

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/811/2022

Ishita Bhattacharya Majumder

-Vs-

State of West Bengal & Ors.

For the Petitioner: Mr. Soumik Ganguly, Adv.,
 Mr. Susnigdho Bhattacharyya, Adv.,
 Ms. Chandana Chakraborty, Adv.

For the private respondent:
 Mr. Ram Anand Agarwala, Adv.,
 Ms. Nibedita Pal, Adv.,
 Mr. Ananda Gopal Mukherjee, Adv.,
 Ms. Sonam Ray, Adv.

For the State: Mr. Sirsanya Bandopadhyay, Adv.,
 Mr. Arka Kumar Nag, Adv.

Hearing concluded on: 25 July, 2023.

Judgment on: 11 August, 2023.

BIBEK CHAUDHURI, J. : –

1. On the basis of an advertisement published in a Bengali Daily “Bartaman” on 4th September, 2020 under the signature of respondent No.2, the Sub-Divisional Controller, Food and Supplies Barasat, North 24 Parganas, a vacancy notification was declared for filling up the vacancies of Fair Price Shop under the provision of WBPDS (Control and Maintenance) Order, 2013. The terms and conditions to be fully filled up for filing the application was also notified in the Kolkata Gazette on 13th March, 2020 and 7th July, 2020. The petitioner applied for the grant of

licence in respect of the vacancy arising at Ashokenagar in the district of North 24 Parganas on 24th September, 2020 along with all supporting documents which was duly received by the respondent No.4 on 30th September, 2020. The petitioner received a notice, dated 9th January, 2021 from the respondent No.4 intimating her that physical inspection would be conducted on 14th January, 2021 at around 2 pm at the proposed location of the petitioner at Ashokenagar. She was asked to remain present in the said location. After conducting physical inspection on the aforesaid date, the petitioner reasonably thought that she would get to know the result of the said inspection. However, she did not get any reply as to the status of her application. The petitioner wrote a letter by e-mail. On 5th January, 2022 she received a reply from respondent No.4 wherefrom she came to know all the previous notifications were cancelled as per the instruction from the Directorate of DDP & S for re-notification of the appointment of FPS dealer against the said notification. The said Sub-Divisional Controller also received another instruction from the Directorate, DDP & S for reconsideration of the case of Smt. Anjana Bhattacharjee, private respondent No.6 herein for appointment of FPS dealer of compassionate ground in place of her deceased father Late Anil Chandra Chakraborty.

2. Therefore, the instant writ application is filed by the petitioner for a direction of issuance of a writ in the nature of mandamus upon the respondent authority to adhere to the Rules and Regulations contained in WBPDS (Maintenance and Control) Order, 2013 as amended from time to

time. The case of the private respondent No.6, on the other hand, is that her father was the MR dealer in respect of the fair price shop at Ashokenagar. He died on 2nd February, 2013 and upon his demise, the petitioner made an application for her appointment on compassionate ground before the Sub-Divisional Controller, Food and Supplies, Barasat on 2nd May, 2013. The Sub-Divisional Controller, Food and Supplies Department, Barasat summoned all the legal heirs of the said deceased dealer for hearing and the said legal heirs gave their no objection in favour of the petitioner. The Sub-Divisional Controller rejected the petitioner's application on 6th January, 2015 on the ground that the petitioner applied for licence of dealership of fair price shop on the basis of Control Order of 2003. However, the said Control Order was repelled by 2013 Control Order. The application for compassionate appointment ought to have been filed by the respondent No.6 under 2013 Control Order. Thus, the application was rejected by the Sub-Divisional Controller, but it was never communicated to the respondent No.6. The respondent No.6 made an appeal before the First Appellate Authority, i.e., the District Controller, Food and Supplies, Barasat and subsequently to the Director, DDP & S for consideration of her application for appointment on compassionate ground. During the pendency of the said appeal the Sub-Divisional Controller declared vacancy in respect of dealership of fair price shop at Ashokenagar on 4th September, 2020.

3. Since the appeal of the respondent No.6 was pending before the Appellate Authority, the Appellate Authority directed the Sub-Divisional

Controller not to renotify the vacancy and the said resultant vacancy was cancelled on 29th April, 2022. The Appellate Authority, upon consideration of the legitimacy of the respondent No.6 for appointment on compassionate ground granted approval and accordingly a licence was issued on 5th July, 2022 in favour of the respondent No.6. However, the said licence could not be acted upon because of the interim stay passed by this Court in the instant proceeding.

4. Under such circumstances, the writ petitioner was not found eligible against the vacancy in question and therefore, she is not entitled to any relief.

5. The learned Additional Government Pleader on behalf of the respondent No.1-5 submits in a written notes of argument stating, inter alia, that one Anil Chandra Chakraborty was a licence dealer of a fair price shop lying and situated at Ward No.18, Ashokenagar. The said licensee died on 3rd February, 2013. On the demise of the original licence, his daughter Smt. Anjana Bhattacharjee, respondent No.6 herein made an application for dealership in respect of the said fair price shop on 2nd March, 2013 within the prescribed period of time. The Sub-Divisional Controller vide memo No.17 dated 6th January, 2015 rejected the prayer of respondent No.6 and sent a proposal for declaration of the resultant vacancy at Ashokenagar to the Department of Food and Supplies. The department approved the creation of resultant vacancy vide G.O No.914-FS dated 4th March, 2020. Accordingly the vacancy was notified and it was published in the newspaper on 4th September, 2020. The petitioner

applied for engagement as a dealer through selection process on 30th September, 2020. The application was duly processed as per the Control Order of 2013. There were two other applicants who applied for selection against the said vacancy on 6th March, 2020. It was found on scrutiny that none of the applicants was able to fulfill the eligibility criteria as mentioned in the vacancy notification. The District Controller was directed to take necessary measure for renotification vide memo No.2463-FMR dated 30th September, 2021. In the interregnum, the respondent No.6 made a representative before the Directorate, DDP & S for reconsideration of her prayer for engagement as a dealer on compassion ground on the death of her father. As directed by the Directorate, DDP & S a personal hearing was given to the respondent No.6 by the Deputy Directorate (Licence). The respondent No.6 was informed by the Deputy Directorate (Licence) that her application was already rejected on 6th January, 2015. However, the said order of rejection was not communicated to her. The record revealed that the order of rejection of the application made by the respondent No.6 was received by one Tapasi Sarkar claiming to be her sister. The respondent No.6 pleaded that she has no sister named Tapasi and the signature on the receipt copy of the communication was forged. The Deputy Director (Licence) was satisfied with the reasons provided by the respondent No.6. He further found that the respondent No.6 was completely dependent on the dealership business at the time of death of her father as her husband was bed ridden and her son was unemployed. The respondent No.6 was also able to

satisfy that she had duly obtained no objection form of the surviving legal heirs of the original licensee, namely, Late Anil Chandra Chakraborty. On being satisfied with as such the Deputy Directorate (Licence) held that the initially rejection of the application filed by the respondent No.6 was improper and the order of rejection was not properly communicated upon her due to which she could not prefer an appeal before the appropriate authority within the stipulated time under Clause 25 of WBPDS (Maintenance and Control) Order, 2013. The Deputy Directorate (Licence) vide memo dated 17th December, 2021 directed the Sub-Divisional Controller to reconsider the application of the respondent No.6 for engagement as a fair price shop dealer on compassionate ground and keep the renotification of the resultant vacancy in abeyance till the disposal of the application of the respondent No.6. Thereafter by an order dated 20th December, 2021 the Sub-Divisional Controller directed the respondent No.6 to submit a fresh application as per Form-C of the Control Order of 2013. The said application was submitted by the respondent No.6 on 25th January, 2020.

6. Simultaneously, on 3rd January, 2022 the petitioner made application before the Sub-Divisional Controller to know the status of her application which she made against the vacancy notification dated 6th March, 2020. The Sub-Divisional Controller by a letter dated 5th January, 2022 informed the petitioner about the status of her application. He also intimated the reasons as to why the application of the respondent No.6 was being reconsidered by the Sub-Divisional Controller as well as the

Appellate Forum. The petitioner without availing the opportunity of appeal before the District Controller, filed the instant writ petition on 28th January, 2022. It is also urged on behalf of the state respondents that in the absence of any order of stay, the application filed by the respondent No.6 was considered by the Sub-Divisional Controller, Barasat and she was found to be eligible to be appointed as FPS dealer on compassionate ground. Proposal was sent for appointment of respondent No.6 on compassionate ground to the government. The Additional Secretary to the Government of West Bengal vide G.O No.1796-FS dated 29th April, 2022 accorded approval for cancellation of resultant vacancy. Subsequently, the Sub-Divisional Controller vide memo No.17th May, 2020 approved the application dated 25th January, 2022 filed by the respondent No.6 and granted licence of FPS dealership in her name as per the Control Order of 2013.

7. Having heard the learned Advocates for the petitioner, respondent No.6 and the state respondents and on perusal of the materials on record as well as the written notes of argument it is ascertained that the petitioner's application for grant of licence of FPS dealership against the vacancy notification dated 6th March, 2020 was rejected on the ground that the petitioner failed to maintain balance of Rs.5 lakhs in her bank account for a period of one year proceedings the date of her application. The above deficiency made the petitioner ineligible for consideration in terms of the mandate dated 21st July, 2014. Moreover, during field inspection it was found that the petitioner was not in possession of

godown and office space measuring about 400 sq.ft and 200 sq. ft. respectively. The measurement of the petitioner's godown and office space were 297 sq. ft. and 136 sq. ft. respectively. Being unsuccessful, the petitioner has no locus standi to challenge the selection process against a vacancy notification which was subsequently cancelled by the department. The resultant vacancy was cancelled by the Deputy Directorate (Licence) on the ground that the application for compassionate appointment of the daughter of the original licensee was wrongly rejected by the Sub-Divisional Controller on improper application of Control Order of 2013. The Directorate of Food and Supplies Department did not take the decision on its own. The claim of the respondent No.6 was sent to the Secretariat and it was duly approved by the Secretariat and communicated by the Additional Secretary to the Department. On the basis of such order, the order of appointment was granted in favour of respondent No.6.

8. The learned Advocate for the respondent No.6 submits that the Control Order of 2013 was amended in the year 2021 which was published in the Kolkata Gazette dated 9th August, 2021. Sub-Clause (VI) of Clause 20 of the said Control Order states that in case of death of a licensee, prayer for engagement on compassionate ground shall be submitted within 90 days from the date of death of the licensee. The original licensee died on 2nd February, 2013 and respondent No.6 filed application on compassionate ground on 2nd May, 2013. She also filed no objection affidavit of other family members of the deceased licensee.

Therefore, she was entitled to get licence on compassionate ground. The Administrative Department rejected her application initially on wrong assumption of applicability of Control Rule of 2013. The Control Order of 2013 was not made applicable in case of the respondent No.6. Subsequently, the department rectified its own wrong by recalling renotification of vacancy order in respect of Ashokenagar fair price shop. It is submitted on behalf of the respondent No.6 that Administrative Department is within its domain to rectify its own wrong.

9. It is also submitted by the learned Advocate for the State that the petitioner has no judicially enforceable right in view of rejection of her application. There must be a judicially enforceable as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or abstain from doing so. In support of his contention the learned Advocate for the State refers to a decision of the Hon'ble Supreme Court in the case of **Mani Subrat Jain & Ors. vs. State of Hariyana & Ors.** reported in **(1977) 1 SCC 486.**

10. Learned Advocate for the petitioner, on the other hand submits that compassionate appointment is required to be considered without any delay because firstly, a compassionate appointment is made to meet the sudden crisis occurring in a family on account of the death of its breadwinner while in service and secondly, appointment of compassionate ground is made to meet the crisis on account of medical incapacity of

the breadwinner. In the instant case the original licensee of the concerned fair price shop died in the month of February, 2013. Compassionate appointment was granted in favour of the respondent No.6 after a lapse of long nine years without considering the fact as to whether the grounds for compassionate appointment which exhausted in the year 2013 is still in existence in the year 2022-2023.

11. It is also pointed out by the learned Advocate for the petitioner that the respondent No.6's prayer was initially rejected by the Sub-Divisional Controller after long lapse of time it was reopened on cancellation of resultant notification for filling up of vacancy. The entire action of the Administrative Department is mala fide and suspicion. Therefore, the prayer made by the respondent No.6 is liable to be rejected and petitioner may be allowed to apply afresh on the basis of re-notification of the vacancy of Ashokenagar fair price shop.

12. Learned Advocate for the respondent No.6 submits that from the submission made by the state respondents in the written notes of argument, it appears that the Deputy Directorate (Licence) directed the Sub-Divisional Controller to reconsider the application of respondent No.6. The Sub-Divisional Controller on objective inquiry found respondent No.6 eligible for engagement as a FPS dealer on compassionate ground. Therefore, the resultant vacancy was cancelled vide order dated 29th April, 2023. The respondent No.6 within the statutory period of time made application for compassionate appointment it was however rejected by the respondent on misconception of the statutory provision. The

Administrative Department took long time to grant the application filed by respondent No.6. For such delay the claim of the respondent No.6 cannot be said to be non-existence. Even during inquiry in the year 2022 the SCF & S was satisfied about the need of the respondent No.6 in support of her claim for engagement as FPS dealer in the fair price shop. Since the respondent No.6 has already been appointed the instant writ petition is not maintainable.

13. Considering the submission made by the learned Counsels for the parties this Court is of the view that the instant writ petition is not maintainable in view of subsequent appointment of respondent No.6 as FPS dealership on compassionate ground. It is also not maintainable on the ground that the initial application of the petitioner was rejected for want of financial solvency and non availability of godown and office space as per the measurement stipulated in the Control Order. The writ petition is also not maintainable as the re-notification of the vacancy was cancelled by the administrative order.

14. For the reasons stated above the instant writ petition is dismissed on contest, however without cost.

15. With the disposal of WPA 811 of 2022, WPCRC 152 of 2022 is also disposed without any order.

(Bibek Chaudhuri, J.)