

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

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

WPA 11312 of 2023

**Trilochan Saha
Vs.
The State of West Bengal & Ors.**

With

WPA 14869 of 2023

**Trilochan Saha
Vs.
The State of West Bengal & Ors.**

For the petitioner: Mr. Saptangshu Basu, Sr. Adv.
 Mr. Ramesh Dhara
 Ms. Mousumi Chowdhury

For the State : Mr. Supratim Dhar
 Mr. Swarnava Banerjee
 Mr. Amrit Lal Chatterjee

Item Nos.73 & 74

Heard & Judgment on: 31.07.2023

Bibek Chaudhuri, J.

Both the writ petitions are taken up for analogous hearing as the petitioner of both the writ petitions is the same and identical

person challenging a process of recruitment of distributorship under W.B.P.D.S. (Maintenance and Control) Order, 2013.

In W.P.A. 11312 of 2023 it is stated by the petitioner that the DDP&S, Food & Supplies Department, Government of West Bengal, respondent No.2 herein invited applications for filling up the vacancy of the distributor under Block Murarai-II Sub-Division, Rampurhat in the district of Birbhum. The petitioner made an online application as directed in the said notification specifying all information relating to eligibility criteria of the petitioner in favour of his claim for distributorship. Subsequently, a spot inquiry was held on 28th December, 2022 by the Inspecting Team of Food and Supplies Department. All necessary documents were inspected by them but no final selection list was published by the respondent No.2 in respect of the said vacancy. It is the case of the petitioner that he made as many as two representations before the respondent authorities but those representations were not entertained or replied by the respondents.

Under such circumstances, the petitioner has prayed for issuance of a writ in the nature of mandamus commanding the respondents and each of them to forthwith rescind, recall and / or withdraw the decision of refusing to give appointment letter and licence to the petitioner against the vacancy in question forthwith.

The petitioner has also prayed for issuance of writ in the nature of mandamus commanding the respondents to give appointment letter and licence to the petitioner in respect of the vacancy of the above mentioned distributor.

At the outset, this Court finds it absolutely necessary to state that the case of the petitioner in W.P.A. 11312 of 2023 was that his application for granting licence in respect of distributorship of Murarai-II Block was not considered by the respondents and the respondents also did not give any reply to the representations filed by the petitioner.

Thus, it is clear from the averment made by the petitioner that he was not aware of the fate of the vacancy notification dated 1st September, 2022. In that view of the matter, the prayer of the petitioner to forthwith rescind, recall and/or withdraw the decision of refusing to give appointment letter and licence to the petitioner is premature and cannot be taken into consideration. On this score only this Court is not in a position to give any relief in respect of WPA/11312/2023.

Next comes WPA/14869/2023 filed by the petitioner praying for a writ in the nature of mandamus commanding the respondents, particularly respondent no. 1 to rescind, recall and/or withdraw the decision of cancelling the vacancy notice dated 1st September, 2022

which is the subject-matter of WPA/11312/2023. The petitioner has also prayed for a direction against the respondents, particularly respondent nos. 1 and 2 to cancel vacancy notice dated 1st June, 2023.

In the instant writ petition, it is submitted by the petitioner that on 1st September, 2022 a vacancy notification for granting licence of distributorship in Murarai –II block was issued. The petitioner made an application in form 'G' in the online portal of the Food and Supplies Department. In the said form, he clearly mentioned the specification of his godown with plinth level. However, without assigning any reason previous notification dated 1st September, 2022 was cancelled by the respondent authority and present notification dated 1st June, 2023 was published.

The Deputy Director of DDP&S, Food and Supplies has filed a report in the form of affidavit in the instant writ petition on 4th July, 2023 stating, inter alia, that in respect of the previous notification dated 1st September, 2022 an Inspecting Team examined the godown of the petitioner and found that there was no plinth level of the godown of the petitioner since a sole of fillings was constructed up to the floor level of the said godown. Secondly, there was no varandah or loading platform in the said godown. Therefore, his application was rejected. In view of rejection of his previous application the

respondent authority has published a fresh notification on 1st June, 2023 for filling up of the said vacancy.

It is submitted by the learned Advocate for the State that the petitioner is always entitled to take part in the second vacancy notification with similar prayer subject to fulfillment of the specification as to the godown.

Mr. Basu, learned Senior Counsel on behalf of the petitioner contended that plinth level of the godown or existence or non-existence of a varandah in front of a godown for the purpose of loading are not two essential grounds for which one's application could be rejected. In support of his contention Mr. Basu refers to an unreported decision of this Court in WPA/8833/2023, Pawan Kumar Agarwal –Vs.- State of West Bengal & Ors., decided on 27th June, 2023. In the said judgment this Court had the occasion to deal with specification criteria in respect of the godown which is delineated in Clause 6(e) of part II of the vacancy notification. In the said decision the application of the petitioner was rejected on the ground that the petitioner does not have concrete wall on all four sides of the godown. The Court found that one side of the godown was brick built up to 10 feet level and the remaining four feet was covered by corrugated sheet. It was also found that the back portion of the corrugated sheet was covered by brick built wall. Therefore, contention of the

respondents was rejected on the ground that the petitioner had brick built wall on all four sides of the said godown.

In the instant case, the inquiry report in respect of the application filed on the basis of vacancy notification dated 1st September, 2022 shows that the petitioner constructed a slope up to the floor level of the godown so that the tracks carrying FPS materials can directly enter inside the godown of the petitioner.

Dictionary meaning of the term 'plinth' is the built up covered area measured at the floor level of the basement or of any storey. Thus, plinth area means the sum total of floor area contained in all storeys of a building, the measurement for which shall be taken from the external faces of the enclosing wall or other boundaries of such buildings.

In the vacancy notification, by the term 'plinth' the respondents want to mean the height of the floor area from the ground level and measurement thereof. According to the vacancy notification, the measurement of the 'plinth' or 'floor level' shall be two feet from the road level or ground level.

If there is a slope raising to the floor level of the godown of the petitioner plinth level could be measured from three side walls by taking measurement of the floor level from the road/ground level.

Since the petitioner did not raise any dispute with regard to non-existence of varandah in front of the godown for loading purpose, this Court refrains from making any observation thereof.

Learned Advocate for the petitioner submits a Division Bench Judgment of this Court passed in FMA/913/2020 on 9th October, 2020 in M/s. Kultali Food Marketing Private Limited & Anr. –Vs.- State of West Bengal & Ors. The factual circumstances of this unreported decision is distinguishable from our case and hence is not applicable under the facts and circumstances of the present case.

In view of the above discussion WPA/11312/2023 is dismissed on contest being premature.

WPA/14869/2023 is disposed of permitting the petitioner to take part in the notification dated 1st June, 2023. It is made clear that in order to ascertain the plinth level of the petitioner's godown, observation of this Court shall be followed by the Inspecting Team and the Inspecting Team shall take independent decision in accordance with law on all other points without being influenced in any way by any observation made in the instant writ petition.

The petitioner is specially permitted to take part in respect of the vacancy notification praying for his appointment as distributor of Murarai –II block. This order is passed under the facts and

circumstances of this case only and it will not act as a precedent in other matters.

Both the writ petitions are, accordingly, disposed of.

(Bibek Chaudhuri, J.)