

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 8700 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 order dt. 07.08.2019 issued by the Additional Secretary to the Government of West Bengal, Department of Food and Supplies wherein the Department of Food and

Supplies cancelled the notification for allotment of distributorship for Hura and Manbazar-I Block in the District of Purulia.

On 16.01.2019, the District Controller, Food and Supplies, Puruliya had issued two notifications being No. 89/DC/FS/PRL and notification no. 91/DC/FS/PRL for grant of distributorship license under West Bengal Public Distribution System (Maintenance and Control) Order, 2013 in Hura and Manbazar-I Block respectively in the District of Purulia.

In terms of the said notifications, the petitioners have submitted their application under Form “G” on 01.04.2019 along with requisite documents and application fees. On receipt of the applications submitted by the petitioners, DCFS had processed the applications of the petitioners in terms of Clause 26 (iii) of 2013 Order and forwarded the same to the concern Sub-Divisional Controller to cause an enquiry and accordingly the Sub-Divisional Controller has conducted enquiry in terms of the application and documents submitted by the petitioners.

All of a sudden on 07.08.2019, the Additional Secretary has issued notification by cancelling the vacancy notice dt. 16.01.2019 with respect of both vacancies i.e. Hura and Manbazar-I Block in the District of Purulia. The respondents have cancelled the vacancy notification on the following reasons:-

- “i. Not notified those vacancies in the Official Gazette.*
- ii. Notified but no application received against those vacancies.*
- iii. Notified but validity of those application expired due to efflux of time for non-processing of the same within the specified period mentioned in Clause 26 of 2013 Order.*

- iv. *The Department has been made to contest several Court cases in this Hon'ble Court on the ground of applicability of the clauses particularly relating to financial solvency of Rs. 50,000/- for last one year from the date of application, which are still pending."*

Mr. Kalyan Kumar Bandyopadhyay, Ld. Senior Advocate representing the petitioners submitted that all vacancy notifications cannot be considered with one yardstick and thus the order of cancellation is arbitrary, malafide, unreasonable, whimsical and motivated. The Ld. Senior Counsel further submits that the vacancies in question were declared after considering all aspects and after due process as envisaged in Clause 26 of 2013, Order and as such the reason no. 1 is alleged in impugned order cannot be sustained.

The Ld. Counsel further submits that the petitioners have applied for grant of license of distributorship with respect of Hura and Manbazar-I Block and as such the reason (ii) alleged in the impugned order is irrelevant.

The Ld. Senior Counsel further submits that the last date for receipt of application was 30 days from 04.03.2019 i.e. 03.04.2019 because of Lok Sabha Election, Model Code of Conduct was implemented and the State directed the concern authorities to maintain status quo in respect of the vacancies until further order and the status quo order was lifted on 26.06.2019 i.e. well within 15 days therefrom. The DCFS processed all the applications and sent to SCFS for conducting enquiry and the SCFS has conducted enquiry and submitted report with respect of the application forwarded by the DCFS within the statutory period of 30 days from the date of enquiry and the DCFS withheld the enquiry report submitted by the SCFS in the grab of no clarification from the State regarding the applications

submitted by the petitioners and as such the reason (iii) alleged in the said cancellation order is not sustainable.

The Ld. Senior Counsel further submitted that vacancies once notified and published by way of advertisement in the newspaper cannot be considered to be cancelled only because the State has been made to contest several Court cases.

The Ld. Counsel further submits that as per clause of financial solvency of Rs. 50,00,000/- for one year preceding the date of application is concerned, all appointments against the vacancies for distributorships through West Bengal have been made in favour of such applicants who have fulfilled such condition and as such the ground alleged in cancellation notice cannot be sustained.

The Ld. Senior Counsel further submits that in the same order the respondent authorities have also cancelled the vacancy notice of Hingalganj Block in the District of North 24 Parganas. The petitioners have challenged the said order of cancellation dt. 07.08.2019 in a writ application before this Court and the said writ was dismissed. The petitioners have carried the order of dismissal to the appeal being MAT No. 617 of 2020 (M/s. Kultali Food Marketing Pvt. Ltd. & Anr. -Vs- The State of West Bengal & Ors.). The Hon'ble Division Bench vide order dt. 09.10.2020 had allowed the writ application and set aside the order of cancellation of engagement of M.R. Distributor in Hingalganj by passing the following order:-

“The State has really no answer to the writ petitioners’ case. In a desperate attempt the decision to cancel the process is sought to be

elevated to the status of a policy. There is no policy instruction or order which is cited. The State has also referred to a judgment reported at (2012) 5 SCC 443 and relied on paragraphs 66 and 68 from the report. The passage cited 7 refers to the scope of judicial review and the latitude which must be afforded to the executive for meaningful administration. Such judgment is of no relevance in the present context when a tender process is discovered to have been cancelled after looking into the credentials of the candidates and without attributing any reasons that would hold water in the context.

For the reasons aforesaid, the order impugned dated August 7, 2019 in so far as pertains to the cancellation of the engagement of an M.R. Distributor in Hingalganj does not appear to be justified or proper. It is made clear that since the challenge here is by one of prospective distributors, the decision here is confined to the Hingalganj block of the Basirhat sub-division in the district of North 24-Parganas. Since other prospective M.R. Distributorship applicants under other advertisements have not approached the Court, the order is confined to Hingalganj block.

F.M.A. 913 of 2020 together with the interim application therein are disposed of by setting aside the judgment impugned dated September 16, 2020 and by allowing the writ petition to the extent indicated above. The respondent authorities will now process the applications received for 8 engagement of M.R. Distributor in the Hingalganj block in accordance with law and communicate the decision within four weeks from date.”

The Ld. Senior Counsel further submits that the respondent authorities have carried the said order to the Hon’ble Supreme Court in SLP No. 26 of 2021 and the Hon’ble Supreme Court had dismissed the SLP filed by the respondents. Relying upon the judgment passed in MAT 617 of 2020 (FMA 913 of 2020) dt. 09.10.2020 submits the instant case is also squarely applicable in the instant case as the similar order was under challenged before the Hon’ble Division Bench.

The Ld. Senior Counsel has further relied upon the judgment passed in WPO No. 359 of 2020 and WPO No. 360 of 2020 (M/s. Sonai Food Marketing Pvt. Ltd. & Anr. –Vs– The State of West Bengal & Ors.) dt.

18.12.2020 an order passed in WPA No. 16713 of 2019 with WPA No. 16013 (M/s. Sonai Food Marketing Pvt. Ltd. & Anr. –Vs- The State of West Bengal & Ors.) and submitted that similar order was also challenged before the Coordinate Bench of this Court with respect of the distributorship at Minakhan Block under Basirhat Sub-division in the district of North 24 Parganas and Raghunathpur II area and the Jaipur Block area both District of Purulia and submitted that the said orders are also squarely applicable in the instant case.

Per contra, Mr. Susovan Sengupta, Ld. Counsel representing the respondent submits that on 07.08.2019, the vacancy notification approved by the department vide Memo dt. 09.01.2019 was cancelled. The reason for cancellation of such vacancy notification was that the concern District Controller (Food & Supplies) has subsequently either (i) not notified those vacancies in the official gazette (ii) notified but the validity of those applications expired due to efflux of time for non processing of same within the specified period mentioned in Clause 26 of West Bengal Public Distribution System (Maintenance and Control) Order, 2019 and the department has been made to contest several court cases before this Court relating to restrictive clauses of solvency of Rs. 50,00,000/- for the last one year of the date of application.

The Ld. Counsel for the respondent further submits that in terms of the direction issued by the Department of Food and Supplies vide Order No. 3316-FS dt. 07.08.2019 with respect of vacancy notification of M.R. Distributorship of Manbazar-I and Hura Block were cancelled. The Ld.

Counsel for the respondents further submits that after cancellation of the vacancy notice the fee submitted by the petitioners were refunded by issuing account payee cheque dt. 29.08.2019.

The Ld. Counsel for the respondents submits the respondents have taken an administrative decision for cancellation of the vacancy notice and as such the petitioner cannot challenge the said order of cancellation before this Court.

Heard, the Ld. Counsel for the parties and the documents available on record.

In the impugned order dt. 07.08.2019 several vacancy notices of different areas were cancelled out of which with regard to the Hingalganj area concern was challenged before this Court in a writ proceeding but the writ petition was dismissed. The matter was carried in appeal and in the appeal, the Hon'ble Division Bench has held that the reasons indicated in the impugned order dt. 07.08.2019, the first two limbs do not apply in the present case but only the third limb that applies; that the process has been delayed beyond the period contemplated in Clause 26 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013.

The Hon'ble Division Bench has further held that for a start, the delay, if any, was not caused by the appellants herein nor it is said in the impugned order that the appeal was occasioned by anything that was beyond the control of the State. It is possible that the State or the relevant authorities may not like the candidates who have applied pursuant to the

advertisement that has been published. Unlike a private body which has a full latitude to choose the person with whom the private body would contract; the State has to act rationally, reasonably and without arbitrariness. Unless the State indicates cogent grounds for annulling the process, the applications made by all the candidates merit consideration in accordance with law.

The Hon'ble Division Bench further held that when a tender or like process is cancelled without any adequate grounds being cited, the decision must be seen to be arbitrary, capricious and unreasonable. In any event, the time that Clause 26 of the relevant Order of 2013 speaks of pertains to the act to be undertaken by the State or relevant authority. Any deliberate or accidental delay on the part of the relevant authority cannot result in the candidates being prejudiced or entire process being cancelled as has been sought to be done in the present case.

The judgment passed by the Hon'ble Division Bench which was duly affirmed by the Hon'ble Supreme Court.

Similarly the applicants who have applied to distributorship of Raghunathpur II area, Jaipur Block area of Purulia and distributorship of Minakhan Block of North 24 Parganas have challenged the impugned order in WPA No. 16713 of 2019, WPA No. 16013 of 2019, WPO No. 359 of 2020 and WPP No. 360 of 2020 and the Coordinate Bench of this Court have set aside the impugned order of the respective area.

The instant case is duly covered by the Judgment passed in FMA No. 913 of 2020 (MAT No. 617 of 2020) and orders passed in the above mentioned writ petitions.

In view of the above, the impugned order 07.08.2019 with respect of Hura Block and Manbazar Block-I in the District of Purulia is set aside and quashed.

The respondent authorities will now process the applications received for engagement of M.R. Distributor in Hura and Manbazar-I Block in the District of Purulia in accordance with law and to communicate the decision to the petitioners within four weeks from the date of communication of this order.

WPA No. 8700 of 2021 is thus **disposed off**.

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.)