

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 16375 of 2022

Sk. Mainuddin

Versus

State of West Bengal & Ors.

For the petitioner : Mr. Ram Anand Agarwala
Ms. Nibedita Pal
Mr. Ananda Gopal Mukherjee
Ms. Sonam Ray
.....Advocates

For the State : Mr. Samrat Sen
Mr. Nilotpall Chatterjee
Mr. Amrita Lal Chatterjee
.....Advocates

For the respondent no. 6 : Mr. S.P. Lahiri
Mr. Kunal Ganguly
Mr. Tirupati Mukherjee
Ms. Sanchari Chakraborty
.....Advocates

Heard lastly on : 31.03.2023

Judgment on : 25.08.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for a direction upon the respondent authorities to publish vacancy for appointment of FPS dealer at Dubrajpur within Jaswantpur Gram Panchayat in Birbhum in widely circulated newspapers by extending reasonable time for filing application by the intending applicants.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. The writ petition was filed claiming that the notification issued by the Sub-Divisional Controller, Food and Supplies, Suri Sadar, Birbhum (in short “SCFS”), for appointment of FPS dealership at village – Ghoratori, P.S. Dubrajpur, District – Birbhum, was not widely published. Rather, the said publication was made in such a fashion that a blue eyed candidate, whose godown was constructed on danga land, might be favoured with the appointment against the said dealership. In the affidavit, the State disclosed the documents wherefrom it appeared that the SCFS issued vacancy notification on 28th January 2022, which was published in the official gazette on 29th March 2022. It was also disclosed that the advertisement in “The Times of India” and in “Aajkal” was published by the Director, District Distribution, Procurement and Supply, who was not the authority for such publication under statute. Clause 20(iia) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013, provided as follows: - “20(iia) after obtaining the approval of the State Government, the Sub-divisional Controller, Food & Supplies, shall declare such vacancy stating the eligibility criteria through notice in the office notice board and

publish the same in the Official Gazette. The Sub-divisional Controller, Food and Supplies, shall simultaneously publish an indicative advertisement of the said vacancy for information to the general public in at least one Bengali newspaper and one English newspaper having State-wise circulation.” In terms of the above clause, the Sub-Divisional Controller, Food and Supplies, should publish the advertisement of the vacancy in the papers having State-wise circulars. But, in the instant case, the advertisement of the instant vacancy along with so many other vacancies was published by the Director, DDP & S, in the newspapers, despite having no authority for such publication under statute and that too, not having wide circulation. It was well settled and established for many decades when the statute provided something to be done in a particular manner, the same should be done in that manner only and not otherwise. Reliance is placed on the famous case of Nazir Ahmed versus The King Emperor, followed in a recent judgment reported in 2022 SCC Online SC 1264 (Harbhajan Singh versus State of Haryana & Ors.). The process of declaration of vacancy was vitiated and hence, the applicant could not participate against the said vacancy.

3. Learned counsel appearing on behalf of the State respondents submitted as follows. The notice for Fair Price Shop vacancy at Dubrajpur, Village – Ghoratari, within Jashpur Gram Panchayat in the District- Birbhum was declared by the Sub-Divisional Controller, Food & Supplies, Suri on 28th January, 2022, after getting approval from the Department of Food & Supplies, Government of West Bengal. The said notice was also published in the Kolkata Gazette on 29th March, 2022. The notice was also

published in a daily English Newspaper the “Times of India” and daily Bengali newspaper the “Aajkal” on 27th April, 2022. The notice was widely published as provided in Clause 20 (iia) of 2013 Control Order. The instant writ petition became infructuous as the issue in the writ petition was wide publication. The publication been made by the Director, DDPS, who was the complaint Authority to make such application. The Director of DDPS was a Superior Authority than the SCFS and enjoyed all the power and privilege. For this reason the paper publication was valid, legal and in consonance with the Control Order, 2013. The petitioner provided wrong facts and figures before the authorities as well as the Hon’ble Court and such act constituted misrepresentation.

4. Learned counsel appearing on behalf of the respondent no. 6 submitted as follows. At no point of time any legal/fundamental/statutory right accrued in favour of the petitioner for being considered to obtain F.P.S. Dealership. The petitioner did not participate in the process despite having full knowledge of vacancy of the concerned F.P.S. Dealership. In absence of any violation of his statutory/fundamental/legal right, the writ petition was not maintainable. This instant writ petition was a glaring example of abuse of process of law and suppression of material facts, rather distortion of material facts. The actual fact remained that on 28th January, 2022, F.P.S. vacancy notice was published whereas the Gazette Notification was done on 21st March, 2022 and finally the wide circulation through newspapers was done on 27th April, 2022. Notably, the petitioner did not throw any challenge to the Notice and Gazette Notification and only challenged the purport of the

newspaper publication that too on technicalities. Hence, the issue of his knowledge had got diluted at the backdrop of such infirmity which established the fact of his full knowledge about the whole process. Reading of paragraph nos. 3, 4 and 5 of the writ petition would show that the petitioner never raised any objection before, even after publication of the three aforesaid documents. Moreover, the petitioner admitted that on 28th May, 2022 and 11th July, 2022 and 15th July 2022 the petitioner came to learn about the whole process. The presumption of fact postulated that any newspaper publication was 'in rem' meaning thereby for wide knowledge and for common people at large (including the petitioner). The petitioner on oath stated that there was no newspaper publication, but by presumption of fact and there being a newspaper publication, the petitioner was well aware of such vacancy of F.P.S. Dealership. The provision laid down under Clause 20(ii) (a) was procedural in nature and did not lay down any substantive provision of law. Minor departure, if any, or alternative modalities in the procedural mechanism without affecting substantive right did not attract any judicial review as there was no decision making process involved in such procedural mechanism. It was no more res integra that unless substantive right was violated by any alleged procedural infraction the same did not cause any prejudice to anyone. Unless such prejudice was caused in any manner then such principle had no manner of application. The said scheme of law involved four authorities in a five stages process. It started from the stage of submission of proposal for the vacancy by the SCFC before the District CFS who, in turn, should send such proposal before the Director

DDPS. These two stages were ministerial in nature and involved no decision making process. The third stage which was a decision making process by the concerned Director by examination/re-examination upon enquiry for sending for approval before the Department which should grant approval at the highest level upon making decision over it. These two stages were primarily substantive decision making process in effect. Lastly, again from the highest level of decision making the process went back at the bottom level of the SCFS for declaration of vacancy and newspaper publication which was itself a ministerial work involving no decision making process. When a process began at the bottom level, reached to the top strata and again came back to the bottom level, it was evident that the process (of newspaper publication) was only ministerial in nature without affecting any substantive right.

5. I heard the learned counsels for the parties and perused the writ petitions, the affidavits filed and the written notes of submissions.

6. It appears that a notice for vacancy of a fair price shop at Dubrajpur within Jaswantpur Gram Panchayat in the District of Birbhum was declared by the Sub Divisional Controller Food and Supplies, Suri on 28th January, 2022, after getting approval from the Department of Food & Supplies, Government of West Bengal. This was also published in the Kolkata Gazette on 29th March, 2022. Notice was also published in the English newspaper “The Times of India” and the daily vernacular newspaper “Ajkal” on 27th April, 2022.

7. The prime objection of the petitioner, although not taken up in the writ petition but subsequently canvassed after getting to know about the relevant records from the State, is that the notice for vacancy could not have been published by the Director, DDP & S, but by the Sub Divisional Controller, Food and Supplies. This is in view of Clause 20(iia) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013. According to the petitioner, if a thing is to be done in a particular way. The same could not have been done in a different way.

8. First, the Director of the DDP & S was a superior authority than the Sub Divisional Controller.

9. More pertinently, one has to find out whether any prejudice was caused by the Director of the DDP & S publishing such notice.

10. It has been contended on behalf of the respondent no. 6, the provision laid down under Clause 20 (iia) of the Control Order was procedural in nature and a minor departure, if at all, or an alternative modality not affecting the substantive rights ought not attract judicial review.

11. It further appears that on 28th January, 2022, the vacancy notice was published where as the Gazette notification was done on 21st March, 2022 and finally the publication in the widely circulated newspapers was done on 27th April, 2022. Interestingly, the petitioner did not challenge the notice and the Gazette notification and only challenged the newspaper publication.

12. A publication in the Gazette is no mean thing. Such publication imputes knowledge to all members of the public. Thus, the petitioner could not deny knowledge of such notice.

13. In any event, questioning the authority to publish notice was only an afterthought.

14. The mere fact that the notice was issued by a superior authority could not have caused prejudice to anyone. What was important was that a notice was published declaring a vacancy for which applications were invited. It would be preposterous to suppose that anyone would ignore such notice after seeing the name of a superior authority issuing the same.

15. In view of the above, I do not find any merit in the application.

16. Accordingly, the same is dismissed.

17. However, there shall be no order as to costs.

18. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)