

Form J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

WPA 574 of 2023

Rakesh Sk.
Vs.
The State of West Bengal & Ors.

For the Petitioner : **Mr. Debabrata Saha Roy,**
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das,
Mr. Neil Basu,
Mr. Sankha Biswas.

For the State : **Mr. T. M. Siddiqui,**
Mr. Amrita Lal Chatterjee.

For the Private Respondent : **Mr. Sagar Bandyopadhyay,**
Ms. Soma Kar Ghosh,
Mr. Arabinda Pathak.

Judgement on : **13.09.2023.**

Bibek Chaudhuri, J.

Both the petitioner and private respondent no. 6 applied for licence for FPS Dealership on the basis of a vacancy notification dated 26th February, 2019 in respect of Village – Mandalpara under Hariharpara Gram Panchayat in the district of Murshidabad. It is not in dispute that the respondent no. 6 was considered successful and he was granted licence by the State respondents. The petitioner has

challenged the said decision in the instant writ petition alleging, *inter alia*, that one of the essential conditions of granting licence as delineated in the vacancy notification is that the application for dealership must have Bank balance of at least Rs.5,00,000/- (Rupees Five Lakhs) as working capital reflected on the day of application and one year preceding the date of application. It is submitted by the petitioner in his writ petition that on the date of application the petitioner had Bank balance amounting to Rs.5,00,000/- which could have been accepted as working capital but he did not have such Bank balance of Rs.5,00,000/- during the period of one year preceding the date of application.

It is submitted by Mr. Saha Roy, learned Advocate for the petitioner that at the time of filing of the application the petitioner made false information stating, *inter alia*, that the petitioner had Bank balance of Rs. 5,00,000/- or more during one year preceding the date of application. He had no such Bank balance for few months during the period preceding one year of the date of filing application. It is alleged by the petitioner that the private respondent no. 6 did not have Bank balance of Rs.5,00,000/- preceding one year of the date of filing of the application but the Sub-Divisional Controller ignored the said fact and without making any enquiry from the Bank regarding his financial solvency the application of the private respondent was allowed stating, *inter alia*, that the private respondent had requisite financial solvency as per Clause 6 of the vacancy notification.

Mr. Saha Roy takes me to paragraph 26 of the writ petition where the petitioner specifically alleges that the private respondent no. 6 did not have the Bank balance of Rs.5,00,000/- of working capital on the date of application and one year preceding the date of

application. Therefore, the petitioner and the private respondent was standing on the same footing but the Sub-Divisional Controller made an enquiry with respect of working capital of the petitioner only in order to reject his application for dealership. It is also submitted by Mr. Saha Roy that in the affidavit-in-opposition the private respondent denied the allegation of not having Bank balance of Rs.5,00,000/- as working capital on the date of application but the specific allegation of the petitioner to the effect that he had no such financial capital preceding one year of the application was not denied by the respondent no. 6. Therefore, it is submitted on behalf of the writ petitioner that the State respondents, specially the Sub-Divisional Controller, Berhampore, Murshidabad with some ulterior motive placed incorrect and incomplete statement of financial solvency of the parties before his higher authority only to see that the private respondent no. 6 might get the licence of fair price shop.

Mr. Bandyopadhyay, learned Advocate on behalf of the private respondent No.6, submits, on the other hand, that the entire writ petition contains false statement and averment made by the writ petitioner on solemn affirmation and only on such ground the writ petition ought to be dismissed with exemplary cost. In support of his contention, he mentioned the averment made by the petitioner in Paragraph 6 of the writ petition where the writ petitioner stated that he and the private respondent No.6 were declared as eligible candidate against the said vacancy notification dated 12th December, 2019. No document has been filed to show that the writ petitioner was ever considered as an eligible candidate in respect of the said vacancy notification. Next he submits that in Paragraph 11 of the writ petition, the petitioner stated that he has been recommended as the

most suitable candidate for grant of FPS licence. The petitioner affirmed the said statement as true to his knowledge but in fact he never considered as the most suitable candidate as alleged. Similarly, the statement made in Paragraphs 12, 14 and 17 contain false statement made by the petitioner only to misrepresent his case before the Court.

It is submitted by the learned Advocate for the private respondent that only on this ground the writ petition should be dismissed with exemplary cost. In support of his contention, Mr. Bandyopadhyay relies on a decision of the Hon'ble Supreme Court in (2007) 8 SCC 449. In Paragraphs 33, 34 and 35, the Hon'ble Supreme Court was pleased to observe that before the Court of law, all facts should be stated without any misrepresentation and reservation. If there is suppression of materials facts on the part of the applicant or facts are twisted and placed before the Court, the writ Court may refuse to entertain the petition and dismissed it without entering into the merits of the matter because the prerogative writ remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. Before the Court of equity, the parties must come with clean hand.

In the instant case, the petitioner tried to place his case in the manner that he had financial solvency preceding one year of the application as per the vacancy notification committing forgery of bank documents which was revealed during enquiry by the State

respondents. Therefore, the petitioner tried to induce the State authority to take a decision on the basis of a false, fabricated, forged and manufactured bank statement. Since the petitioner himself was not an eligible candidate, he cannot raise any question of appointment of another candidate whom the authority found to be eligible.

Learned Advocate on behalf of the State respondent refers to a report in the form of affidavit filed by the respondent No.5, Sub-Divisional Controller, Food and Supplies, Berhampore, Murshidabad on behalf of the State respondents.

It is pertinent to mention at the outset that the said affidavit was affirmed on 23rd March, 2023. Subsequently, the Advocate on behalf of the State was changed. The report was affirmed by the previous Advocate and the copy of the said report was served upon the learned Advocate for the petitioner as well as the respondent No.6. Both the learned Counsels for the petitioner and respondent No.6 submit that they have no objection if the copy of the said report is taken on record and dealt with in the instant judgment. Therefore, on the consent of the learned Counsels for both the parties, a copy of the said report supplied by the learned Advocate for the respondent No.6 is taken on record.

Learned Advocate for the State respondents submits that the fact of the case regarding grant of licence was stated in Paragraph 5 of the said report. It is stated by the Sub-Divisional Controller, Food and Supplies in his report that the petitioner submitted an application in prescribed form on 7th March, 2019 and made a declaration that he has working capital of five lakhs in his bank account. It is not in dispute that on the date of filing application, the petitioner had bank balance of Rs.5,01,000/-. Subsequently, during enquiry on 7th July,

2022, the villagers of Mondalpara made a complaint to the Sub-Divisional Controller, stating, *inter alia*, that the statement in respect of the petitioner's bank account which he filed along with the application was false. This necessitated the Sub-Divisional Controller to make an enquiry in respect of the bank account of the petitioner with the concerned branch of the State Bank of India. During enquiry he came to know that on the date preceding one year of the application, the petitioner had only Rs.12,365.80/- in his bank account. In the bank statement, which he filed along with his application, he forged the relevant entry on 9th March, 2018 and on subsequent dates showing that he had requisite amount in his bank account. When the Sub-Divisional Controller found that the petitioner made false and fabricated document and filed the same along with his application, it was reported to his higher authority and it was decided that his petition would be rejected.

Having heard the learned Counsels for the parties and on careful perusal of the entire materials on record, it is not in dispute that the petitioner did not have requisite bank balance one year preceding the date of application.

It is contended by the petitioner that the respondent No.6 also did not have the requisite amount. However, no document could be filed by the petitioner in support of his case.

The learned Advocate for the petitioner has vehemently urged that the petitioner might make false statement, manufactured false documents in order to get the licence, but at the same time the respondent did not have the requisite qualification to have the licence in respect of the vacancy in question.

In my humble opinion, the petitioner does not have any locus to challenge the licence granted in favour of the respondent No.6 or the action taken by the State because of the fact that the petitioner approached this Court with unclean hand making false statement in Paragraph Nos.6, 11, 12, 14 and 17 of the writ petition. Not only that the petitioner tried to mislead the State authority by filing false statement. It is not in dispute that the petitioner did not have requisite financial solvency during the period preceding one year of filing the application. On this ground only his petition is liable to be rejected by the authority. However, by misrepresentation producing false and fabricated document, he tried to mislead the State authority, which is not only permissible for the petitioner but also an act of false inducement of the Government Authority by submitting a false and fabricated document that amounts to an offence. He tried to deceive the State authority by dishonest misrepresentation. He manufactured a document in order to have wrongful gain and corresponding wrongful loss of the Government authorities. Therefore, the petitioner is also liable to criminal offence.

In view of the above discussion, the instant writ petition is dismissed subject to payment of cost of Rs.25,000/- to be paid by the petitioner to the Calcutta High Court Legal Services Authority.

It is open for the respondent No.5 to consider as to whether he would file FIR against the petitioner for manufacturing false documents or not.

(Bibek Chaudhuri, J.)

Srimanta/Mithun, A.Rs.(Ct.)

Item No. 13.