

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

W.P.A No. 4275 of 2023

Tarani Rajwar
-Vs-
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. Sirsanya Bandopadhyay,
 Mr. Amrita Lal Chatterjee

For the Respondent No.6:
 Mr. Srijib Chakraborty,
 Mr. Ramij Munsi,
 Ms. Champa Pal

Hearing concluded on: 13th September 2023.

Judgment on: 6 October, 2023.

BIBEK CHAUDHURI, J. : –

1. A vacancy notification of dealership of fair price shop at village Kaliganj (Khidirpore/ Narayanpur) within Kaliganj Gram Panchayat under Krishnanagar Sub division was published in the official website of the Food and Supplies Department, Government of West Bengal on 11th March, 2020. The said notification was published in the Bengali News Paper 'Anandabazar Patrika' on 29th January, 2021. The vacancy notification disclosed the eligibility criteria to be fulfilled by the

applicants. Amongst them, two important requirements are that the applicant must have a godown measuring about 400 square ft. and an office-cum-shop room measuring about 200 square ft. in the locality where the vacancy has been declared and the applicant must have a deposit in his bank account an amount of Rs.5,00,000/-on the date of filing the application and preceding one year. The petitioner had a deposit of more than Rs.5,00,000/- on the date of notification but he had no such deposit in his bank account for a period preceding one year. Therefore, he could not file any application for grant of licence in respect of the said dealership. It will not be out of place to record that the petitioner has a godown and office cum shop room as per specification disclosed in the vacancy notification. The petitioner enquired as to whether the financial requirement is a mandatory criteria or not and he came to learn from the office of the Sub divisional Controller that the said criteria is mandatory and therefore, he was not eligible to apply for dealership of fair price shop in question.

2. The petitioner also came to know from the office of the Sub-divisional Controller that none of the applicants could satisfy the eligibility criteria with regard to financial solvency and he had the legitimate expectation that the applications for FPS dealership would be cancelled and a new vacancy with a new financial requirement would be published by the State respondents whom the petitioner would be eligible to file application. However, all on a sudden the petitioner came to know

that the private respondent was granted license for fair price shop relaxing the financial requirement.

3. It is the case of the petitioner that he never knew that financial requirement would be relaxed by the State respondents. Had it been so, the petitioner could have filed application for dealership in question. The specific act and conduct of the state respondents are arbitrary and unjust and violates the right to equality enshrined in Article 14 of the Constitution. It also offends Articles 19(1)(g) and 21 of the Constitution. Therefore, the petitioner has prayed for quashing and/or setting aside the order of appointment of the private respondents as a fair price ship dealer; direction upon the State respondents to publish fresh notification in respect of the said vacancy and other reliefs incidental thereto.

4. The Sub-Divisional Controller, Food and Supplies, Krishnanagar, Nadia on his own behalf and on behalf of other respondents representing the State Government filed an affidavit-in-opposition controverting all allegations made out by the petitioner in the above writ petition. It is specifically pleaded by the Sub-Divisional Controller that as per the eligibility criteria the applicant must have bank balance of at least Rs.5 lakhs as working capital reflected on the date of application and one year preceding the date of application. There was other conditions stipulating eligibility criteria but these conditions are not relevant for the purpose of the instant case. Pursuant to the said vacancy notification, private respondent and others made application for grant of licence. The petitioner did not submit any application for the said dealership. During

inquiry it was found that on the date of application that is on 18th February, 2021 the bank balance of the private respondent was Rs.691829/- and his bank balance on the preceding year was also above Rs.5 lakhs which specified the eligibility criteria as has been mentioned in the vacancy notification. The Sub-Divisional Controller also contended that in the vacancy notification the department did not specifically mentioned any character of land over which the godown and shop room are required to be constructed by the respondent. The respondent constructed his godown and shop room which has been recorded as agricultural land in the record of rights. There is no stipulation in the vacancy notification that if a construction is made on the agricultural land the application for Fair Price Shop dealership would be cancelled. It is for the respondents and the competent authority under the West Bengal Land Reforms Act to consider as to whether such construction violates the provisions of the West Bengal Land Reforms Act or not. Since private respondent fulfilled all eligibility criteria licence was granted in his favour.

5. The private respondent has also filed a separate affidavit in opposition taking into account maintainability of the writ petition and locus of the petitioner to challenge respondent No.6 appointment as a dealer of Fair Price Shop. It is contended on behalf of the respondent No.6 that the petitioner did not file any application for grant of licence in favour of him. Therefore, the petitioner is not an aggrieved person in respect of the subject matter of the writ petition. It is further contended by the

respondent that he has been maintaining saving + account with the State Government of India, Debogram ADB Branch having mode balance. Saving + Account always shows steady balance of Rs.35000/- in the account. Excess amount is transferred to the mode balance of the account holder in order to fetch better interest rate. Therefore, though the private respondents account showed liquid cash of Rs.35000/- during the relevant period of time he had balance of more than Rs.5 lakhs on the date of application as well as preceding one year.

6. Mr. Saha Roy, submits that the Sub-Divisional Controller, Food and Supplies Department was special interest so that the respondent No.6 who get the dealership of the Fair Price Shop in question. For purpose the Sub-Divisional Controller himself made an inquiry from the bank where the saving + account of the respondent No.6 is maintained to ascertain if he had a balance of Rs.5 lakhs preceding one year of the date of application.

7. I have heard the learned Advocates on behalf of the petitioner and the respondents. From the documents filed by the respondent No.6 as well as the State respondents it is not in dispute that the respondent No.6 had a balance of Rs.6,91,000/- and odd on the date of filing of the application and he maintained balance of more than Rs.5 lakhs in his account preceding one year of the date of filing application. Therefore, the respondent No.6 was rightly appointed as a dealer of Fair Price Shop. I am not in agreement with Mr. Srijib Chakraborty, learned Advocate for the respondent No.6 that the petitioner has no locus to challenge the

appointment of respondent No.6. He did not file any application for grant of dealership in question. Therefore, he cannot raise any objection against the appointment of respondent No.6 on the ground that it violated the eligibility criteria.

8. Mr. Chakraborty, refers to a decision of the Hon'ble Supreme Court in the case of **N.G. Projects Limited vs. Vinod Kumar Jain & Ors.** reported in **(2022) 6 SCC 127**. It is observed by the Hon'ble Supreme Court in paragraph 23 as herein:-

“23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.”

23. It is submitted by Mr. Chakraborty, that though the said report is on the subject of Government of Contracts and tender, the principle laid in the said decision on the scope of judicial review is also applicable in the

instant case because the respondents who are the state functionaries granted leadership in favour of the respondent No.6 considering his financial and all other eligibility criteria.

24. Mr. Chakraborty also refers to a Division Bench judgment of this Court in **Subir Ghosh vs. State of West Bengal & Ors.** reported in **2020 SCC OnLine Cal 2213**, wherein it is clearly observed by the Division Bench of this Court that a person who has not participated in the bidding process at all cannot challenge the tender conditions on any ground whatsoever. In the instant case, since the petitioner did not participate in the selection process of FPS dealership, he cannot challenge selection of respondent No.6. On the same issue he refers to the decision of **National Highways Authority of India vs. Gwalior Jhansi Expressway Limited** reported in **(2018) 8 SCC 243** and **ITC Limited vs. Blue Coast Hotels Limited & Ors** reported in **(2018) 15 SCC 99**.

25. Having heard the learned Advocates for the parties and on careful perusal of the entire materials on record, it is ascertained that the respondent No.5 rightly recommended the private respondent No.6 for dealership of Fair Price Shop. The respondent No.6 has fulfilled all eligibility criteria. The petitioner has filed the instant writ petition on the assumption that he was given undue relaxation in respect of his financial solvency. The documents filed by the respondent No.6 prove such contention of the petitioner to be false. Therefore, the state respondents did not commit any illegality in granting dealership to private respondent No.6.

26. The learned Advocate for the petitioner has raised an objection that the land upon which the petitioner's godown and shop room are situated is recorded as "billan" i.e. agricultural land. No godown or office room can be constructed on agricultural land. The respondent No.6 failed to show that the land upon which the godown and shop room are situated was converted to "bastu land". It is needless to say that application for issue of licence for FPS dealership is required to be filed in FORM-C. Paragraph 32 of the said Form states that the petitioner is required to mention the character of the land of the premises (bastu/commercial/agricultural etc). Thus, if the land on which godown and shop room are constructed is agricultural land, it does not disentitle an applicant from filing an application for dealership of Fair Price Shop. It is for the Land and Land Reforms Department to consider as to whether such construction violates the provision of West Bengal Land Reforms Act or not. Only due to the construction of godown and office-cum-shop room on the agricultural land of the applicant, it does not mean that he will not be entitled to file any application for FPS dealership.

27. For the reasons stated above, I do not find any merit in the instant writ petition and accordingly the writ petition is dismissed on contest, however, without cost.

(Bibek Chaudhuri, J.)