

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9299 of 2024

Shiv Kumar Mochi, aged about 44 years, Male, S/o Ramkrit Mochi, Resident of Village-Rampur Nagwan, P.O. and P.S.- Paliganj, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Food and Civil Supplies, Bihar, Patna.
3. The Divisional Commissioner, Patna
4. The District Magistrate, Patna.
5. The Sub-Divisional Officer, Paliganj, District-Patna
6. The District Supply Officer, Patna.
7. The Block Supply Officer, Block-Paliganj, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhash, Adv.
For the Respondent/s : Mr. Standing Counsel (19) with
Mr. Birendra Prasad Singh, AC to SC-19.

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

6 02-12-2024 Heard learned counsel for the parties.

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

“(i) To issue an appropriate order/s, direction/s including a writ preferably in the nature of Certiorari for quashing the order dated 13.02.2024 passed in BTPDS Control Appeal No. 27 of 2024 passed by Divisional Commissioner, Patna against the order of D.M., Patna whereby and whereunder he has rejected the appeal stating the order of District Level Selection Committee



(Compassionate) he added by D.M. Patna requires no modification/Interference.

(ii) To quash the order vide memo no. 91 dated 24.11.2023 passed by District Level Selection Committee (Compassionate) headed by D.M., Patna whereby and whereunder the claim of the petitioner for issuance of fair price shop license on the basis of compassionate ground has been rejected.

(iii) To direct the respondent to issue fair price shop license on compassionate ground to the petitioner taking into consideration that the petitioner fulfills the criteria under clause 2.5 of the public Distribution system (control) order 2001.”

3. It is the case of the petitioner that the father of the petitioner was appointed as PDS dealer in the year, 1997 and he has been continuing the dealership till his death in the year, 2004. Thereafter, the petitioner has applied for appointing him as a PDS dealer under the compassionate grounds, however, the authorities have rejected his application solely on the ground that the father of the petitioner has not completed eight years relying on the letter No. 5489 dated 14.10.1998 (Annexure-A).

4. Learned counsel appearing on behalf of the petitioner has stated that there is nothing in the Bihar Targeted Public Distribution System (Control) Order, 2016 which states that the PDS dealer should have completed eight years for being



eligible to be considered under the compassionate appointment. Learned counsel has stated that only condition laid down in the control order is that the legal heirs should apply within a period of two years from the date of the death of the original dealer and that the PDS dealer should not have completed 58 years as on the date of death. Learned counsel has stated that both the authorities have misconstrued the provisions of the Control order and rejected the application made by the petitioner.

5. Learned counsel for the respondents has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that as per the notification which was issued in the year 1988, any person to be eligible for grant of compassionate appointment the original dealer should had completed eight years. That in this particular case, the father of the petitioner was appointed as a PDS dealer in the year 1997 and he died on 07.04.2004 which is less than eight years therefore, the petitioner cannot be considered under the compassionate appointment.

6. Admittedly, in the present case, the authorities are relying on the letter No. 5489 dated 14.10.1998 to contend that the father of the petitioner has not completed eight years as a PDS dealer to become eligible to be considered under the



compassionate appointment. However, the counter affidavit is silent as to how the letter would be applicable, when the control order is of the year 2016, Clause 10 of the Bihar Targeted P.D.S. (Control) Order, 2016 reads as under:-

“In case of death of a fair price shop's licensee under the age of 58 (fifty eight) years, his shop may be allotted in order of priority to his/her wife/husband, son, unmarried daughter, daughter-in-law, and widow of his son. If there are out of these more than one dependent, all the other are required to forsake their claim in favour of one through an affidavit. The application in this regard shall be entertained, if submitted within two years from the date of death of the licensee by his dependent. If granted, such a fair price shop license shall be a new license, and it shall be permissible for further compassionate ground license, but if any member of the family of the deceased licensee is a government servant or holds a post of profit in the government, such a family shall not get benefit of compassionate ground.”

7. There is no impediment or condition in the Bihar Targeted Public Distribution System (Control) Order, 2016 stating that to be eligible for being considered under the compassionate appointment the original dealer should had completed eight years. Further, it is to be noted that the letter issued in the year 1988 cannot override the provisions of the Control order which admittedly came into effect from the year, 2016. This fact has been lost-sight by the authorities concerned and they have wrongly rejected the application made by the



petitioner.

8. Having regard to the above stated facts and circumstances, the impugned order dated 13.02.2024 passed by the Divisional Commissioner, Patna and the order dated 24.11.2023 passed by the District Level Selection Committee (Compassionate) headed by D.M., Patna are both set aside. The matter is remanded back to the District Level Selection Committee (Compassionate) for considering the case of the petitioner afresh and pass necessary orders duly taking into consideration the observations made by this Court. The entire exercise to be completed within a period of eight weeks from the date of the receipt of the copy of this order. It is needless to observe that before passing any order the petitioner shall be put on notice and given an opportunity of hearing. Any order passed shall be communicated to the party.

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

(A. Abhishek Reddy, J)

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