

Form J(2)

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

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

WPA 19023 of 2022

**Somsar Samabay Krishi Unnayan Samity Ltd.
Vs.
The State of West Bengal & Ors.**

For the petitioner : Mr. Syed Shamsul Arefin
**For respondent No.6 : Mrs. Pampa Dey Dhabal,
Mr. Nikhil Kumar Gupta**
**For the State : Mr. Sirsanya Bandopadhyay,
Ld. Jr. Standing Counsel,
Mr. Arka Kumar Nag**
Judgement on : 22.08.2023.

Bibek Chaudhuri, J.

The issue involved in the instant writ petition is as to whether a writ petitioner can claim relief under the plenary power of the Constitutional Writ Jurisdiction alleging purported wrong committed by the State respondents as a result of inaction on the part of the petitioner.

Indisputably Somsar Samabay Krishi Unnayan Samity Limited was the licensee of a fair price shop to distribute ration articles to the beneficiaries since 1963. It is alleged by the petitioner that in 2010, some problem cropped up and the petitioner/liecncee was directed to

show-cause as to why his licence shall not be terminated with immediate order of suspension. It is also the case of the petitioner that the said licence was tagged with another person namely M.P.Chakraborty temporarily to run the said fair price shop. Subsequently, the vacancy was declared for granting licence in respect of the said fair price shop vide notification No.311 dated 17th March, 2020. The petitioner did not challenge the said vacancy notification. However, on the basis of the said vacancy notification, nobody could be selected. Subsequently, a fresh vacancy notification was issued on 5th January, 2022. The petitioner has submitted a representation stating, *inter alia*, that without taking decision in respect of the licence issued in the name of the petitioner, no vacancy could be filled up by the State respondents.

The learned Advocate for the State respondents has filed a report in the form of an affidavit. On perusal of which it is ascertained that the licence of the petitioner was suspended because of the fact that on the date of inspection on 2nd November, 2010, the Food Inspector found that no rate and stock board was displayed, secondly, no list of beneficiaries under APL/BPL/AAY Scheme were found in front of the MR Shop and, thirdly, MR Dealer could not produce books of accounts including relevant cash memos of all schemes on demand in flagrant violation of Para 17(iii), 17(iv) and

17(v) of the WBPDS (Maintenance and Control) Order, 2003. The said dealership was placed under suspension and the petitioner/dealer was directed to show cause in writing within 7 days from the date of receipt of the letter without fail. It is contended on behalf of the State respondents that the petitioner did not give any reply to the said show-cause notice. The petitioner was also given an liberty in the said order that if he feels aggrieved, he may prefer an appeal to the competent authority within stipulated time. He did not prefer an appeal before the higher authority against the order dated 2nd November, 2010.

It is contended on behalf of the petitioner that no formal order of termination has been issued by the Food and Supplies Department in respect of the licence of the petitioner. Therefore, the said licence is still subsisting.

The learned Advocate on behalf of the State respondents, on the other hand, submits that the said licence was automatically terminated by efflux of time after 10 years and more because of the fact that it was not renewed after 2nd November, 2010. Learned Advocate for the petitioner, on the other hand, submits that the petitioner prayed for renewal of the said licence on payment of requisite fees but the State respondents have not passed any order in respect of renewal of such licence.

Having heard the learned Advocates for the parties and on perusal of the materials on record, it is ascertained that the petitioner never agitated the issue of refusal on the part of the State respondents of granting licence in favour of the petitioner. The Secretary of Somsar Samabay Krishi Unnayan Samity Limited made a representation before the District Controller, Food and Supplies, Bankura and jurisdictional Sub-Divisional Controller challenging the process of selection vide a vacancy notification dated 5th January, 2022 and simultaneously praying for re-tagging the beneficiaries with the petitioner-Samabay Samity.

Having heard the learned Counsels for the parties as well as added respondents and on careful perusal of the entire materials on record, it appears that the Sub-Divisional Controller, Food and Supplies issued a notice to the Secretary/Chairman of the petitioner to appear before him for personal hearing over the representation submitted by the Secretary of the said Samabay Samity on 11th July, 2022. It is found from the endorsement that the Chairman of the petitioner Samabay Samity refused to receive the copy of the said notice on 17th August, 2023. Thus, in one hand, the petitioner is espousing its cause for renewal of licence which was suspended with effect from 2nd November, 2010 by filing a representation on 11th July, 2022 and, on the other hand, the petitioner did not appear before the

Sub-Divisional Controller for hearing and refused to accept the notice, this Court is of the view that the petitioner cannot blow hot and cold at the same time and when the petitioner refused to submit the jurisdictional authority of the State respondents in respect of renewal of licence, he is not entitled to get any relief in the instant writ petition. Accordingly, the instant writ petition is dismissed on contest. However, there shall be no order as to costs.

(Bibek Chaudhuri, J.)

***Mithun De.
A.R. (Ct).
SI No.12.***