

Surendra Sharma and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jan-25-2002

Judge : Ravi S. Dhavan, C.J. and Shashank Kr. Singh, J.

Acts : [Constitution of India](#) - Article 19(1)

Appeal No. : CWJC No. 1314 of 2002

Appellant : Surendra Sharma and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Rajeshwar Prasad, Govt. Pleader No. 6

Advocate for Pet/Ap. : Birendra Pd. Verma and Iftekhar Mohmood, Advs.

Disposition : Petition dismissed

Judgement :

1. Messrs Surendra Sharma, Umesh Prasad Singh alias Umesh Kumar Singh and Sanjay Kumar, all of the district Patna but of villages Manjhauli, Sultha and Pasahl, have sought this writ petition under the High Court prerogative writ jurisdiction seeking a relief, in effect, that instructions which have been Issued by the State by its Letter No. 5107 dated 6 December 2001 by the Department of Food and Civil Supplies be declared as ultra vires as it violates the fundamental rights in reference to Articles 14, 19 and 21 of the [Constitution of India](#).

2. What aggrieves the petitioner is a policy of the State Government that if there are kinsmen and relatives of a person who may be a member of a Panchayat, a Sarpanch or a Mukhiya, and these close relatives be running a licenced shop dealing with commodities which come under the public distribution system, then such licences be recalled or cancelled.

3. The petitioners are under the impression that the permission or the license to sell essential commodities under the public distribution system is a business which is guaranteed to them and it is their fundamental right to do such a business. First, the question which the Court is to examine is whether it is a fundamental right of a citizen to be guaranteed a licence to deal with goods under the public distribution system. The answer is not complicated. To sell commodities from a ration shop on a license is not a business like any other trade. Essential commodities at a controlled price under State subsidies are not for trade. It is another matter that such commodities are traded through the back door in a parallel economy. These are socio economic measures and, thus, ration shops are meant to cater to the needs of persons below a certain economic level. It is at best a licence which the State may recall for a given reason.

4. The policy has a pattern and is in the spirit of the [Constitution of India](#) under Article 243G of the Constitution, under the Chapter 'Panchayats'. Even distribution of essential commodities to persons below the poverty line is the dominant purpose of the public distribution system. In the Eleventh Schedule of the Constitution, item 28 refers to 'Public distribution system'. In the circumstances, the Panchayats cannot go around and carve out a pattern for themselves for distributing largesse and presents amongst the members of the Panchayat or their relatives to doll out licences of ration shops.

5. In the present case, an objective of the policy is that such a circumstance may not be rendered in rural Bihar that the kinsmen of every conceivable person elected to the office of Mukhiya or Sarpanch or for that matter a Ward member has a direct nexus or connection with the ration shop.

6. In the circumstances, the State formulated a policy that from the Ward member upto the Mukhiya, their close relatives (the expression used in the circular

announcing the policy is 'Nikat Sambandhi') should not be running a ration shop dealing with goods for the public distribution system on a licence granted by the State.

7. The details on the status of the petitioner emerged slowly during the course of the arguments on the petition. Proceeding in the reverse order, the petitioner No. 3 Sanjay Kumar acknowledges in paragraph-12 that he is a Ward member and also has a licence to run a ration shop under the public distribution system. The petitioner No. 2 Umesh Prasad Singh alias Umesh Kumar Singh, Learned counsel acknowledges, has a son who is Ward member of a Panchayat. The Petitioner No.1 Surendra Sharma has a cousin who is a Ward member. Thus, all the three petitioners have a direct nexus with a ration shop being run by their close relatives. The sooner such practices are put to an end it would be better particularly when Panchayats are being made functional in the State and are seeing a return after almost a quarter century. Such vested interests of the pattern which are attempted to be discouraged, must necessarily be kept at bay.

Thus, dismissed.

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