

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 12446 of 2023

**Abdul Khaleque Dafadar
-Vs-
State of West Bengal &Ors.**

For the Petitioners: Mr. Timir Baran Saha.

For the State: Mr. Susovan Sengupta, Adv.,
 Mr. Subir Pal, Adv.

Heard on: 05.07.2023.

Judgment on: 14.07.2023

BIBEK CHAUDHURI, J. : –

1. This instant writ petition is filed by the petitioner, one Mr. Abdul Khaleque Dafadar, against the respondent authority challenging a notification for appointment of F.P.S. Dealer at Sayestanagar, dated 28.03.2023 under Baduria Block District- North 24-Parganas alleging violation of the Guidelines dated 03.09.2021 for declaration of new vacancy for appointment of F.P.S Dealer.

2. The petitioner carries on business as Fair Price Shop dealer at Magurali Satpai which is adjacent to Village- Sayestanagar, Post Office- Sayestanagar, Police Station- Baduria, District: North 24- Parganas in terms of the licence granted by the licencing authority as per provision of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013. A total number of 7535 ration cards are tagged with the

petitioner's dealership. The consumers/ration card holders of Magurali Satpai and Sayestanagar are tagged with the petitioner's dealership.

3. On 28.03.2023, a vacancy notice by the Directorate of District Distribution, Procurement and Supply, vide order 834/FMR/10D-03/14 (Part-II) was issued for rationalizing of ration card population. The petitioner challenges this notice of vacancy. The petitioner states that on 04.09.2020 the Additional Secretary, Government of West Bengal issued a letter to the Director of District Distribution Procurement and Supply regarding approval for a new vacancy of F.P.S. Dealer in the District of North 24-Parganas. The petitioner states that in the said letter dated 04.09.2020, there is no proposal for a new vacancy of Fair Price Shop dealer at Sayestanagar, Baduria Block under Basirhat Sub-Division, District: North 24-Parganas. Therefore, he argues, that the said vacancy notice was issued not only in violation of the guideline dated 03.09.2021 and the letter dated 04.09.2020 but also, the said vacancy notice was not published in the local as well as in a widely circulated daily newspaper which was essentially required as per provision of the Control Order, 2013. As such the said vacancy notice is liable to be cancelled and/or set aside.

4. Guidelines for rationalization of ration card population and notice for vacancy were published by the Food and Supplies Department, Government of West Bengal on 03.09.2021, 11.02.2022 and 28.03.2023 respectively. For the judicious expedition of this matter, the relevant

portions of these orders must be looked into. The order of 03.09.2021(Memo No. 3004-FS/Sectt./Food/6F-86/2017) read as:

“Government in Food & Supplies Department is aware of the fact that ration card population attached to the existing Fair Price Shops running in the districts is not evenly distributed. Some shops are quite overpopulated, of varying degrees, whereas some shops are running with much less population. Naturally, both the beneficiaries and Dealers are being adversely affected in terms of services through PDS and business volume which is proportional to the tagged ration card population.

In view of the said situation, rationalization of existing ration card population of the Fair Price Shops of the state has been under active consideration of the Department for the quite sometime past and the Government has decided to rationalize ration card population registered with the existing FPSS through setting up of new FPS or merger of ration cards with neighboring FPS as may be convenient to the concerned beneficiaries for better service to the beneficiaries through PDS and bringing in a rational level of parity in terms of volume of business among the shops.

It is to be kept in mind that in this exercise, a certain range of ration card population, between 6500 to 7500, considered to be the minimum average, has to be kept/retained with the existing FPS while exploring rationalization proposals subject to the geographical locations of the areas and convenience of the beneficiaries. However, a new FPS may start with a minimum average population between 4000 to 5000beneficiaries/cards. It has to be kept in mind that all categories of Ration Cards of the habitation and full family shall be tagged/shifted.

Following points are mentioned below for guidance:

1. The following situations may occur while considering rationalization proposals:-

Situation-I

In case of overpopulated FPS having card population more than 12000, proposals for new vacancies may be given at appropriate locations of the areas under the service of the existing FPS through bifurcation of the card population as may be convenient for the concerned beneficiaries.

Situation-II

In case of overpopulated FPS having card population between 10000 to 12000, around 3000-5000 cards of the existing FPS may be considered for de-tagging and to be clubbed with the de-tagged over populated card of any neighboring FPS(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....”

5. The order of 11.02.2022 (No.328/FMR/10D-03/14 (Part-II)) read as follows:

“Food & Supplies Department has issued Guidelines vide Memo No. 3004-FS dated 03.09.2021 vacancies or merger of small ration card population with neighboring FPS. In the said guidelines, it was envisaged that, in case of excess population, a range between 6500 and 7500 ration cards/beneficiaries has to be retained with an existing FPS while exploring such rationalization,

However, necessity for further modification of the above range of retained population was felt and under active consideration of the Department for sometime past. Now, it has been decided by the Department that a range of 5000 to 6500 ration cards will be

considered as the average population to be retained with an existing FPS. However, a new FPS may start within a range of 3000 to 4500 ration card population....”

6. The vacancy order of 28.03.2023 (Memo No. 834/FMR/10D-03/14 (Part-II)) read as:

“ Guidelines for rationalization of excess Ration Card population of existing FPSS through declaration of new vacancies or merger of small Ration Card population with neighboring FPS 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....”

7. Therefore, from the above orders it can be inferred that via the notification of 2021, the minimum average ration card population that

had to be kept/retained with the existent FPS dealers was fixed at 6500 to 7500. According to the order of 2022, the minimum average ration card population that had to be kept/retained with the existent FPS dealers was fixed at 5000 to 6500. Now, according to the vacancy notification of 2023, the existing FPS dealers would be allowed to retain less than 5000 ration card holding population considering the local scenario, convenience/inconvenience of the beneficiaries and the larger interest of PDS in the locality. The petitioner is an existing FPS dealer. He states that a total 7535 number of consumers/ration card holders are presently tagged with his dealership. Therefore, if any appointment is made by following the vacancy notice then in that event the number of ration cards tagged with the petitioner's dealership would be drastically reduced from 7535 ration cards which would be less than the viable limit. Therefore, the said vacancy notice is liable to be cancelled and/or set aside.

8. The petitioner argues that the said business of M.R/F.P.S. Dealership is the only source of the petitioner's life and livelihood which is guaranteed under Article 21 of the Constitution of India. He has invested huge sums of money in carrying on the said dealership business and therefore if the vacancy is filled up in terms of the said vacancy notice and curtailed the ration cards tagged with the petitioner's dealership then in that event the petitioner will suffer irreparable loss and injury which cannot be compensated in any other way as the viability of his business would be greatly affected. He argues that the respondent issued the impugned notification without following the provisions of the Control

Order and existing policy, norms and procedure for the appointment of a new Dealer. Therefore the said notification is not tenable in the eyes of the law and is a glaring example of an arbitrary exercise of power. He contends that he is carrying on business strictly by following the Control Order, 2013 and distributing the M.R. articles to the consumers tagged with his shop as per allocation made by the competent authority from time to time. None of the consumers tagged with the petitioner's business raised any objections either to the petitioner or to the competent authority that they are not getting M.R. Articles as per allocation made by the competent authority or facing difficulties to get the said articles and/or the petitioner is not functioning properly. Therefore the impugned notification of vacancy was published without any basis and for this reason the petitioner is praying before this Court to issue a writ of Mandamus commanding the respondent to cancel/rescind and set aside the vacancy notice.

8. After having heard the arguments of the Learned Counsel at length, it is the opinion of the Court that the respondents have not acted in an arbitrary manner while decreasing the ration card holding population to 5000 for existing FPS dealers. While it is true that the petitioner would have to deal with a lesser number of population and it could lead to some financial losses, this administrative action does not violate any legal right of the petitioner. While taking out the new notification for the vacancy, the Department of Food and Supply, Government of West Bengal acted within

their power and authority delegated to them by the State Government under the National Food Security Act, 2013. The Primary objective and expansion of Public Distribution System in India is to provide necessary consumer food items at subsidized and cheap prices, protecting the consumers from increasing prices of goods. Therefore, it is in furtherance of this objective that such administrative decisions are taken which would benefit the public at large and not just cater to the interest of a selected few.

9. After the introduction of the targeted Public Distribution System (TDPS), the State Government has to identify eligible beneficiaries under the National Food Securities Act, 2013 and these eligible beneficiaries would replace the existing set of beneficiaries and categorized under (Antyaodaya Anna Yojana Scheme) AAY, (Below Poverty Line) BPL and (Above Poverty Line) APL. As a result, these eligible beneficiaries would be tagged with the respective Fair Price Shops from where they would get their entitled quantity of food grains as stipulated under the said Act and therefore, there would be a need for de-novo tagging of eligible beneficiaries with the Fair Price Shops, which may in return result in the reduction in the number of ration cards tagged with such dealers under NFSA norms. This was published by Food & Supplies Department, Government of West Bengal vide Memo No. 796-FS/Select/Food/14R-OG/2015 on 12.03.2015. Therefore, following these guidelines and objectives, the Department issued a notification for the vacancy and

subsequent reduction in the number of ration card holding population of existing FPS dealers.

10. I, therefore, find no merit in this writ petition and it is dismissed on contest. There shall however be no order as to cost.

(Bibek Chaudhuri, J.)