

Form J(2)

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

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

WPA No. 9318 of 2023

**Bikash Majumder
Vs.
State of West Bengal & Ors.**

**For the Petitioner : Mr. Susanta Kumar Mukherjee,
Ms. Sonali Bhar**

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

**For the Added
Respondent : Mr. Saptangshu Basu, Sr. Adv.,
Mr. Ramesh Dhara,
Ms. Mousumi Choudhury**

Judgement on : 28.06.2023.

Bibek Chaudhuri, J.

Supplementary affidavit filed by the petitioner is taken on record.

The petitioner has filed the instant writ petition for the following reliefs:-

- a) A writ in the nature of mandamus commanding the respondents, their agents, men and subordinates, the respondent no. 2 in particular from giving effect and/or further effect the Notification dated 01.09.2022 in

annexure – P/3 to this petition, without considering the Notification published in Kolkata Gazette dated 23.07.2018 for engagement of Distributor at Murarai with Murarai – II Block, Headquarter at Murarai Block – I with Murarai Block – II, combined area;

- b) A writ in the nature of mandamus commanding the respondents to give effect to the vacancy notice dated 12.07.2018 for engagement of Distributor at Murarai, with Murarai – II Block, Headquarter at Murarai Block – I with Murari Block – II, combined area;
- c) A writ in the nature of mandamus not to complete the selection process under Memo dated 01.09.2022, by selecting some third party distribution, exclusion of the petitioner;
- d) A writ in the nature of mandamus directing the respondents to withdraw the Memo dated 01.09.2022 forthwith so that the 2018 Notification is not segregated;
- e) A writ in the nature of certiorari commanding the respondents, their agents, men and subordinates to submit all the records relating to the case before the Hon'ble High Court so that the conscionable justice may be administered by quashing the notification dated 01.09.2022;
- f) Rule NISI in the prayers of (a), (b), (c), (d) and (e) above;
- g) Ad-interim order of injunction restraining the respondents their agents, men and subordinates each of them from giving effect and/or further effect the Notification dated

01.09.2022 in annexure-P/3 issued by the respondent no. 2 of this petition without considering the Gazette Notification dated 23.07.2018 issued by the respondent no. 3 until further order;

- h) Ad-interim of mandatory direction, directing the respondent no. 2 by quashing the Notification dated 01.03.2022 forthwith;
- i) Interim order in terms of prayers (g) and (h) above;
- j) To pass such other order or orders, direction or directions as your Lordship may seem fit and proper.

Factual circumstances which prompted the petitioner to file the instant writ petition is that one K. D. Jain was the M.R. Distributor of Murarai Block with both Headquarters at Murarai – I and Murarai – II under Rampurhat Sub-Division. He used to cater 45 MR Dealers out of whom 39 MR Dealers were from Murarai –II Block and 6 MR Dealers were from Murarai – I Block. On or about 7th September, 2015 the said K.D. Jain resigned from his MR Distributorship and the said Distributorship was tagged with one T.P. Kreshri and thereafter with Dharampur SSSS Limited. Subsequently on 12th July, 2018 a vacancy declaration was made by Notification No. 1608 of even date which was published in the official Gazette on 23rd July, 2018.

The case of the petitioner is that the petitioner applied for MR Distributorship as per the provision of Clauses 26(iii) and 26(iv) of WBPDS (M & C) Order, 2013. When the said application was pending, without taking any decision finally with regard to the said application filed by the petitioner the State respondents cancelled the said Notification some times in 2022 and substituted the same with another Notification dated 1st September, 2022 under WBPDS (M & C)

Order, 2013. It is already recorded that the petitioner made a specific prayer for withdrawal of the said Notification dated 1st September, 2022. At the time of hearing of this matter, Mr. Basu, learned Senior Counsel intervened and submits that he is inclined to file an application in the instant writ petition for addition of party on the ground that the Notification dated 1st September, 2022 has also been withdrawn and substituted by a new Notification. Therefore, the instant writ petition filed by the petitioner has become infructuous. Alternatively, it is submitted by Mr. Basu, learned Senior Counsel that the relief which was sought for by the petitioner has eventually been granted by the subsequent order passed by the State respondents.

Mr. Amrit Lal Chatterjee, learned Advocate for the State respondents has filed a report in the form of affidavit and submits from the writ petition that admittedly the original Distributor, namely K. D. Jain used to cater 45 beneficiaries, 6 beneficiaries of Murarai – I Block and 39 beneficiaries of Murarai – II Block. Under instruction he also submits that the writ petitioner is absolutely correct on the factual situation that after resignation tendered by Mr. K.D. Jain it was tagged with one Thakur Prasad Kreshri and thereafter with one Samabai Samity. It is submitted by Mr. Chatterjee that the Notification dated 23rd July, 2018 was cancelled on 7th August, 2019. The stand taken by the State respondents is that according to the said Maintenance and Control Order, 2013 the State Government in the Department of Food and Supplies reserves the right to reject any application or cancel the vacancy at any point of time without assigning any reason and such act of the State Government cannot be challenged by filing a writ petition. Subsequently, the Notification

dated 1st September, 2022 was issued. Subsequently, it was cancelled and a new Notification was issued on 1st June, 2023.

Having heard the learned Counsels for the parties and on careful perusal of the provision of maintenance order this Court is of the view that the appointing authority has the right to cancel any vacancy Notification. An aggrieved person can challenge the State action if his candidature is affected by the subsequent Notification and he is debarred from taking part in such vacancy Notification for selection.

Without going into the merits of the case as to whether the Notification dated 23rd July, 2018 was cancelled without considering the candidature of the petitioner this Court is of the view that the petitioner's grievance will be satisfied if the petitioner is permitted to take part in respect of the vacancy Notification issued on 1st June, 2023. The petitioner is given liberty to apply for distributorship in respect of the Notification dated 1st June, 2023 which is at present prevailing. The State respondent shall consider his vacancy application in accordance with law along with other applications, if any, to fill up the vacancy of Distributorship in Murarai –I and Murarai – II Block.

With the above liberty, the instant writ petition is disposed of.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 05.