

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4728 of 2022

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Bushra Yasmin Wife of Md. Anwar Alam, Resident of Village-Supaul
Bazar, Near Idgah, P.S.-Biraul, District-Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food,
Civil Supply and Consumer Protection, Govt. of Bihar, Patna.
2. The District Magistrate, Darbhanga.
3. The District Food Supply Officer, Darbhanga.
4. The Sub-Divisional Officer, Biraul Sub-Division, Darbhanga.
5. Md. Afroz Alam S/o of Md. Yahiya, Resident of Supaul Bazar,
Sheikhpura P.S.-Biraul, District-Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anand Kumar Ojha, Adv.

Mr. Shailesh Kumar, Adv

For the Respondent/s : Mr. Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 28-09-2022

Heard Mr. Anand Kumar Ojha, the learned
Advocate for the petitioner and Mr. Alok Ranjan, learned
AC to AAG-5 for the State.

2. The claim of the petitioner for being granted
license under the P.D.S. scheme was rejected on the
ground that the certificate of the educational qualification



furnished by her was found to be doubtful. This led the petitioner to approach this Court vide C.W.J.C. No. 7907 of 2018 where the University from where the petitioner had passed out was also impleaded as a party.

3. The L.N. Mithila University declared before this Court through the counter affidavit filed on its behalf that the marksheet of the petitioner issued by the University was not forged but genuine and that the seal / signature of the Controller of Examination was inadvertently left to be put in place.

4. Considering the afore-noted statement of the University about the genuineness of the certificate issued in favour of the petitioner, this Court directed the Sub Divisional Officer, Biraul to consider the case of the petitioner for grant of license by treating her marksheet to be genuine. A timeline also was fixed for the aforesaid purpose.

5. Thereafter, when the matter was considered by the District Selection Committee headed by the District Magistrate, it was found that the vacant place was



required to be given to a differently abled person under the scheme and as such, another lady by the name of Farhana Khatoon was granted license. After the grant of license to aforesaid Farhana Khatoon, she passed away and in her place, license was granted, on compassionate ground, to her husband.

6. The petitioner in this instance also has been left high and dry.

7. Hence, the writ petition.

8. Mr. Ojha, the learned Advocate has seriously contended that when the petitioner was not considered by the District Selection Committee for grant of license only on the ground of her certificate being doubtful and when a Bench of this Court had given a declaration that the certificate was genuine in view of the specific stand of the University, then there was no reason to reject the claim of the petitioner by the District Selection Committee. For saying so, Mr. Ojha employs the logic that when the issue of non-selection of the petitioner as a licensee was challenged before this Court, giving every opportunity to



the respondent/ the Sub Divisional Officer and other authorities under the scheme to rebut such contention, they were left with no option but to take verdict of the Court to its logical conclusion in granting license to the petitioner.

9. In support of the aforesaid logic, Mr. Ojha has drawn the attention of this Court to an observation made by the Hon'ble Supreme Court in ***Forward Construction Company vs. Prabhat Mandal; 1986 (1) SCC 100***, wherein, it has been held that the principle underlying such proposition is that where the parties have had an opportunity of controverting a matter and which has not been done, that should be taken to be the same thing as if the matter had been actually controverted and decided. It may be true that where a matter has been constructively in issue, it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. Reference also has been made to an observation of the Hon'ble Supreme Court in ***Direct Recruit Class II Engg. Officers' Assn. vs. State of Maharashtra 1990***



(2) SCC 715, wherein, it has been clarified that any adjudication is conclusive and final not only for the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming into the legitimate purview of the original action, both in respect of the matters of claim and defence. Thus, it has been urged that the principle of constructive *res judicata* would apply, leaving no scope for the District Selection Committee to traverse beyond the consideration of the educational certificate of the petitioner.

10. We have perused the order passed by the learned Single Judge, wherein a direction has been given to the Sub Divisional Officer / the Licensing Authority to consider the case of the petitioner within the timeline provided by the Court. In fact, the decision with respect to selection of candidates for grant of license under the PDS scheme is left to the District Selection Committee of which the Licensing Authority as also the District Magistrate are



members. Normally, any decision taken by the District Selection Committee is appellable before the Collector but since the concerned Collector is part of that decision making process, by way of a notification, the dispute has been made referable to the Divisional Commissioner of the division for the needful. However, in the present case, the only objection of the petitioner is that once the educational certificate of the petitioner was found to be genuine, no other ground could have been taken by the decision-making authority in non-suiting the petitioner and not granting license to her.

11. The aforesaid submission on behalf of the petitioner is not at all acceptable for various reasons.

12. The issue before the learned Single Judge was with respect to incorrectness in holding the educational certificate of the petitioner to be forged and fabricated. It was for that purpose that the L.N. Mithila University and the Controller of Examination were made party respondents. This was the preliminary objection in not keeping the candidature of the petitioner within the zone



of consideration. Once that cob-web was cleared and the cloud over the correctness of the certificate was resolved, the petitioner, no doubt came within the zone of consideration. This prompted the learned Single Judge to direct the Licensing Authority/ Sub Divisional Officer, Biraul to consider the case of the petitioner for grant of license. No where in the order and not even by employing the principle of constructive res judicata can it be argued that no other ground was required to be taken in consideration for granting license to the most suitable candidate amongst many contenders, even in the absence of the officials respondents not bringing such issues before the learned Single Judge regarding further issues on which the suitability of the candidates could be determined.

13. There cannot be any gainsaying that an adjudication is conclusive and final with respect to all aspects of the matter but in the present case, where the issue brought before the learned Single Judge by the petitioner was only with respect to non-consideration of the case of the petitioner for the educational certificates



were treated as fake, which confusion was resolved, the other issues remained open for the decision-making authority to take a final call. Had it not been the case, the learned Single Judge would have directed for grant of license to the petitioner by the Licensing Authority. The selection process is clearly delineated in Bihar Targeted Public Distribution System (Control) Order, 2016 which provides that a merit list is to be prepared on the recommendation of the authorities under the Control order, 2016 which shall be scrutinized by the District Selection Committee and a final merit list shall be prepared. According to the own showing of the petitioner and which can be clearly derived from the decision of the District Selection Committee that the post vacant for which the petitioner had applied was given to a differently abled person, who ultimately died. Once license was granted to a different person, with his or her death, any next heir/dependent would be entitled in any circumstance to apply for grant of license on compassionate ground. The husband of the licensee in that case applied and was



granted license. This definitely did not exclude the petitioner from the zone of consideration and, therefore, it would not be appropriate for the petitioner to urge that the principle of constructive *res judicata* would apply and that the District Selection Committee was left with no option but to grant license to the petitioner in the event of the educational certificates furnished by her to have been found to be genuine.

14. We do not find any reason to interfere with the selection made by the District Selection Committee.

15. For the afore-noted reasons, the petition stands dismissed.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

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AFR/NAFR	AFR
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