

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 7495 of 2023

**Ramkrishna Dey
-Vs.-
State of West Bengal & Ors.**

**For the petitioner : Mr. Ram Anand Agarwal,
Ms. Nibedita Pal,
Mr. Ananda Gopal Mukherjee**

**For the respondent No. 6 : Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharyya**

Heard & Judgment on : 02.08.2023

Bibek Chaudhuri, J.

The petitioner is one of the six applicants for grant of licence in respect of a fair price shop at Mouza-Punur in the district of Birbhum. It is found from the record, specially a report in the form of affidavit that private respondent no. 6 was granted licence in respect of the said dealership. On the basis of an inspection of the site and other requirements needed for such grant of licence of MR Dealership. The petitioner has filed the instant writ petition challenging the order passed by the Director, DDP&S in compliance with the order dated 17th November, 2022 passed by a Coordinate Bench of this Court in WPA/23560/2022.

The private respondent has raised initial objection on the ground of maintainability. It is submitted by the learned Advocate for the private respondent no. 6 that vacancy notification was made by the respondent authority on 15th February, 2022. The petitioner made online application on 15th May, 2022. It is found from the averment made in the petition itself that on 22nd June, 2022 the petitioner submitted documents in support of his financial capacity and the sketch map of the godown and office room as sought for by the Sub-Divisional Controller, Food and Supplies Department before conducting inquiry. It is contended by the learned Advocate for the respondent no. 6 that the documents relating to financial capability, area and measurement of the godown etc. are required to be uploaded along with the application. If the said documents are not uploaded along with the application for grant of licence, the said application is liable to be rejected.

Secondly, it is submitted by the learned Advocate for the petitioner that as per the criteria of godown and office premises it is declared in the vacancy notification that the applicant must have a godown measuring 400 square feet or more and an office-cum-shop room measuring about 200 square feet or more. Thus, the petitioner should at least have 600 square feet of constructed premises consisting of a godown and office-cum-shop room. It is found from the writ application that the petitioner is having 435 square feet of land in his own name over which he constructed a godown. Therefore, the petitioner has violated the minimum eligibility criteria and petitioner's application was rightly rejected. There is no occasion for the petitioner to challenge selection of respondent no. 6 after she has been granted licence to run the FPS Dealership.

In reply thereto, the learned Advocate for the petitioner draws my attention to the order dated 21st February, 2023 rejecting the representation of the petitioner by the Director, DDP&S, Government of West Bengal. The relevant portion of the said order is quoted below:-.

“As per the observation of the SCF&S the petitioner could not show the document as the owner of the whole land as demanded (810 sq. ft.) on the date of enquiry that was conducted on 31/05/2022. The petitioner could only show the land measuring 430 ft. in his own name and the rest was joint property which he purchased later. Apart from this SCF&S observed that the office space of the petitioner is not quite adjacent to the godown.”

Thus, it is contended by the learned Advocate for the petitioner that financial insolvency or measurement of godown were not the criteria for which the representation of the petitioner was cancelled. There are only two grounds for which the petitioner's application was cancelled – First, being the measurement of the godown in his own name and secondly, the office room is not quite adjacent to the godown.

In this regard, it is submitted by the learned Advocate for the petitioner that the petitioner constructed his godown in a law land. The godown measuring about 430 sq. ft. has been constructed on the land level and the office room is constructed on the first floor of the said godown. Thus, the petitioner is having a total area of about 870 sq. ft. However, the petitioner's claim was not considered by the respondent authority. The learned Advocate for the petitioner also draws my attention to a report submitted by local Panchayat Pradhan wherefrom it is ascertained that the son of the respondent no. 6 is a

contractual employee of Food and Supplies Department of the said Sub-Division. The petitioner has made an allegation that the respondent authority extended undue favour in support of the respondent no. 6 and due to such reason, the petitioner was victimized.

Though the State respondent is not represented I have perused the report in the form of affidavit filed by the State respondent. The State respondents have reagitated that the size of the godown of the petitioner is about 435 sq. ft. and there is no shop adjacent to the godown of the petitioner. It is submitted, on the contrary, by the learned Advocate for the petitioner that the shop-cum-office of the petitioner has been constructed on the roof of the godown. Thus, the shop and the godown are situated in one building on two floors.

Having heard the learned Advocates for the petitioner and the respondent no. 6 and on careful perusal of the materials-on-record, this Court is of the view that in order to obtain a clear picture as regards the measurement of the godown and shop room of the petitioner, the respondent authority should inspect the godown-cum-shop of the petitioner once again and reappraise the case of the petitioner afresh. In view of such circumstances, the impugned order dated 21st February, 2023 passed by the Director, DDP&S is set aside. The respondent authority is directed to take a fresh decision on the basis of further inspection in this regard in the light of observation made hereinabove.

However, pending final result of the fresh inquiry which has been directed to be made by the State respondents, *status quo* in respect of the functioning of the FPS shop by respondent no. 6 shall

be maintained. Entire process shall be concluded within 90 days from the date of communication of this order.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 62.