

Form J(2)

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

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

WPA 19293 of 2023

**Md. Samim
Vs.
The State of West Bengal & Ors.**

Ms. Nilanjana Adhya
Ms. Mousumi Parvin
Md. Maznu Ahmed
..for the petitioner

Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag
..for the State

Item No.10

Heard & Judgment on: 17.08.2023

Bibek Chaudhuri, J.

Affidavit of service be kept with the record.

The petitioner is one of the applicants in respect of fair price licence, the vacancy notice which was published on 7th June, 2022 for village Rampur, Rampur Pally Mangall Yoba Samity and Gram Panchayet Mahendrapur in the district of Malda. It is submitted by the

petitioner that the petitioner is a permanent resident of Chanchal Sub-Division. It is also submitted that the petitioner possesses a suitable godown as per the notification issued by the department of Food & Supplies dated 21st July, 2021 within the vacancy location having an area of 400 square feet. The petitioner has also a shop room with big covered space that may be used for beneficiaries to wait to receive the ration articles. Thus, the petitioner also satisfied clause 4 and 5 of the eligibility criteria. In spite of such eligibility criteria the application of the petitioner was rejected and the private respondent No.10 was selected for licence of fair price shop of the said area.

It is submitted by the learned advocate for the petitioner that the private respondent is not a resident of the same Gram Panchayet area. His godown and proposed shop room is situated in a lease hold property and there is a dispute with regard to the lease deed because of the fact that it could not be ascertained as to whether the lessor of the said property is actually the owner and authorized to grant lease in respect of the said property in favour of the respondent No.10. It is also submitted by the learned advocate for the petitioner that the respondent No.10 showed the said lease hold property as his godown and shop-cum-office though the lease was taken for residential

purpose. Considering all such aspect of the matter the petitioner ought to have been selected for licence.

The learned advocate for the petitioner further submits that the Department of Food & Supplies has issued an order bearing No.2750-FS dated 17th August, 2021 delineating the scoring system in respect of different heads of eligibility criteria of the applicants and the applicant who gets the highest mark is selected. On the basis of the said order dated 17th August, 2021 the petitioner made a comparative study in respect of the eligibility criteria and it is shown that the petitioner was at least entitled to get eight marks more than the respondent No.10 who has been selected by the Sub-Divisional Controller, Food & Supplies Department, Chanchal Sub-Division.

The petitioner has submitted a representation on 28th April, 2023 for reconsideration of the decision made by the State Respondents. However, the said representation has not been acceded to.

The learned advocate for the State Respondent, on the other hand, submits that if the applicant does not have requisite space for godown and office premises, his application is liable to be rejected at the threshold. In the instant case, the petitioner himself admits in paragraph 18 of the writ petition that he is having an office space measuring about 120 square feet. Thus, the petitioner does not have

an office space measuring about 200 square feet. Moreover, the petitioner has converted his living room as a godown. The living room contains two doors on both sides of the room. A godown cannot have two entries and exit. Therefore, the authority did not treat the same as a godown. For the reasons aforesaid the respondent's action cannot be questioned by the petitioner by filing the instant writ petition.

Having heard the learned advocates for the parties and on perusal of the materials on record it is found that as per the order bearing No.2750-FS dated 17th August, 2021 the petitioner was entitled to get five marks for the size of shop-cum-distribution centre. The petitioner was not given any mark on these two counts. I am also of the view that if the Inspecting Team found there are two doors in the proposed godown of the petitioner, the petitioner could have asked to close one door before considering the size and suitability of the godown. It is the allegation of the petitioner that though the petitioner has a godown measuring about 450 square feet and a shop room measuring about 120 square feet with a front shed of 270 square feet, he was not granted any mark by the respondents.

In view of such circumstances, the representation filed by the petitioner dated 28th April, 2023 ought to have been considered by the State Respondents.

In view of such circumstances, the instant writ petition is **allowed** directing the respondent No.3 to consider the representation of the petitioner dated 28th April, 2023 in accordance with law after giving an opportunity to the petitioner of hearing within 60 days from the date of this order.

In the meantime, the State respondent shall not issue licence in favour of the private respondent till the disposal of the representation made by the petitioner as stated hereinabove.

The parties are at liberty to act on the server copy of this order.

(Bibek Chaudhuri, J.)