

Form J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

WPA No. 12372 of 2023

Nargis Parvin
Vs.
The State of West Bengal & Ors.

For the petitioner : **Mr. Ramesh Dhara,**
Mr. Manoranjan Jana,
Ms. Mitali Jana.

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

For the Private respondent : **Mr. Pingal Bhattacharyya,**
Mr. Rajdeep Sinha.

Judgement on : **29.08.2023.**

Bibek Chaudhuri, J.

The petitioner filed an application against a vacancy notification dated 11th April, 2022 for grant of licence of FPS Dealership at Village – Rahana (Part – II) within Amdanga GP in the district of North 24-Parganas. It is submitted on behalf of the petitioner that the petitioner's application was duly accepted by the Food and Supplies Department for consideration. However, in spite of her requisite qualification as per the vacancy notification, she was not granted licence. On the contrary, private respondent was granted licence in

respect of FPS Dealership. The petitioner registers her challenge against such administrative decision in the instant writ petition.

Learned Advocate for the petitioner draws my attention to a letter dated 8th May, 2023 addressed to the learned Advocate for the petitioner by Sub-Divisional Controller, Food and Supplies Department, Barasat. In the said letter, it is stated that the application of the petitioner was rejected on following grounds:-

- (1) There was no shed in front of the proposed shop-cum-godown;
- (2) Loading and unloading facility was not available due to inadequate approach of the road;
- (3) Registered tenancy deed was not submitted during inquiry;
- (4) The petitioner was not financially solvent.

With regard to non-availability of shed in front of the proposed shop-cum-godown it is submitted by the learned Advocate for the petitioner producing Clause 23 of the vacancy notification that the petitioner would be under obligation to construct shed for waiting of at least 20 customers in a queue only after licence is granted in favour of the petitioner. Therefore, the petitioner was under no obligation to construct shed on the date of filing the application. Secondly, it is submitted by the learned Advocate for the petitioner that the petitioner was financially solvent on the date of filing application as she had a fixed deposit in the local branch of Punjab National Bank amounting to Rs.50,000/- on the date of filing of the application but inadvertently she failed to annex the copy of such fixed deposit with her application. Therefore, petitioner's application

are required to be dealt with by the respondent authority afresh to decide her case.

The learned Advocates on behalf of the State respondent as well as the private respondent submit that the mother of the petitioner is holding a licence of dealer of FPS shop and the petitioner being relative is not entitled to get fair price shop licence in view of Clause 20(iia) of the WBPDS (Maintenance and Control) Order, 2013. In reply, it is strongly urged by the learned Advocate for the petitioner that the ground of rejection of petitioner's application was not that the mother of the petitioner is a fair price shop dealer. The ground which are stated in the letter of the Sub-Divisional Controller has been taken care of by the petitioner and her petition cannot be rejected on such grounds. At present, the respondents cannot take the maintainability issue saying that the mother of the petitioner is FPS licence holder. Moreover, the petitioner does not reside with her mother. The definition of relative in Clause 2(xa) of the WBPDS (Maintenance and Control) Order, 2013 does not include the daughter of a FPS Dealer. Therefore, she is entitled to get licence and her application should be considered afresh by the State respondents.

I have heard the learned Advocates for the parties.

Clause 2(xa) of 2013 Control Order defines 'relative' in the following words:-

'relative' includes the family member and the following kin:

- (i) son's spouse, son or daughter;
- (ii) daughter's spouse, son or daughter;
- (iii) brother's spouse, son or daughter;
- (iv) sister's spouse, son or daughter;
- (v) parents brother or sister;

(vi) spouse brother or sister.

A plain reading of Clause 2(xa) clearly shows that the 2013 Control Order provides an inclusive definition of the term 'relative'. It includes family members and others being the kin of the dealer as stated in Sub-Clause (i) to (vi) of Clause 2(xa).

Clause 2(m)(v) includes a daughter within the meaning of family members. It is not in dispute that the petitioner is the family member of the existing FPS Dealer.

It is true that the Sub-Divisional Controller, Food and Supplies Department did not state in the grounds of rejection of application of the petitioner that her application was not to be considered due to the fact that she is a family member and relative of an existing FPS Dealer.

However, when the Statute, viz., 2013 Control Order states that a family member and a relative is not entitled to get FPS Dealership, there cannot be any estoppel against the Statute. Even if the Sub-Divisional Controller or the respondent authority does not mention the ground of rejection of licence of the petitioner and the Statute provides such ground, it is within the scope of judicial review to adjudicate whether the application of the petitioner should be entertained under the provisions of the Statute. While examining the application of the petitioner in consonance with the statutory provision, this Court finds that the petitioner's application is not maintainable as her mother is an FPS Dealer. Considering such aspect of the matter, I do not find any merit in the instant writ petition and accordingly the writ petition is summarily dismissed.

(Bibek Chaudhuri, J.)

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