

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.526 of 2023
In
Civil Writ Jurisdiction Case No.7943 of 2022

Ruby Kumari W/o Kailash Yadav, resident of village - Nayatola Gangeli, P.S. - K.Nagar Maranga, District - Purnea.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Divisional Commissioner, Purnea.
3. The Collector, Purnea.
4. The Sub-Divisional Officer, Sadar, Purnea.
5. The District Supply Officer, Purnea.
6. The Block Supply Officer, K. Nagar Block, District Purnea.
7. Sangita Kumari, W/o Vidyaranand Singh, resident of village - Gangeli, P.S. - K.Nagar (Maranga), District - Purnea.

... ... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mukesh Kumar Thakur, Advocate
For the Resp. no.1- 6	:	Mr. S. Raza Ahmad (AAG-5)
		Mr. Alok Ranjan, Advocate
For the Resp. no.7	:	Mr. Pankaj Kumar Sinha, Advocate
		Mr. Rajiv Kr. Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-08-2025

Heard Mr. Mukesh Kumar Thakur, learned counsel for the appellant, Mr. S. Raza Ahmad, learned AAG-5 for the respondent Nos. 1 to 6 and Mr. Pankaj Kumar Sinha, learned counsel for the respondent No.7.

2. The present appeal has been filed under Clause-X,



Appendix-E of the Patna High Court Rules against the order dated 13.03.2023 passed by learned Single Judge in C.W.J.C No. 7943 of 2022 whereby the learned Single Judge has allowed the writ petition filed by the present opponent no.7/original writ petitioner.

3. The factual matrix of the present case is as under :-

3.1. The present opponent no.7/original writ petitioner filed the captioned writ petition under Article 226 of the Constitution of India in which the petitioner had prayed for quashing and setting aside the order dated 16.03.2022 passed by the Divisional Commissioner, Purnea in Supply Appeal No. 28 of 2019 whereby the Public Distribution System dealership license issued in favour of the petitioner came to be cancelled.

3.2. It is a case of the writ petitioner that she applied for grant of fair price shop dealership licence for Gangeli Gram Panchayat under Bihar Targetted Public Distribution System (Control) Order, 2016 (hereinafter referred to as ‘the Order of 2016’). It is further the case of the petitioner that the original respondent no.7 and others also submitted their applications before the competent authority.

3.3. It is also the case of the petitioner that thereafter the Sub-Divisional Officer, Sadar, Purnea asked the Block



Supply Officer to submit an enquiry report relating to the application submitted by the concerned candidates for grant of the aforesaid licence. Pursuant to the same, the concerned Block Supply Officer, Purnea submitted his report dated 25.09.2017. In the said report, it has been stated by the said officer that the petitioner and other candidates possess computer knowledge which is essential for giving priority over others.

3.4. It is further case of the petitioner that on 26.07.2018, the application was submitted by the petitioner before the District Supply Officer, Purnea along with the computer certificate, Aadhar Card, Pan Card at the stage of claim/objection. It was further stated in the said application that she could not submit her computer certificate, Aadhar Card and Pan Card along with her application for grant of fair price shop dealership licence.

3.5. The petitioner has also stated that at the time of consideration of the application submitted by all the candidates/applicants, the Selection Committee considered the application of the petitioner and thereafter in the meeting held on 29.09.2018 under the Chairmanship of District Collector, Purnea, it was decided to issue licence in favour of the petitioner. Accordingly, the licence was issued in favour of the



petitioner.

3.6. It has been further stated in the memo of the petition that against the decision taken by the concerned Selection Committee granting licence in favour of the petitioner, the original respondent no.7/present appellant filed an appeal, being Supply Appeal no.28 of 2019, before the Divisional Commissioner, Purnea. It is the grievance of the petitioner that the concerned Divisional Commissioner, Purnea vide order dated 16.03.2022 allowed the appeal filed by the original respondent no.7 and thereby the licence issued in favour of the petitioner under the Order of 2016 came to be cancelled.

3.7. The petitioner, therefore, filed the captioned writ petition before this Court. Learned Single Judge allowed the said petition and thereby quashed and set aside the order dated 16.03.2022 passed by the Divisional Commissioner, Purnea. The original respondent no.7 has, therefore, preferred the present appeal.

4. Learned counsel for the appellant herein has assailed the impugned order passed by the learned Single Judge mainly on the ground that the original petitioner is not entitled for the grant of licence of fair price shop as she has submitted the document i.e. the computer certificate subsequent to the cut-



off date i.e. the last date for submission of the application form. Learned counsel referred the relevant documents, which are annexed with the memo of the petition, and pointed out from the record that it is an undisputed fact that while submitting the application form, the petitioner did not mention about her qualification in computer subject. Further, she did not annex the relevant certificate with her application and, therefore, the concerned Block Supply Officer submitted the report, copy of which is placed on record at page no.81 of the compilation. It is submitted that as per the said report, the petitioner did not qualify for the grant of licence of fair price shop, despite which subsequently, i.e. after submission of report on 25.09.2017 by Block Supply Officer, the petitioner submitted an application on 26.07.2018 that she is having certificate of computer knowledge and, therefore, the Selection Committee has committed an error while accepting that certificate which was supplied after the cut-off date and thereby wrongly granted licence in favour of the petitioner. It is further submitted that the Divisional Commissioner, Purnea has rightly allowed the appeal filed by the present appellant, despite which the learned Single Judge interfered with the said order passed by the concerned appellate authority. Learned counsel has placed reliance upon the decision



rendered by the Hon'ble Supreme Court in the case of **Ashok Kumar Sonkar vs. Union of India & Ors.** reported in (2007) 4 SCC 54. Learned counsel has more particularly referred paragraph no. 20 of the said decision. Learned counsel for the appellant, therefore, urged that the impugned order passed by the learned Single Judge be set aside and the order dated 16.03.2022 passed by the Divisional Commissioner, Purnea, which was in favour of the present appellant, be confirmed.

5. On the other hand, learned counsel appearing for the present opponent no.7/original writ petitioner has vehemently opposed the present appeal. Learned counsel submits that it is true that the original petitioner has failed to mention about her knowledge in computer and the certificate obtained by her in computer, while submitting the application form, however, the fact remains that the petitioner is having knowledge of computer. She was holding that certificate and, therefore, when the petitioner realised about the same, she has submitted an application before the competent authority and produced such certificate along with the Aadhar Card and Pan Card. Learned counsel referred the copy of the said application dated 26.07.2018, copy of which is placed on record at page no.20 of the compilation. Learned counsel for the present



opponent no.7/original writ petitioner would further contend that in the present case, the petitioner acquired the required qualification prior to the date of advertisement and even prior to the cut-off date. The only mistake which she committed was that she could not mention about the same in the application form and could not produce the same along with the application form. However, subsequently, the same was submitted before the competent authority and that too, prior to the meeting of the Selection Committee which was held on 29.09.2018 under the Chairmanship of District Collector. Learned counsel, therefore, urged that the learned Single Judge has not committed any error while allowing the petition preferred by the petitioner. At this stage, learned counsel has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Charles K. Skaria & Ors. vs. Dr. C. Mathew & Ors.** reported in **AIR 1980 Supreme Court 1230**. Learned counsel also placed reliance upon the recent decision rendered by the Hon'ble Supreme Court in the case of **Sweety Kumari vs. State of Bihar & Ors.** reported in **AIR 2023 Supreme Court 4491**. Learned counsel, therefore, urged that the present appeal be dismissed.

6. Learned AAG-5 appearing on behalf of the



respondent-authorities has also opposed the present appeal. Learned AAG-5 would submit that it is open for the respondent-authorities to accept the document while considering the claim/objection. It is further submitted that in the present case, the original petitioner submitted the relevant document prior to the meeting of the Selection Committee. It is also contended that in the present case, it is not in dispute that the petitioner acquired the requisite qualification prior to the date of publication of the advertisement in the newspaper and even prior to the cut-off date and, therefore, the Selection Committee has rightly considered the candidature of the original petitioner and thereby granted licence of the fair price shop in favour of the original petitioner. Learned AAG-5, therefore, urged that the learned Single Judge has not committed any error while allowing the petition. He also, therefore, requested that the appeal be dismissed.

7. Having heard the learned Advocates appearing for the parties and having gone through the material placed on record as well as the decisions upon which the reliance has been placed by the learned counsel appearing for the parties, it transpires that pursuant to the advertisement issued in the newspaper for grant of fair price shop for a particular location,



the original writ petitioner as well as the present appellant along with the other applicants submitted their applications. From the record, it further transpires that the petitioner submitted the application form in which she did not state about her certificate in computer. Hence, she did not produce the said certificate of computer knowledge along with her application form. Therefore, the concerned Block Supply Officer while submitting the report on 25.09.2017, observed that the petitioner did not possess the requisite qualification of computer. It is further revealed from the record that before the meeting of the Selection Committee under the Chairmanship of District Magistrate was held on 29.09.2018, the petitioner submitted an application on 26.07.2018, a copy of which is placed on record at page no.20, wherein she has pointed out the correct facts that she could not place the relevant certificate as well as the Aadhar Card and Pan Card along with her application form, therefore, she submitted all the three documents with the said application. It is also not in dispute that the meeting of the Selection Committee was held on 29.09.2018. Thus, undisputedly, prior to the meeting of the Selection Committee, the requisite document was supplied by the petitioner before the competent authority and, therefore, the concerned Selection Committee, at the time of considering the



application submitted by all the applicants, considered the application of the original petitioner as well as the document, i.e. certificate with regard to the computer, and thereafter thought it fit to issue licence of fair price shop in favour of the original petitioner.

8. It is required to be observed at this stage that it is not the case of the present appellant/original respondent no.7 that the certificate obtained by the petitioner is a forged document or a concocted document nor it is the case of the present appellant that the original writ petitioner has acquired the qualification after the cut-off date. Thus, the fact remains that before the cut-off date, the petitioner was having the requisite qualification, however, as observed herein above, the mistake, which was committed by the petitioner, was that she could not state about the said thing in the application form and she could not annex the said document with the application form. Thus, here is a case where the original petitioner has acquired the requisite qualification prior to the cut-off date and even prior to the meeting of the Selection Committee.

9. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Charles K. Skaria (supra)**, whereby the Hon'ble Supreme Court has



held in paragraph nos. 20 and 21 as under :-

“20. There is nothing unreasonable nor arbitrary in adding 10 marks for holders of a diploma. But to earn this extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma, the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say :

(4)(b) : 10% to Diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. Certificates to be produced :- In all cases true copies of the following documents have to be produced :-

x x x

(k) Any other certificates required along with the application.

This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive



of 'sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential in the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the hand maid but the mistress and form not as subservient to substance but as superior to the essence.

21. Before the selection committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question, has he the requisite qualification? If he has, the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an incontestable but unorthodox probative process. Equity shall overpower technicality where human justice is at stake. ”



10. In the case of **Sweety Kumari** (*supra*), the Hon'ble Supreme Court has held in paragraph nos.18 and 19 as under :-

“18. The view taken by this Court is fortified by the analogy drawn in the case of Charles K. Skaria and Others v. Dr. C. Mathew and Others (1980) 2 SCC 752: (AIR 1980 SC 1230) whereby Justice Krishna Iyer speaking for the Court held that the factum of eligibility is different from factum of proof thereof. This Court held that if a person possesses eligibility before the date of actual selection, he cannot be denied benefit because its proof is produced later.

19. In the present case, the proof is available and true photocopies were on record. The appellants' candidature could not have been rejected merely because the original was not produced before the Commission at the time of interview in particular when such requirement was not mandatory, in view of the manner in which the Rules are couched.”

11. In the case of **Ashok Kumar Sonkar** (*supra*), upon which the reliance has been placed by the present appellant, the Hon'ble Supreme Court has held in paragraph no.20 as under :-

“20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to



prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application.”

12. Thus, from the observations made by the Hon'ble Supreme Court in the aforesaid decisions, it can be said that the Hon'ble Supreme Court observed in the said case that before the Selection Committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question, has he the requisite qualification? If he has, the marks must be added. If the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means.

13. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court in the case of **Charles K. Skaria** (*supra*) with the facts of the present case, as discussed herein above, we are of the view that in the present case, the petitioner has acquired the required qualification prior to the cut-off date and, therefore, we are of the view that the Selection Committee has not committed any error while accepting the candidature of



the original writ petitioner. Similarly, the learned Single Judge has also not committed any error while exercising powers under Article 226 of the Constitution of India, while considering the case of the present petitioner as she was having the required requisite qualification of certificate of computer knowledge prior to the cut-off date and even prior to the date of advertisement. The view taken by the learned Single Judge cannot be faulted on any ground.

14. In the case of **Ashok Kumar Sonkar (supra)**, the facts are different. In the said case, the concerned candidate passed the examination on 30.10.1995, however, he was allowed to appear before the Selection Committee despite the fact that he did not hold the requisite qualification till the date of filing of the application and the said candidate was selected. In the said case, admittedly, the concerned candidate did not hold the requisite qualification as on the cut-off date and, therefore, he was not eligible. Considering the said factual aspect, the Hon'ble Supreme Court has made the observation in paragraph no.20 of the said decision that possession of requisite educational qualification is mandatory. We are of the view that the aforesaid decision would not render any assistance to the learned counsel appearing for the appellant herein.



15. We have also gone through the reasoning recorded by the learned Single Judge while allowing the writ petition filed by the original writ petitioner and we are of the view that the learned Single Judge has not committed any error while passing the impugned order. Hence, no interference is required in the present appeal.

16. Accordingly, the appeal stands dismissed.

(Vipul M. Pancholi, CJ)

(Partha Sarthy, J)

Saurabh/Shiv

AFR/NAFR	NAFR
CAV DATE	NA
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