

22.08.2023.
Item No. 3.
Court No. 13
ap

M.A.T. No. 1559 of 2023
With
I.A. No. CAN 1 of 2023

Trilochan Saha
Versus
The State of West Bengal & Ors.

Mr. Kalyan Bandopadhyay, Id. Sr. Advocate,
Mr. Ramesh Dhara.

...For the appellant.

Mr. Supratim Dhar,
Mr. Amritalal Chatterjee.

....For the State.

1. The Advocate-on-record for the appellant undertakes to rectify the defects pointed out by the Additional Stamp Reporter dated 16th August, 2023.
2. Affidavit-of-service filed in Court today be taken on record.
3. This intra court appeal is directed against the judgment and order dated 31st July, 2023 passed by the learned Single Judge of this Court in two several writ petitions taken up together being W.P.A. No. 11312 of 2023 and W.P.A. No. 14869 of 2023. The appellant is only aggrieved by an order passed in respect of W.P.A. No. 14869 of 2023.
4. It appears from the pleadings and the detailed submissions of Mr. Kalyan Bandopadhyay, learned Senior Advocate appearing on behalf of the appellant that the appellant participated in a process of selection

for FPS Distributorship at Murarai-II Block, Rampurhat sub-Division, Birbhum.

5. The appellant downloaded the form and the Rules from the Website of the Food and Supplies Department, Government of West Bengal and submitted his application. A spot inquiry was conducted on 28th December 2022, subsequent to his application.

6. After several representations of the appellant, the respondents filed a report alleging rejection of the appellant's application on the following two grounds:-

- (i) Due to a sole of fillings constructed upto the floor level of the godown, there was no plinth level at the appellant's godown.
- (ii) The appellant did not have a Varandah within the meaning of Sub-Clause (D) of Clause 6 of the Memo/Notice Inviting Vacancy of Distributors dated 1st September, 2022.

7. The requirement of Clauses (B), (C) and (D) of Clause (6) are set out hereinbelow:

“(B) Plinth level:

- (I) 0.60 m (2 feet) from road level & ground level in rural areas and municipalities,*
- (II) 0.30 m (1 feet) from road level & ground level in Municipal Corporation area*
- (C) Godown Height: Minimum 4.28 meter (14 feet) along the side walls.*
- (D) A Varandah –*

- (I) *with a minimum width of 6 feet all along the side of the godown having operating gates/openings or*
- (II) *with a minimum continuous length of 50 feet and minimum width of 6 feet covering all the opening gates/doors or*
- (III) *with a minimum width of 6 feet covering all the operating gates/openings and with a lateral projection on both sides of the opening with a minimum measurement of 15 feet beyond the edges of operating gates/opening.”*

8. The respondents curiously cancelled the entire selection process and advertised afresh. It follows from the above that the appellant may have been the only applicant. Be that as it may, the learned Single Judge went on to observe in the impugned order that the definition of plinth area is the built up covered area measured at the floor level of the basement or of any storey.

9. The learned Single Judge, however, did not entertain the writ petition or the prayers made thereunder and only allowed the appellant/writ petitioner to participate in the new selection process.

10. Mr. Kalyan Bandopadhyay, learned Senior Advocate appearing on behalf of the appellant would argue that Sub-Clause (A), (B), (C) and (D) of Clause 6 are rather vague. It is submitted by reference to certain photographs of the appellant's godown that there was compliance of all the requirements under

Sub-Clauses (B), (C) and (D) of Clause 6 (supra). Mr. Bandopadhyay next submits that if the learned Single Judge felt the need to clarify the plinth level in his order, there is a presumption that the assessment by the respondents of absence of plinth must be incorrect. He, therefore, submits that the prayers made in the writ petition ought to have been allowed and his client's application sought to have been accepted and a licence been issued to him.

11. Mr. Bandopadhyay, alternatively argues that the requirements under Clause 6 are to be complied with after issuance of a licence. For the Authority to insist on such compliance at the time of application, and reject the same, is contrary to law, the Rules for allocation of Distributorship. It is submitted that the respondents have acted in an arbitrary and illegal manner. The learned Single Judge, according to Mr. Bandopadhyay, should have allowed the writ petitions.

12. The learned Advocate for the State, Mr. Supratim Dhar, has submitted that the appellant was aware of the requirements of Clause (6) before making an application. It must be presumed that he had clearly understood all the terms and conditions required. He, therefore, cannot turn around now and say that the terms and conditions of the Notice Inviting Application are arbitrary.

13. It is finally argued by the Counsel for the State that the appellant is not prevented from participating in the new advertisement process, which has been undertaken by the State and the appellant may fulfil all the criteria as stipulated.

14. Having heard the Counsels for the parties, this Court notes that Clause (6) of the Notice Inviting Vacancy dated 1st September, 2022 is clear and explicit. The plinth level has been duly explained i.e. from the road level or from the ground level. The height required to be maintained from the road and ground level for the space of the godown is clearly implied.

15. In so far as the expression 'Varandah' is concerned, from a reading of Sub-Clause (D) and the alternative under Sub-Clauses (I), (II) and (III), it is clear and explicit that there is need for a loading platform for materials to be easily unloaded from the trucks to be stored in the Distributors' godown. Such elevated platform could either be in front of each of the openings or the gates or entry point into the godown or uniformly located on all four sides of the same.

16. This Court finds no ambiguity in the requirement under Clause (6) Sub-Clauses (B), (C) and (D). The learned Single Judge while rejecting the writ application need not have made any observation on the plinth area or the Varandah. The observations

made by this Court are merely what come out from a plain reading thereof and do not add or reduce the plain meaning of Sub-Clauses (B), (C) and (D) of Clause (6) [supra].

17. As already permitted by the learned Single Judge, the appellant may participate in the new selection process upon his satisfying and strictly complying with all the requirements of the notice dated 1st September, 2022. If the appellant makes such application within three weeks from date, the respondents shall assess the appellant's application strictly in accordance with the applicable Rules and stipulated requirements, uninfluenced by any observations made either by the learned Single Judge or by this Court.

18. MAT No. 1559 of 2023 shall stand disposed of without any further order. Connected application being CAN 1 of 2023 shall also stand disposed of.

19. 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.)

