

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6428 of 2022

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Sitaram Gupta, aged about 59 years, male, Son of Hiralal Gupta, Resident of Village- Sabeya, Gram Panchayat- Kandh Gopi, Block- Hathua, Sub-Division- Hathua, P.S.- Mirganj, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The Commissioner, Saran Division, Chhapra.
4. The District Magistrate, Gopalganj.
5. The Sub Divisional Office, Hathua, District- Gopalganj.
6. The Block Supply Officer, Block- Hathua, District- Gopalganj.
7. The District Selection Committee, District- Gopalganj through the District Magistrate, Gopalganj.
8. Sima Devi (License No- 17/2021), aged about 26 years, female, Wife of Yogendra Baitha.
9. Rinku Devi (License No- 19/2021), aged about 25 years, female, Wife of Amit Tiwari.
10. Samima Khatoon (License No- 21/2020), aged about 30 years, female, Wife of Khurshed Alam.

All are resident of Village- Kandh Gopi, Gram Panchayat - Kandh Gopi, Block - Hathua, Sub Division - Hathua, P.S. - Mirganj, District - Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Pandey No. 5, Adv.
For the Respondent/s : Mr. Upendra Pratap Singh, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-01-2023

Heard Mr. Sanjay Kumar Pandey No. 5, the



learned Advocate for the petitioner and Mr. Upendra Pratap Singh, the learned counsel for the State.

2. The petitioner is a P.D.S. dealer, who is aggrieved by the decision of the respondents in creating more shops under the Public Distribution Scheme in a particular locality, which is in teeth of the administrative instruction of the Department of Food and Civil Supplies and Rule 9 of the Bihar Targeted Public Distribution System (Control) Order, 2016 (*in short the Control Order of 2016*).

3. In order to test the correctness of the submissions advanced on behalf of the petitioner, a P.D.S. dealer, who appears to be aggrieved by a dis-balance of the economies of scale for the creation of more than required number of P.D.S. shops in the locality, it would be necessary to refer to Clause-9 of the Control Order of 2016.

4. The Clause-9 of the Control Order of 2016 mandates that there shall be one fair-price shop for the



population of 1350 in urban areas and for the population of 1900 in rural areas on the basis of the census data prevailing at that time. It further ordains that it shall be ensured that a consumer not cover a maximum distance of more than two kilometers in reaching his fair-price shop, both in rural and urban areas.

5. In distant and difficult to communicate areas, especially in the areas of scheduled castes/tribes, a fair-price shop may be allotted for a population of 1000.

6. It appears that the Department came to learn that more than the required number of shops were opened in particular area, which assessment was *qua* the number of human heads in urban and rural areas. It was in this context that a communication was made by the Secretary of the Department of Food and Civil Supplies to all the concerned officers for identifying such shops which were in excess of the requirement *qua* the human head; cancelling the agreement with them and



allow only such number of shops which would cater to the needs of the targeted beneficiaries.

7. Drawing strength from this communication, the petitioner seeks a direction from this Court for preventing opening of three more P.D.S. shops in the area, where already, including the petitioner, seven licensees have been operating.

8. Mr. Pandey, the learned Advocate for the petitioner has further pointed out that because of such un-channelized and unrestricted opening of Public Distribution Shops, an unhealthy competition has emerged amongst the licensees, who more often than not, have been indulging in distributing food-grains beyond the list of targeted beneficiaries attached to their respective shops. This has the potency of the controlled food-grains being sold in the black-market or the needy beneficiaries being left out dry of the benefits which are intended through the Control Order of 2016.

9. The apprehension of the petitioner is



unfounded, to say the least.

10. As noted above, Clause-9 of the Control Order of 2016 merely states the minimum number of there being at least one fair-price shop for 1350 heads in urban areas and 1900 heads in rural areas, which assessment is to be based on the census data prevailing at the time of distribution of such shops.

11. What the petitioner has conveniently forgotten is the another mandate in Clause-9 of the Control Order of 2016, which, as noted above, requires that a consumer ought not to cover more than maximum distance of two kilometers in reaching his fair-price shop, which condition is to be followed in urban as well as rural areas.

12. There is nothing in the communication, referred to above, which can give an impression that such assessment of the Secretary of the Department was based on any census or head-counting *qua* the number of shops. A general statement has been made



by the Secretary of the Department, which does not take into account the overall mandate under the Control Order of 2016 with respect to the number of shops in a particular area.

13. There is no outer ceiling limit.

14. What has been prescribed is the minimum number *qua* the number of heads.

15. True it is that if more than required number of shops are opened in an area, that would result in food-grains being distributed amongst the shopkeepers which may not ultimately reach the targeted beneficiaries, leaving food-grains in surplus with those licensees, who could indiscriminately hoard the same and sell it in black-market. Nonetheless, seeking cancellation of the fair-price shops in a particular area or preventing new shops to be opened, without any specific instance or evidence and only based on a general communication of the Secretary of the Department is neither desirable nor called for.



16. We do not find any reason to hold an opinion that the number of shops in particular areas are more than required for which necessary census will have to be undergone and a figure would have to be projected. In the absence of such details, an administrative instruction, a casual one at that, may not be enforced under Article 226 of the Constitution of India.

17. The petition has no merit and is, accordingly, dismissed.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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