

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6641 of 2023

Rinku Kumari Wife of Muna Kumar Sah, Daughter of Shankar Sah Resident of Village and Post- Bokane Kala, Block-cum- Circle- Patahi, Sub-Division- Pakridayal, District- East Champaran, Bihar- 845414.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Civil Supply, Government of Bihar, Patna.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur, Bihar.
3. The District Magistrate-cum- Collector, East Champaran, at Motihari, Bihar.
4. The District Supply Officer, East Champaran, Motihari.
5. The Sub-Divisional Officer- cum- Licensing Authority Public Distribution System, Pakridayal, East Champaran, Bihar.
6. The Block Development Officer-cum-Block Supply Officer, Patahi, District- East Champaran, Bihar.
7. The Circle Officer, Circle- Patahi, District- East Champaran, Motihari.
8. Munita Kumari, Wife of Shri Avanish Kumar Resident of Village and Post- Bokane Kala, Block-cum-Circle- Patahi, Sub- Division- Pakridayal, District- East Champaran, Bihar- 845414.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal, Sr. Adv.
	:	Mr. Sanjay Kumar, Adv.
	:	Mr. Diskha Kumari, Adv.
For the Respondent/s	:	Mr. Arvind Ujjwal (Sc4)

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

9 03-10-2023 Heard the learned counsels for the parties.

The present writ petition has been filed for the following
reliefs:

*“For quashing the order
dated 01.04.2023 passed by learned
Divisional Commissioner in P.D.S
Revision Case No. 208 of 2022
whereby and whereunder the licence*



for shop of proper value as granted to petitioner by the order of District Level Selection Committee under Bihar Targeted Public Distribution System (Control) Order, 2016 is comminuted by instructing to act further in accordance with law without appreciating the proper facts and prospective of law.

Certified copy of order dated 01.04.2023 passed by learned Divisional Commissioner in P.D.S Revision Case No. 208 of 2022 is annexed herewith and marked as annexure I to this application.

(ii) To hold and declare that the petitioner is a resident of village and post-Bokane Kala, Block-cum-Circle - Patahi, Sub - division - Pakridayal, District- East Champaran, Bihar -845414 and as such she is entitled to grant of licence for shop of proper value under Bihar Targeted Public Distribution System (Control) Order, 2016 and comminute of her licence based on the reason of non-appearance of her name in the panchayat voter list of her father, name in Ration card /Adhar Card of her father and strike out of her name from voter list concerned to her in laws place as well as application made for correction of name in Adhar Card in year 2018, after



publication of advertisement for said licenced shop and further rejection of application in respect to residence certificate of petitioner on basis of her marriage solemnised under Kalyanpur Circle whereas, it is evident that after her marriage solemnised in year 2005, she is residing at the place of his father i.e., at village and post- Bokane Kala, Block- cum-Circle-Patahi, Sub-division - Pakridayal, District- East Champaran, Bihar - 845414 since, 2009 and so, comminute of her said licence for shop of proper value under Bihar Targeted Public Distribution System (Control) Order, 2016 is not just and proper.

iii. For directing the concerned respondent authority to reinstate her licence for shop of proper value as granted by the order of District Level Selection Committee under Bihar Targeted Public Distribution System (Control) Order, 2016.

iv. For directing the concerned respondent authority to stay the operation of the order 01.04.2023 passed by learned Divisional Commissioner in P.D.S Revision Case No. 208 of 2022 as contained in annexure pendency of the case. I to this application till

V. For any other relief or reliefs for



which petitioner is entitled to.”

3. Learned counsel for the petitioner has stated that the impugned order passed by the Divisional Commissioner in PDS Revision No. 208 of 2022 is liable to be set aside on the ground that the same is not in accordance with the provisions of the Bihar Targeted Public Distribution (Control) Order 2016. Learned counsel for the petitioner has stated that the authority concerned without verifying the factual aspects has held that the petitioner is not a resident of village Bokane Kala and thereby cancelled the PDS license issued in favor of the petitioner. Learned counsel has stated that the petitioner was born and brought up in Bokane Kala village and her parents still live in the same village. That the marriage of the petitioner was solemnized in the year 2005 and she had temporarily shifted to her-in-laws place and, thereafter, in the year 2019 she had returned back to her native village as her father had given a piece of land over which she had built a house and residing with her husband. Learned counsel has further stated that the petitioner is a resident of Bokane Kala village and she was also appointed as a Bank mitra in the year 2014 and continued till 2019. Learned counsel for the petitioner has further stated that the application of the petitioner for grant of PDS license was accepted by the authorities after conducting a thorough enquiry



and verifying the documents filed by the petitioner. That the Respondent No. 08 herein has filed an appeal before the Divisional Commissioner, who vide PDS Appeal Case No. 208 of 2022 has cancelled the license issued in favor of the petitioner. Learned counsel for the petitioner has stated that as per the provisions of the Rule 9 of the Control Order, 2016, the petitioner was fully eligible to be appointed as a PDS dealer and the authorities duly considered the application made by the petitioner and appointed her as a PDS dealer. Further, learned counsel has stated that the reasoning given by the Divisional Commissioner is liable to be set aside on the sole ground that the said commissioner has not taken into account the provisions of the Control Order, 2016 more particularly Rule 9 under which the eligibility criteria is prescribed. Learned counsel has stated that Rule 8 of the Control Order, 2016 is only a facilitating rule and the said Rule 8 cannot take precedence over the Rule 9. Learned counsel has stated that the authorities have to first verify as to whether a particular candidate meets the requirements of Rule 9 and thereafter, if no eligible candidate are available, they can rely on Rule 8 for appointing a PDS Dealer. However, the Divisional Commissioner without advertng to the above, has given precedence to Rule 8 and set



aside the license granted to the petitioner on the sole ground that the petitioner is not a resident of Bokane Kala village. Therefore, learned counsel has prayed this Hon'ble Court to set aside the impugned order and direct the authorities to restore the license of the petitioner.

4. *Per Contra*, the Learned counsel appearing on behalf of the respondents-State has vehemently opposed the very maintainability of the present writ petition and has stated that the order passed by the Divisional Commissioner (Respondent No. 2) is strictly in accordance with the law and the provisions of the Control Order, 2016. Learned counsel has further stated that the Rule 8 of the Control Order, 2016 will take precedence over Rule 9 and in case the arguments of the learned counsel appearing on behalf of the petitioner are to be accepted, then the provisions of Rule 8 will become redundant and meaningless. Learned counsel has stated that only in case there are no eligible persons from the very same village or ward, then only the license can be granted to other persons from other villages or wards. That preference should be given to the residents of the same village or ward. Learned counsel for the respondent No. 8 while adopting the above said arguments made by the counsel for the state has also stated that the petitioner is not a resident of



the Bokane Kala village and that she was a resident of Manichapara Kalyanpur Purvichamparan village. Learned counsel has drawn the attention of the Court to the ration card issued in favor of the petitioner and also the voter list of Manichapara Kalyanpur Purvichamparan village. Further, it is stated that the documents filed by the petitioner showing her to be a resident of Bokane Kala village are forged and fabricated documents, therefore, no credence can be given to the said documents. Learned counsel has prayed for dismissal of the present writ petition.

5. Admittedly, in the present writ petition, the only controversy is as to whether the provisions of Rule 8 will take precedence over Rule 9 of the Control Order, 2016 or vice-versa. In order to appreciate the issue involved in the present writ petition, it is necessary to extract the provisions of the Rule 8 and Rule 9 which reads as under;

“8. Priorities in allotment of fair price shop.

Except the compassionate ground cases, the priorities in allotment of fair price shops shall be as follows:

(i) Self Help Groups;

(ii) Cooperative Societies of Women;

(iii) Cooperative Societies of Ex-Servicemen;



(iv) Educated Unemployed persons:

(v) The resident of a panchayat or ward shall be given priority.

9. The following facts shall be considered in allotting a fair price shop by the Selection Committee.

(i) 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 the time. a maximum distance

(ii) It shall be ensured that a consumer should not cover of more than two kilometer in reaching his fair price shop both in rural and urban areas.

(ii) In distant and difficult communication areas, especially in the areas of the scheduled castes/tribes, a fair price shop may be allotted for a population of 1000.

(iv) The self help groups or cooperative societies of women/ex-servicemen shall be deemed to belong to in that class (such as scheduled caste, scheduled tribe, extremely backward class, backward class, backward class women and general) in which more than 50 percent of the members of the managing committee of such self help groups or cooperative societies of women/ex-servicemen, belong to, for the purpose of determination of their reservation status.

(v) The applicant of a fair price shop's license must be matric pass and an adult: Provided that the applicant having computer knowledge shall be given priority. In case of equality in computer knowledge, the applicant having highest qualification and in case of equality in highest qualification also the applicant of older age shall be given priority.



(vi) In case, a cancelled license is in appeal or in revision, and the lower court's order is stayed, such cancelled license shall not be enumerated in the list of vacant fair price shops.

(vii) The process of filling up vacant fair price shops shall be a continuous process, and a vacant fair price shop shall be filled up within a month from its vacancy.

(viii) After approval of the District Officer on the reservation roster point prepared in accordance with the reservation roster point determined by the General Administration Department applications shall be invited for filling up the vacant fair price shops by advertisement at least in two daily news papers.

(ix) Against unreserved vacancies, persons of all classes may submit application, and the selection shall be made purely on merit, and their status shall be unreserved.

(x) The license for a fair price shop shall be issued in the name of self help groups and cooperative societies of women/ex-servicemen and its operation shall be made by their managing committee.

(xi) A fair price shop owner shall have the fair price shop in its catering locality, and as an exception in special circumstances in view of convenience of the beneficiaries a fair price shop may be allowed outside of the catering area by the prior approval of the District Officer."

6. Rule 8(v) states that the priority in allotment of fair price shop should be given to the resident of the panchayat or ward. Rule 9 prescribes the eligibility criteria for allotment of the fair price shop. Under the said rule, a person applying for the



license of the fair price shop should be a matriculation pass and an adult, he should have sufficient computer knowledge and in case there is equality among the applicants with regard to the computer knowledge, then the applicant having the highest qualifications should be given preference and in case there is equality in the qualification, then the person who is older should be selected. The contention of the petitioner that the authorities concerned first ought to take into consideration the criteria provided under Rule 9 and only if no eligible candidate is available, then only they can rely on Rule 8 is flawed and cannot be countenanced. In case the argument put forward by the learned counsel for the petitioner is accepted, then the very purpose of enacting Rule 8 will be defeated. The very purpose of having Rule 8 is to give preference to the class of persons enumerated in Rule 8. As per Rule 8(v), the residents of the panchayat or the ward shall be given priority. In case there are eligible candidates belonging to the very same panchayat or ward for which the PDS license is sought to be allotted, then they should be given priority. The very purpose of enacting the said rule is to provide employment to the residents of panchayat/ward and only in case there are no eligible candidates belonging to the very same panchayat or ward meeting the



eligibility requirements enumerated under Rule 9, then only the persons from other villages, panchayats or wards can be selected. The reasons given by the Divisional Commissioner vide order dated 01.04.2023 cannot be faulted with and the order is in accordance with the provisions of the Control Order, 2016. The conclusion reached by the authority concerned is a well reasoned one and factually correct. Moreover, as seen from the record, the petitioner is still having a ration card from the Manichapara Kalyanpur Purvichamparan village and her name is also reflected in the voter list at Serial No. 702 of Page 18 (AnnexureR-8/B) filed along with the counter affidavit filed by the Respondent No. 08. Therefore, it cannot be said that the petitioner is a resident of Bokane Kala village.

7. Having regard to the above facts and circumstances, this Court does not find any merit in the present writ petition which warrants any interference and the same is accordingly dismissed.

(A. Abhishek Reddy, J)

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