

28.04.2022
Item No. 88
Crt.No.11
b.r.

FMA 2890 of 2015

Gurupada Pramanik
-vs-
The State of West Bengal & Ors.

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Neil Basu
..... for the appellant.

Mr. Susovan Sengupta
Mr. Subir Pal
Mr. Tarak Karan
..... for the State-Respondents.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Under challenge in this appeal is the order of the Hon'ble Single Bench in a clutch of writ petitions on the same point and delivered on 10th of April, 2015. The writ petitions (*supra*) challenged two Government Orders (for short G.Os) both dated the 21st of July, 2014. Under the two G.Os, the State Government, in exercise of delegated powers under the Essential Commodities Act, 1955 (for short referred to as the E.C. Act), had issued a fresh norms for appointing Fair Price Shops & Distributors (for short FPS Dealers) under the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 (for short the 2013 Control Order).

The appellant, who was one of the writ petitioners before the Hon'ble Single Bench, raised the grievance that in terms of applications invited from intending candidates dated the 3rd of February, 2014 there were clear guidelines both in respect of godown space offered by the intending candidates and their financial capacity. In terms of such Vacancy Notice dated 3rd of February, 2014, the godown space was assessed at 200 Sq.ft. and the financial capacity at Rs. 50,000/- in the bank account of the applicant.

It is submitted by Mr. Saha Roy, Learned Counsel appearing for the appellant, that in terms of the impugned G.Os both dated 21st of July, 2014, the godown space to be offered by intending candidates had been raised by 400 Sq.ft. to a total of 600 Sq.ft. and the financial capacity to maintaining a bank balance of Rs.5,00,000/- which would include such bank balance for a period of one year preceding the Vacancy Notification.

Mr. Saha Roy submits, upon taking this Court to the detailed discussion by the Hon'ble Single Bench *vide* its judgement and Order impugned dated 10th of April, 2015, that all other conditions, including godown space except the Condition no.1 with regard to the enhanced financial capacity were upheld by the Hon'ble Single Bench. With regard to the financial

capacity of Rs.5,00,000/- in the bank balance to be maintained throughout for the preceding one year of filing the application, the Hon'ble Single Bench directed the State-Respondents not to enforce the same. There is no appeal from the State-Respondents to the findings (*supra*) of the Hon'ble Single Bench as contained in the judgement and order dated 10th of April, 2015.

Mr. Saha Roy submits that the candidature of the appellant has been considered in terms of the original Vacancy Notification dated 3rd February, 2014, meaning thereby a godown space of 200 Sq.ft. and bank balance of Rs.50,000/-. It is further submitted that in the interregnum corresponding to the period of this litigation, the appellant has upgraded the godown space to 600 Sq.ft. and has been maintaining the bank balance continuously at Rs.80,000/- and odd, which is above the requirement of Rs.50,000/- as originally desired by the Vacancy Notification dated 3rd February, 2014.

It is further submitted that the requirement/condition of maintaining a bank balance of Rs.5,00,000/- as on the date of application as well as for a period of one year prior thereto having been struck down by the Hon'ble Single Bench, the appellant is now well entitled to be considered for

grant of the FPS Dealership in terms of the solemn order of the Hon'ble Single Bench dated 10th April, 2015.

Mr. Sengupta, Learned State Counsel, submits that although it is submitted by the appellant that the financial requirement of Rs.5,00,000/- has been subsequently reduced by still subsequent Notifications, such Notifications make it clear that the reduction of financial capacity shall not apply retrospectively to applicants such as the present appellant who had applied in terms of the requirements of the earlier Notification.

Mr. Sengupta submits that there is no challenge to the power of the State Government to exercise delegated powers under the E.C. Act by issuing Notifications specifying the guidelines for applying for the FPS Dealership/Distributorship.

Having heard the parties and considering the materials placed, this Court finds as follows:-

A) That the Hon'ble Single Bench by the Judgement and Order dated 10th April, 2015 has only struck down Condition no.1 of the revised Notification raising the financial capacity to Rs. 5,00,000/- as on the date of the application as well as for the period of one year prior thereto;

B) That the Hon'ble Single Bench has not struck down the other conditions in the revised Notification for applying for FPS

Dealership/Distributorship particularly relating to godown space of 600 Sq.ft.;

C) There is no dispute with regard to the above referred pronouncement of the law by the Hon'ble Single Bench;

D) That the appellant claims to fulfill the other conditions of the revised notification as upheld by the Hon'ble Single Bench including the godown space of 600 Sq.ft.;

E) That again in the light of the findings of the Hon'ble Single Bench, the appellant stands discharged from fulfilling the financial obligation of maintaining Rs.5,00,000/- in his bank account as on the date of the application and for a period of one year prior thereto;

F) Axiomatically therefore, the appellant is entitled to apply on the basis of the financial condition existing prior to the revised notification imposing the requirement of Rs.5,00,000/- as on the date of the application and for a period of one year prior thereto.

This Court accordingly finds no reason to interfere with the findings of the Hon'ble Single Bench *qua* the application filed by the present appellant.

In the light of the above observations, the matter is remanded to the Respondent no.1/the Secretary, Department of Food and Supplies, to decide the candidature of the appellant.

It is expected that such decision shall be taken not later than a period of three weeks from the date of communication of this order.

The Secretary, as and if necessary, shall grant the appellant or, his authorised representative, an opportunity of hearing as well as the opportunity to produce necessary documents.

FMA 2890 of 2015 stands accordingly **disposed of**.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Krishna Rao, J.)

(Subrata Talukdar, J.)