

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

W.P.A No. 10454 of 2023

Raju Chatterjee
-Vs-
The State of West Bengal & Ors.

For the Petitioner: Mrs. Pampa Dey Dhabal,
 Mr. Animesh Paul,

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

Heard on: 25 September 2023.

Judgment on: 10 October, 2023.

BIBEK CHAUDHURI, J. : –

1. The petitioner applied for an FPS Dealership pursuant to a vacancy notification dated 24.03.2022 issued by the Food & Supplies Department, Government of West Bengal for a vacancy at Sadigachi, Hasnabad Block, Basirhat Sub-Division, District-North 24 Parganas. Accordingly, an enquiry was conducted on 20.12.2022 against the petitioner's application at the proposed shop-cum-godown site of the petitioner. Thereafter, on 17.04.2023, the petitioner came to know that respondent no.4, one Tapan Kumar Pal was granted the dealership as per the terms and conditions stipulated in the vacancy notification and the WBPDS (M&C) Order, 2013

and was issued a provisional license as per Clause 21(i) of the WBPDS (M&C) Order, 2013.

2. The case of the petitioner is that the rules and regulations for making an application for a new dealership for Fair Price Shop contain certain eligibility criteria, which include that the applicant or any of the members of the family of the applicant should not have any other dealership/distributorship in their name. The petitioner states that one Ramesh Chandra Pal was the dealer of kerosene dealership at Bhebia Bazar, Village Sadigachi, Police Station - Hasnabad, District - North 24 Parganas and consequent to the death of said Ramesh Chandra Pal, his son Swapan Kumar Pal is continuing with the said dealership. Respondent No.4, Tapan Kumar Pal, happens to be one of the sons of said Ramesh Chandra Pal and as such, the application of respondent No 4 herein for the said dealership was against the eligibility criteria for the aforesaid dealership of Fair Price Shop and therefore, the appointment of respondent No.4 is in violation of the rules and regulations. The petitioner states that previously, one Mahadeb Karmakar, who has also applied for the said dealership of Fair Price Shop, through his Learned Advocate on 17.12.2022, had made a letter to the respondent authorities informing about such non-compliance of eligibility criteria by four of the applicants for the said dealership, which included the information about the aforesaid non-compliance of eligibility criteria of said respondent No.4 for the dealership of said Fair Price Shop owing to an existing dealership in the name of the father and the brother of said respondent No.4. The

petitioner states that such information was disclosed to the respondent authorities prior to the issuance of the offer letter to respondent no.4 for the vacancy of the dealership. Therefore, they did the same being fully aware of the fact that the appointment would be in violation of the rules and regulations.

3. Next, the petitioner argues that about 246 residents have made a representation to respondent no.3, the Sub-Divisional Controller, Food & Supplies, Basirhat, informing that though the previous Fair Price Shop was situated at a distance of about 3.5 kilometres, the local residents were able to make such distance because of the existing market, bank, post office and other statutory offices situated nearby, however, if the respondent No.4 is granted the said dealership, it would be extremely difficult for the local residents to reach the said godown-cum-shop and moreover, there are schools situated near the godown and as such, the queue and chaos of people near the said godown would create difficulties to the peaceful studying of children of the said school. Therefore, the respondent authority was under an obligation to consider such mass petition submitted by the local residents as non-consideration of the same would result in going against the scheme of the Fair Price Shop, which has been established by the State for the benefit of the common people. Under the following circumstances, the petitioner has prayed for the following reliefs:

“a) A writ of/ in the nature of Mandamus directing the concerned respondent, particularly

the respondent No. 3 herein, to rescind, recall and/or cancel the memo No. 401/SCF dated 17.04.2023 issued by the respondent No.3 herein (being Annexure "P/4 hereto") in terms of the representation dated petitioner's 21.04.2023 (being Annexure - "P/9" hereto);

b) A writ in the nature of Certiorari thereby quashing and/or setting aside the memo No. 401/SCF dated 17.04.2023 issued by the respondent No.3 herein. (being Annexure - "P/4 hereto"

c) A writ in the nature of Certiorari directing the respondent authorities to produce the records pertaining to the instant case, so that conscionable may be done to the petitioner,

d) An order of stay of memo No. 401/SCF dated 17.04.2023 issued by the respondent No.3 herein (being Annexure- "P/4 hereto"

e) Ad-interim order in terms of prayer (d) above;

f) Costs;

g) Such further and/or other order or orders be passed, and/or direction or directions be given as to this Hon'ble Court may deem fit and proper."

4. In the affidavit filed on behalf of the State Respondent No.3, it is argued that the private respondent stands in a better position regarding the area and condition of Godown, storage capacity and other criteria for establishing the new fair-price shop. The area of the shop and godown of the petitioner is 405 sq.ft and 202 sq.ft respectively, whereas, respondent no.4's shop and godown measures 548 sq.ft and 243 sq.ft respectively.

For the said vacancy notification, only 2 out of 7 applicants were eligible as they fulfilled the basic requirements and, a score-based enquiry in the online module was conducted and the respondent No.4 was found to be the highest score earner and best suited candidate. So, he was selected.

5. Next, the respondent authority argues that one of the main considerations while considering of an application is the vicinity of the Godown with Fair Price Shop. The prime consideration of the Food & Supplies department is the proximity between the godown and shop. Since the prime consideration is the location which is beneficial to the public at large that's why they consider the proposed shop-cum-godown which is located at the notified vacancy Gram Panchayat area as eligible and for choosing a central location they consider a prominent location such as School, College, Market place, etc. to serve as a place of reference (Landmark) for calculating the distance from a central point for a particular proposed fair price shop. The distance of the proposed FPS Godown cum sale counter of respondent No 4, i.e, Tapan Kumar Pal from the central point of the vacancy is 600 meters and that of the Petitioner i.e. Raju Chatterjee is 290 meters.

6. Next, the respondent authority argues that the petitioner misinterpreted the terms and conditions of the notification dated 24.03.2022 and the WBPDS (M&C) Order, 2013 which states that an applicant shall not be eligible to apply for a license of FPS dealership if any person holding a license of FPS dealer, or distributor or wholesaler in his name is a 'relative' as per Clause 2(xa) of the WBPDS (M&C) Order,

2013. It is mentioned that the holding of a S.K. Oil License does not debar any applicant from being granted a Fair Price Shop License. They argue that according to the notification dated 24.03.2022, there is no statutory bar to a person to get an FPS Dealership License if any one of his relatives deals in the S.K. Oil business. Therefore, no rules or regulations were violated when respondent no.4 was appointed for the dealership.

7. Having heard the parties at length and perusal of all the materials on record, it is the opinion of the Court that the license for the dealership of respondent no.4 should not be revoked. From the argument on behalf of the State respondent, it can be concluded that respondent no.4 is a better candidate for filling up the vacancy. Firstly, the area of the shop and godown of respondent no.4 is much bigger than that of the petitioner. The area of the shop and godown of the petitioner is 405 sq.ft and 202sq.ft respectively, whereas that of respondent 4 is 548 sq.ft and 243 sq.ft respectively. Secondly, the distance of the proposed FPS Godown cum sale counter of respondent No 4, i.e., Tapan Kumar Pal from the central point of the vacancy is 600 meters and that of the Petitioner i.e. Raju Chatterjee is 290 meters. Therefore, on these issues, it can be concluded that the Department was absolutely correct in allotting more points to respondent no.4.

8. Coming to the other contention that respondent no.4 should not be granted the dealership as her relative is a dealer of kerosene oil, this Court cannot accept such an argument. The applicant would have been barred from being granted the dealership, if any family member, coming

under the definition of 'relative' under Clause 2(xa), was also a dealer of FPS Shop. In that case, it would be unfair if, in the same family, two people are granted the dealership, whereas a deserving and unemployed person is denied the same. But in this case, the 'relative', namely the husband is a dealer of S.K. Oil. In the notification, nowhere was it mentioned that if the 'relative' is a dealer of S.K. Oil, then the applicant would be barred from being granted the dealership. If this argument is to be considered now, it would be extremely unfair to the applicant, as there are many such existing dealers who are operating the dealership of dealerships of both S.K. Oil and food grains simultaneously. If they or their relatives were granted dealerships in previous instances, then, in this case also the applicant should be granted the FPS dealership. If not, it would be highly unfair and discriminatory. Therefore, for the above reasons, I hold that the applicant should be granted the dealership.

9. This instant petition is dismissed, however, there will be no order as to costs.

(Bibek Chaudhuri, J.)