

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5154 of 2023

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Madhuri Kumari @ Madhuri Devi, Female, aged about 38 years W/o Sanjai Sah, Resident of Village- Raghapur, Ward No.- 5, P.S.- Meenapur, District- Muzaffarpur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Muzaffarpur.
4. The District Level Committee through the District Magistrate, Muzaffarpur.
5. The Sub- Divisional Officer, East Muzaffarpur.
6. The Block Supply Officer, Katra.
7. Babita Kumari, Female, aged about 28 years W/o Ajay Kumar, Resident of Village- Methnapur, P.S.- Meenapur, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prem Prakash Poddar, Adv.

For the Respondent/s : Mr. Arvind Ujjwal, SC-4.

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

11 10-01-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the following reliefs:-

“(i) To issue an appropriate writ or writs/order or orders/direction or directions for quashing the order of Divisional Commissioner, Tirhut Division, Muzaffarpur passed in Revision Case No. 244 of 2022 dated 16.02.2023.

(ii) To issue an appropriate writ or writs/order or orders/direction or directions for quashing the order of District Selection Committee,



Muzaffarpur dated 13.06.2022
(16.06.2022).

(iii) To issue an appropriate writ or writs/order or orders/direction or directions for quashing the order of SDO, East Muzaffarpur vide 331 dated 27.02.2023.”

3. Learned counsel appearing on behalf of the petitioner has stated that the petitioner has been granted P.D.S. licence on 14.01.2020. Thereafter, the Respondent No. 7 has filed an appeal before the District Magistrate and the same was allowed by the District Magistrate vide order dated 13.06.2022 (16.06.2022) directing the SDO to look into the matter and pass appropriate order. Thereafter, the District Selection Committee has verified the complaint made by the Respondent No. 7 and came to the conclusion that the non-selection of the Respondent No. 7 was not proper and that the Respondent No. 7 does not come under the disqualifications mentioned in Rule 11 (i) of the Bihar Targeted Public Distribution System (Control) Order, 2016. The petitioner aggrieved by the order of the District Selection Committee has preferred CWJC No. 5612 of 2022 and this Court vide order dated 22.09.2022 has passed the following order:-

“In view of the notification dated 21.07.2022, issued by the Government of Bihar, we direct the



petitioner and the Respondent No. 5 to appear before the concerned Divisional Commissioner within a period of 15 days. The Divisional Commissioner shall look into the matter and after hearing all the stakeholders i.e. petitioner, Respondent No. 5 or any other person/persons interested, shall pass a final order within a further period of 60 days, giving reason in support of the decision taken by him.”

“Needless to state that the averments made by the parties shall be taken into account and a reasoned order shall be passed.

Till such time a final order is passed, the status-quo shall continue.”

4. Thereafter, the Divisional Commissioner, Tirhut Division, Muzaffarpur on the representation made by the Respondent No. 7 has taken up the matter and passed the impugned order on 16.02.2023 in PDS Revision Case No. 244 of 2022.

5. Learned counsel appearing on behalf of the petitioner has stated that the Divisional Commissioner instead of passing a reasoned order has only reiterated the facts and came to the conclusion that the order of cancellation dated 13.06.2022 passed by the District Selection Committee was proper and needs no interference. Learned counsel has stated that the order of the Divisional Commissioner impugned in the present CWJC



is not only contrary to the judgement of this Hon'ble Court passed in CWJC No. 5612 of 2022 but against the well settled principles of law. Learned counsel has stated that once a direction has been given to the authority concerned to pass a reasoned order afresh the authority concerned ought to have given reasons in the said order but the authority simply cannot rely on the earlier cancellation order passed by the District Selection Committee dated 13.06.2022 which for all purposes was not in effect and non-existent. Learned counsel has, therefore, prayed this Court to set aside the impugned order by allowing the present writ petition.

6. Per contra the learned counsel for the respondent No. 7 has vehemently opposed the very maintainability of the present writ petition and stated that the impugned order passed by the Divisional Commissioner is perfectly in consonance with the orders of the Division Bench of this Hon'ble Court. That the Divisional Commissioner duly taking into account the provisions of the Control order more particularly Rule 11 (i) has clearly held that the Respondent No. 7 does not fall into any of the categories of the prohibitory relationships enumerated under Rule 11 (i) of the Control order and therefore, the said order does not need any interference by this Court. Learned counsel



has, therefore, prayed this Court to dismiss the present writ petition.

7. Learned counsel for the Respondent-State while reiterating the contentions submitted by the learned counsel for the Respondent No. 7 has stated that the order impugned in the present writ petition wherein the Divisional Commissioner has upheld the order of cancellation made by the District Selection Committee vide order dated 13.06.2022 is bad in law and contrary to the orders of this Hon'ble Court passed in CWJC No. 5612 of 2022. Learned counsel has stated that the Divisional Commissioner ought to have passed a reasoned order independently and ought not to have reiterated the order of cancellation passed by the District Selection Committee.

8. A perusal of the impugned order passed by the Divisional Commissioner reveals that the Divisional Commissioner while reiterating the facts of the case has held in the penultimate paragraph of the impugned order that the order passed by the District Selection Committee cancelling the PDS licence issued to the petitioner vide order dated 13.06.2022 holds good and does not need any interference.

9. Admittedly in this particular case, the Division Bench of this Hon'ble Court in CWJC No. 5612 of 2022 dated



22.09.2022 duly taking into account the notification dated 21.07.2022 issued by the Government of Bihar wherein the Divisional Commissioner has being vested with the power to go into the complaints made by any aggrieved person with regard to his non-selection as a PDS dealer, has directed the petitioner as well as the Respondent No. 7 herein to approach the concerned Divisional Commissioner within a period of 15 days ventilating their grievance. Thereafter, the Respondent No. 7 has approached the Divisional Commissioner with a complaint regarding her non-selection and the same was taken up by the Divisional Commissioner and numbered as PDS Revision Case No. 244 of 2022. The petitioner was issued notice and appeared through her counsel. After hearing the arguments of the petitioner as well as the Respondent No. 7 before the said authority, the impugned order was passed. However, the Divisional Commissioner instead of passing a fresh reasoned order has relied on the earlier cancellation order passed by the District Selection Committee dated 13.06.2022 and hold it to be good. The Divisional Commissioner has forgotten the fact that he was not sitting in appeal on the orders of the District Selection Committee dated 13.06.2022 but was supposed to have independently applied his mind and pass a reasoned order.



Once the Division Bench of the High Court had directed the petitioner as well as the Respondent No. 7 herein to approach the Divisional Commissioner through a complaint/representation and the Divisional Commissioner was directed to pass a fresh reasoned order, the reliance on the earlier order of cancellation dated 13.06.2022 by the Divisional Commissioner is bad in law. After the order of the Division Bench of this Hon'ble Court, the order of the District Selection Committee dated 13.06.2022 pales into insignificance and for all practical purposes is non-existent in the eye of law.

10. Having regard to the above facts and circumstance, the impugned order is set aside and the matter is remanded back to the Divisional Commissioner for passing a reasoned orders afresh. Consequentially, the order passed by the SDO dated 27.02.2023 is set aside.

11. It is needless to mention that before passing any order the petitioner as well as the Respondent No. 7 herein shall be put on notice and given an opportunity of hearing. The petitioner as well as the Respondent No. 7 are directed to appear either in person or through their counsel on 22nd January, 2024 before the Divisional Commissioner and submit their arguments. The Divisional Commissioner shall pass a reasoned



order duly taking into account the materials filed before him and also the submission made by the counsels for the parties and pass a reasoned order. The entire exercise shall be completed as expeditiously as possible preferably within a period of four weeks from the date of receipt of the copy of this order. It is made clear that no further notice shall be given either to the petitioner or the Respondent No. 7 as both the counsels have agreed that they will inform their clients to appear before the Divisional Commissioner on 22.01.2024. The Status-quo existing as on shall be maintained by the parties till final orders are passed by the Divisional Commissioner. The parties shall endeavour to advance arguments without taking unnecessary adjournments.

12. With the above directions, the present Writ Petition stands allowed to the extent indicated.

(A. Abhishek Reddy , J)

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