IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 6180 of 2021

M/s. Sonai 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 Petitioner

Mr. Susovan Sengupta
Mr. Subir Pal

.....For the State-respondents

Heard on : 23.02.2022

Judgment on : 21.04.2022

Krishna Rao, J.: This writ petition is directed against the Order passed by the District Controller, Food and Supplies, Murshidabad dt. 29.01.2021 wherein the application of the petitioner for the Distributorship against the vacancy Notification No. 2017/DCFS/MSD/2018 dt. 13.07.2018 at Hariharpara (East) was rejected.

The District Controller, Food and Supplies, Murshidabad had invited applications for filling up the vacancy of Distributorship in terms of Clause 26 (i) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 in Hariharpara Block, Hariharpara (East) at Swaruppur, Murshidabad on 13.07.2018.

In terms of the said notification dt. 13.07.2018, the petitioner has submitted an application on 20.08.2018 in Form "G" in the Office of the District Controller, Food and Supplies, Murshidabad by enclosing all the requisite documents along with application fee. After receipt of the applications, the authorities have forwarded the same to the Sub-Divisional Controller, Food and Supplies, Berhampore to cause enquiry. On 11.03.2019 notice was issued for spot inspection and on 14.03.2019/15.03.2019, spot enquiry and inspection was conducted and have also taken the measurement of the godown of the petitioner. Inspite of enquiry and inspection no decision was taken by the authorities and accordingly, the petitioner had moved a writ application before this Court in WP No. 15661 (W) of 2019 and the said writ petition was disposed of on 13.08.2019 by the Coordinate Bench of this Court, directing the Principal Secretary to expedite and conclude the process within 2 months.

On 31.08.2019, the District Controller, Food and Supplies had sent a cheque of Rs. 5,000/- to the petitioner stating that the payment made by the petitioner for submission of application is refunded. Subsequently, the petitioner came to know that many vacancies in different districts including the vacancies at Hariharpara Block have been cancelled by the authorities by an order dt. 07.08.2019 accordingly, the petitioner had again filed a writ petition being WPO NO. 362 of 2020 challenging the order dt. 07.08.2019 and order dt. 22.11.2019. The writ petition was disposed of by the Coordinate Bench of this Court on 22.12.2020 by directing the respondent authorities to process the application of the petitioner for engagement of distributor in the respective Block and to communicate the decision to the petitioner within six weeks. After the order passed by the Coordinate Bench of this Court, the District Controller, Food and Supplies had issued an order on 29.01.2021 by rejecting the application of the petitioner on the following reasons:-

> *"1) M/S Sonai Food Marketing Pvt. Ltd. is a Private Limited Company in nature which contravenes Para- 1 of the vacancy Notification No. 2017/DCFS/MSD/2018 dated 13.07.2018 and applications were invited only from the intending Self Help Group/ Registered Co-operative Societies/ Semi-Gov. bodies/Individuals/ Group of individuals as an entity.*
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> *It transpires that the address of the Registered office of M/S Sonai Food Marketing Pvt. Ltd. is 24/1, Bethun Row, Kolkata- 700006. Neither the company has any address nor any of the Directors of the Company has a permanent residential address in the district and thus the applicant contravenes eligibility criteria number 2 of the vacancy notification.*
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> *2) On examination of the application of M/s Sonai Food Marketing Pvt. Ltd. it is found that Sri Tamal Kundu, Director and authorized signatory of the company submitted application on 20.08.2018 enclosing most of the documents except Lease agreement and land conversion certificate which were supposed to be submitted alongwith the application as per the vacancy notification. Although, he submitted both the documents later as per provision of N.B. of the said application format.*
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> *3) Further, Sri Kundu, Director and authorized signatory of the company mentioned in application Form-G at para-12 the size of the*

godown and nature of possession as rental. Accordingly, he submitted the column and structural layout plan of the godown and rent receipt from the owner of the godown alongwith the application which was submitted on 20.08.2018. But, the conversion certificate was issued by the Collector U/S 4C of WBLR Act, 1955 & SDL&LRO, Murshidabad Sadar on 19.09.2018 in favour of Nityahari Kundu, owner of the godown against his application dt. 31.07.2018. It is mentioned worthy here that conversion of land without permission is a cognizable offence as per Section 4D of the WBLR Act, 1955.

The provision is as follows:

"[4D, Offence and penalties.]-(1) Amy change, conversion or alteration in the area, character or mode of use of any land, except in accordance with the provisions of Section 4C, or any violation of the order of the Collector under sub-section (5) of section 4C, [Shall be a cognizable and non-bailable offence and shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or with both]".

So, without obtaining the permission of the competent authority the owner of the godown has converted the land and thereby violated law. Consequently, the structure of the godown is itself illegal and permission to set distributor's godown in such illegal structure may not be accorded.

4) On examination of the bank statement and certificate issued by Bandhan Bank it is found that he submitted bank statement from the date of 11.07.2017 to 10.08.2018 and bank balance certificate issued by Bandhan bank, Bidhan Sarani Branch at Kolkata on 13.08.2017. But, as per the eligibility criteria as mentioned at Sl. No.-5 in the said vacancy notification that "the applicant must be financially solvent so as to run the distributorship business successfully having bank balance of Rs. 50,00,000/- (Rupees Fifty Lakh only) as working capital as reflected on the day of application and one year preceding the date of application". It transpires that he has not fulfilled this eligible criteria."

Mr. Kalyan Kumar Bandyopadhyay, Senior Advocate representing the petitioner submitted that on receipt of the application submitted by the petitioner for appointment of M.R. Distributorship against the vacancy in terms of the Notification dt. 13.07.2018, the office of the respondent authorities satisfied with the statements made in the statutory Form "G" and finding the petitioner is eligible to participate against the vacancy, the application of the petitioner was forwarded to the concern authorities for enquiry and accordingly, the enquiry was conducted and the godown was also inspected. At the time of enquiry and inspection of godown it was found that the petitioner has fulfilled all the criteria as mentioned in Form "G". The Ld. Senior Counsel further contended that as the authorities have not taken the decision on the application submitted by the petitioner for appointment of M.R. Distributorship, the petitioner had approached this Court and this Court has directed the Principal Secretary who is the highest authority to process for appointment of Distributorship against the vacancy and at that point of time also the respondent authorities have not raised any objection with regard to the eligibility of the petitioner and the authorities have accepted the order passed by this Court.

Ld. Senior Counsel submits that the Ground No. 1 of the impugned order that the petitioner is a company and as such not eligible to apply for Distributorship against the notification as applications were invited only from Self Help Groups/ Registered Co-operative Societies/ Semi-Government Bodies/Individuals/ Group of Individuals as an entity is against the settled position of law. On the earlier occasion, the respondent authorities have rejected the claim of the Company on the similar ground and the petitioner has challenged the order before the Hon'ble High Court and the matter went up to the Hon'ble Division Bench in an earlier proceeding and the Hon'ble Court held that, "It is hence in comprehensible that tender specifications should be designed in a manner construing a group of individual as an entity has limited to eliminating the Appellants/ the Company. It is equally in comprehensible that the construction of expression a group of individuals as an entity has been argued as limited to natural persons whereas the legal groundnorms persuades this Court to hold otherwise by purposively interpreting the expression to include within its scope, ambit and meaning juristic entities constituted by a group of individuals. To the mind of this Court such a condition in the tender status out to be ex facie discriminatory and since such a tender condition fails to provide a level plying field, the exclusion of the Appellants/Company is liable to be struck down."

The Ld. Counsel relying upon the said judgment submitted that ignoring the judgment passed by the Hon'ble Division Bench again the respondent authorities have rejected the application of the petitioner on the same ground.

The Ld. Senior Counsel for the respondent further submits that the statutory application Form "G" provides for submission of land conversion certificate and in case of hired godown, the Record of Rights, a registered Rent Agreement for atleast a period of 10 years upon offer of the license of the distributorship of the applicant. It is further submitted that the petitioner has submitted all the documents along with the said form and accordingly, the respondents have conducted enquiry and inspection of the godown on the basis of documents submitted by the petitioner.

The Ld. Senior Counsel further submits that as per the vacancy notification, the applicant is required to submit rent receipt with respect of the possession of the proposed godown in the vacancy in question and the petitioner had submitted rent receipt with regard to the possession of the godown and had fulfilled the eligibility criteria. The Ld. Senior Counsel further argued that it is beyond the scope of the vacancy notice to enquire into the status of the owner of the godown if any candidate submits rent receipt in respect of the godown along with the Application Form. It is further submitted that the respondent authorities are required to consider only whether the godown with required space is in possession of the applicant or not on the date of enquiry.

The Ld. Counsel further argued that the petitioners have submitted that Bank statement from 11.07.2017 to 10.08.2018 and it will appear from the said Bank statement that the petitioner company had bank balance of Rs. 4,07,33,000/- on 20.08.2017 i.e. one year preceding to the date of application. It is further submitted that the petitioner had the bank balance of Rs. 3,54,65,133/- on 13.08.2018 even, on the date of application.

The Ld. Counsel for the petitioner further submits that the action of the respondent authorities is discreminatory as the authorities have appointed another company as distributor against the similar vacancy notification for distributorship in respect of the other District which is violative of the Article 14 of the Constitution of India.

Per contra, Mr. Susovan Sengupta, Ld. Counsel representing the respondent submits that the petitioner is a Private Limited Company whereas the applications were invited only from Self Help Groups/ Registered Co-operative Societies/ Semi-Government Bodies/Individuals/

Group of Individuals as an entity and neither the Company has any address nor any of the directors has the permanent residential address in the district.

The Counsel for the respondent further submits that no lease agreement and land conversion certificate were submitted with the application but the same was submitted later.

It is further submitted that the conversion was issued by the Collector on 19.09.2018 but the application was made on 20.08.2018 and the conversion of the land was without permission and is cognizable offence under WBLR Act, 1955.

It is further submitted that the Bank statement submitted from 11.07.2017 to 10.08.2018 and the Bank certificate was dt. 13.08.2017 whereas the application was made on 20.08.2018 and as such the petitioner did not fulfilled the eligibility criteria.

The Ld. Counsel for the respondent relied upon the judgment reported in (2011) 5 SCC 103 (Glodyne Technoserve Limited –Vs- State of Madhya Pradesh & Ors.) and the judgment reported in (2006) 7 SCC 756 (Jai Narain Parasrampuria & Ors. –Vs- Pushpa Devi Saraf & Ors.) and submitted that subsequent filling of documents cannot be taken into consideration if the applicant has not filed/submitted document along with application.

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

The respondents have rejected the application of the petitioner for appointment of M.R. Distributorship by assigning four reasons as mentioned in preceding paragraphs.

As regard the ground no. 1, in an earlier proceeding the petitioner has challenged the rejection order of the respondents wherein the respondents have rejected the claim of the petitioner on the similar ground and the Hon'ble Division Bench of this Court in MAT No. 562 of 2021 (M/s. Sonai Food Marketing Pvt. Ltd & Anr. –Vs- State of West Bengal & Ors.) in paragraph 8 held that, "It is hence in comprehensible that tender specifications should be designed in a manner construing a group of individual as an entity has limited to eliminating the Appellants/ the Company. It is equally in comprehensible that the construction of expression a group of individuals as an entity has been argued as limited to natural persons whereas the legal groundnorms persuades this Court to hold otherwise by purposively interpreting the expression to include within its scope, ambit and meaning juristic entities constituted by a group of individuals. To the mind of this Court such a condition in the tender status out to be ex facie discriminatory and since such a tender condition fails to provide a level plying field, the exclusion of the Appellants/Company is liable to be struck down." In view of the judgment passed by the Hon'ble Division Bench the ground no. 1 of the rejection dt. 29.01.2021 is not sustainable under law.

As regard ground no. 2, the petitioner has submitted Lease Agreement and the Land Conversion Certificate subsequently and had not submitted the document along with the application Form. As per the impugned order dt. 29.01.2021 it reveals that before passing of the impugned order, the petitioner has submitted the said documents. It is not the case that at the time of considering the case of the petitioner; the said documents were not available with the respondents. It is further admitted case of the respondents that the respondents have verified the documents and inspected the godown and process the case of the petitioner for consideration and at that point of time the respondents have not raised any objection of the documents thus the grounds that the documents were not submitted along with the application is not sustainable.

As regard the ground no. 3, it is alleged that the Conversion Certificate was issued on 19.09.2018 and the conversion of the land was without any permission and is cognizable offence as per Section 4 (d) of the WBLR Act, 1955. As per the documents submitted by the petitioner along with the application, the respondents have inspected the godown but the respondents have not raised any objection. It is not the case the land is not converted at the time of passing the impugned order. The conversion order was available with the respondents. The respondents have alleged that it was without the permission, but there is no proceeding initiated by any authority against the petitioner or against the owner of the godown for conversion of the land in violation of WBLR Act, 1955. The authorities are concerned with the godown and the godown was available and it is converted into commercial as required in the vacancy notice. In view of the above this Court is of the view that the ground as mentioned above is unsustainable.

As regard the Ground No. 4 with regard to the bank balance of Rs. 50,00,000/-, it reflects from the document which annexed with the writ application, the petitioner company had the bank balance of Rs. 4,07,33,000/- as on 20.08.2017 i.e. one year preceding from the date of application and on 20.08.2018 the petitioner had the bank balance of Rs. 3,54,65,133/- and thus the allegation made by the respondents on the basis of which the request of the petitioner was rejected is not sustainable 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.*
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> *49. We would, in this regard, notice some precedents operating in the field.*
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> *50. In Kapila Hingorani vs. State of Bihar [(2003) 6 SCC 1], this Court opined:*
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> *"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 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. 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."*

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 above, this Court is of the view the impugned order passed by the District Controller, Food and Supplies, Murshidabad dt. 29.01.2021 is not sustainable under law and accordingly, the same is set aside and quashed.

The respondent authorities are directed to consider the case of the petitioner for grant of Distributorship in Hariharpara Block, Hariharpara (East) at Swaruppur in the District of Murshidabad in accordance with law within four weeks from the date of communication of this order.

WPA 6180 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.)