

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1058 of 2019

Shailendra Kumar Son of Prabhu Nath Chaudhary, Resident of Hatiyahi P.O.-
Tikulia, via-Damodarpur, P.S.- Pipra Kothi, District- East Champaran- 845416.
... .. Petitioner/s

Versus

1. The State Of Bihar and Ors through the Chief Secretary, Government of Bihar, Patna.
2. The Principle Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
4. The District Magistrate, East Champaran at Motihari.
5. The Sub-Divisional Officer, Motihari Sadar, East Champaran at Motihari.
6. The District Selection Committee through its Chairman, East Champaran at Motihari.
7. Saroj Kumar Son of Ramakant Chaudhary, resident of Village- Dhekahan Bishunpur, P.O. Dhekahan Bazaar, P.S. Piprakothi, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kumar Kaushik
For the Respondent/s : Mr. Alok Ranjam

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

4 10-01-2023 Heard the learned counsel for the parties.

Pursuant to the advertisement for grant of license under Public Distribution System, the petitioner had applied and was also adjudged the first candidate in the provisional merit list. With the provisional merit list having been prepared, the candidates were permitted to rectify their application / meet the objection by a particular cut-off date.

With respect to the candidature of the petitioner, it



was stated in the provisional merit list that the computer ability certificate and the residential certificate had not been attached with the main application. Taking this as a substantive objection to the candidature of the petitioner for grant of license, the man at sl. no. 2, who has been impleaded as respondent no. 7 in this writ petition, was chosen to be the licensee.

Mr. Kumar Kaushik, the learned Advocate for the petitioner submits that over the period of time, some interesting developments have taken place. By virtue of an order passed by this Court as also as a result of an enquiry, respondent no. 7 was never granted license and the vacancy thus exists till today.

In the counter affidavit, an objection has been taken that the necessary requirement under the advertisement was not fulfilled by the petitioner, which is, that the computer ability certificate and the residential certificate were not attached with the main application form.

Be it noted, that in an enquiry with respect to correctness / genuineness of the documents regarding educational qualification of respondent no. 7, those were



found to be forged and fabricated.

Mr. Kaushik submits that precisely for this reason, notwithstanding the notice having been issued and served to respondent no. 7, there is no appearance on his behalf. The petitioner, therefore, expects that with no fresh advertisement having been issued and the process still not concluded, the most suitable candidate today for grant of license is the petitioner and nobody else.

Queerly, Mr. Dhananjay Kumar No. II has also, for all this while, waited in the wings to press his intervention petition, should the case of the petitioner does not succeed.

Mr. Kaushik, the learned Advocate, has argued that the requirement in the advertisement of furnishing all the documentary proof of the assertion regarding the educational ability/computer ability is only directory and not mandatory and in the event of the petitioner having supplied such information before the actual decision was taken, he should not be non-suited on that ground alone. This, he submits in response to the objection taken by the State in the counter affidavit.

This proposition cannot be accepted in absolute



terms.

We would not be required to consider the correctness of this proposition for the sole reason that notwithstanding the requirement in the advertisement of a candidate to furnish all the documents along with the application form, a time was given to such candidates to rectify their application forms, should some of the documents be found missing in the scrutiny list.

The petitioner appears to have furnished all such documents, bringing his case within the zone of consideration by the authority.

The objection taken by the State in the counter affidavit, therefore, it has been urged on behalf of the petitioner, is not tenable.

For the afore-noted reason especially that respondent no. 7 is not expected now to pursue his case and no third party right has been created until now, the case of the petitioner requires a consideration.

For the aforesaid purpose, we, in view of the notification dated 21.07.2022 issued by the Government in exercise of the powers conferred under Sections 3 and 5



of the Essential Commodities Act, 1955 read with Clause -36 of the Bihar Targeted Public Distribution System (Control) Order, 2016, deem it appropriate to refer the matter to the Divisional Commissioner for the needful.

Should the petitioner prefer a suitable representation / complaint before the Divisional Commissioner bringing all these facts into his notice, within a period of 30 days from today, he shall look into the same and after hearing all the stakeholders, including respondent no. 7, shall pass a final order within a further period of 60 days, giving reasons in support of the decision taken by him.

The decision so arrived at, shall be made available to the petitioner as well as respondent no. 7, forthwith.

With the aforesaid observation/direction, the writ petition stands disposed of.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

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