

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9159 of 2018

Prabhu Singh Son of Late Manchan Singh, Resident of Village- Tirhuta, P.S.-
Babubarhi, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate, Darbhanga.
3. The Sub Divisional Officer Sadar Darbhanga, District- Darbhanga.
4. The Block Supply Officer Block- Tardih, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sushmita Mishra
For the Respondent/s	:	Mr.S. Raza Ahmad- Aag5

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 13-10-2022

1. Heard Ms. Sushmita Mishra, learned Advocate for the petitioner and Mr. Alok Ranjan, for the State.

2. The sole question raised in the present writ petition is whether for compassionate grant of licence to the petitioner, his qualification is required to be seen.

3. Clause-X of the Bihar Targeted Public Distribution System (Control) Order, 2016 specifies that in case of death of a fair price shop licensee under the age of 58 years, his shop may be allotted in order of priority to his/her wife/husband,



son, unmarried daughter, daughter-in-law and widow of his son. If there are, out of these, more than one dependent, all the others are required to forsake their claim in favour of one through an affidavit. The application for being considered for compassionate grant of licence has to be made within two years from the date of death of the licensee by his dependent.

4. What is important to note in the aforesaid clause is that if licence is granted, such a fair price shop licence shall be treated as a new licence and it shall be permissible for further compassionate ground licence but if any member of the family of the deceased/licensee is a Government servant or holds a post of profit in the Government, such a family shall not get the benefit of compassionate ground.

5. A bare reading of Clause-X of the Control Order of 2016 makes it very obvious that such right of securing compassionate grant of licence is not absolute and is limited by conditions like the licence to be treated as a new licence and that the dependent shall not be entitled to such grant of licence in case anybody in the family is a Government servant or holds an office of profit. In this context it would really be necessary



to look at the provision contained in Clause-IX of the Control Order of 2016 which provides indices for consideration in allotting fair price shop by the Selection Committee. One of the conditions is that the applicant of a fair price shop licence must be matric pass and an adult.

6. Apart from this, Mr. Alok Ranjan, learned Advocate for the State has brought to the notice of this Court, a circular contained in Memo No. 4842, dated 25.09.2017 issued by the Department of Food and Civil Supplies that in cases of grant of licence on compassionate ground, all the qualifications/disqualifications enumerated in the Control Order, 2016 shall be insisted upon.

7. Thus, if the candidate/dependent/licence-seeker on grounds of compassion is not a matriculate or an adult, he would not be a competent person to ask for such licence.

8. Ms. Sushmita Mishra, learned Advocate for the petitioner, however, has contended that the considerations which are required to be factored in for grant of licence requiring a candidate to be at least Matric pass and an adult is for grant of fresh licence in general and not licence on



compassionate ground. She has further submitted even her father, who died during the currency of the present Control Order of 2016, was a licensee of an earlier Control Order and he too was a non-matriculate. Additionally it has been urged that the petitioner, while assisting his father in running the PDS shop, has gained sufficient experience in handling such matters and, therefore, only on the ground that he is not a matriculate, he ought not to have been non-suited by the authorities. It has also been pointed out that considering the fact that the petitioner is the son of the deceased licensee and has the experience of running the PDS shop, was selected by the District Selection Committee in the first instance but ultimately no licence was granted to him only for his not being a matriculate .

9. We have given anxious consideration over the arguments advanced on behalf of the parties, but the dictum behind our consideration is that any direction against the Statute would amount to showing undue sympathy which has no place in the eyes of law. Assuming for the sake of argument that the petitioner would not have been an adult or would have



been a lunatic, whether on grounds of compassion, he could have been granted licence in the event of death of his father. The answer obviously is "No".

10. By the aforesaid logic, if it has been prescribed in the Control Order that for any person to be a licensee under the Control Order of 2016, he has to be a matriculate and an adult, such condition cannot be by-passed even while considering the case of compassionate grant of licence.

11. Apart from this, the Circular of the Government makes the intention behind framing the Control Order of 2016 very clear, namely, that every licence, be it grant of licence on compassionate ground, is a new licence under the Control Order of 2016 and, therefore, all such licensees have to have the qualification prescribed under the Control Order of 2016. Any disqualification enumerated in the Control Order of 2016 also attaches to a person who claims grant of licence on compassionate ground.

12. For the afore-noted reasons, we are not inclined to accept the submissions of the petitioner challenging the



decision of the authorities in not granting licence to him on the ground of his not being a matriculate.

13. We are, thus, left with no option but to dismiss this petition but without any order as to costs.

14. The petition stands dismissed accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Skm/ashishkr/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

