

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8412 of 2023

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Phul Kumari Wife of Ishwar Chandra Gupta @ Ishwarchand Gupta Resident
of Village- Alampur, Police Station- Shiv Sagar, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Food and Consumer Affairs, Government of Bihar, Patna.
2. The Divisional Commissioner, Patna Division, Patna.
3. The District Magistrate-cum-Chairman, District- Rohtas at Sasaram.
4. The Sub Divisional officer-cum-Licensing Authority, Sasaram, District- Rohtas.
5. The Block Supply Officer, Sheosagar Block, District- Rohtas.
6. Lalita Devi Wife of Ritik Raj Resident of Village- Alampur, Police Station- Sheosagar, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Tiwary, Adv.
For the Respondent/s : Mr. S. Raza Ahmad (Aag5)

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

5 02-11-2023 Heard the parties.

2. The present writ petition is filed for the following

relief:-

(I) For that the present writ petition is being filed for setting aside the decision of Selection committee vide memo No. 138 dated 30.01.2021 passed by the Respondent District Magistrate, Rohtas At the request of learned counsel for the petitioner, post this matter on Sasaram by which the claim of the petitioner has been cancelled on the false and vague claim made by someone and



ignoring the valid claim of the petitioner, fair price shop has been allotted to the private Respondent No. 6 illegally whereas she is top on the merit list and belonging to the OBC and to cancel the fair price shop on the making false vague and baseless claim and keeping dark to the Respondent authorities on her father-in-law has running fair price already, while partition has been made between the family member's award passed by the Lok Adalat, Sasaram, Rohtas in Partition Suit No. 477 of 2004 amongst the co-sharer hence all members are living separately since long much prior to the advertisement of the present fair price shop.

(ii) A writ in the nature of certiorari to set aside the Memo dated 30.01.2021 passed by the Respondent District magistrate, Rohtas At the request of learned counsel for the petitioner, post this matter on Sasaram by which the claim of the petitioner has been cancelled on the false and vague claim made by someone.

(iii) For setting aside the Revisionl order dated 09.02.2023 passed in Bihar Targeted P.D.S. control Revision No. 275 of 20222 passed by the learned Divisional Commissioner, Patna Division, Patna whereby and where



under without taking in to consideration that husband of the petitioner and all family including father-in-law of the petitioner is living separately by the award passed by the Lok Adalat, Sasaram, Rohtas in Partition Suit No. 477 of 2004.

(iv) A writ in the nature of mandamus directing the Respondent authority to allotted the fair price shop to the petitioner while she is top on the mrit list and belonging to the O.B.C. and to cancel the fair price shop allotted to the private Respondent No. 6 while she has got allotment and Fair Price Shop in her name by making false, vague and baseless claim and keeping dark to the Respondent authorities as her father-in-law has running fair price shop already, while partition has been made between the family members, award passed by the Lok Adalat, Sasaram, Rohtas in Partition Suit No. 477 of 2004 amongst the co-sharer; hence all family members are living separately since long."

3. Learned counsel for the petitioner has stated that the authority concerned without taking into consideration the award passed by the Lok Adalat has passed the impugned order. Learned counsel has stated that



there was a severance in the status of the joint family of the petitioner's husband and his brothers and father-in-law by way of partition. Therefore, the reliance by the Divisional commissioner on Rule 11 of the **Bihar Targeted Public Distribution System (Control) Order, 2016** was highly misplaced. Learned counsel has stated that once there is a severance in the status of the joint family between the members of the said family, the Rule 11 does not apply and, therefore, the authority concerned ought not to have passed the order which is impugned in the present writ petition. Further, it is stated that the severance took place long before the advertisement for appointment of PDS Dealer took place by way of award of the Lok Adalat. Learned counsel for the petitioner has prayed for allowing the present writ petition by setting aside the order of the Divisional Commissioner.

4. Per contra, the learned counsel appearing on behalf of the State as well as the Respondent No. 6 have vehemently opposed the very maintainability of the present writ petition and stated that the order passed by the Divisional commissioner is a well reasoned order which



does not require any interference and, therefore, prayed this Hon'ble court to dismiss the present writ petition.

In order to adjudicate the issue involved in the present writ petition, it is necessary to extract Rule 11(1) which reads as under:-

(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.

5. A reading of the above rule shows that in case a member of the joint family is having a PDS license, no other member of the family can be allotted another PDS license. However, as seen from the record, the award has been passed way back in the year 2004 by the Lok Adalat whereby there was a partition between the family members and the husband of the petitioner. The order of the Divisional Commissioner does not show that the said award passed by the Lok Adalat has been taken into consideration by the authority concerned and he has simply relied on the Rule 11(1) to pass the impugned order. Once,



this is a severance in the status of the joint family by way of an award passed by the Lok Adalat way back in the year 2004, it cannot be said that the petitioner is not entitled to PDS dealership.

6. Having regard to the same, the impugned order is set aside and the matter is remanded back to the Divisional Commissioner for passing orders afresh duly taking into consideration, the award passed by the Lok Adalat. It is needless to mention that before passing any order, the petitioner as well as the Respondent No. 6 herein shall be put on notice and given an opportunity of hearing. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the copy of this order. Any order passed shall be communicated to the parties.

7. With the above directions, the writ petition stands disposed of.

(A. Abhishek Reddy , J)

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