

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6756 of 2023

Naresh Kumar, aged about 40 years, (Gender-Male), Son of Raghunandan Prasad Yadav, Resident of Village- Parsahi, Post- Bajitpur, Police Station- Triveniganj, District- Supaul, Pin 852139

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protection Department, Bihar, Patna
2. The Divisional Commissioner, Kosi Division, Saharsa
3. The District Magistrate, Supaul
4. The Sub-Divisional Office-cum-Licensing Authority Triveniganj, District- Supaul
5. Sarbesh Kumar, Son of Sujit Kumar Singh, Resident of Village and P.O.- Bajitpur, Police Station- Triveniganj, District- Supaul, Pin 852139
6. Praveen Kumar, Son of Buchendra Rai Resident of Village-Anulaha, Post- Bajitpur, Police Station- Triveniganj, District- Supaul, Pin 852139

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pranav Kumar, Advocate.
For the State	:	Mr. S. Raza Ahmad (AAG 5) with Mr. Anisul Haque, AC to AAG-5.
For the Respondent No 5:		Mr. Manindra Kishore Singh, Advocate. Mr. Santosh Kumar Jha, Advocate. Mr. Siyaram Pandey, Advocate.
For the Respondent No 6:		Ms. Anukriti Jaipuryar, Advocate.

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

12 13-05-2024 Heard learned counsel for the parties.

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

“(i) For issuance of a writ of certiorari for quashing/setting aside the order dated 21.04.2023 passed by the Divisional Commissioner, Kosi Division, Saharsa in Supply Revision Case No. 161/2022 by which the revision preferred by private respondent no.-5, has been allowed and the selection of petitioner as PDS Shop Dealer against the UR category has been cancelled and consequently the licence no. 64/2018 issued to the petitioner has also



been cancelled.

(ii) For issuance of writ of mandamus directing the respondents not to interfere with the licence of petitioner and not to interfere in the supply of Food grains and other materials to the PDS Shop of petitioner.”

3. Learned counsel appearing on behalf of the petitioner has stated that the petitioner was initially selected as PDS dealer by the District Selection Committee. Thereafter, Respondent No. 5 aggrieved by the selection of the petitioner as PDS dealer, has approached the Divisional Commission, Kosi Division, Saharsa by way of revision. The Divisional Commissioner vide order dated 21.04.2023 has set aside the selection of the petitioner. Learned counsel for the petitioner has stated that the Divisional Commissioner has set aside the selection of the petitioner on the two grounds:- 1. That the Masters degree obtained by the petitioner from the Prachin Kala Kendra, Chandighadh of Kurukshetra University, Haryana is not a valid one. 2. That the petitioner had applied under the General Category whereas the vacancy was earmarked under BC category. Learned counsel for the petitioner has stated that without there been any iota of proof the authority came to the conclusion that the masters degree obtained by the petitioner was not valid. That even for the sake of argument if the above stand taken by the Divisional Commissioner is taken to be true,



the fact remains that the marks obtained by the petitioner in the bachelor degree are more than that of the Respondent No. 5, therefore, the selection of the petitioner as PDS dealer is a valid one. That the petitioner is more qualified than the Respondent Nos. 5 & 6 and therefore, the order passed by the Divisional Commissioner is liable to be set aside. Learned counsel has prayed for setting aside the order of the Divisional Commissioner and restoring the license of the petitioner. Further, it is stated that the vacancy is a general category one and the petitioner has applied under the general category only.

4. Per contra, the learned counsel appearing on behalf of the State as well as the learned counsel for the Respondent Nos. 5 & 6 have stated that the orders passed by the Divisional Commissioner is perfectly in consonance with the well settled principles of law and does not call for any interference.

5. Learned counsel for the Respondent No. 5 has vehemently argued that the masters degree obtained by the petitioner from Prachin Kala Kendra, Chandighadh of Kurukshetra University, Haryana is through distance mode and, therefore, the Divisional Commissioner has rightly held that the same is not a valid degree. Further, it is stated that the petitioner has not produced any evidence to show that the masters degree



obtained through distance mode from the Prachin Kala Kendra, Chandighadh of Kurukshetra University, Haryana is recognized degree in the State of Bihar and therefore, prayed this Court to dismiss the present writ petition.

6. In order to appreciate the issue involved in the present case, it is necessary to extract the provisions of the Bihar Targeted Public Distribution System (Control) Order, 2016 more specifically Rule 9 (v) which reads as under:-

“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.”

7. A perusal of the above provisions reveals that the basic minimum qualification that is required to be appointed as PDS dealer are 1. Matric pass 2. The person should have computer knowledge and in case, the computer knowledge is found to be equal among the candidates then the educational qualification of the candidates should be taken into account and the person having the higher qualification should be selected and in case, the educational qualifications are found to be equal among two or more persons then the person having the higher age should be appointed. In this particular case the petitioner is



having M.A. degree from Prachin Kala Kendra, Chandighadh of Kurukshetra University, Haryana however, the Divisional Commissioner came to the conclusion that the said degree obtained by the petitioner through distance mode is not valid one. There is absolutely nothing on record to show as to on what basis the Divisional Commissioner has come to the said conclusion. Irrespective of the fact that the Divisional Commissioner came to the conclusion that the masters degree obtained by the petitioner is not a valid one even otherwise also the petitioner is having 64.3% in the degree where as the Respondent No. 5 is having only 61.5%. Therefore on this ground the Divisional Commissioner should have rejected the revision filed by the Respondent No. 5. The fact that the petitioner is having more marks in the degree has not been disputed by the Respondent No. 5 or the other respondents. In so far as the other ground on which the Divisional Commissioner has set aside the selection of the petitioner is that the petitioner was selected in the open category whereas the Gram Panchayat, Aurlaha is earmarked for BC category. However, as seen from the records, the said conclusion reached by the Divisional Commissioner is also not correct, as seen from the notification, three vacancies were notified for Gram



Panchayat, Aurlaha one for BC category, one for UR category and one for UR (F) category.

8. Admittedly, in this case the one earmarked BC category and one for UR(F) have already been filled up and the only remaining vacancy is the general category. Though the petitioner belongs to BC category he has applied under the general category. Therefore, the conclusion reached by the Divisional Commissioner is contrary to the records.

9. Having regard to the above, the order dated 21.04.2023 in Supply Revision Case No. 161/2022 passed by the Divisional Commissioner, Kosi Division, Saharsa is set aside. The authorities are directed to restore the PDS license of the petitioner as expeditiously as possible preferably within a period of four weeks from the date of the receipt of the copy of this order.

10. With the above directions, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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