

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri
WPA 5405 of 2023**

**Md.Babar Ali
Vs.
The State of West Bengal & Ors.**

**For the petitioner : Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,,
Ms. Poulami Chakraborty**

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

Judgement on : 02.08.2023.

Bibek Chaudhuri, J.

The State respondents have filed a report in the form of affidavit through the Sub-Divisional Controller, Food and Supplies, Suri, Birbhum.

The petitioner was heard at length on 27th June, 2023. Therefore, this Court proceeds to dispose of the instant application on the basis of the submission made on behalf of the petitioner on 27th June, 2023 and the learned Advocate for the State respondents this day.

The case of the petitioner, in brief, is that the petitioner has been running a fair price shop since quite some time. In all, he is

having 6900 ration cards tagged with his shop. It appears from the memorandum dated 11th February, 2022, issued by the Food & Supplies Department that according to a new policy of the State Government, if a fair price shop has cards in the range of 5000 to 6000, then there shall be a scope of declaring vacancy for such area. It was also decided that a new fair price shop shall start with a range of 3000 to 4500 ration cards. So far as the petitioner is concerned, 6900 of cards having been tagged with the petitioner were within the range of ration cards which can be retained by an existing fair price shop. If the fair price shop is situated in the same area, then it could not have cards in the range of 3000 to 4500. Otherwise the cards of the existing fair price shop would fall below 5000. Therefore, the vacancy could not have been declared for the same area. Without considering such fact situation, the State respondents declared vacancy in respect of the village Sekedda, Post Office: Makdamnagar under Police Station Mohammad Bazar, District: Birbhum.

It is profitable to mention here that there was a previous guideline vide memorandum 3004-FS dated 3rd September, 2021 wherein it was stipulated under the following two situations:-

Situation-I

In case of overpopulated F.P.S. having card population of more than 12000, proposals for the new vacancies may be given at

appropriate locations of the areas under the service of the existing F.P.S. through bifurcation of the card population as may be convenient for the concerned dealers;

Situation-II

In case of overpopulated F.P.S. having card population between 10000 to 12000, around 3000 to 5000 cards of the existing F.P.S. may be considered for detagging and to be clubbed with the detagged over populated card of any neighbouring F.P.S.(s) for declaration of suitable new vacancy, the proposal of the same may be given at locations as may be convenient for the concerned beneficiaries.

Thus, it is contended by the learned Advocate for the petitioner that an F.P.S. dealer can cater at least 10000 beneficiaries and if the number of beneficiaries becomes higher than 10000 the concerned authority can bifurcate the beneficiaries and tag them with a new fair price shop for rationalization of public distribution system.

However, the office order dated 3rd September, 2021 has been superseded by Memo No.834 dated 28th March, 2023. The relevant order issued by the Director of the Directorate of District Distribution, Procurement & Supply is quoted below:-

“Guidelines for rationalization of excess Ration Card population of existing FPSs through declaration of new vacancies or merger of small Ration Card population with neighbouring FPSs were issued by

the Department vide No.3004-FS dated 03.09.2021. In the said guidelines, in case of shops having excess population, it was envisaged that 6500 to 7500 Ration Cards were to be retained with an existing FPS for declaring a new vacancy.

Later, the above range of retained population was modified to 5000 to 6500 and new vacancy was to be proposed with a range of DRC population of 3000 to 4500 vide No.328-FMR dated 11.02.2022.

However, certain issues have been raised from some quarters regarding the retained population and proposed population for a new vacancy which were under active consideration of the Department. Now, after due consideration of the matter it has been decided that for the purpose of proper and complete rationalization of existing Ration Card population for ensuring better service to the concerned beneficiaries through PDS, a new vacancy may be proposed with a population which may be less than 3000 and DRC population retained with an existing FPS may be less than 5000 considering local scenario, convenience/inconvenience of the beneficiaries and in the larger interest of PDS in the locality."

The guidelines stands modified to the extent as mentioned above. However other criteria of the same will remain unchanged.

In view of such guidelines, the petitioner cannot claim as of right more than 5000 beneficiaries to be tagged with his fair price shop.

Therefore, there may be vacancy notification in respect of 1900 excess beneficiaries plus other beneficiaries in accordance with DRC population and separate licence may be granted for establishment of a new fair price shop. The petitioner cannot raise any objection until and unless he is not allowed to have 5000 beneficiaries/card holders in respect of his shop. The additional number of beneficiaries/card holders will be detagged and the recent notification of the Food and Supplies Department as quoted below.

Therefore, the petitioner cannot challenge the said administrative orders issued by the State respondents on the ground of arbitrariness , *mala fide* or violative of any constitutional or legal right of the petitioner.

In view of the above discussion, I do not find any merit in the instant writ petition.

The instant writ petition is, accordingly, dismissed.

There shall be, however, no order as to costs.

(Bibek Chaudhuri, J.)

**Mithun De.
A.R. (Ct).
SI No.69.**