

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21687 of 2019

=====

Sameer Kumar Roshan S/o Sri Basant Kumar Das Resident of Village-
Indiraawas Colony, P.o.- Nandlalpur, P.s.- Kahalgaon, Distt.- Bhagalpur
... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Govt. of Bihar, Old Secretariat, Patna
2. The Chairman-cum-Collector-cum-District Magistrate District Selection Committee, Bhagalpur, Distt.- Bhagalpur
3. The Sub Divisional Officer Kahalgaon, Distt.- Bhagalpur
4. The Block Supply Officer Kahalgaon, Distt.- Bhagalpur

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Kumar Rajdeep, Mr. Arvind Kumar, Ms. Diksha Kumari, Advocates
For the Respondent/s	:	Mr. Anisul Haque, AC to AAG5

=====

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

4 06-02-2024 The present writ petition has been filed for the

following relief:-

“ That the present writ application is being filed on behalf of the petitioner before this Hon’ble Court challenging the validity of the order dated 20.07.2019 passed by the learned Chairman-cum-Collector-cum-District Magistrate, District Selection Committee, Bhagalpur, District-Bhagalpur contained in letter no. 573 dated 27.07.2019 of the District Supply Officer, Bhagalpur by which the learned Collector, Bhagalpur rejected the petitioner’s claim for appointment of PDS dealer on compassionate ground.”

2. Learned senior counsel for the petitioner has



stated that the application of the petitioner for appointing him as PDS licensee on compassionate grounds has been rejected by the authority concerned on two grounds, one, that the father of the petitioner was having a Government job and secondly on the ground that though the petitioner has filed his application in the year 2015 itself, as no order was passed prior to coming into force of the Bihar Targeted PDS (Control) Order, 2016, the authorities are well within its right to pass an order as per provisions of the new Control Order. Learned Senior counsel has stated that the above said two grounds are contrary to the decision of this Hon'ble Court passed in CWJC No. 98 of 2013 dated 07.01.2013. Learned counsel has stated that mother of the petitioner who was the PDS dealer died in the year 2015 and the petitioner made his application in the year 2015 itself. However, the authorities passed the order in the year 2019 and the ground taken for rejection is not legally tenable as the petitioner cannot be punished for the lapses, if any, committed by authorities by not passing the order within a particular time frame. That the authorities concerned taking advantage of the fact that the new Control Order 2016 has come into the force cannot reject the claim of the petitioner under the new law. But, has to pass order on the basis of earlier Control Order which governs the case.



The the law governing as on the date of making application has to be taken into consideration and not the subsequent new act.

3. *Per contra*, the learned counsel for the respondents has stated that as per New Control Order 2016, if any application is to be considered on compassionate grounds, one of the conditions is that none of the members of the family can be holding a Government post. That in this particular case, the father of the petitioner was holding a Government post, and therefore, the authority has rejected the case of the petitioner. Further, it is stated that where no order is passed by the authorities concerned and the law existing as on the date of passing the order shall only govern the case. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present petition.

4. A learned Single Judge of this Hon'ble Court in a decision dated 07.01.2013 passed in CWJC No. 98 of 2013 has held as under:-

“The claim for compassionate appointment has to be considered on basis of the law as it stood on the date of death and not any subsequent directions or instructions. The instructions dated 23.06.2011 shall therefore not govern the claim of the petitioner. The claim has been deferred calling for further information. He is required to satisfy them that there is no other dependent. The control order does



not reflect that his brother being in government service is any bar to consideration of his candidature. Even otherwise a PDC license is not akin to appointment in Government service but has an element of a fundamental right to vocation under Article 19 of the Constitution of India.

5. Learned counsel for the respondents has not disputed the proposition laid by the Hon'ble Single Judge in the above cited case.

6. Having regard to the above settled position of law, the impugned order is set aside and the matter remanded back to the authorities concerned for passing orders afresh duly taking into consideration the fact that the authorities have to consider the case of the petitioner on the basis of the Control Order which was in existence as on the date of death of mother of the petitioner and not the subsequent Control Order, 2016 or any, directions or instructions given by the Department or Government subsequent to 2016.

7. Having regard to the above, the impugned order dated 20.07.2019 is set aside. The authorities concerned shall consider the case of the petitioner as expeditiously as possible preferably within a period of four weeks from the date of receipt/production of a copy of this order keeping in mind the



law laid down by this Hon’ble Court.

(A. Abhishek Reddy , J)

perwez

U			
---	--	--	--

