

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Ananda Kumar Mukherjee**

**FMA 4583 of 2015
Munsef Mondal**

-vs.-

The State of West Bengal & Ors.

With

FMA 3657 of 2015

Sk. Afsar Ali

-vs.-

The State of West Bengal & Ors.

For the Appellant	: Mr. Debabrata Saha Roy
in both the appeals	Mr. Pingal Bhattacharyya Mr. Subhankar Das

.....Advocates

For the State	: Mr. Sushovan Sengupta
in both the appeals	Mr. Subir Pal

.....Advocates

Heard on	: 12.05.2022
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Judgment on	: 22.07.2022
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Subrata Talukdar, J.:- The short question in both the appeals turns on the legal issue as to whether the selection process pertaining to the appellants for being licensed as Fair Price Shop Dealers (for short referred to as *FPS Dealers*) under the West Bengal Rural Public Distribution System (*Maintenance and Control*) Order, 2003 (for short *the 2003 Rural Control Order*) stood preserved in the context of the amended *savings clause* of the

West Bengal Rural Public Distribution System (*Maintenance and Control*) Order, 2013 (for short *the 2013 Control Order*).

The brief facts pertaining to the above legal issue is that both the appellants in the two appeals, who were the writ petitioners before the Hon'ble Single Bench, were recommended for appointment as *FPS Dealers* under the *2003 Control Order*. Such recommendation was however not acted upon by the selecting authority which is the Department of Food and Supplies (F&S), Government of West Bengal, for a period of nearly 30 months.

In the meantime, when the recommendation of the appellants for being ultimately selected as *FPS Dealers* under the *2003 Rural Control Order* was kept pending, there was a change in the law and the *2013 Rural Control Order* came into force. Similarly, the *2003 Urban Control Order* stood amended in the form of the *2013 Urban Control Order*. The *savings clause* in the new *2013 Urban Control Order* was Clause No. 39 which read as follows:

“39. Repeal and savings. The West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2003 is hereby repealed but such repeal shall not affect.

(a) The previous operation of any of the Orders so repealed; or

(b) anything duly done or suffered thereunder; of

(c) any right, privilege, obligation or liability acquired or accrued or incurred under any of the said orders; or

(d) any penalty, forfeiture or punishment incurred under any of the said orders; or

(e) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy

may be instituted, continued or enforced and any such penalty or forfeiture or punishment may be imposed as if the said orders have not been repealed.”

By the Judgement impugned in these appeals dated the 27th of July, 2015 of the Hon’ble Single Bench it was, *inter alia*, held that the *savings clause* 39 of the *2013 Urban Control Order* and *savings clause* 42 of the *2013 Rural Control Order* are distinguishable. Since *savings clause* (a), (b) and (c) of Clause 39 of the *2013 Urban Control Order* preserved the right of selection under the previous repealed Act being the *2003 Urban Control Order* to be continued under the amended Act, such provision being absent in *Clause 42* of the *2013 Rural Control Order*, the right of the writ petitioners, i.e. the present appellants, to be ultimately selected post recommendation under the *2003 Rural Control Order* cannot be said to have been preserved.

Accordingly, the Hon’ble Single Bench permitted the writ petitioners who were similarly circumstanced as the present appellants the benefit of being continued in their selection process under the *2013 Urban Control Order* but the recommendations of the present appellants made under the *2003 Rural Control Order* were extinguished.

The Judgement and Order of the Hon’ble Single Bench dated the 27th of July, 2015 in a bunch of writ petitions underscoring the above mentioned point of distinction in the *savings clauses* of the respective *2013 Urban and Rural Control Orders* as well as the validity of the consequential action taken thereto, was challenged by the State respondents in appeal. However, the Hon’ble Division Bench by Judgement and Order dated 20th July, 2016 dismissed the appeals and the Special Leave Petition (SLP) filed thereafter

challenging the order of the Hon'ble Division Bench dated 20th July 2016 also stood dismissed on 14th July 2020.

Thereafter by a further notification dated 4th November 2015, the F&S Department, Government of West Bengal, further amended *savings clause 42* of the *2013 Rural Control Order*. As a result of the insertion of the new *savings clause 42* in the *2013 Rural Control Order* the same became *pari materia* to the *savings clause 39* of the *2013 Urban Control Order*.

The appellants have therefore argued that since both classes of writ petitioners under the *2013 Rural and Urban Control Orders* were declared to be at par by legislative action, the benefit of such action should proceed identically in respect of both classes of writ petitioners who were differently dealt with by the Hon'ble Single Bench *vide* its Judgement and Order dated 27th July 2015. In other words, the present appellants want that their recommendations be converted into full-fledged appointments as has been done in cases of incumbent appointees under the *2013 Urban Control Order*, by applying the benefit of insertion of *Clause 42* in the *2013 Rural Control Order* retrospectively.

Per contra, the State respondents have argued that the recommendations in favour of the present appellants to be appointed as *FPS Dealers* have not accrued into a vested right. Second, since the *2003 Rural Control Order* was substituted by the *2013 Rural Control Order* with a *savings clause* which did not permit *pari materia* treatment as permitted under the *2013 Urban Control Order*, the effect of such repeal of the *2003 Rural Control Order* automatically extinguishes the recommendation in favour of the appellants.

Furthermore, the recommendations do not reflect a *complete transaction* within the meaning of the expression *anything duly done* under the newly incorporated *savings clause 42* of the *2013 Rural Control Order*. The State respondents therefore submit that in the absence of an accrued right, the reliefs claimed by the present appellants are unenforceable. It is pointed out that pursuant to the Judgement and Order of the Hon'ble Single Bench dated 27th July 2015, the State respondents issued a Notification dated 17th August 2015 creating fresh vacancies of *FPS Dealers* by cancelling the vacancies notified earlier under the *2003 Rural Control Order*. The creation of fresh resultant vacancies by the State respondents pursuant to the Judgement and Order of the Hon'ble Single Bench dated 27th July 2015 is the subject matter of a pending *lis* before the Hon'ble Apex Court. The State respondents therefore argue that since cancellation of the earlier vacancies under the *2003 Rural Control Order* pursuant to the Judgement and Order dated 27th of July 2015 is pending before the Hon'ble Apex Court, in law till the issue of cancellation is not finally decided the present appellants cannot pray for the relief of being ultimately selected by applying *clause 42* of the new *2013 Rural Control Order*.

In support of their arguments the appellants have relied on *2010 (1) SCC 489* for the proposition that the newly amended *savings clause 42* of the *2013 Rural Control Order* should be read to have retrospective effect. In other words, since the Judgement and final Order of the Hon'ble Single Bench dated 27th July 2015 have been ultimately upheld by the Hon'ble Apex Court by dismissing the SLPs of the State respondents on 14th of January 2020, the *savings clauses* being 39 and 42 respectively of the *2013 Urban and Rural Control Orders* cannot convey *pari materia* legal protection.

The State respondents, rely upon the Notification dated 17th of August 2015 cancelling all vacancies published under the *2013 Rural Control Order* and the pendency of the *lis* connected thereto before the Hon'ble Apex Court read in the light of Judgements reported in *2009 (1) SCC 180*, *2019 (19) SCC 626*, and *2017 (9) SCC 463*, in support of their arguments.

Having heard the parties and considering the materials placed, this Court finds that the recommendations of the appellants under the vacancies declared under the *2003 Rural Control Order* stood cancelled by the Notification dated 17th August 2015. The cancellation took place prior to the insertion of new *Clause 42* of the *2013 Rural Control Order* vide the Notification dated 4th November 2015.

Also, the cancellation took place prior to the ultimate affirmation of the Judgement and Order of the Hon'ble Single Bench dated 27th July 2015 by the Order of the Hon'ble Apex Court dated the 14th of January 2020. Therefore, as on 17th August 2015 neither the recommendations of the appellants against the vacancies of the *2003 Rural Control Order* can be stated to be alive nor, the Judgement and Order of the Hon'ble Single Bench dated 27th July 2015 holding the two control orders to be distinguishable can be said to be dead.

In other words, the two Control Orders stood legally distinguishable and the cancellation of the vacancies under the *2003 Rural Control Order* stood poised for adjudication in a pending *lis*.

Second, arguably the effect of the new *savings clause 42* of the *2013 Rural Control Order* cannot be applied in a void when the vacancies stand cancelled and poised for adjudication. Therefore, new *Clause 42* of the *2013*

Rural Control Order cannot be so applied in a situation where the corresponding vacancies stand in suspended animation. Arguably, the validity of the cancellation under the Notification dated 17th August 2015 and the retrospective operation of the new *savings clause 42* of the 2013 *Rural Control Order* require conjoint consideration.

For the above reasons no relief can be extended at this stage to the appellants.

FMA 4583 of 2015 with **FMA 3657 of 2015** stand accordingly **disposed of.**

The disposal of the appeals shall not however prevent the appellants from ventilating their cause-of-action at the appropriate stage before the appropriate authority/forum/Court and/or to participate in any fresh selection exercise of *FPS Dealers* under the State respondents.

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.

I agree.

(Ananda Kumar Mukherjee, J.)

(Subrata Talukdar, J.)