

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/4646/2023

**Shah Alam
Vs
State of West Bengal & Ors.**

For the Petitioner: Mr. Pingal Bhattacharyya, Adv.,
 Mr. Rajdeep Sinha, Adv.

For the Respondent No.6:
 Mr. Sagar Bandyopadhyay, Adv.,
 Mr. Siddhartha Banerjee, Adv.,
 Mr. Amit Nath, Adv.,
 Mr. Shergil Ahmed, Adv.

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

Heard on: 31 August, 2023.

Judgment on: 12 September, 2023.

BIBEK CHAUDHURI, J. : –

1. A vacancy of fair price shop dealership was notified on 15th February, 2022 to be situated at Khagraghat Chaipara, Chaipara Natunpara, Mouza- Gopjan (CT), J.L No.098 within Radharghat-1 Gram Panchyat, under Police Station Berhampore, Murshidabad. The petitioner submitted an application for grant of licence in prescribed form annexing all necessary documents before the Sub-Divisional Controller, Food and Supplies, Berhampore (Sadar). Some other candidates also applied for the

said dealership as per the vacancy notification dated 15th February, 2022. Subsequently, he was informed that an inquiry would be held on 8th June, 2022 at the proposed shop cum godown site of the petitioner and he was directed to remain present at the site on the date and time of inquiry with all relevant documents. On the fixed date, inquiry was conducted at the proposed shop cum godown of the petitioner and the members of the inspecting team expressed their satisfaction with regard to infrastructures and financial capability of the petitioner. Subsequently, the petitioner and private respondent No.6 were directed to appear before the District Level Fair Price Shop Selection Committee in the chamber of the Additional District Magistrate (Development) with all relevant documents. The petitioner was present at the schedule date, time and venue. The officials of the Food and Supplies Department examined the relevant documents. It is further stated by the petitioner that the size of the godown of the petitioner is more than 600 sq. ft and he had the financial solvency to be selected as fair price shop dealer. However, he came to know that the Sub-Divisional Controller, Food and Supplies, Berhampore Sadar recommended private respondent No.6 for dealership before the District Controller, Food and Supplies Murshidabad and the District Controller forwarded the same to the Director of DDP & S for necessary approval of issuance of FPS licence in favour of the private respondent.

2. It is submitted by the petitioner that the godown of the private respondent No.6 is situated on a narrow lane. It is not possible for the

distributor to deliver ration articles at the doorstep of the godown of the respondent No.6. On the other hand, the godown of the petitioner is situated adjacent to the main road and there is 12 ft. wide road in front of the petitioner's godown. The distributor can conveniently reach the godown of the petitioner for unloading ration articles. It is also contended by the petitioner that the godown of the private respondent is situated upon agricultural land. The petitioner came to know that the size of the godown of respondent No.6 is smaller than that of the petitioner and total area is less than 600 sq. ft. The Sub-Divisional Controller, Food and Supplies failed to appreciate and consider the above mentioned facts and forwarded the file of the private respondent to the higher authorities for grant of licence. It is alleged by the petitioner that such act of the respondent specially the respondent No.5, Sub-Divisional Controller, Food and Supplies Department is arbitrary, unjust, illegal and mala fide and also violates the petitioner's right protected under Article 14, 19(I)(g) and 21 of the Constitution. It is also submitted by the petitioner that in spite of having all eligibility criteria as per vacancy notification dated 15th February, 2022 the petitioner was denied FPS licence and it was wrongly granted in favour of the respondent No.6.

3. The respondent No.5, Sub-Divisional Controller, Food and Supplies Department has filed a report in the form of affidavit denying all allegations made by the petitioner in the writ petition. It is contended by the respondent No.5 that a vacancy notification was published in respect of the dealership of fair price shop at Khagraghat Chaipara on 15th

February, 2022 in the official website of the Food and Supplies Department. Subsequently, the said vacancy was notified in a Bengali and English Daily, mainly, “Bartaman” and “The Times of India” on 15th March, 2022. The candidates made applications for dealership of the FPS shop and on the basis of the inquiry report it was ascertained that the measurement of the godown of the petitioner was 474 sq. ft. and sales counter was measured about 210.12 sq. ft. respectively. The said area is smaller than the godown and shop room offered by the private respondent. The measurement of the godown and fair price shop room of the private respondent was 859.66 sq. ft and 292.40 sq. ft. respectively which is much bigger than the petitioner. After conducting thorough inquiry under the supervision of the Sub-Divisional Controller, Food and Supplies Private respondent No.6 was selected as the best candidate amongst the applicants in respect of the nature of land, area and condition of the godown, storage capacity and other criteria required to establish a new fair price shop. It is also submitted by the Sub-divisional Controller, that inspection is held on score based inquiry on offline module and therefore there is no scope for any foul play in the inquiry. Since the private respondent was found the most suitable her name was recommended for dealership. The Sub-Divisional Controller also states that the proposed godown of the private respondent is situated over plot No.4758, 4762, 4763, 4764 under khatian No.13557 of Mouza- Gopjan, Chaipara under Radharghat-1 Gram Panchyat and the character of the land is recorded as *vitti*. The result of inquiry was placed before the

District Level Fair Price Shop Selection Committee and on the basis of the inquiry report as well as score sheet the respondent No.6 was selected. The land on which the godown and shop of the respondent No.6 are situated were converted to bastu land. Therefore, there was no illegality in selecting respondent No.6 as a dealer of the fair price shop of the above named village.

4. The petitioner has filed an exception to the report filed by the respondent No.5. It is specifically stated by the petitioner that in the vacancy notification it was stated that the applicant has to submit their respective application within 21 days from the date of publication of vacancy in the official gazette or indicative advertisement thereof in the newspaper. Secondly, incomplete application or application received after the stipulated date or from ineligible candidates will be summarily rejected. Thirdly, the applicant should possess a suitable godown as per government order dated 21st July, 2014 as amended on 17th August, 2021 and the said godown must be situated within the vacancy location. Fourthly, documents in respect of the land of the proposed shop-cum-godown should be characterized as “dokan/commercial/bastu”. The last date of submission of application was on 8th March, 2022. On the date of filing of the application the godown and the shop of the respondent No.6 was situated on agricultural land. It was subsequently converted to bastu land on 29th April, 2022 i.e., on a later date from the last date of submission of application. It is further stated by the petitioner that the entries in the record of rights in respect of respondent’s plot No.4758,

4762, 4763, 4764 shows that plot No.4758 is cultivated by a *bargadar*, namely, Jugal Mondal. It is submitted on behalf of the petitioner that no land cultivated by a *bargadar* can be converted to a bastu land. It is also contended by the petitioner that the land upon which the godown and shop room of the respondent No.6 is at village Shealmara, whereas vacancy was declared at village Khagraghat Chaipara. Thus, shop-cum-godown of the private respondent is not situated within the advertised location though it was one of the conditions in the vacancy notification that the godown-cum-shop should be located in advertised location of fair price shop.

5. The respondent No.6 has also filed an exception to the report filed by the respondent No.5. In his report he only annexed the order issued by ADM, DL & LRO, Murshidabad on 29th April, 2022 converting some portion of land in plot No.4758, 4762, 4763, 4764 from agricultural land to homestead land.

6. By filing an affidavit-in-reply to the exception filed by the respondent No.6 it is contended by the petitioner that the last date of submission of application form for FPS dealership was fixed on 8th March, 2022. The land in question upon which the godown and office room are situated was agricultural land on the date of filing of the application. The said land was converted to bastu land only on 29th April, 2022 after inquiry was held by the authorized officer of the Food and Supplies Department. In the inquiry report it was not stated that the godown and shop of respondent No.6 was situated on agricultural land and one of the

said plots is being cultivated by a *bargadar*. Had there been such report, his application ought to have been rejected. It is also alleged by the petitioner that the godown of the respondent No.6 was situated at village Shealmara Notunpara, while the advertised location of the fair price shop is at Khagrapara Chaipara, Chaipara Notunpara. Thus, the godown and the shop room of the private respondent were not situated at the advertised location and the selection of private respondent was illegal, arbitrary, unjust and mala fide.

7. Mr. Pingal Bhattacharyya, learned Advocate for the petitioner submits that the respondent No.6 played a blatant fraud upon the state respondents by suppressing the nature of land upon which her godown and shop room was situated. It is submitted by the learned Advocate for the petitioner that the record of the case indisputably shows that the land upon which the respondent's godown and shop room were situated recorded as agricultural land on the date of application as well as on the date of inquiry. The respondent No.6 suppressed the same and converted her land to a bastu land on 29th April, 2022. This suppression of fact and misrepresentation of the truth or concealment of a material fact to induce the District Selection Committee to act to its detriment by granting licence of FPS dealership in favour of her is an act of "fraud" which vitiates the entire selection process of FPS dealership. In respect of his contention he refers to paragraph 68 of the decision of the Hon'ble Supreme Court in **Satluj Jal Vidyut Nigam vs. Raj Kumar Rajinder Singh (dead) Through Legal Representatives & Ors.** reported in **(2019) 14 SCC 449**.

8. Paragraph 68 of the aforesaid judgment is reproduced below:-

68. Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. On behalf of the appellants, reliance has been placed on the definition of “fraud” as defined in *Black's Law Dictionary*, which is as under:

“*Fraud*: (1) A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp. when the conduct is wilful) it may be a crime. ... (2) A misrepresentation made recklessly without belief in its truth to induce another person to act. (3) A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment. (4) Unconscionable dealing; esp., in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain.”

9. Learned Advocate for the respondent No.6, on the other hand, submits that the petitioner had made out a case of mala fide allegedly perpetrated by respondent No.6. That the specific act of respondent No.6 is malicious is required to be specifically pleaded in the writ petition. The petitioner has not pleaded the case of “malice in fact” in his writ application.

10. It is also submitted by Mr. Sagar Bandyopadhyay, learned Advocate for the respondent No.6 that the competent authority has taken an administrative decision on the basis of well recognized score based evaluation method in favour of the respondent No.6 in granting licence for FPS dealership. Judicial review of administrative decision would apply in order to prevent arbitrariness or favoritism. However, it is submitted by the learned Advocate on behalf of the respondent No.6, that there are inherent limitations in exercise of that power of judicial review. The right

to review one's application for a particular dealership and acceptance of another's application is always available to the government. Only in cases where such decision violates Article 14 of the Constitution or any other fundamental rights, the action of the government can be stated to be arbitrary and unjust and accordingly, subject to judicial review. Referring to a decision of the Hon'ble Supreme Court in **Municipal Corporation, Ujjain & Anr. vs. BVG India Limited & Ors.** reported in **(2018) 5 SCC 462**. It is submitted by Mr. Bandyopadhyay that modern trend of judicial review points to judicial restraint in administrative action. The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision without the necessary expertise which itself may be fallible.

11. It will not be out of place to mention that BVG India Limited (supra) is a case relating to government contracts and tenders. On factual score the aforesaid decision is clearly distinguishable with the facts that case. However, this court relies on the principle and scope of judicial review of administration action made by the Hon'ble Supreme Court in the said decision.

12. In the instant writ petition the bone of contention between the petitioner and the respondent No.6 is in respect of character of the land upon which the godown and shop room of respondent No.6 are situated on the date of filing of the application and also on the date of holding

inquiry. It is the specific case of the petitioner that on the date of filing application as well as on the date of inquiry, the land of the petitioner was described as agricultural land (Aush). Construction of godown and shop room is not permitted on agricultural land before its conversion. Moreover, plot No.4758 is cultivated by *bargadar*.

13. The respondent No.6, on the other hand, stated that the competent authority converted the land from agricultural to residential (bastu).

14. Part-4 (VII) of vacancy notification speaks about documents regarding possessional right over the proposed place of business. It runs thus:-

“A) In case of ownership/shared ownership: (a) photocopy of Record of Rights/Registered Deed of Conveyance/purchase /gift in the name of applicant, (b) Document showing character of land as ‘dokan/commercial/bastu’ if Record of Rights is not produced, (c) Up to date property tax receipt and (d) NOC. of other co-owners (in case of shared ownership of the offered shop cum godown).

B) for leased/rented property: Registered Lease Deed or Tenancy Agreement with copies of rent receipts for all the months from the date of agreement till date of application and Registered Deed/RoR in the name of the land owner (or lessor).”

15. From a close reading of the aforesaid clause, it appears that the vacancy notification nowhere stated that a candidate having ownership of agricultural land over which “**the proposed place of business**” is to be set up cannot file an application only due to the reason that the proposed place of business is agricultural land. Only requirement of such applicant is to convert the proposed place of business from agricultural to

commercial or residential. A candidate can make such application for conversion even after inquiry or even after grant of licence because he gets adequate time to make necessary arrangement of his proposed place of business.

16. In the instant case, the respondent No.6 applied for conversion of land on 12th April, 2022 that is after inquiry and such application was allowed on 29th April, 2022. Before conversion of land he constructed his godown on his agricultural land. It is for the government to raise objection for unlawful construction over agricultural land, if, on the other hand, the government approves such construction and converts the land to residential plot, the court cannot sit over the government decision to review the matter judicially.

17. In view of the above discussion I do not find any merit in the instant writ petition and accordingly, the instant writ petition is dismissed on contest. There shall, however, be no order as to cost.

(Bibek Chaudhuri, J.)