

**29.11.2023
Sl. No. 10
Suman
Ct.No.654.**

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

WPA 16666 of 2023

**Nandigram Cooperative Marketing Society
Limited and Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Arjun Ray Mukherjee,
Ms. Saheli Mukherjee
..for the petitioners

Ms. Jhuma Chakraborty
Mr. Suddhadeb Adek
..for the State

This writ petition is filed under Article 226 of the Constitution of India challenging the notification under Memo No.2049 FMR 13L-36/14/Part-(Pt-VI) dated 1st June, 2023 issued by the Director, Directorate of DDP & S, Government of West Bengal declaring vacancy of MR distributorship at Nandigram–II Block under Haldia Sub-Division.

The brief fact of the case is that the petitioner No.1 is the registered Cooperative Society within the meaning of West Bengal Cooperative Societies Act bearing registration No. 132 dated 31st January, 1961 and the petitioner No.2 is the Secretary of the said

society. The petitioner No.1 is an MR distributor and it has been running the said business of MR distributorship covering Nandigram–I and II Blocks for more than 40 years and its licence has been renewed from time to time and it is valid till 31st December, 2023. On 1st August, 2019 the petitioners came to learn that a notification dated 5th July, 2019 has been issued by the District Controller, Food & Supplies, Purba Medinipur whereby it was informed that pursuant to the approval of the Government applications were invited from the intending self-help groups/registered cooperative societies/Group of individuals etc. for filling up distributorship in terms of clause 26(ii) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 at Reapara, Nandigram-II Block, Purba Medinipur. The petitioners challenged the said notification in WPA 15363 of 2019. During the pendency of the aforesaid writ petition the notification dated 5th July, 2019 was cancelled. Thereafter on 1st September, 2022 another notification bearing No. 2867-FMR 131-36/14 (Pt-V) dated 1st September, 2022 was issued by the Directorate, DDP & S, Government of West Bengal declaring vacancy of distributorship at Nandigram – II Block, Purba Medinipur. It was informed that pursuant to the approval of vacancy of distributor vide order dated 3rd June, 2022 read with 22nd August, 2022 by Department of Food & Supplies, Government

of West Bengal, applications were invited. The petitioners challenged the aforesaid notification dated 1st September, 2022 in the writ petition being WPA 22336 of 2022 precisely on the ground that the District Administration and District Controller, Purba Medinipur did not exercise their discretion in accordance with law as stipulated in clause 26(ii) of Control Order instead they followed the order of higher authorities in violation of the Control Order. The aforesaid writ petition was heard and judgment was reserved. During pendency of the aforesaid writ petition, the Director, Directorate of DDP & S, Government of West Bengal issued another notification for filling up of vacancy of distributor on 1st June, 2023 which is under challenge in the present writ petition. In the present writ petition notification dated 1st June, 2023 is challenged on the similar ground that the District Administration and the District Controller, Purba Medinipur did not exercise their discretion in accordance with law as stipulated in clause 26(ii) of Control Order instead they followed the order of the higher authority in violation of Control Order and the notification has been issued based on instructions given during the meeting held on 19th May, 2018.

Mr. Arjun Ray Mukherjee, learned advocate for the petitioner submits that the petitioner previously challenged the notification dated 1st September, 2022 in writ petition being WPA 22336 of 2022 on the ground

that the provisions contained in clause 26(ii) of the Control Order, 2013 has not been adhered to while issuing such notification. However, such writ petition was dismissed and the grounds as aforesaid was turned down. Be that as it may, in the instant writ petition, the State-Respondents have not produced any documents to suffice that the District Administration and the District Controller, Purba Medinipur has followed the provisions under clause 26(ii) of the Control Order. Since from the materials on record it would manifest that the provisions of clause 26(ii) of the Control Order, 2023 has not been followed by the authorities while issuing, the said notification dated 1st June, 2023, hence it is liable to be cancelled.

Ms. Jhuma Chakraborty, learned advocate for the State-Respondents submits that in terms of the order of this Court the State-Respondents have submitted its report wherein it is categorically stated that the provisions under clause 26(ii) of the Control Order, 2013 has been followed by the District Administration and there is no denial of the said fact in the Exception filed by the petitioner to the report of the State-respondents. Since on the similar ground the previous writ petition has been dismissed, she submits that the present writ petition is also liable to be dismissed.

Having heard the learned advocates for the respective parties the only issue that has fallen for

consideration in the present writ petition is whether the notification dated 1st June, 2023 has been issued following the stipulation in clause 26(ii) of the Control Order, 2013.

The petitioners challenging the previous notification for filling up a vacancy of distributorship dated 1st September, 2022 raised the similar ground in WPA 22336 of 2022. A Co-ordinate Bench of this Court while dismissing the aforesaid writ petition observed in paragraph 7 as hereunder:-

“Even as regards clause 26(ii) of the said Control Order, there is no material to indicate that the District Administration and District Controller, Purba Medinipur did not exercise powers in accordance with law and merely followed orders of higher authorities.”

For better appreciation of the issue, Clause 26(ii) of West Bengal Public Distribution System (Maintenance & Control), Order, 2013 is reproduced as hereunder:-

“(ii) If it appears necessary for the District Administration to declare a new vacancy of Distributor for better functioning of Public Distribution System in a particular area, the concerned District Controller, Food and Supplies, shall submit the proposal of such vacancy to the Director with the opinion of the concerned District Magistrate. The Director shall examine the proposal and send it to the State Government with his specific views for consideration. On receipt of the proposal of the vacancy, if the State Government is satisfied, it may approve the vacancy and communicate its decision to the Director.”

In terms of the order of this Court dated 19th July, 2023 the State-Respondents have submitted its report in the form of affidavit. In paragraph No.7 of the said report it has been categorically stated that the District Administration worked as per provision laid down in clause 26(ii) of the Control Order, 2013. Nothing has been spelt out in the Exception filed by the petitioner to such report denying and/or challenging such assertion made by the State-respondents in its report of following stipulation under Clause 26(ii) of the Control Order, 2013. Thus, precisely there is no material to suggest that the District Administration and the District Controller, Purba Medinipur did not exercise its power in accordance with law as envisaged under clause 26(ii) of the Control Order, 2013.

In the light of the aforesaid discussion, the writ petition stands dismissed.

However, there shall be no order as to costs.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)