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ORDER SHEET

WPO 362 of 2020

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

M/S SONAI FOOD MARKETING PVT LTD AND ANR
Versus
THE STATE OF WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 22nd December, 2020.

(Via Video Conference)

Appearance:

Mr. Kalyan Bandopadhyay, Sr. Adv.

Mr. Ram Anand Agarwal, Adv.

Ms. Nibedita Pal, Adv.

Mr. Ramesh Dhara, Adv.

Mr. Ananda Gopal Mukherjee, Adv.

Mr. Kishore Datta, Ld. AG.

Mr. Susovan Sengupta, Adv.

Mr. Subir Pal, Adv.

The Court: The grievance of the petitioner is directed against a Government Order dated 7th August, 2019 and the consequential order dated 22nd February, 2019 passed by the Principal Secretary.

By a notification dated 23rd July, 2018 the State had invited applications for filling up of a vacancy for the distributorship at the Hariharpara Block, Hariharpara (East) at Swaruppur More in the District of Murshidabad. Pursuant to such notification on 20th August, 2018, the petitioner submitted an application

form in the prescribed manner along with the requisite documents and the required application fees. On 11th March, 2019 the Sub-Divisional Controller, Food and Supplies, Berhampore issued a notice informing the petitioner that a spot enquiry would be held. Pursuant to such notice, a spot enquiry was held where the petitioner produced all the relevant documents on 14th March, 2019. Thereafter, the petitioner wrote to the Appropriate Authority to know the result of his application. On 13th August, 2019 the petitioner had filed a writ petition being WP No.15661(W) of 2019 wherein a learned Single Judge of this Hon'ble Court had directed the Principal Secretary to expedite and conclude the process within a period of two months from date. By an order dated 22nd August, 2019 the Principal Secretary passed an order informing the petitioner that the State had taken a policy decision vide a notification dated 7th August, 2019 to cancel the vacancies including the vacancy for which the petitioner had made an application. Hence, the application of the petitioner was rejected. It is this consequential order dated 22nd November, 2019 which is also challenged in the instant writ petition.

Mr. Kalyan Bandopadhyay, learned Senior Advocate appearing on behalf of the petitioner, contended that the impugned order contains no reasons. He strongly relies on the decision of the Hon'ble Division Bench in F.M.A. 913 of 2020 (M.A.T. 617 of 2020) with CAN 1 of 2020 (M/s. Kultali Food Marketing Private Limited & Anr. Versus State of West Bengal & Ors.). He also relies on a Single Bench decision of this Hon'ble Court delivered in WPO No.359 of 2020 and WPO No.360 of 2020 (M/s. Sonai Food Marketing Pvt. Ltd. & Anr. Versus State of

West Bengal & Ors.). He further submitted that in the light of these two decisions, the very same notification dated 7th August, 2019 has been challenged and succeeded. He further submitted that the consequential order of 22nd November, 2019 relies only on the notification dated 7th August, 2019 and hence both are liable to be interfered with. He submitted that the reasoning in the two unreported judgments relied on by him are self explanatory and he adopts the same reasoning in the instant case. He submits that the decision to cancel the selection process is arbitrary and the rights of the petitioner cannot be denied on the basis of such arbitrary action. He further submits that the impugned order dated 22nd November, 2019 is *per se* arbitrary and without any basis whatsoever.

Learned Advocate General appearing for the State has tried to distinguish the two unreported judgments relied on by Mr. Bandopadhyay. He submitted that the cancellation of the entire process was not intimated to the Court in the earlier writ petitions and in any event the said fact was correctly relied on by the Principal Secretary in rejecting the claim of the petitioner. He relies on the judgment reported in **(2005) 6 SCC 138** and **(2007) 2 SCC 588**.

In reply, Mr. Bandopadhyay distinguish the authority cited on behalf of the State and submitted that in view of the pronouncement of the Hon'ble Division Bench and a Coordinate Bench of this Hon'ble Court, there were no grounds whatsoever to distinguish the case of the petitioner.

I have heard the parties and I am of the view that the petitioner in the instant case is similarly situated to the petitioner in both M/s. Kultali Food Marketing Private Limited and Anr and M/s. Sonai Marketing Private Limited i.e.

the aforesaid two decisions relied on by the petitioner. I am also of the view that the impugned order has been passed solely on the basis of the Notification dated 7th August, 2019. The Principal Secretary in passing the order dated 22nd November, 2019 has primarily relied on the aforesaid notification and was of the view that in view of the cancellation of the vacancy, nothing remained to be decided by the Principal Secretary. This notification i.e. 7th August, 2019 has been held to be bad and illegal in both the aforesaid decisions relied on by the petitioner. I am not inclined to accept the submissions made on behalf of the learned Advocate General that there are any distinguishing features in the instant case. I am of the view that the petitioner is similarly situated and circumstanced as the writ petitioners in the aforesaid two decisions relied on by Mr. Bandopadhyay. I have not been able to find any distinguishing features which would justify taking a different view from the earlier decisions relied on by the petitioner. In such a scenario, when a process is cancelled there must be cogent reasons for the cancellation. I agree that in responding to a notice intimating tenders no vested right is created in favour of the applicant. However, every applicant has a right to have his or her application to be considered in accordance with law. I am of the view that the impugned notification in the facts of the instant case does not appear to be justified, proper or lawful. In such circumstances, the writ petition is allowed. The respondent authorities will process the application of the petitioner for engagement as a distributor in the respective block applied for by the petitioner in accordance with law and

communicate the decision to the petitioner within a period of six weeks from date.

With the aforesaid directions, WPO 362 of 2020 is disposed of. There shall be no order as to costs.

(RAVI KRISHAN KAPUR, J.)

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