

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4988 of 2016

Md. Taiyab Khan Son of Rahmat Khan, Proprietor of M/s Khan Fruit Traders,
Shop No. 10, Agricultural Produce Marketing Yard, Musallahpur, Patna- 6

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Patna
3. The Under Secretary, Bihar State Agricultural Marketing Board (Dissolve),
Pant Bhawan, Bailey Road,
4. The Sub-Divisional Police Officer, Patna City, Patna
5. The Sub-Divisional Officer-cum-Special Officer, Agricultural Produce
Market Committee, Musallahpur (Dissolved), Patna - 6
6. The Officer-in-Charge, P.S.- Bahadurpur, District- Patna
7. Rafia Parween, Daughter of Md. Daud Khan, Wife of Md. Jawed Khan,
Resident of village- Bhaisasur, P.O.- Biharsharif, P.S.- Laheri, District-
Nalanda

... .. Respondent/s

Appearance :

For the Petitioner/s	:	M/s Y.V.Giri, Sr. Advocate Md. Irshad, Advocate
For the State	:	Mr. Anuj Kumar, AC to SC 12

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 17-12-2024

1. The petitioner has filed the instant application

for the following reliefs:

*“(a). For issuance of a Writ of
certiorari seeking quashing of memo no. 70
dated 27.02.2016 issued under signature of
Sub-Divisional Officer-cum-Special Officer,
Agricultural Produce Market Committee
(Dissolved), Musallahpur, Patna-6 whereby
and whereunder the respondent no. 5 granted
allotment of shop no. 10 to the private*



respondent no. 7. The said allotment is based on no grounds and is whimsical in nature and in the teeth of the statutory provision as stipulated under the Bihar Agricultural Produce Markets Act, 1960.

(b) For any other relief/reliefs to which the petitioner may be legally found to be entitled too. ”

2. At the outset, the Learned counsel for the petitioner draws attention of this Court towards the order dated 15.03.2016 passed by this Court, by which the order contained in Memo No. 70 dated 27.02.2016 issued by the respondent No. 5 was stayed.

3. The brief facts culled out of the Writ petition is that the the petitioner and other two persons, namely, Md. Irshad Khan and Md. Jawed Khan gave joint application for grant of fruit trading licence before the authority and after due process a licence was issued vide licence No. 2/2002-2003 in the name and style of M/s Khan Fruit Traders by the respondent Agricultural Produce Market Committee, Musallahpur and name of proprietors were mentioned as (i) Md. Irshad Khan, (ii) Md. Jawed Khan and (iii) Md. Taiyab Khan. Thereafter, petitioner and



other partners applied for shop and the same was allowed vide Shandry Shop No. 10 in the year 2011. It is further submitted by the petitioner that the Licence was granted in the year 2002-03 in the name of three persons i.e. (i) Md. Irshad Khan, (ii) Md. Jawed Khan and (iii) Md. Taiyab Khan. Further, Md. Irshad Khan has shifted to Saudi Arab , only two persons Md. Jawed and the petitioner Md. Taiyab Khan were doing business of fruits in shop No. 10 under the name of style of M/S Khan Fruit Traders.

4. It is submitted by the Learned Senior counsel for the petitioner that licence initially issued under the Bihar Agricultural Produce Markets Act, 1960 was given for the shop in question in the name of the petitioner i.e. Md. Irshad Khan and husband of respondent no. 7 i.e., Md. Jawed Khan. Md. Irshad Khan left the country and settled in Saudi Arab and Md. Jawed Khan died on 16.03.2014, since then the petitioner alone was doing the business of fruit in Shop no. 10 and he never defalcated in payment of rent till date. Due to that reason the petitioner has given an application for transfer directly in the name of M/s Khan Fruit Traders through Md. Taiyab Khan as



proprietor of the said shop but the authority has refused to transfer the proprietor's name because in the firm there were three partners. However, subsequent to the death of the Jawed Khan respondent no. 7 / wife of Javed Khan filed an application before the respondent no. 5 and the State Minorities Commission. Initially the respondent no. 5 refused to allot the shop as it is in the name of partnership firm and further stated that she could carry on business only as a partner. However, surprisingly from the impugned order dated 27.02.2016 it is evident that the shop was allotted in favour of the respondent no. 7 in individual capacity by the 5th respondent. It is submitted that the action of the respondent no. 5 is discriminatory, arbitrary, malafide and against the Principal of Natural Justice.

5. Notices were issued to respondent No. 7, but she chose not to appear. Thereafter notice through paper publication was done. None appeared for the respondent No. 7.

6. A detailed counter affidavit was filed on behalf of the respondent Nos. 4 and 5. From perusal of contents of counter affidavit, it appears that respondent No.



5 has justified his mistake.

7. Heard the Learned Senior Counsel for the petitioner as well as the Learned counsel for the respondent/ State. Perused the records.

8. On perusal of the record, it is evident that Respondent No. 5, Sub Divisional Officer, Patna City – cum – Special Officer, Bazaar Samiti (Di), Musallahpur has written a letter dated 04.06.2015 to Member Secretary, Bihar State Minority Commission, Patna with reference to the subject regarding grabbing movable and immovable property of a widow (respondent No. 7) and getting the shop registered in her name, stating in letter that at present no change were made in the shop. As Md. Javed Khan died, from the humanitarian point of view his wife would be entitled to partnership, as all the three partners have common rights. Again respondent No. 5 vide his letter dated 10.12.2015 informed to respondent No. 7 in context of her application 24.11.2015 that *“Khan Fruit Traders in market premises has been allotted licence on the basis of seniority in licence. There are already three partners in this license namely (1) Mohd. Irshad Khan, father- Mohd. Rafiq Khan,*



(2) Mohd. Javed Khan, father- Mohd Mustafa Khan and (3) Tayyab Khan, father- Mohd. Rehmat Khan. According to the death certificate submitted by you, Javed Khan died on 16.03.2014. Since, as per your claim, you claim to be his wife, in this regard, you are free to do business as a partner in the shop. But the transfer of the shop cannot be done in your name alone under any circumstances. As a result, your application for transfer is rejected.”

9. No reasons are assigned by the 5th respondent as to why a different stand was taken. Initially the 5th respondent rejected to grant licence to the 7th respondent. Subsequently, licence was allowed to the 7th respondent without cancelling the licence of the petitioner.

10. In the facts and circumstances stated above, the Order which are under challenge is liable to be quashed.

11. In the result, the Writ petition is allowed and the order contained in memo no. 70 dated 27.02.2016 issued under signature of Sub-Divisional Officer-cum-Special Officer, Agricultural Produce Market Committee (Dissolved), Musallahpur (Annexure -1) is hereby quashed



and set aside.

11. Interlocutory application(s), if any, shall
stands disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2024
Transmission Date	

