

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12159 of 2018

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Juvaida Khatun Wife of Md. Salauddin, resident of Mohalla- Bhadaul, Police Station- Kusheshwarsthan, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Principal Secretary, Department of food and Consumer Protection Government of Bihar, Patna.
3. The District Magistrate, Darbhanga cum President District Selection Committee, Darbhanga.
4. The District Supply Officer Darbhanga cum Secretary District Selection Committee, Darbhanga.
5. The Sub Divisional Officer, Biraul, Darbhanga.
6. The Sub Divisional Officer, Sadar, Darbhanga.
7. Madhuri Kumari, Wife of Sri Sunil Kumar Ray, resident of Village- Lodipur, Police Staiton- Kusheshwarsthan, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Adv.
	:	Mr. Ashok Kumar Karna, Adv.
For the Resp. No. 7	:	Mr. Kaushalesh Choudhary, Adv.
For the State	:	Mr.Arvind Ujjwal- Sc4

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

Date : 02-05-2024

Heard the Learned senior counsel Mr. N.K. Agrawal

for the petitioner, the Learned counsel Mr. Kaushalesh

Choudhary for the respondent no. 7 and the Learned counsel Mr.

Arvind Ujjwal for the State.

2. The writ petition is filed for quashing the Minutes

dated 01.09.2017 for which the private respondent no. 7,

namely, Madhuri Kumari was granted Public Distribution



System dealership of Panchayat-Masankhan, Sub-Division Biraul as respondent authorities had wrongly appointed/granted PDS license to the respondent no. 7, despite the District Selection Committee had recommended the name of the petitioner vide meeting dated 05.08.2007 and further prays to direct the respondent authorities to appoint/grant Public Distribution System license to the petitioner for the Panchayat Masankhan as she was already recommended by the District Selection Committee, Darbhanga.

3. The brief facts culled out of the petition are that the petitioner is an unemployed lady who have passed Intermediate in 1st Division and also possesses DCA qualification in Computers. Further, as per the certificate dated 21.06.2017 issued by the Circle Officer, Kusheshwarsthan, the petitioner is the resident of village Bhadaul of Darbhanga District. Respondent Authorities published advertisement for Selection/grant of PDS license to the eligible persons. As per the said advertisement, the petitioner has fulfilled the eligibility criteria for grant of PDS Licence. The Respondent Authorities accepted the application of the petitioner along with other persons and the District Selection Committee has considered the application of the petitioner along with the other persons in the



meeting dated 05.08.2017 against the unreserved seat for women. Further, the District Selection committee has recommended the name of the petitioner for grant of PDS license for the Block Biraul. The Minutes of the meeting is Annexure 2. In spite of the recommendation made by the Selection Committee, the respondent authorities have not granted Public Distribution System license to her and in contrary, it granted PDS license to Respondent No. 7 vide meeting dated 01.09.2017. The action of the respondent authorities is arbitrary, illegal and violative of law, therefore, prayed to quash the Minutes of the meeting dated 01.09.2017 and further to direct the respondent authorities to select the petitioner.

4. On the other hand, a detailed counter affidavit was filed by the Respondent Nos. 3 to 5. In the counter affidavit, the allegations of the petitioner are totally denied. It is contended that the writ petition is not maintainable as there is a specific provision laid in Clause 32(vii) of (Control) Order, 2016, according to which the petitioner has to file his objection before the concerned department and without filing the objections, the Writ petition cannot be entertained. It is further contended that the petitioner has to file a proper representation before the



Commissioner, Darbhanga Division in accordance with the observations and directions of this Court by order dated 02.01.2023 passed in C.W.J.C. No. 12504 of 2018.

5. It is further contended in the counter affidavit that pursuant to the advertisement/notice circulated in the locality of the District of Darbhanga for the year 2017, applications were received including the applications of the petitioner and Respondent No. 7 for one vacancy of one dealership reserved for woman. Pursuant to the applications, a merit list has been prepared and it was published on 05.08.2017 in order to get objections from any corner. The proceeding order dated 05.08.2017 connotes the name of the petitioner at serial no. 3 with remarks of having recommendation whereas name of the respondent no. 7 is at serial no. 6. Within the stipulated period certain objections were received and after entertaining the same the Selection Committee, Darbhanga has prepared and published the selection list on 01.09.2017. Aggrieved by the same, the petitioner has preferred the writ application. Pursuant to the objection of Respondent No. 7, the District Selection Committee, Darbhanga has come to know that Respondent No. 7 has more qualification than the petitioner, therefore, selected



Respondent No. 7 in accordance with law and therefore, prayed to dismiss the Writ petition as it is devoid of merits.

6. On the other hand, a detailed counter affidavit was filed by the Respondent no. 7, contending that the Writ petition is not maintainable as the petitioner filed it without exhausting the appellate remedy. The counsel for Respondent No. 7 contended that the petitioner as well as the Respondent No. 7 along with several other persons have preferred this applications and a tentative selection list was issued by the District Selection Committee on 05.08.2017 wherein petitioner's name was figured at serial no. 3 and Respondent No. 7 was figured at serial no. 6 in which the petitioner's qualification was only intermediate for which the respondent no. 7 has filed her objection stating that she has higher qualification i.e. graduation in the year 2016 itself, thereafter, considering the said facts, the Selection Committee has selected the Respondent No. 7 as the dealer of PDS.

7. The counter affidavit also reveals that the respondent no. 7 has filed an appeal before the Collector-cum-District Magistrate, Darbhanga *vide* Appeal No. 126 of 2019 which was allowed by order dated 25.02.2020 and on the basis of the said order the license of the Respondent No. 7 has been



re-enstated *vide* order contained in Memo no. 1517 dated 16.07.2020 passed by the Licensing Officer-cum-Sub Divisional Officer, Biraul and the said license is valid upto year 2025. Thereafter, the Licensing Officer has issued an order vide Memo no. 1639 dated 04.08.2020 directing the petitioner to ensure distribution of food grains and Kerosene oil under supervision of Panchayat Level Vigilance Committee. Further, it is contended that the writ petitioner had old enmity with the Respondent No. 7 for which she filed the writ petition on false, baseless and frivolous grounds and prayed to dismiss the writ petition as it is devoid of merits.

8. A supplementary affidavit has been filed by the petitioner contending that basing on a fraudulent misrepresentation, Respondent No. 7 was selected under an impression that she would have passed her graduation. Subsequently, the petitioner obtained the certificate of Respondent No. 7 from the university and came to know that the private respondent was disqualified and failed in graduation, therefore, she cannot be continued as license holder for the PDS. It is further contended in the supplementary affidavit that a complaint was also made before the Sub Divisional Officer for which the Respondent No. 7 could not produce her certificates



and also contended that her certificates were washed away in floods. And therefore, the F.I.R. is registered against the private Respondent No. 7.

9. A supplementary counter affidavit was also filed on 26.04.2024 raising preliminary objection about the maintainability of the writ petition on the ground that as per the notification issued by the Secretary, Food and Consumer Protection Department, Government of Bihar vide Memo No. Pra-07-court cases-07/2022 3223, dated 21.07.2022, necessary amendment has been made in Bihar Targeted Public Distribution System (Control) Order, 2016 which is known as Bihar Targeted Public Distribution System (Control) Second Amendment Order, 2022 by which paragraph nos. (i), (ii), (iii), (iv), (v) and (vi) have been added after Paragraph No. 5 and therefore, the writ petition is not maintainable. In Clause No. 2(iv) of the aforesaid Amendment order, 2022 of the aforesaid Order, 2022, it is specifically stated that “any aggrieved applicant against the recommendation embodied in the publication of final merit list may file a complaint before the Divisional Commissioner within 15 days itself mentioning clear reasons with the evidence. The Divisional Commissioner will dispose of vacancy-wise complaints. All complaints will be disposed of within a



maximum period of 30 days from the date of its receipt.” Further in clause 2 (v) of the aforesaid Amendment, 2022, it is clearly stated that “In all such cases in which no complaint has been filed before the Divisional Commissioner against the final merit within the prescribed period, the Licensing Officer shall issue the license within the prescribed period. But in cases wherein the complaint has been filed before the Divisional Commissioner, the license shall be issued in the light of the said order of the Divisional Commissioner.”

10. Heard the Learned counsel for the petitioner as well as Learned counsel for the State and Learned counsel for the Respondent No. 7. It is contended by the Learned counsel for the petitioner that the eligibility criteria for the license of Public Distribution System initially is matriculation. Further, the candidate shall also possess Computer knowledge and in case all the candidates possess the same, the next criteria will be the qualification i.e. whoever possesses higher qualification and if that is also same between the candidates who applied for the public distribution license, then the age will be the ultimate criteria. In the present case. Initially, the Selection Committee has recommended the name of the petitioner as PDS licensee but without considering the criteria the respondent authorities have



considered Respondent No. 7 with a contention that she is having higher qualification than that of the petitioner i.e. B.A. It is specific contention of the Learned counsel for the petitioner that the Respondent No. 7 does not possess higher qualification than that of the petitioner and moreover, the document which was issued by the University clearly disclose that the Respondent No. 7 has appeared for the 1st year degree examination in the year 2016, but could not pass. Therefore, the petitioner was constrained to prefer complaint before the Sub Divisional Officer and in spite of calling for the documents the Respondent No. 7 did not produce her certificates and further stated that the original documents were lost in flood.

11. On the other hand, it is contended by the Learned counsel for the Government representing Respondent Nos. 3 to 5 that the S.D.O. has sent several notices to the Respondent No. 7 to produce the relevant documents and there was no reply from the Respondent No. 7.

12. It is contended by the Learned counsel for the Respondent No. 7 that the Writ petition is not maintainable as there is an alternative remedy available for the petitioner, further, the Amendment Act, 2022 specifically disclose, that the aggrieved applicant has to prefer a complaint before the



Divisional Commissioner mentioning the reasons along with the evidence which shall be disposed of within 30 days and therefore, this Court cannot adjudicate the matter.

13. On perusal of the amendment, it is evident that the amendment has come into effect in the year 2022 and it shall come into force from the date of publication in the official gazette. The notification advertisement for PDS dealership licence is of the year of 2016. This amendment shall only come into force in the year 2022. Therefore, this cannot be applied for the petitioner as the amendment is not retrospective and it is prospective in nature. Therefore, directing the petitioner to make a compliant before the Divisional Commissioner and further directing the Commissioner to dispose it of within one month does not arise in this Case.

14. Perused the records. Considered the rival submissions of the parties. This Court is of the considered view that the respondent authority, prior to issuing the license should have scrutinized the documents of each of the parties to consider who are eligible for the appointment of PDS dealer. This Court initially finds fault with the authority for not scrutinizing the documents prior to appointing the PDS dealer i.e. the Respondent No. 7. In the present case, the respondent-



authorities have sought for the documents only after the complaint preferred by the petitioner before the S.D.O. The counter affidavit of Respondent Nos. 3 to 5 disclose that many notices were issued to Respondent No. 7, but Respondent No. 7 could not produce the documents to prove that she has higher qualification than that of the petitioner. The only reason stated by the Respondent No. 7 is that she lost the documents in the flood, but no date or year is mentioned regarding when the flood has occurred. This Court is not in a position to appreciate whether the flood occurred prior to 2018 or subsequent to 2018 so as to consider that the documents of the Respondent No. 7 were lost. Furthermore, it is the contention of the Learned counsel for the respondent no. 7 that two months time may be granted to produce all the documents. When the original documents were said to be lost, the question of filing the documents after two months cannot be considered at this juncture. Therefore, this Court is of the considered view that it is a fit case to quash the Minutes of the meeting dated 01.09.2017. Further the respondent authority shall consider the applications of the candidates on merits and shall pass appropriate orders in issuing the license.



15. Interlocutory Application(s), if any, shall stand dispose of.

16. With the aforesaid observation the writ petition is disposed off.

(G. Anupama Chakravarthy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.05.2024
Transmission Date	N/A

