

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25075 of 2019

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Saurabh Suman S/o Binod Kumar R/o Karori Chak, near Shiv Mandir Talab,
P.s. and P.o.- Phulwarisharif, Phulwari, Patna and presently residing at C/o
Munna Ji, above royal fitness gym, kishan colony, Beur Akhara, P.s. and p.o.-
Beur, Anisabad, Patna-800002

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna
2. The Collector cum Chairman District Selection Committee, Patna, Distt.-patna
3. The Sub Divisional Officer cum Licensing Authority Patna Sadar, District-Patna
4. Shravan Kumar S/o Late Ganauri Singh R/o Village- Brahmpur, P.S. and P.O.- Phulwarisharif, District- Patna.

... .. Respondents

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Appearance :

For the Petitioner : Ms. Chhaya Kirti, Advocate
For the Respondents : Mr. Upendra Pratap Singh, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

11 17-09-2021 This matter has been taken up for hearing on-line because of COVID-19 Pandemic restrictions.

2. The petitioner was an applicant for allotment of a fair price shop under Bihar Targetted Public Distribution System (Control) Order, 2016 (in short 'BTPDS Control Order'). It is specific case of the petitioner that name of the petitioner was recommended for allotment of a fair price shop for Ward No. 28 under Phulwarisharif Nagar Parishad. Subsequently, his candidature was cancelled, which was not communicated to the petitioner. The petitioner learnt about the



cancellation on the basis of information received by him under the Right to Information Act. The petitioner's candidature, is said to have been cancelled with reference to Order 11(i) of the BTPDS Control Order. One Shrawan Kumar, who has been impleaded as respondent No. 6 is said to have been recommended for allotment of the shop in question in place of the petitioner. Learned counsel for the State of Bihar has informed this Court that till date requisite licence has not been issued in favour of respondent No.6 because of the pendency of this application.

3. Order 11 of BTPDS Control Order reads as under : -

“11. Disqualifications of getting a fair price shop license. - (i) No fair price shop license shall be granted to more than one member in a joint family. Father, mother, brother, brother's wife, husband, wife, son, son's wife and step brother shall come in the definition of the family

(ii) A mukhia, a sarpanch, a panch, a ward member, a member of a panchayat samiti, a member of a district board, an MLA, a Member of Legislative Council, a member of Parliament, and an elected member of municipal bodies shall not be eligible for allotment of a fair price shop during his tenure as such capacity.

(iii) An owner of a flour mill and his



near relatives shall not be allotted a fair price shop.

(iv) A minor or a lunatic or an insolvent shall not be allotted a fair price shop.

(v) A person finally convicted by the court under the Essential Commodities Act, 1955 or in any other criminal case shall not be allotted a fair price shop.

(vi) A person holding a post of profit in the Government shall not be allotted a fair price shop.”

4. Order 11 of the BTPDS Control Order delineates the circumstances in which a person shall stand disqualified of getting a fair price shop licence. Sub-order (i) of Order 11 requires that no fair price shop licence shall be granted to more than one member in a joint family. Father, mother, brother, brother's wife, husband, wife, son, son's wife and step brother come within the definition of ‘the family’ for the purposes of Order 11(i). This is an admitted fact that the petitioner’s father has licence for running a fair price shop under the BTPDS Control Order. Evidently, on this ground alone while invoking Order 11(i) of the BTPDS Control Order, the petitioner has been denied grant of licence, despite selection and recommendation in his favour, the petitioner contends.

5. Despite service of notice, respondent No. 6 has



not entered appearance.

6. Heard Ms. Chhaya Kirti, learned counsel appearing on behalf of the petitioner and Mr. Upendra Pratap Singh, learned A.C. to S.C.-4 for the State of Bihar.

7. Ms. Chhaya Kirti, learned counsel for the petitioner has argued that it is true that the petitioner and petitioner's father come within the meaning of family for the purposes of Order 11(i) of the BTPDS Control Order. She has, however, submitted that there is no jointness in the family inasmuch as there has been partition in the joint family. She has further contended that unless there is a cogent finding that a person is in jointness with the family members as mentioned in Order 11(i) of the BTPDS Control Order, he/she cannot be denied the privilege of grant of licence on that ground.

8. On careful reading of Order 11(i) of the BTPDS Control Order, I find substance in the submission made on behalf of the petitioner. To deny the privilege of grant of licence for running a fair price shop under the BTPDS Control Order, there must be a finding based on cogent material that the applicant for such licence lives in jointness with his family member/members already having licence for running a fair price shop. Since there is no denial of facts, as noted hereinabove, this



application is allowed with a direction to the licensing authority to reconsider the question of allotment of fair price shop, Ward No. 28 of Phulwarisharif Nagar Parishad. If the licensing authority-cum-Sub Divisional Officer is of the view that the petitioner cannot be granted licence because his father has been granted such licence under the BTPDS Control Order, he will have to record a finding based on cogent materials to the effect that the petitioner and his father live in jointness.

9. The decision must be taken within two months from the date of receipt/production of a copy of this order.

10. This application is allowed with aforesaid direction.

(Chakradhari Sharan Singh, J)

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