

03.08.2023.
Item No. 6.
Court No. 13
ap

M.A.T. No. 1398 of 2023
With
I.A. No. CAN 1 of 2023

Nashirul Islam
Versus
The State of West Bengal & Ors.

Mr. Abhratosh Majumder, Id. Sr. Advocate,
Mr. Ramesh Dhara,
Ms. Mousumi Choudhury.

...For the appellant.

Md. T. M. Siddiqui, AGP,
Mr. Amritalal Chatterjee.

....For the State.

Mr. Debabrata Saha Ray,
Mr. Subhankar Das,
Mr. Sankha Biswas.

...For the respondent no.6.

1. This intra court appeal is filed against an interim order dated 13th July, 2023 passed by the learned Single Judge of this Court in W.P.A. No. 16097 of 2023 (Sanjib Kumar Mondal – Vs. – The State of West Bengal & Ors.).

2. The facts relevant are that the writ petitioner/respondent no.6 had challenged the allotment of M.R. Dealership at Village – Mahisgram within Sabaldaha Gram Panchayet to the appellant herein.

3. The contention of the writ petitioner is that there is violation of Clause 20 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 as amended on 14th December, 2020.

4. By reason of the amendment, certain persons under Sub-clause (iii) of Clauses (a) to (g) have been disqualified from applying for M.R. Dealership. The said Clauses are set out hereinbelow:

“(iiia) Following person shall not be eligible to apply for a licence of a dealer, namely –

- (a) a person holding a license of dealer or distributor or wholesaler in his name or a person whose relative already has a dealer or distributor or wholesaler license;*
- (b) a member of local bodies, local authority, Panchayati Raj Institutions, board or corporation, or Member of Legislative Assembly or a Member of Parliament during his tenure as such capacity;*
- (c) a minor or person of unsound mind or an insolvent;*
- (d) a person convicted by the court under the Act or in any other criminal proceedings connected with essential commodities;*
- (e) a person holding a post in the establishment of any State Government or Central Government or any authority or body or institution of Local self-government established or constituted by or under the Constitution or by any other law made by the Parliament or a State Legislature or by notification issued or order made by the Central Government or a State Government;*
- (f) a limited liability partnership;*
- (g) a corporation or company.”*

5. It is further alleged by the writ petitioner/respondent no.6 that the Sub-Divisional Controller of the area had received illegal gratification of a sum of Rs.6,00,000/- from the appellant.

6. It is submitted that the appellant has been running a fertilizer business and even otherwise does not have the required godown space, as mandated in the Notice Inviting applications dated 29.07.2022.

7. It is also alleged that the writ petitioner was a better candidate than the appellant.

8. After scrutiny of applications, the appellant was found to have secured 75 marks and the writ petitioner/respondent no.6 secured 45 marks.

9. Consequently, an allotment order for M.R. Dealership was made in favour of the appellant. When the writ petition was moved, probably on the submissions of the learned Counsel representing the writ petitioner, the learned Single Judge, went on to hold an order as follows:

“Clause 13 of Part-3 of Vacancy Notification states the eligibility criteria of the candidates which excludes the candidates already having a business of FPS dealership or distributorship or wholesalers a member of local bodies, local authority, Panchayati Raj Institutions, board or corporation, or Member of Legislative Assembly or a Member of Parliament during his tenure in such capacity; a minor or person of unsound mind or an insolvent; a person convicted by the Court under the EC Act or in any other criminal proceedings connected with Essential Commodities; a person holding a post in the establishment of any State Government or Central Government or any authority or body or institution of Local self-government established or constituted by or under the Constitution or by any other law made by the Parliament or a State Legislature or by notification issued or order made by the Central Government or a State Government.

In short an existing licensee, representatives of people, a minor or a person of unsound mind, a person convicted in a criminal case and a person holding civil post are excluded from being considered for FPS dealership. The reasonableness of inclusion of Part-3is

that a person having financial substance or means should not get distributorship of FPS shop. The vacancy notification is silent about a person carrying on a business and earning substantial amount of money. If such person is allowed to be the distributor of FPS shop, the State will allow him to carry on another business in addition to his existing business, the purpose of granting licence of FPS dealership to the unemployed person is stated in the control order in order to give some provision to the unemployed to stand on their own. If, on the other hand, a person having business and substantial income is allowed to give dealership of fair price shop, such purpose will be frustrated and on the strength of financial substance they can easily construct bigger godowns than that of the minimum requirement. On this score, this Court is willing to hear the State Respondents.

Under such circumstances, the instant writ petition is admitted. The respondents are at liberty to file affidavit-in-opposition on the issue raised in the instant order within three weeks from the date. The matter to appear in the monthly list of August, 2023 for final hearing and disposal. In the meantime, the State respondents mainly the respondent No.5 is directed to maintain status quo in respect of public distribution system as on this date.”

(emphasis added)

10. It is clear and apparent from the aforesaid observations of the learned Single Judge that the Court found that the Rules for allotment of M.R. Dealership were inadequate and did not address the rights of unemployed and marginalized sections of the

society to be given an opportunity to run a M.R. Dealership.

11. The Court also found that the Notification is silent about a person already carrying on business and earning a substantial amount of money therefrom.

12. This Court is of the view that the Judiciary does not legislate or interfere with the policy decisions of the State except when such decisions have the effect of extinguishing existing rights or have civil consequences on persons who have altered their position on the basis of an earlier policy.

13. One of the conditions of granting M.R. Dealership to persons is the requirement of having a minimum amount of Rs.50,000/- in their Bank Account and also owning or having a godown to house the goods to be dispensed through the Dealership. The financial capacity needed to possess the aforesaid requirements cannot be executed from unemployed and marginalized youth.

14. The concern of the learned Single Judge for such marginalized sections of the society is indeed laudable. However, by the observations and the requirements stipulated in the order set out hereinbelow, the learned Single Judge may have inadvertently sought to legislate or dictate a policy to the State.

15. The Constitution of India clearly confers the power to legislate and/or take the policy decision and

frame Rules only to the Legislature and the Executive and/or its delegates. The Judiciary cannot and does not usurp the powers of the Executive or Legislature.

16. In the backdrop of the above, this Court finds error in the impugned order. The order of status quo passed by the learned Single Judge shall, therefore, stand set aside.

17. However, serious allegations of impropriety have been made by the writ petitioner in his complaint dated 26th June, 2023 to the Secretary, Food & Supplies Department and the Director, DDP&S, Food & Supplies Department, Government of West Bengal. The Director, DDP&S, Food & Supplies Department, Government of West Bengal shall cause an enquiry in this regard and take steps that may be permitted in law, within a period of two months from date.

18. In view of the aforesaid observations, this Court is of the view that nothing further remains to be adjudicated in the writ petition being W.P.A 16097 of 2023 (Sanjib Kr. Mondal vs. State of West Bengal & Ors.) and the same shall stand disposed of with the aforesaid order.

19. MAT No. 1398 of 2023 shall stand disposed of. Connected application being CAN 1 of 2023 shall also stand disposed of.

20. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)