IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 2836 of 2021

M/s. Kultali Food Marketing Pvt. Ltd. & Anr.

Versus

The State of West Bengal & Ors.

Mr. Kalyan Kumar Bandyopadhyay, Sr. Adv.
Mr. Ram Anand Agarwal
Ms. Nibedita Pal
Mr. Ramesh Chandra Dhara
Mr. Ananda Gopal Mukherjee
Ms. Sonam Roy

.....For the Petitioners

Mr. Susovan Sengupta
Mr. Subir Pal

.....For the State-respondents

Heard on : 23.02.2022

Judgment on : 21.04.2022

Krishna Rao, J.: The petitioners have challenged the vacancy notice dt. 09.01.2019 and prayed for declaring Clauses 1, 2, 7 & 8 of the said vacancy notice as ultra vires and setting aside notices dt. 03.12.2020 and 04.12.2020 wherein the application of the petitioners for appointment as distributor against the vacancy for Hingalganj Block, North 24 Parganas was rejected.

The District Controller (F & S), North 24 Parganas had published a notice dt. 11.07.2018 in the Official Gazette on 23.07.2018 inviting applications for filling up the vacancy of M.R. Distributorship at Hingalganj Block under Basirhat Sub-Division in the District of North 24 Parganas in prescribed format Form “G” with requisite documents and application fee.

The petitioner being eligible for the said M.R. Distributorship have submitted an application in the prescribed form enclosing requisite documents along with the fee as required in the vacancy Notification dt. 23.07.2018.

By a Gazette Notification dt. 09.01.2019, the earlier vacancy notice dt. 11.07.2018 notified in the Official Gazette on 23.07.2018 was superseded and applications were invited for filling up the vacancy of distributorship in terms of Clause 26 (i) of 2013, Order under Hingalganj Block in the District of North 24 Parganas. By a proviso in the said Notification dt. 09.01.2019 it is stated that, “Please note that those applicants, who have applied earlier on the basis of principal notification may opt to consider his/her/their application under this notification on submission of an undertaking to the DCF&S, North 24 Parganas within last date of submission of application”.

In the Notification dt. 09.01.2019 some eligibility criteria being Serial Nos. 1, 2, 7 & 8 were added. The petitioner in terms of first proviso of the notification dt. 09.01.2019 made representation to the respondents opting for consideration of their application. On receipt of the request made by the petitioners, the application of the petitioners were processed and have found that the petitioners have fulfilled the eligibility criteria and have submitted requisite documents and accordingly, the same was forwarded to the Sub-Divisional Controller for conducting enquiry. The Sub-Divisional Controller (F & S) had accordingly conducted spot enquiry.

Inspite of the enquiry and spot inspection, the respondents have not taken any decision for appointment of distributorship against the vacancy in question and accordingly, the petitioners have preferred a writ application before this Court being W.P. No. 14509 (W) of 2019 with the prayer for a direction upon the authorities to complete the selection process with respect of the vacancy in question. The Co-ordinate Bench of this Court had disposed of the writ application by directing the concern authority to expedite and conclude the process within a period of two months.

On 07.08.2019, the District Controller (F & S) had issued a notice by cancelling the vacancy in question and refunded the application fee to the petitioners. Being aggrieved with the order of cancellation, the petitioners have preferred a writ application before this Court being WPA No. 16833 of 2019 praying for quashing of the impugned order of cancellation and consequential order for appointment of distributorship against the vacancy declared by the respondents. The writ petition filed by the petitioner was dismissed by the Co-ordinate Bench of this Court on 16.09.2020. Being aggrieved with the order of dismissal dt. 16.09.2020 the petitioners have preferred an appeal, being MAT No. 617 of 2020 which was subsequently renumbered as FMA No. 913 of 2020.

The appeal preferred by the petitioners was disposed of by the Hon'ble Division Bench on 09.10.2020, wherein the order dt. 07.08.2019 issued by the authorities and the order passed by the Ld. Single Judge were set aside and the respondents were directed to process the application of the petitioners for engagement of M.R. Distributor for Hingalganj Block in accordance with law within a period of four weeks from date.

After the order passed by the Appellate Court, the respondent authorities vide order dt. 04.12.2020 rejected the application of the petitioner on the ground that the petitioner has not fulfilled the criteria as per the Provision of 2013 Order.

Being aggrieved with the order dt. 04.12.2020, the petitioners have preferred a writ application before this Court being WPO No. 405 of 2020. During the pendency of the writ application, the respondents have forwarded an email to the petitioner along with an order dt. 03.12.2020 informing the reasons for rejection of the application of the petitioners. The writ petition filed by the petitioner was dismissed by the Co-ordinate Bench of this Court with the liberty to the petitioner to file afresh on the same self cause of action and accordingly, the petitioner have filed the instant writ application.

Mr. Kalyan Kumar Bandyopadhyay, Ld. Senior Advocate representing the petitioners submits that by the impugned order dt. 03.12.2020, the

District Controller (F&S) had tried to improve upon the communication dt. 04.12.2020 without considering the vacancy notice, the petitioner's application and the enquiry and inspection report.

Ld. Senior Counsel further submits that 2013 Order has been framed by the State in exercise of the power conferred under Section 3 of the Essential Commodities Act, 1955 and therefore, clause nos. 1, 2, 7 and 8 of the vacancy notice dt. 09.01.2019 are contrary to the Order of 2013 including Form "G" which is also a part of 2013 Order.

Ld. Senior Counsel further submits that Form "G" does not make prohibition as mentioned in clauses 7 and 8 of the notification dt. 09.01.2019 thus it is ultra vires of 2013 Order and violative of Articles 14 and 19 (1) (g) of the Constitution of India.

The Ld. Senior Counsel further submits that in the notification dt. 09.01.2019, it is clear that no further application was directed to be filed by the applicants, who already applied under the earlier notification and as such, the option was exercised by the petitioner in terms thereof and on the basis of such option, enquiry was conducted by the Sub-Divisional Controller (F&S) and therefore, it cannot be said that new application required to be made in terms of the notification dt. 09.01.2019.

Ld. Senior Counsel further submits that the respondents by their own conduct, waived the necessity of making application in terms of second notification and the District Controller (F&S), being satisfied with the requisite documents annexed with the application submitted by the petitioner under Form "G" was processed for enquiring the spot inspection.

The Ld. Senior Counsel submits that to nullify the Judgment and Order dt. 09.10.2020 passed by the Hon'ble Division Bench and the Order dt. 01.08.2019 passed by the Hon'ble Single Judge in earlier proceedings, the respondents have issued the impugned notices dt. 04.12.2020 and 03.12.2020 in a bias manner.

The Senior Ld. Counsel further submits that serial no. 20 of the statutory Form "G" seeks the information from the applicant whether any member of the applicant's family possessed in FPS or distributor license, whereas serial no. 7 of the notification dt. 09.01.2019 debars the intending applicant, applying against the vacancy in question if the applicant possesses any dealership or distributorship license in his name or in the name of any member of his family and thus Clause 7 of Notification dt. 09.01.2019 is an ultra vires.

The Ld. Senior Counsel further submits that before passing the impugned order no opportunity of hearing was given to the petitioners and as such the respondents have violated the principles of natural justice.

The Ld. Senior Counsel further submitted that the petitioners have invested huge money for the infrastructure to meet the requirements of the vacancy in question but the decision of the authorities, after enquiring into the applications submitted by the petitioners and by rejecting the application of the petitioner, caused serious prejudice to the petitioners.

Ld. Senior Counsel relied upon the judgments reported in (2016) 8 SCC 389 (Lok Prahari –Vs- State of Uttar Pradesh & Ors.), (2016) 2 SCC 507 (Life Insurance Corporation of India –Vs- Insurance Policy Plus Services Private Limited & Ors.) and (1997) WBLR (Cal) 150 (Purnendu Sekhar Biring & Ors. –Vs- Government of West Bengal & Ors.).

Per contra, Mr. Susovan Sengupta representing the respondents submitted that the Special Secretary to the Government of West Bengal, Food and Supplies Department vide his office Memo dt. 27.11.2020 informed the Director that the Competent Authority has rejected all the four applications received against the vacancy notified in the principal notification dt. 11.07.2018 and re-notification dt. 09.01.2019 since all the applicants failed to fulfill the requirement criteria.

The Ld. Counsel for the respondents further submits that the District Controller had communicated the decision of the Food and Supplies Department to each of the applicants separately by post in pursuance to the direction dt. 27.11.2020 on 03.12.2020. In the case of the petitioners herein, the said communication was addressed to the petitioner no. 2 vide office Memorandum dt. 03.12.2020 and Email dt. 04.12.2020 and further on 04.12.2020, the District Controller (F&S), North 24 Parganas had communicated the decision of the Food Supplies Department to the Ld. Advocate for the petitioner vide Email dt. 04.12.2020.

The Ld. Counsel for the respondents further submits that the petitioners have applied for the vacancy as Company inspite of the fact that the vacancy notification for distributorship in question was made inviting application from Self Help Group/Registered Co-operative Societies/Semi-Government Bodies/Individuals/Group of Individuals as an entity.

The Ld. Counsel for the respondents further submits that the petitioner does not fall under the ambit of the aforesaid categories of persons and if the petitioner accepts that the petitioner has applied against the category of Group of Individuals as an entity then the petitioner has to abide by the conditions of the eligibility criteria as mentioned in clause nos. 1, 2, 7 & 8 of the vacancy notification.

The Counsel for the respondents further submits that the respondents have not violated the Provisions of Article 14 and 19 (1) (g) of the Constitution of India.

The Ld. Counsel for the respondents relied upon the judgments reported in (2006) 7 SCC 756 (Jai Narain Parasrampuria & Ors. –Vs- Pushpa Devi Saraf & Ors.) and the judgment reported in (2011) 5 SCC 103 (Glodyne Technoserve Limited –Vs- State of Madhya Pradesh & Ors.).

Considered the rival submissions, the documents available on record and the judgment relied by the parties.

The District Controller (F&S) had initially published vacancy notice on 11.07.2018 in which the following eligibility criteria, documents and the conditions are mentioned:-

"Eligibility Criteria

1. *The applicant must be adult Indian citizen (s).*
2. *If the applicant be individual(s), he/she/they should be permanent resident of the district where the vacancy occurs.*

3. *The applicant should have knowledge for both reading and writing in local language prevailing in the area for which the vacancy stands for.*
4. *The applicant should possess a suitable godown (in keeping with the norms of Central Warehousing Corporation) within the advertised area for storage of food grains and other public distribution commodities. The size of the godown should be to accommodate at least 1000 M.T of food grains. There must be a covered space of 200 Sq. ft. Adjacent to the godown to be used for office purpose as well as for computer operations Minimum height of the godown should be 15 ft.*
5. *There has to be adequate space for loading and unloading of stocks as well as for queuing of the vehicles.*
6. *The applicant for distributorship must have bank Balance of at least Rs. 50 lakh (Rs. Fifty lakh) as working capital as reflected on the day of application and one year preceding the date of application.*
7. ***The applicant must be prepared to furnish, on engagement, a security deposit of Rs. 1 lakh (Rs. One lakh) only and License Fee of Rs. 60,000/- (Rs. Sixty thousand) only through Treasury Challan under appropriate head of account.***
8. *The applicant (in case of individual) should not be employed in any Govt. Semi-Govt. organization/School etc. and should not be an elected member of any Panchayati Raz Institution/Urban local body.*
9. *The applicant must not be convicted in any court of law implicated in any criminal case.*

The applicant must submit, along with application in Form – 'G', the supporting documents as follows:

1. *Recent passport size colour photograph (to be self attested and affixed on the application form).*
2. *Affidavits as per Annexure – I & II to From – 'G' under WBPDS (M&C) Order 2013.*
3. *Proof of citizenship (Photocopy of EPIC/Passport etc.)*
4. *Proof of residence.*
5. *Proof of Education qualification.*
6. *Documents regarding possession right over the proposed of business (photocopy of deed/ROR Registered Rent/ Lease agreement at least for 10 years/Rent receipt etc).*
7. *Proof of financial solvency (account statement/photocopy of updated passbook issued by recognized banks).*
8. *A copy of sanctioned plan and layout map of the offered godown indicating space for loading/unloading and approach road.*
9. *Document regarding character of land.*
10. *Photocopy of registration certificate issued by the competent authority (in case of SHG/Co-opt-society).*

Conditions:-

1. *The functioning of MR Distributorship shall be governed by the provisions as laid down in the West Bengal Public Distribution System (M&C) Order, 2013 as mentioned from time to time.*
2. *Any form of canvassing will automatically disqualify a candidate for engagement.*
3. *Any suppression of fact or incorporation of wrong information in the application form will be considered as a gross disqualification for a candidate.*
4. *The Government in the Food & Supplies Department reserves the right to reject any application without assigning any reason thereof and will not entertain any correspondence on this score.*
5. *Application which do not reach the District Controller of Food & Supplies, North 24 Parganas within the last date of submission as mentioned above will be rejected."*

In terms of the said vacancy notice, the petitioner had submitted an application on 20.08.2018 in the Form "G" by mentioning the documents as enclosed the said Form. On the basis of the documents submitted by the petitioner, the respondents have inspected the premises and the godown of the petitioner.

All of the sudden on 09.01.2019, the respondent authorities in supersession of an earlier vacancy notice dt. 11.07.2018 had issued another vacancy notice in terms of Clause 26 (i) of 2013, Order under Hingalganj Block in the District of North 24 Parganas. In the said notice it was clarified that "those applicants who have applied earlier on the basis of the principal notification may opt to consider his/her/their application under this notification on submission of an undertaking by the applicant to the DCF&S, North 24 Parganas within the last date of submission of the application. In the notification dt. 09.01.2019, the respondents have added further conditions being serial nos. 1, 2, 7 & 8 which reads as follows:-

"1. The applicant (in the case of individual or group of individuals) must be adult citizen (s) of India.

2. The applicant (in the case of individuals or group of individuals) should be permanent resident(s) of North 24 Parganas district.

7. The applicant (in the case of individuals or group of individuals) should not possess any FPS dealership/distributorship license on PDS either in his/her/their name or in the name of any member of his/her/their family.

8. The applicant (in the case of individuals or group of individuals) should not be employed in any Govt./Semi-Govt. organization/School etc. and should not be an elected member of any Panchayati Raj Institution/Urban local body/ Legislative Assembly/Parliament or holding any Office of Profit in Govt."

On 03.12.2020, the respondents have rejected the application of the petitioner on the following ground:-

"1) An MR distributorship license is running in the same name & style. i.e. M/s Kultali Food Marketing Pvt. Ltd. under DCF&S Malda.

This violates the eligibility criteria mentioned at Sl. No. 7 that "the applicant (in the case of individual or group of individuals) should not possess any FPS dealership/distributorship license on PDS either in his/her/their name or in the name of any member of his/her/their family."

ii) As per application submitted, M/s Kultali Food Marketing Pvt. Ltd. has its registered office at 24 N.S. Road, Vill – Mahinagar, PO – Malancha under South 24 Parganas district. No papers were submitted to prove the existence of any office of M/s Kultali Food Marketing Pvt. Ltd. in North 24 Parganas district. Further, the address of Mr. Kalpataru Maiti, Managing Director & Authorized Signatory of M/s Kultali Food Marketing Pvt. Ltd. (as recorded in his AADHAAR card bearing AADHAAR No. 5279 6688 9388) is recorded as Chakradhaban under Purba Medinipur district.

This violates the eligibility criteria mentioned at Sl. No. 2 that "the applicant (in the case of individual or group of individuals) should be permanent resident(s) of North 24 Parganas district."

iii) Total credit balance of Rs. 92,27,856/- is shown as on date 13/08/2018 (i.e. one week prior to date of application) and credit balance of Rs. 86,37,000/- on 20/08/2017 (i.e. one year prior to date of application). However, no papers have been submitted by *the applicant to prove the credit balance with him as on 20.08.2018, i.e. the date of application.*

This violates the eligibility criteria mentioned at Sl. No. 5 that "the applicant must be financially solvent so as to run the distributorship business successfully having bank balance of Rs. 50,000/- (Rupees Fifty lakh only) as working capital ***as reflected on the day of application and one year preceding the date of application."***

iv) No adequate covered space adjacent to the godown for use as office was found during inspection, suitable godown… … … having the size to accommodate at least 1000 MT of foodgrains… … … along ***with an adequate covered space adjacent to the godown to be used for office purpose****… … …"*

Vide communication dt. 03.12.2020, the respondents have informed the Counsel for the petitioner that the appointment of M.R. Distributor at Hingalganj under Hingalganj Block in the District of North 24 Parganas as required criterion are not fulfilled by any of the four applicants as per Provisions of the West Bengal Public Distribution System (Maintenance & Control) Order 2013 and in the said communication altogether four reasons were assigned. Vide communication dt. 04.12.2020 also informed about rejection of application the petitioner.

The petitioner has challenged the impugned communication dt. 03.12.2020 and 04.12.2020 on the ground that clause nos. 1, 2, 7 & 8 of the vacancy notice dt. 09.01.2019 an ultra vires.

The Government of West Bengal has published the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 in exercise of power conferred under Section 3 of the Essential Commodities Act, 1955. Clause 26 of Order, 2013 provides for engagement of distributor. The terms and conditions for engagement of distributorship is envisaged in Clause 26 which reads as follows:-

"26. Engagement of Distributor :-

(i) In the event of-

a) resignation of any Distributor ;

Or

b) death or incapacitation of the existing Distributor on medical ground, unless any of his / her family members is found suitable for engagement on Compassionate ground as per Sub-Clause (vi);

Or

c) dissolution of firm formed by a group of people ;

Or

d) cancellation of licence issued to a Distributor for any reason whatsoever;

Or

e) (in the case of private limited company) the transfer of majority shareholding of that company in favour of the third party i.e. other than promoters / Directors of that company ;

the resultant vacancy has to be notified by the District Controller, Food and Supplies with prior approval of the department.

(ii) If it appears necessary for the District Administration to declare a new vacancy for better functioning of Public Distribution System in a particular area, the vacancy is to be declared with the approval of Department. In that case the SC F&S shall submit the proposal of any vacancy of Distributor to the concerned District Controller (F&S). The Concerned District Controller, Food and Supplies shall send the same to the Director of DDP&S, with the opinion of the concerned District Magistrate. The Director, DDP&S, will examine the proposal, and send it to the Department with his specific views. After obtaining approval of the State Government, the District Controller, Food and Supplies shall declare such vacancy stating the eligibility criteria through notice in the office notice board and official Gazette notification / advertisement in a local as well as in a

widely circulated daily news paper. The last date of receiving applications shall be thirty days from the date of notification of the vacancy.

iii) *Applications for filling up the vacancies as notified in Sub-Clause (ii) hereinbefore shall be invited from Self Help Groups / Registered Co-operative Societies / Semi-Government bodies / individuals / group of individuals as an entity. In case of fresh vacancies preference may be given to Self Help Groups, specially women Self Help Groups. If the applicant be individual(s), he / she / they should be permanent resident of the concerned districts. The applications received in Form G along with annexure I & II and requisite fee as prescribed in Schedule-B within the stipulated time shall be enquired by the Sub-divisional Controller, Food and Supplies within one month period from the last date of receipt of the applications as notified, and the report so prepared shall be sent with his comment to the concerned District Controller, Food and Supplies. The said District Controller, Food and Supplies shall forward the same with his comments through the concerned District Magistrate to the Director, DDP&S, within thirty days from the date of receipt of the report from the Sub-divisional Controller, Food and Supplies. The Director, DDP&S, in turn, will forward the same to the Department with his views.*

Provided that if the Government so desires it may give such opportunities to only Self Help Groups or Cooperative societies or Semi Government bodies or such other public agencies by separate notifications.

iv) *The State Government, if necessary, may arrange for further enquiry into the matter by any competent Officer or by a team of Officers and thereafter shall accord approval selecting the most suitable candidate/organization for filling up the vacancy.*

v) *After obtaining government approval District Controller, Food and Supplies shall issue an offer letter in Form "H" to the approved candidate / organization with the direction for furnishing recent passport size photograph(s), security deposit and licensing fee as per Clause 27(i) and Schedule-B,*

vi) ***Engagement on compassionate grounds:-*** *In case of vacancy arising out of death or in case of incapacitation on medical ground of any existing distributor, such vacancy shall not initially be notified. Prayer of any of the family members of the deceased / incapacitated distributor* *having no regular means of subsistence, will be considered with preference on compassionate ground provided such prayer along with formal application in Form 'G' along with annexure I & II with requisite fee is submitted within 60 days from the occurrence of such vacancy. However, the applicant should be capable of running the Distributorship smoothly.*

While applying, the applicant shall have to furnish "No Objection" from other family members in the form an Affidavit executed before a 1st Class Magistrate except in the following cases :- (a) if the applicant be the spouse of the deceased licensee, (b) if the ex-licensee, because of his / her being incapacitated / infirm has opted for the applicant.

The District Controller, Food and Supplies shall arrange for an enquiry to verify the eligibility of the applicant and submit the report with his opinion to the Director, DDP&S. While forwarding a case on medical ground the District Controller should satisfy himself / herself on examination of the medical prescription and certificate issued by a Registered Government Medical Practitioner that the ex-licensee is not in a position to run distributorship business considering his / her health ground. The Director, DDP&S, shall send the same with his comments to the Department for necessary approval. The District Controller, Food and Supplies after having Government approval, shall issue an offer letter to the approved candidate, directing him/her to furnish recent passport size photograph(s), security deposit and licensing fee as per Clause 27(i) and Schedule-B,

vii) Distributorship run by any individual person shall not be allowed for inclusion of any partner(s). In the case of induction of a new partner or substitution or exclusion of an existing partner, in an existing partnership licence, the same may be considered on merit subject to the provision of the Indian Partnership Act 1932 as amended from time to time."

In terms of Clause 26, the respondents have formulated Form "G" for the purpose of application for distributorship. The respondents have published the vacancy notice by way of Notification dt. 23.07.2018 and the said vacancy notice was in terms of Clause 26 of the Order of 2013.

The respondents by superseding the vacancy notice dt. 23.07.2018 have published another vacancy notice on 09.01.2019 wherein the respondents have incorporated several clauses other than the clauses mentioned in vacancy notice dt. 23.07.2018.

The Order of 2013 is promulgated by exercising the power under Section 3 of the Essential Commodities Act, 1955 and in the said order, the terms and conditions for distributor is notified. Now, the respondents have incorporated other conditions which are not in consonance with Clause 26 of the Maintenance and Control Order, 2013 and as such clauses 1, 2, 7 & 8 as incorporated by the respondents vide Notification dt. 09.01.2019 cannot be sustained under law.

The respondents have rejected the application submitted by the petitioner firstly on the ground that the petitioner violates the criteria mentioned in Serial No. 7 and secondly on the ground that the petitioner has not submitted the document with regard to the permanent resident of North 24 Parganas District. In the preceding paragraph it is already held that the Clause nos. 1 and 2 of the Notification dt. 09.01.2019 is not sustainable under law and as such the ground for rejection of the application of the petitioner in terms of clauses 1 and 2 also cannot sustain under law.

As regard reason no. 3 which alleged to have violated Clause 5 of Notification dt. 09.01.2019 as the petitioner failed to show the credit balance of Rs. 50,00,000/- as on 20.08.2018. The same is contrary as per the application submitted by the petitioner on 20.08.2018 for grant of distributorship under Form "G". The petitioner has mentioned the following in Clause 16 (iii) which reads as follows:-

> *"iii) Credit Balance as on the date of application:*
>
> *9227856/- (Rupees Ninety Two Lakh Twenty Seven Thousand Eight Hundred Fifty Six) Only.*
> *(Cash – 227856/- and 9 TD of Rs. 9000000/- in Principal)"*

In support of the contention, the petitioner has also enclosed the documents to prove that the petitioner was having the total credit amount of Rs. 92,77,806/- and as such the contention raised by the respondents is not sustainable under law.

As regard the reason no. 4 for rejection of the application of the application of the petitioner as there is no adequate covered space adjacent to the godown for use as office was found during inspection and it is alleged that the same is in violation of Sl. No. 6 of the Notification dt. 09.01.2019.

In the application, the petitioner had categorically mentioned about the size measurement of godown with length, breadth height and area in square feet which is appearing in Clause 12 of Form "G" which reads as follows:-

> *"12. Size Measurement of the godown with Length, Breadh, Height and Area in sq. ft. Length of the frontage on the street/lane mentioned at serial no. 11. Nature of possession, Viz Rental or Ownership*
>
> *:L-117'8'', b-58'8", H-18 ft. Area-69 sqft. Frontage: 79 ft. & office space of 210.25 sqft. Nature of Possession: Rental"*

Sub-Clause 6 of Clause 23 of Form "G" reads as follows:-

"23. An applicant for distributorship must note that he/she have to abide by the following terms & conditions in case he/she is offered a license.

6. An office shall be set up attached to the godown, by the distributor, and both shall open for inspection by the Department officials at any point of time."

From the plain reading of Clause 23, it reveals that an office is to be set up attached to the godown if the license is offered. In the instant case, the petitioner has submitted plan with regard to the proposed godown and office and the same was duly inspected by the authority. The ground of Rejection that in the adequate covered space adjacent to the godown for use as office was found during inspection cannot be sustained under law.

The petitioner relied upon the judgment paragraph 17 of the judgment reported in (2016) 2 SCC 507 which reads as follows:-

> *"17. In our considered opinion it is not open to the appellants to charter a course which is different to the postulation in the Insurance Act, by means of its own circulars. We need not go beyond mentioning the decision of this Court in Avinder Singh v. State of Punjab wherein it has been held that the legislature cannot efface itself by delegating its plenary powers unless the delegate functions strictly under its supervision. If the delegate is allowed to function independently it would tantamount to "usurpation of legislative power itself". This view came to be reiterated two decades later in Agricultural Market Committee v. Shalimar Chemical Works Ltd. This Court held that: SCC p. 525, para 26)*
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> > *"26….. Power to make subsidiary legislation may be entrusted by the legislature to another body of its choice but the legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates."*

The position that obtains today is diametrically opposite inasmuch as the statue permitted, at the relevant time, the assignment and/or transfer of life insurance policies, but the delegate, through its circulars, has attempted to nullify that provision of law. We conclude, therefore, that the circulars are ultra vires the statute and must, therefore, be made ineffectual."

The petitioner relied upon the judgment paragraph 39 of the judgment reported in (2016) 8 SCC 389 which reads as follows:-

"39. As stated hereinabove, there is a statutory provision which relates to salaries and perquisites to be given to the ministers, including the Chief Minister. The 1981 Act is a statute enacted by Respondent no.1-State under its power under Article 164 read with Entry 40 of the List II (State List) of the Seventh Schedule of the Constitution. Thus, there is a statutory provision with regard to perquisites to be given to the ministers, including the Chief Minister under Section 4 of the said Act, which has been reproduced hereinabove. The said Act provides that all the ministers are entitled to official residence without payment of any rent and they are also entitled to occupy the said official residence for 15 days even after completion of their term. Thus the statutory provision is to the effect that the Chief Minister can continue to occupy the official accommodation for a further period of 15 days after completion of his/her term."

The judgment relied by the petitioner reported in (1997) WPLR (Cal) 150 para 9 reads as follows:

"9. A statutory body cannot exercise any power which is not expressly conferred by the statue. The essence of the ultra vires doctrine is that a person or body acting under statutory power can only do those things the statute authorities him or it to do : an act will be ultra vires if a person or a body doing it did not have the statutory power to do it."

The judgments relied upon by the petitioner is squarely applicable in the instant case as the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 has been framed in exercise of power conferred under Section 3 of Essential Commodities Act, 1955 and in Clause 26 and Form "G" conditions for engagement of distributorship is incorporated but the respondents have added further condition in the vacancy notice dt. 09.01.2019 which is not permissible under law.

The Counsel for the respondents had relied upon the judgment reported in (2006) 7 SCC 756 para 48, 49 & 50 which read as follows:-

> *"48. In a case of this nature, keeping in view the facts and circumstances of the case, even the doctrine of lifting the corporate veil would be applicable.*
>
> *49. We would, in this regard, notice some precedents operating in the field.*
>
> *50. In Kapila Hingorani vs. State of Bihar [(2003) 6 SCC 1], this Court opined:*
>
> *"25. It is now well settled that the corporate veil can in certain situations be pierced or lifted. The principle behind the doctrine is a changing concept and it is expanding its horizon as was held in State of U.P. v. Renusagar Power Co. The ratio of the said decision clearly suggests that whenever a corporate entity is abused for an unjust and inequitable purpose, the court would not hesitate to lift the veil and look into the realities so as to identify the persons who are guilty and liable therefor."*

The judgment relied by the respondent reported in (2011) 5 SCC 103 para 46 which reads as follows:-

> *"46. The above provision obliges a tenderer to produce along with the bid document a copy of the quality certificate which is valid and active on the date of submission of the bid and it does not enable a bidder to withhold the copy of such quality certificate. Where the quality certificate will be expiring shortly and is due for renewal, the bidder is also obliged to produce the renewed certificate at the time of signing of the contract. The appellant claimed to have a valid and active ISO 9001:2000 certificate at the time of submission of the bid, but did not produce a copy of the said certificate along with the bid document."*

The judgment relied upon the Counsel for the respondent is not applicable in the instant case, as the facts of the instant case is totally different from the facts of the case relied by the Counsel for the respondent. The point raised by the respondents have been settled by the Hon'ble Division Bench and the same was upheld by the Hon'ble Supreme Court.

In the instant case, though the petitioner has not enclosed the document with the application but subsequently the documents were accepted by the authorities and the respondents have acted upon the documents submitted by the petitioner by inspecting the land and godown of the petitioner without any objection and as such the judgment relied by the respondent is not applicable in the instant case.

In view of the discussions made above, the impugned Notices dt. 03.12.2020 and 04.12.2020 are hereby set aside and quashed and consequently the Clause 1, 2, 7 & 8 of vacancy Notice dt. 09.01.2019 are struck down.

The respondents are directed to consider the application of the petitioner for appointment of distributorship under Hingalganj Block in District of North 24 Parganas in accordance with law within four weeks from the date of communication of this order.

WPA No. 2836 of 2021 is thus **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)