

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21657 of 2019

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Sulochana Kumari, Wife of Sri Rakesh Kumar, Resident of Village- Chankap,
P.S.- Kutumba, District- Aurangabad.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Civil Department, Government of Bihar, Patna.
2. The Principal Secretary, Food and Civil Supplies Department, Government of Bihar, Patna.
3. The District Magistrate, Aurangabad.
4. The District Supply Officer, Aurangabad.
5. The Sub Divisional Officer, Aurangabad.
6. The Sub Divisional Officer, Daudnagar.
7. The District Cooperative Officer, Aurangabad.
8. The District Welfare Officer, Aurangabad.
9. The Executive Engineer, PHED, Aurangabad.
10. The Divisional Commissioner, Magadh Division, Gaya

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kumar Singh, Advocate Mr. Saket Gupta, Advocate
For the Respondent/s	:	Mr. Alok Ranjan, AC to AAG 5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 25-03-2021

I. A. No. 1 of 2020.

This interlocutory application has been preferred seeking amendment of pleadings and reliefs in the writ application. It is stated that during the pendency of this writ application the respondents have come out with Advertisement No. 1 of 2019-20 issued under the signature of the District Magistrate, Aurangabad. A copy of the same has been brought



on record as Annexure '18'.

Learned counsel for the petitioner submits that since the advertisement has been issued during the pendency of the writ application, the prayer made by the petitioner to allow him to amend the writ application is fit to be accepted.

In paragraph '3' of the said application it is stated that the impugned order in this writ application has been passed by Divisional Commissioner, Magadh Division, Gaya but inadvertently the Divisional Commissioner, Magadh Division, Gaya has not been made party respondent in the writ application and as such petitioner may be permitted to add him as party respondent in the writ application.

Prayer made in the interlocutory application are formal in nature and in the opinion of this Court, the interlocutory application may be allowed.

Let the amendment be incorporated in the writ application. The Divisional Commissioner, Magadh Division, Gaya be added as party respondent no. 10. Mr. Alok Ranjan, learned AC to AAG-5 accepts notice on behalf of the Divisional Commissioner, Magadh Division, Gaya (respondent no. 10).

With the consent of the parties, the writ application has been heard for purpose of final consideration.



Petitioner in the present case has challenged the letter no. 726 dated 28.08.2019 issued by the Divisional Commissioner, Magadh Division, Gaya as contained in Annexure '1' to the writ application. Further, challenges have been thrown to the directions as contained in Letter No. 4410 dated 18.09.2019 issued under the signature of the Secretary, Food & Consumer Protection Department, Govt. of Bihar who directed for initiation of fresh selection process for appointment of P.D.S. dealers. Petitioner has also challenged the report dated 08.07.2019 submitted by the Inquiry Committee consisting of Deputy Development Commissioner, Nawada, Deputy Development Commissioner, Jehanabad, and Additional Collector, Arwal which is enclosed as part of Annexure '1'.

Learned counsel for the petitioner submits that the petitioner was selected for grant of license of Public Distribution Shop (P.D.S.) vide memo no. 198 dated 08.03.2019 (Annexure 15 to the writ application). She has also deposited the required amount through challan on 08.03.2019 copy of which is enclosed as Annexure '16'.

Learned counsel submits that as it appears now one Ravi Ranjan Kumar Pandey who was also a candidate challenged the selection of the petitioner on the ground that she



is an accused in a criminal case. This is evident from the tabular chart of the committee constituted for the purpose of conducting an enquiry in the matter of selection of P.D.S. dealers in the district of Aurangabad. The name of the complainant appears at serial number 5 and the remarks in front of him shows the nature of complaint.

Learned counsel for the petitioner submits that earlier some aggrieved candidates had complained that there has been a large scale bugglings in the matter of selection of P.D.S. dealers in the district of Aurangabad. While the complaints were still pending with the Divisional Commissioner, some of the aggrieved persons moved this Court in CWJC No. 7646 of 2019. During the pendency of the said writ application, the Divisional Commissioner, Gaya issued Memo No. 354 dated 11.03.2019 by which a committee of three members were constituted to look into the grievances of the several persons against the selection process. When this Court was informed about the issuance of Memo No. 354 dated 11.03.2019 by the Divisional Commissioner, Gaya, this Court observed that because enquiry committee has already been constituted, this Court is not going into any discussion with regard to allegation made in the writ application. A direction was, however, issued to



the Divisional Commissioner, Gaya to complete the enquiry within a period of two months and a decision thereon be taken within an another period of one month. The order dated 04.06.2019 passed by this Court in CWJC No. 7646 of 2019 has been placed on record as Annexure 'B' to the counter affidavit filed on behalf of the respondent nos. 1 and 2.

Learned counsel for the petitioner submits that this Court while disposing of the aforesaid writ application had directed the Divisional Commissioner, Gaya to take a decision in accordance with law and such direction essentially required that in case for any reason the Divisional Commissioner was of the view that the decision to grant license to the petitioner is to be cancelled, she was required to be given an opportunity to be heard. Learned counsel submits that the principle of natural justice is in fact omnipresence and it prevails everywhere.

Learned counsel submits that this Court had also directed the Divisional Commissioner, Gaya to pass an appropriate order in accordance with law, therefore, the Court had not dispensed with the requirement of fulfilling the established procedure of law.

It is further submitted that the Divisional Commissioner, Gaya passed the impugned order giving an



impression as if this Court had directed him to pass such order. The Court has been informed that the order was passed after a transfer order of the Commissioner had already been issued and on the very next day he had to depart. It is, therefore, submission of learned counsel for the petitioner that the order impugned has been passed in haste without complying with the principles of natural justice.

Learned counsel for the petitioner has further submitted that in fact at the time of enquiry by the three members committee the complainant Ravi Ranjan Kumar Pandey did not appear and nothing was produced to satisfy that the petitioner had got any criminal case on her head. Learned counsel has reiterated that in fact the petitioner has no criminal case on her head, therefore, the complaint was only mischievous in nature.

Mr. Alok Ranjan, learned AC to AAG-5 has opposed the writ application. It is his submission that this Court had noticed the kind of allegations made by several persons and only after looking into the same, since the Court found that a Committee has already been constituted to look into the grievance of the writ petitioners, the writ application was disposed of vide order dated 04.06.2019.



Learned counsel further submits that there was a general consideration of all the grievances and when the three members committee found that the decision to hold examination with regard to the computer knowledge was not duly communicated to all the candidates, it was thought just and proper to recommend cancellation of the entire selection process. It is submitted that the petitioner may still participate in the next round of selection and on being successful she may be awarded the license. Learned counsel submits that the license was yet to be issued.

Learned counsel further submits that consideration given by the committee may be found in paragraph '4' to '12' of the report dated 08.07.2019.

Having regard to the facts and circumstances of the case as also on perusal of the records, this Court finds that the three members committee was constituted to look into the general grievances of the various applicants who had not succeeded in the selection process. The three members committee was constituted to look into the grievances but in course of enquiry, despite the information available on the record that the petitioner had already been selected and was duly communicated to deposit the required amount through challan



and submit other requirement so as to enable the licensing authority to issue license and the petitioner had complied with those requirements a right had accrued to her, the committee did not provide her an opportunity of hearing. The licensing authority had already received a direction to issue the license. In such circumstance, in the opinion of this Court, she was required to be heard before cancelling her selection on any ground whatsoever.

The general finding recorded by the three members committee which has led to cancellation of selection of this petitioner would not be relevant and is not attracted as against the petitioner inasmuch as no complaint was filed in respect of her vacancy on the ground that any candidate had suffered due to lack of information as regards the computer test. The allegation made against the petitioner was that she had got a criminal case but the allegation was not substantiated in course of enquiry. The complainant did not turn up and the petitioner has been reiterating that she has no criminal case on her head.

In the opinion of this Court the non-observance of the principles of natural justice in case of the petitioner has definitely prejudiced her case inasmuch as the selection of the petitioner has been cancelled without giving an opportunity of



hearing to her.

This Court, therefore, finds it just and proper to set-aside the impugned order as contained in Annexure '1' to the present writ application insofar as it relates to the petitioner. This Court directs the licensing authority to issue license to the petitioner in terms of his Memo no. 198 dated 08.03.2019 (Annexure '15' to the writ application) within a period of 30 days from the date of receipt/production of a copy of this order.

It goes without saying that the licensing authority may, if so advised, consider the complaint against the petitioner afresh, giving an opportunity of hearing to her and take a decision in accordance with law.

This application stands disposed of in terms indicated hereinabove.

(Rajeev Ranjan Prasad, J)

vats/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.03.2021
Transmission Date	

