

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.286 of 2024
In
Civil Writ Jurisdiction Case No.8229 of 2020

1. M/s Rita Petrol Pump through its proprietor Gopal Kumar Jha, having its location at- Ramchandrapur, P.S.- Sarairanjan, Dist.- Samastipur, Musapur Sarairanjan, P.S.-Ghatho, Dist- Samastipur.
2. Gopal Kumar Jha, S/o- Late Diwakara Jha, R/o- Village- Musapur, Sarairanjan, P.S.- Ghatho, Dist.- Samastipur.

... .. Appellant/s

Versus

1. Bharat Petroleum Corporation Ltd. through the State Head having its office at Ashiyana Tower, 1st floor, Exhibition Road, Patna.
2. State Head, Aashiyana Tower, 1st floor, Exhibition Road, Patna.
3. Territory Manager, Bharat Petroleum Corporation Ltd., Barauni.
4. District Education Officer, Samastipur.
5. Principal, Upgraded Middle School, Maniyarpur, Vidyapati Nagar, Samastipur.
6. Hemant Kumar Prasad, Principal, Upgraded Middle School, Maniyarpur, Vidyapati Nagar, Samastipur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mrs. Nivedita Nirvikar, Sr. Advocate Ms. Supragya, Advocate Mr. Abhishek Singh, Advocate Mr. Sumit Kumar, Advocate Mr. Neeraj Kumar, Advocate Mr.Sahil Kumar, Advocate
For the BPCL	:	Mr. Sanjay Singh, Sr. Advocate Mr. Siddhartha Prasad, Advocate Mr. Om Prakash Kumar, Advocate Mr. Sumit Kumar, Advocate Mr. Rudrank Shivam Singh, Advocate
For the State	:	Mr. Sarvesh Kumar Singh, AAG-13 Mr. Arya Achint, AC to AAG-13 Mr. Abhinav Alok, AC to AAG-13

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR



CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-04-2024

The appeal impugn the judgment of the learned Single Judge which found that the respondent-Corporation passed an order of termination of dealership, over-reaching the orders dated 06.10.2020 and 07.02.2023 passed in the instant writ petition; but however left liberty to the respondent-Corporation to issue a fresh show-cause notice on the same cause of action.

2. Learned Senior Counsel Smt. Nivedita Nirvikar pointed out that the very contentions taken in the writ petition against the two show-cause notices issued were not considered. A fresh show-cause notice if at all issued will be on the same cause of action, which need not be freshly agitated before the Corporation since the Corporation by the repeated show-cause notices has revealed its prejudiced mind to somehow cancel the allotment of a petrol pump to the appellant, which allotment was also in the year 2016 pursuant to an advertisement of the year 2014. As of now the third show cause notice has been issued, produced in this appeal which is on the identical facts and a verbatim reproduction of the earlier notice. The allotment, now sought to be cancelled, was made to the appellant as a dependent of a government servant, based on the death



certificate issued by the Principal/Headmaster of the School in which the father of the appellant was employed. At that point, the Corporation had sought for clarification from the Principal of the School regarding the issuance of the certificate as also its genuineness; which were affirmed by the Principal based on which the letter of appointment was granted in the year 2016. The appellant had been successfully carrying on the petrol pump without any complaints when the Corporation published a second advertisement for allotment of retail outlets, against which the petitioner also applied, based on the very same dependency clause.

3. The advertisement of the year 2018 led to an application in which a certificate of the year 2019 was produced from the Principal. At this instance, finding that the date of death of the appellant's father was a Sunday, the Corporation sought a clarification from the District Education Officer (DEO) as to whether his father was on duty on the said day. The appellant filed an objection with the BPCL and the BPCL constituted a two-men committee to look into two aspects; one as to who is the competent authority to issue a certificate after the death of the government employee and whether the appellant's father indeed passed away while on duty; as claimed.



The DEO communicated to the Committee that the appellant's father passed away while he was in service, while the Principal of the School issued a letter that the appellant's father was not on duty, on the date of his death. A further clarification was issued by the DEO indicating that the petitioner's father did not die while on duty; since 23.09.1984 was a Sunday and the Competent Authority to issue a death certificate is the Registrar of the Gram Panchayat.

4. Based on the above facts, a show-cause notice was issued to the appellant produced as Annexure-A4 dated 29.08.2020 against which the petitioner filed the writ petition wherein by order dated 06.10.2020, there were directions issued; to the appellant to reply to the show-cause notice, the respondents to file a counter affidavit and no coercive steps in the meantime. A counter affidavit was filed by the respondents and on 21.12.2020, the Director, Primary Education responded to a clarification sought by the BPCL that as per Rule 184 of the Bihar Service Code, even holidays are treated as period of duty. Again on 13.01.2021, this Court raised relevant issues arising in the case as to whether, the death on a Sunday can be treated as death on duty and directed the interim order to continue. The appellant submitted his reply to the show-cause notice on



15.01.2021 and later on 15.01.2022, the show-cause notice was withdrawn.

5. The BPCL again approached the DEO seeking a verification of the appellant's certificate and on 27.08.2022, the Principal of the School issued a communication stating that the certificate issued was not available in the school records and what is seen from records is that the communication was one issued for signature verification. A second show-cause notice was issued on 07.10.2022 on the ground that the appellant was born four months after the death of his father and hence was not dependent; further alleging forgery since the Principal had submitted that the communication issued was a signature verification and not a dependency certificate. Later to that, the appellant filed I.A. No.2 of 2022 to implead the Principal of the School in his personal capacity and quash the second show-cause notice as also the Principal's letter. The appellant also sought production of the school records to verify the original documents. The Corporation filed I.A. No. 03 of 2022 pointing out the withdrawal of the show-cause notice of 29.08.2020 and seeking closure of the writ petition itself.

6. By reason of a roster change, the matter was placed before a Division Bench which allowed I.A. No.2 of 2022 filed



by the petitioner dated 07.02.2023, but later a termination letter was issued by the BPCL on 09.02.2023 in violation of the orders passed. The attempt was only to circumvent an examination by this Court as to whether the cancellation was proper. The issue as to whether the appellant was entitled to be allotted the petrol pump in the year 2016 no longer survives and there is no ground for cancellation of the same. Merely because the second allotment sought for by an application on the same grounds was rejected, would not enable the Corporation to cancel the earlier allotment which was done after proper verification.

7. Learned Senior Counsel Shri Sanjay Singh appears for the respondent-Corporation and points out that there was a writ petition filed against the refusal of the Corporation to grant the second allotment; which stood dismissed as withdrawn, but with a cost levied. The appellant did not file any appeal from the same and went on making complaints to various authorities. The denial of allotment pursuant to the second application was on the finding that the appellant was not entitled to apply under the dependency clause, which was the ground on which the first allotment was made. This gave rise to serious issues as to the first allotment also, in which circumstance, the cancellation of the first allotment was perfectly in order. The learned Senior



Counsel took us to Annexure-15 dated 09.12.2014 which is the certificate submitted at the first instance, the genuineness of which is seriously put to doubt by Annexure-8 produced along with the counter affidavit of the District Education Officer. It is pointed out that the appellant was not born at the time of the death of his father and the certificate issued shows the appellant as the dependent of the deceased, which, in the face of the document is false and a fraudulent claim.

8. Reliance was also placed on *Sadbhavana H P Gas v. Hindustan Petroleum Corporation Ltd. 2018 (4) PLJR 993*.

The appellant is guilty of deliberate false representation. The Brochure issued by the Corporation, calling for applications for allotment of retail outlets, clearly provided for cancellation of the allotment at any stage when it is established that the allotment was on a wrong premise due to the false representation made by the applicant. Trite is the principle that fraud vitiates everything argues the respondent-Corporation, which seeks dismissal of the appeal.

9. We will first look at the dependency clause under which the petitioner is said to have applied, which is extracted hereunder: -

d) Government (including PMP) and Public Sector Personnel

The personnel serving in different Departments of Central/State



Governments and Public Sector undertakings of Central/State Government who are incapacitated or disabled while performing their duties will be eligible under this category. In case of death, while performing duties, their widows/ dependents will be eligible under this category.

Applicants under this category should attach a copy of relevant certificate from the concerned Organisation/Govt Department signed by the Head of the Office or an Officer not below the rank of Under Secretary to the Government – Appendix VIII

10. Clause (d) as extracted herein above has two limbs, one, a benefit conferred on persons who were incapacitated or disabled while performing their duties and the other, that given to dependents of Government employees and public sector personnel, who died while performing duties. The applications under this category should also be attached with a copy of the relevant certificate from the concerned organization/government department signed by the Head of Office or an officer not below the rank of Under Secretary to the Government. The benefit, as we understand is to a government or public sector employee who loses his employment due to the disablement and the dependents of employees who die, in-harness. The disabled employee by reason of his loss of employment and the dependents of the deceased employee, by reason of the loss of the bread winner of the family, is given an alternate source of income/livelihood by allotment of a retail outlet of petroleum products; a laudable objective of the public



sector oil company. Obviously, a disabled employee who is allowed to continue in employment despite the disability; in another category or a supernumerary post, would not be entitled to run a retail outlet of an oil company.

11. At first blush, the dependency clause cannot be said to be strictly akin to a dying-in-harness scheme. All the same, we cannot but notice that the condition of death or disablement, while performing their duties cannot be imported into all services under the government and the public sector. Death in the course of performance of duty would be in cases where some perilous activities are carried on by the employee in discharge of his duties, by the very nature of the service or that of his duties. A member of the armed forces or the police or any such similar force engaged in the maintenance of law and order or prevention of disruptive activities would be examples of services, which by their very nature are perilous. A hazardous manufacturing activity would be the example of a duty, which could lead to loss of limb or life. As the clause exists, it has to be understood as one which entitles an allotment of a retail outlet in the circumstance of loss of employment by reason of disablement or loss of dependency due to the death of the bread winner; which visits the employee or his family with loss of



livelihood and possibly abject penury. Hence, understood in the broadest perspective as a beneficial clause; especially when the entire class of government and public sector employees are brought into its net; not confined to an employment which by its very nature is perilous or hazardous, it has to be considered as one akin to a dying-in-harness scheme. Loss of livelihood by reason of disablement or death would be the reigning consideration in examining whether an applicant under the specific clause has the entitlement or not.

12. A school teacher or an employee of the school if dying during duty hours, the death can rarely be said to be caused due to the arduous nature of the duties carried out; which duties on no account can be said to be by its very nature perilous or hazardous. A death caused when in employment, putting the family to penury; is the context in which mitigation is offered by the public sector oil company, the Corporation, by the aforesaid beneficial clause which provides a lifeline for the disabled employee or the dependents of a deceased employee. The beneficial clause has been incorporated for the purpose of mitigating such loss of livelihood to government and public sector personnel and their dependents; in discharge of the public duties enjoined upon the Corporation.



13. In this context, we have to notice that the second show-cause notice alleged that since the petitioner was born four months after the death of his father, he cannot be said to be a dependent; which we find to be quite frivolous and illogical. A child in the womb succeeds to his father's estate and merely because he was not born in the lifetime of the father would not lead to restriction of claims arising from the parentage; be it succession to the assets of the deceased or to the beneficial schemes available to the dependents, like the dying-in-harness scheme. A compassionate employment definitely can only fructify after the dependent child attains majority, which also has to be only as per the conditions of the scheme. The scheme of beneficial allotment as introduced by the Corporation does not impose any restriction; like many schemes which restrict dying-in-harness employment to be only within a few years of the loss having occurred. The subject clause only requires a dependency, to a government employee or a public sector personnel, who died while performing duties. A child in the womb, who is born after the father's death has equal claims to the father's estate, as any born before death and would also suffer the very loss of dependency, while in the womb and after it is born. Likewise, would be, a claim to a beneficial scheme



like the dying-in-harness scheme or the preferential allotment which is the subject matter of this appeal.

14. Admittedly, the first advertisement for award of retail outlet in petrol and diesel, in Samastipur, that too in the reserved category, was issued on 09.10.2014, as is seen from Annexure-A produced in the counter-affidavit. The appellant had applied under the dependency clause producing Annexure-1. Annexure-1 dated 09.10.2014 is issued from Utkramit Middle School, Maniyarpur Block, Vidyapati Nagar, District-Samastipur. It certifies that one Diwakar Jha, working in the school as an Assistant Teacher passed away on 23.09.1984 while on duty at the school. It is also stated that the appellant is a dependent of late Diwakar Jha, as per the records of the school. There is no dispute even now that the facts recited in Annexure-1 certificate is false or concocted. The appellant is the son of Diwakar Jha and Diwakar Jha died on 23.09.1984, while he was in the service of the school, a government school, as an Assistant Teacher. The contention against Annexure-1 is, and the falsity of the same is projected on, the ground that there was no reason for the school records to reveal the identity of the son, the appellant herein, who was not born at the time of death. We cannot accept the argument since immediately after the death of



the father within about four months the appellant was born, as evident from the date of birth in the application form produced as Annexure-B in the Counter Affidavit. Hence the appellant's mother was probably six months into her pregnancy when her husband died. There would have been retiral benefits due to the family for which papers would have been submitted to the school and it would have shown the appellant also as the son of the deceased Assistant Teacher. Pertinent is that the certificate is not issued immediately after the death in 1984, but is one issued after three decades of the death; in the year 2014.

15. The Corporation itself had, by Annexure-14 dated 26.06.2015 produced along with the supplementary affidavit dated 04.01.2021, sought clarification as to whether the certificate was, indeed, issued from the Principal's office and whether it was genuine. It was pursuant to such affirmation that on 28.06.2016, Annexure-2; produced in the writ petition, was issued allotting the petrol pump to the appellant. The appellant had been continuing operation of the retail outlet and there has been no complaints raised against him in so far as the operation of the outlet. Due enquiries were conducted by the Corporation as against the certificate produced by the appellant and only after getting affirmation, the retail outlet was allotted based on



the dependency clause.

16. It is also to be specifically noticed that the certificate issued was by the Principal who was the head of the school in which the appellant's father was working. The subsequent clarification of the DEO that only the local body could issue a death certificate, would not apply in the present case since the dependency clause as incorporated in the Brochure of the Corporation required only a certificate from the Head of Office; in which the deceased was serving, which in the instant case being a school, it would obviously be the Principal. There was no demand for a certificate issued from the local body regarding the death nor was there any verification conducted as to the specific date on which the death had occurred, being a holiday or a working day. As we noticed hereinabove, even if it was a working day the employment being in the status of an Assistant Teacher, there is little scope of the death being a direct cause of the discharge of duties. The dependency clause also does not require the death to be as a direct consequence of discharge of duties but only requires it to be during the course of duties.

17. In this context, we cannot but notice Annexure-13 produced by the Director Primary Education, which responded



to clarification sought by the Corporation that as per Rule 184 of the Bihar Service Code, leave period is also treated as duty. This is the communication relied on in Annexure-27 dated 15.01.2022; leading to withdrawal of the first show-cause notice issued on 29.08.2020. Holidays, especially Sundays, are treated as duty even for payment of salary and every government employee as is seen from Rule 184 continues on duty whether it be a holiday or a leave sanctioned. That 23.09.1984 was a Sunday, was easily verifiable by the Corporation at the time when the allotment was made. There was absolutely no reservation made regarding the death having occurred on Sunday, when the dependency clause was invoked to allot the retail outlet to the appellant.

18. The problems arose with the appellant making a further application under a second advertisement for award of a retail outlet. Again, by a certificate, produced as Annexure-17 dated 02.01.2019, the Principal made a certification with which the appellant again invoked the dependency clause. Immediately, we have to observe that a second allotment on the dependency clause would not be justified since it would work against the equality clause; especially in allotment of retail outlets of a public body. The purpose of the dependency clause



is to provide a livelihood and compensate the loss that occurred by the death of the only bread winner of a family. We do not tarry further on this aspect, since the second allotment did not occur.

19. The Corporation again sought a clarification as per Anneuxre-16 dated 12.06.2019 and the appellant too raised objections to such verification being again conducted. It was in this context that a two-man committee was constituted on 18.06.2020 by the Corporation to examine as to who is the competent authority to issue a death certificate to a government employee and whether the appellant's father, indeed, passed away, while on duty as on 23.09.1984. A clarification was sought from the DEO as per Annexure-D produced along with the counter affidavit dated 20.06.2020. Annexure-E dated 06.08.2020 is the report of the Committee constituted, which refers to a letter dated 08.07.2020 of the DEO which confirmed the death of the appellant's father while he was in service on 23.09.1984, but did not speak on the authority competent to issue a certificate as per Annexure VII; which annexure is from the Brochure issued by the Corporation, speaking only of the Head of Office or any person not below an Under Secretary. On further enquiry the DEO is said to have responded by letter



dated 04.08.2020 and it was informed that the proper authority to certify death would be the concerned Grama Panchayath and that on 23.09.1984, the subject school was closed, being a Sunday. Again, we have to notice that this communication was issued 36 years after the death of the appellant's father. What the DEO speaks of, also is a death certificate as is commonly understood, which is not the certification sought by the Corporation. The Corporation requires the certification as per Annexure-VIII as provided in the Brochure, which requires it to be issued by the Head of Office. The Committee by its report dated 06.08.2020 found that the appellant's father had been in the service of the school at the time of his death and he died on 23.09.1984 when he had not been discharging his duty; that day being a Sunday. It was also found that the DEO is the proper authority to issue a certificate of death in discharge of duty since it is that office which maintains the service book of the employees.

20. Here, we cannot but notice that these were facts which could have been verified at the time of the first application itself and that was not done. We also do not detect any false representation having been made by the appellant. That the appellant's father was in service at the time of his death is not disputed nor is the fact disputed that the appellant was



born to the Teacher who died-in-harness. Annexure-E report of the Committee led to the first show cause notice dated 29.08.2020 being issued.

21. The above writ petition was filed against the show cause notice dated 29.08.2020 and for setting aside order dated 24.07.2020 and 04.08.2020 issued by Respondent No. 5 (Principal) and Respondent No. 4 (DEO) respectively. Then by Annexure-13 the Director Primary Education, responded to clarification sought by the Corporation that as per Rule 184 of the Bihar Service Code, leave period is also treated as duty. This communication was relied on in Annexure 27 dated 15.01.2022; leading to withdrawal of the first show-cause notice issued on 29.08.2020.

22. It was while the writ petition was pending so, the Corporation again approached the DEO by Annexure-18 dated 22.07.2022 (I.A. No. 2 of 2023) seeking verification of the certificate issued by the school. As per Annexure-21, the Principal of the school issued a communication dated 27.08.2022 that the certificate issued was of signature verification and is not a dependency certificate. The copy of the certificate was also not available in the records of the school. It is obvious that the signature of the applicant was attested by the



Principal in Annexure-1 certificate. The mere recitals in the records of the school that a signature verification was done, does not detract from the fact that the certificate itself indicates the appellant to be the son of an Assistant Teacher who died while in service; which fact, we reiterate has not been disputed by anyone. The Certificate issued is also as per Annexure VIII, provided in the Brochure, as required by the Corporation. If the Principal who issued the Certificate understood it as a signature verification that cannot be levelled as an allegation against the appellant, that too as a misrepresentation or deliberate falsehood. The appellant merely applied under the advertisement producing Annexure-1 certificate. Even if Annexure-1 Certificate was issued as a signature verification by the Principal/Headmaster of the school in which the father of the appellant was working; the Corporation thought it fit to accept the same as one enabling the appellant to invoke the dependency clause; in the year 2016.

23. We reiterate at the risk of repetition that the Corporation could have verified and easily found out that the death occurred on a Sunday and also that when the death occurred, the appellant was not born; which would be clear from a comparison of the date of birth of the appellant to the date of



death, as certified in Annexure-1. We observe so, despite our opinion that; the death occurred on a Sunday is of little relevance and the appellant was not born at the time of death also is of no consequence at all. There can be no contention raised by the Corporation at this point that the appellant employed any fraud or committed any forgery. Annexure-1, as we found, can also be deemed to be a signature verification wherein the details of the signatory has been mentioned. The Corporation with open eyes accepted the same; which was in the form Annexure VIII as available in its own Brochure, when all the details were before it. Annexure-1 cannot be said to be a forgery nor can the appellant said to have employed any fraud in producing the certificate and applying under the scheme. There is no *suppressio veri or suggestio falsi* by the appellant; neither suppression of truth nor suggestion of a falsehood. What the Corporation asserts now as a falsehood; which it is not, could have been easily verified by the Corporation before the allotment in the year 2016.

24. The Corporation's second show cause notice dated 07.10.2022, which is produced as Annexure-22 was also with respect to allotment of the retail outlet made in the year 2016 under the advertisement of 2014. The dependency clause,



as extracted hereinabove, was extracted in the notice along with Clause 21, which speaks of false information. It was pointed out that there was also a notarized affidavit submitted along with the application, wherein it had been stated that any information or declaration given by the appellant in pursuance of the application, if found to be untrue or incorrect or false, then the Corporation would be well within its rights to withdraw the letter of intent or terminate the dealership and that the applicant would have no claim whatsoever against the Corporation for such withdrawal or termination. Then the second application made by the appellant was also referred to as also the writ petition which was pending in the High Court of Patna; wherein the challenge was against the first show cause notice, which notice stood withdrawn. The writ petition filed seeking allotment of the second dealership as per the advertisement of 2019 stood dismissed as withdrawn with a cost of Rs. 5000/-. It is also stated that even after the dismissal of the writ petition, the appellant had been approaching various authorities of the Corporation for issuance of a letter of intent with respect to the dealership advertised in the year 2019.

25. The crux of the show cause notice was again the date of birth certificate of the appellant and the CCI certificate



issued by the Utkramit Middle School Maniyarpur. On a comparison of both, it was found that the appellant's father had passed away on 23.09.1984 even before the appellant was born; which was on 13.01.1985. It was opined that there is a contradiction insofar as the appellant having styled himself as a dependent of his father, which was stated to be very serious in nature resulting in withdrawal of the letter of appointment. It has also been alleged that a forged-cum-fake CCI certificate issued by the Headmaster of the Utkramit Middle School Maniyarpur has been submitted by the appellant.

26. The appellant filed I.A.No. 2 of 2022 challenging the second show cause notice issued on 07.10.2022. The appellant also made other prayers regarding the quashing of the Principal's letter dated 27.08.2022 and sought a direction to produce the original documents and school records. I.A. No. 3 of 2022 was filed by the respondents seeking disposal of the writ petition on the ground that the first show cause notice dated 29.08.2020; which was challenged in the writ petition, was withdrawn.

27. We cannot but observe that such a prayer made by the respondent-Corporation smacks of *mala fides*, especially when at that point of time, on similar set of facts, another show



cause notice was issued; which was also sought to be challenged by way of an interlocutory application in the writ petition. I.A. No. 2 of 2022 filed by the appellant was allowed and I.A. No. 3 of 2022 filed for disposal of the writ petition, obviously, was not considered. While there was a direction not to take any coercive steps, by a communication dated 09.02.2023, the appellant's retail outlet was terminated, which was challenged in I.A.No. 5 of 2023 by the appellant. I.A. No. 4 of 2023 was also filed to implead the 10th Respondent in his personal capacity and initiate contempt proceedings. The Corporation also attempted to claim that there was no interim stay order in operation in pursuance of order dated 13.02.2023 passed by a learned Single Judge. Pursuant to this, the writ petition was disposed of leaving liberty to issue a fresh show cause notice. As of now, a third show cause notice has been issued which is dated 07.03.2024, which is produced as Annexure-A/2 along with the supplementary affidavit in the appeal.

28. The third show cause notice now issued also alleged that the scrutiny of the documents submitted in 2014 indicates the death of the father of the appellant on 23.09.1984, on which date, the appellant was not born and there being a factual contradiction as to how the appellant could be dependent



on the late father. It is also alleged that a forged-cum-fake CCI certificate allegedly issued by the Principal of the Utkramit Middle School Maniyarpur, has been submitted by the appellant, which was stated to be a mere signature verification and not with respect to issuance of dependency certificate. It has also been alleged that the Headmaster has now indicated that the Circle Officer is the competent authority for issuance of the dependency certificate. These allegations were found to be grave in nature and an extreme serious view is taken in the matter; as per the third show cause notice.

29. The allegations in the present show cause notice is identical to that in the first & second show cause notice. We have already found that the death of the father before the appellant was born, would not take him away from the status as a dependent; which is quite an absurd proposition propounded by the Corporation; a public sector organization having access to the best legal advice available. Further allegation that the certificate produced is forged-cum-fake cannot at all be countenanced. As we found, even if we assume that it was a mere signature verification issued; which is a possible view looking at the certificate produced by the appellant, it is one issued in the format as required by the



Corporation. The appellant's signature has been verified by the Principal of the school, which has been attested. The said certificate produced as Annexure-1 in the writ petition, admittedly, is not available in the school records, as of now. However, that would not indicate that what is produced is a fake certificate or a fraudulent one. The facts as stated in the certificate are unquestionable and not disputed. The appellant is the son of Diwakar Jha, who was working as an Assistant Teacher in the Utkramit Middle School Maniyarpur and the Teacher died on 23.09.1984.

30. The learned Senior Counsel appearing for the Corporation points out that the statement in the certificate that the appellant was the son and dependent as per the records of the school, cannot be true since on the date of death, the appellant was not born. We repeat, that the appellant was born four months after the death of the father and the certificate was issued in the year 2014, almost 30 years after the death of the father. The appellant would have been shown to be a dependent in the records of the school; which would as well be from the applications made for availing retirement benefits. There is nothing suspicious in the certificate having shown the appellant as the son and dependent of the deceased person; since it is



undisputed. Further, as we observed earlier, there was nothing stopping the Corporation from verifying these facts in the year 2016 itself before an allotment was given.

31. We do not think that there is any false representation made by the appellant and the certificate also cannot be treated as one fraudulently obtained. As we noticed, the appellant may not have a case for a second allotment, but his first allotment cannot be cancelled. We find that the learned Single Judge ought to have considered the contentions and not merely left the appellant to a further show cause notice. The appellant had challenged the first show cause notice, which was withdrawn by the Corporation and again on the very same set of facts, a second show cause notice was issued; which too has been withdrawn. Now, after the judgment of the learned Single Judge, a third show cause notice has been issued again on the very same set of facts for cancellation of the retail outlet allotted in the year 2016 on clearly unsustainable and untenable grounds bordering on absurdity.

32. Normally, we would not interfere with a show cause notice, but in the present case, the proceedings are palpably arbitrary and the action of the Corporation is also vindictive; more because of the complaints made by the



appellant before the various authorities, referred to disparagingly in the writ petition and derisively urged in the arguments. We have also noticed that even when the second show cause notice on the very same set of facts was pending, the Corporation filed an application seeking disposal of the writ petition. We find the Corporation to have acted in a manner unbecoming of a public sector organization.

33. On the reasoning above, we interfere with the show cause notice issued, as produced in the appeal. There can be no cancellation of the allotment made in the year 2016, on the facts stated in the show cause notice and the allegations are not sustainable. We set aside the judgment of the learned Single Judge and restrain the Corporation from taking any further steps with respect to the allotment of the year 2016 on the ground of either the dependency not being proper or the certificate of dependency not being valid.

34. The writ petition is allowed and only by reason of the vindictive attitude of the respondent-Corporation; which we least expect from a public sector organization, we impose a cost of Rs. One lakh, which shall be paid to the appellant within a period of two months from the date of receipt of a certified copy of the judgment. If the amount is not paid, the appellant would



be entitled to adjust the same from the value of the petroleum products supplied to the appellant.

35. Ordered accordingly.

(K. Vinod Chandran, CJ)

I agree.
Harish Kumar, J:

(Harish Kumar, J)

Anuska/Sujit

AFR/NAFR	AFR
CAV DATE	16.04.2024
Uploading Date	29.04.2024
Transmission Date	

