

Form J(2)

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

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

WPA No. 13863 of 2023

**Nantu Das Mahanta
Vs.
State of West Bengal & Ors.**

**For the Petitioner : Mr. Aswini Kumar Bera,
Mr. Arijit Bera**

**For the State : Mr. Somnath Ganguli,
Mr. Tanoy Chakraborty**

**For the Respondent
No. 5 : Mr. Debabrata Chakrabarti,
Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharya**

Judgement on : 21.06.2023.

Bibek Chaudhuri, J.

The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution praying for issuance of a writ in the nature of mandamus directing the respondent nos. 3 and 4 to act in a clean hand in relation to allotment of licence for fair price shop at village – Patharpara within Police Station – Goaltore, Paschim Medinipore. The petitioner has also prayed for invocation of writ in the nature of certiorari for production and inspection of documents

relating to grant of licence of fair price shop of village – Patharpara for conscionable justice.

Fact remains the respondent no. 3 issued a notification bearing No. 159/DCM (W)MR/2022 inviting applications for grant of licence of MR Dealer at village – Patharpara. It was stipulated that the application is required to be filed on 7th May, 2022. It is the case of the petitioner that though the petitioner prepared the application in the proforma he failed to upload the same in the official website of the Food and Supply Department due to non-operation of the said website on 7th May, 2022. Subsequently on 9th May, 2022 the application was uploaded. The concerned respondents, it is to be mentioned specifically, did not reject his application being time barred. On the other hand, the application was taken into consideration and notice was sent to the petitioner stating, *inter alia*, that an inquiry is to be held on 8th July, 2022. Subsequently, the petitioner was informed that the inquiry was preponed to 6th July, 2022. It is further stated by the petitioner that on 6th July, 2022 inquiry was held by the respondent no. 4 and during inquiry it was found that the petitioner did not file affidavit as per annexure – 1 of the instant writ petition. The petitioner was asked to file the affidavits at the earliest and as per the advice of the concerned respondent affidavits were filed on 11th July, 2022. Subsequently, further inspection was held twice but licence was not granted in favour of the petitioner. He came to know subsequently that MR Dealership of village – Patharpara was tagged with the MR Dealership of respondent no. 5 who purchased a piece of land at Patharpara for obtaining licence of MR Dealership at village – Patharpara. Subsequently, the petitioner came to know by a letter dated 29th May, 2023 issued by the Sub-Divisional Controller to the

learned Advocate for the petitioner in reply to his demand justice on behalf of the petitioner stating, *inter alia*, that four online applications were received from eligible candidates against the declared vacancy. After scrutiny the same were forwarded to the inquiry team for physical inquiry. The Inquiry Officer had submitted the reports through online module. On the basis of the said inquiry report respondent no. 5, Samiron Mallick was selected for FPS Dealership by the Department, Government of West Bengal. The claim of the present petitioner was rejected on the following grounds :-

- (i) On the date of application the Bank balance of the petitioner was below Rs.50,000/-;
- (ii) The petitioner did not produce annexure – 1 as per prescribed proforma;
- (iii) Sale counter was below 200 square feet.

It is submitted by the learned Advocate for the petitioner that on the date of application, i.e., 7th May, 2022 the Bank balance in the petitioner's account more than Rs.50,000/-. Secondly, on the advice of the inquiry team he filed affidavit on 11th July, 2022. The respondent no. 5 is having a sales counter smaller than that of the petitioner. Therefore, the petitioner's application ought to have been allowed and the licence for MR Dealership ought to have been issued in the name of the present petitioner.

Learned Advocate for the State respondent, on the other hand, submits that the petitioner submitted his application on 9th May, 2022 online. Therefore though in the application the date of filing is stated to be 7th May, 2022 it was the duty of the petitioner to show that on 9th May, 2022 he had Bank balance of Rs.50,000/- in his Bank. It appears from the Bank statement which has been annexed with the

instant writ petition that the Bank balance of the petitioner on 9th May, 2022 was Rs.778.35/-. It is also admitted that the petitioner failed to produce the affidavit as per annexure – 1 along with the application form. The said affidavit was filed subsequently on 11th July, 2022. It is pointed out by the learned Advocate for the State respondents that the petitioner did not pray for setting aside of the order/letter dated 29th May, 2023. The State respondents already granted licence in favour of the respondent no. 5. Unless and until a prayer is made for setting aside the licence issued in favour of respondent no. 5, the instant writ petition cannot be said to be maintainable.

Learned Advocate for the respondent no. 5 submits referring to the annexures in the writ petition that the petitioner failed to comply with the requisite criterion and the respondent no. 5 was selected as qualified candidate for having licence for fair price shop.

In reply, it is submitted by the learned Advocate for the petitioner that the petitioner has made a specific prayer for cancellation of the licence of respondent no. 5. It is the case of the petitioner that entire process of issuance of licence was made by the State respondent nos. 3 and 4 in uncleared hand and, therefore, the grant of licence in favour of respondent no. 5 is *mala fide*.

Having heard the learned Advocates for the parties and on careful perusal of the entire materials-on-record this Court finds that on 9th May, 2022 indisputably the petitioner had no requisite Bank balance in his account. It is proposed by the learned Advocate for the petitioner that the petitioner may be permitted to deposit the requisite amount in his Bank and the State respondents may be directed to hold further inquiry. The Writ Court has the power to consider as to whether the action of the State violates fundamental

and legal right of the petitioner. If the inquiry process is found to be *mala fide* such process can be set aside with a direction to the State respondents to hold fresh inquiry. However, in the instant case, it is the case of the petitioner that the inquiry was held thrice for selection of MR Dealer at village – Patharpara. The petitioner failed to upload the Bank statement dated 9th May, 2023 on the date on which the application was uploaded. On the other hand, the petitioner himself submitted the Bank statement of his account on perusal of which it is found that on the date of filing application as well as on the date of inquiry he had no requisite balance in his account. It was also found by the respondent authority that the application in prescribed proforma was incomplete as affidavit was not filed along with the application. Such affidavit was filed after the first inquiry held on 8th July, 2022. The respondent no. 5 complied with all the requirements necessary for the purpose of obtaining licence.

In view of such circumstances, I do not find any merit in the instant writ petition and accordingly the instant writ petition is dismissed.

(Bibek Chaudhuri, J.)

**Srimanta, A.R.(Ct.)
Item No. 18.**