

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 21631 of 2022
Pradip Prasad
Versus
The State of West Bengal & Ors.

For the petitioner : Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
.....Advocates

For the State : Mr. Susovan Sengupta
Mr. Subir Pal
.....Advocates

Heard lastly on : 19.01.2023

Judgment on : 19.04.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for direction upon the respondent authorities to cancel and withdraw the vacancy declaration notice dated 27.04.2022 issued by the Sub-Divisional Control (F&S) Gangarampur for Sahapara (Barabajar), Ward No. 7, Post Office and Police Station Gangarampur, Dakshin Dinajpur.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. On 11.03.2020 a vacancy notification was published in respect of a fair price shop at Sahapara (Barabajar), Ward No. 7, Post Office and Police Station Gangarampur, District Dakshin Dinajpur. The petitioner applied for such dealership. An enquiry was held. Later on, the petitioner came to learn that the earlier notification was withdrawn and a fresh notification was issued. The declaration of fresh vacancy on 27.04.2022 was without any Gazette notification. On this, reliance was placed on Barun Ghosh versus Goutam Kumar Saha, 2011 SCC Online Cal 2977. Nor was the second notification published in widely circulated newspapers as required. A reference was made to Clause 20 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 as amended. Besides, the petitioner was quite eligible for the said dealership and there was no reason why his candidature was purportedly rejected.

3. Learned counsel appearing on behalf of the State submitted as follows. The respondent authorities had ample powers to renotify a vacancy. The resultant vacancy in question was generated due to the surrender by the erstwhile dealer Girinath Roy of his dealership in 2008. Consequently, a notification for vacancy declaration was issued. Inquiry was conducted. But, it appeared from the enquiry report that no applicant was found suitable. Hence, a proposal was sent for renotification, which was approved. Thereafter, the Sub-Divisional Control (F&S), Ganganagar renotedified the vacancy vide notification no. 275/MR/SCFS/GMP dated 27.04.2022. Not only was the renotification displayed on the office notice board, but the

same was also published in renowned daily newspapers namely, the 'Aajkal' and 'The Telegraph' on 28.05.2022. The said notification dated 27.04.2022 was also made also available in the Department's website for the prescribed period of application from 28.05.2022 to 18.06.2022. That was all that was required for renotifying a vacancy for a dealership. Quite significantly, the petitioner had chosen not to file an affidavit-in-reply.

4. I heard the learned counsel for the parties and perused the writ petition and the affidavit in opposition.

5. For a proper adjudication of the present lis, it is important to refer to the provision amending Clause 20 of the West Bengal Public Distribution System (Maintenance and Control), 2013.

“(1) In clause 20, -

(a) for sub-clause(ii), substitute the following sub-clauses: -

“(ii) If it appears necessary for the District Administration to declare a new vacancy of dealer for catering to the need of consumers in any particular area, the vacancy has to be declared with the approval of the State Government. In that case the concerned Sub-Divisional Controller, Food and Supplies, who, in turn, shall send the same to the Director. The Director shall examine the proposal. If necessary, make re-enquiry and send the proposal to the Department for approval.

(ii) After obtaining the approval of the State Government, the Sub-Divisional Controller, Food & Supplies shall declare such vacancy stating the eligibility criteria through notice in the office notice board and publish the same in the Official Gazette. The Sub-divisional Controller, Food and

Supplies shall simultaneously publish an indicative advertisement of the said vacancy for information to the General Public in at least one Bengali newspaper and one English newspaper having State-wise circulation. Provided that in case of re-notification of any vacancy on account of non-availability of suitable candidates against such vacancy, the concerned SCF& S shall publish the same with the approval of the concerned District Magistrate under intimate to the State Government.”

6. Thus, it is evident that in case a fresh vacancy is to be declared, a notice has to be given in the office notice board, in the Official Gazette as also advertised in at least one Bengali and one English newspaper having State-wide circulation. The next portion deals with the case of renotification of vacancy on account of non-availability of suitable candidates. There, the term used is ‘shall publish’ the same.

7. Although the mode of publication has been specifically delineated in case of a fresh vacancy, in the following portion dealing with the renotification of vacancy the specific modes have not been mentioned in clear terms. However, for a logical and harmonious construction, one has to ascribe to the word ‘published’ the same meaning and mode as contained in the main portion of the sub-clause. Otherwise, it would be left to diverse interpretations as to what mode of publication should be included and what be excluded.

8. Moreover, a notification in the present context of Government largesse would quite obviously connote a public notification and a public notification

has been defined in Article 366(19) of the Constitution of India to mean a notification in the Gazette of India or in the official Gazette of the State.

9. In *Akhil Bhartiya Upbhokta Congress Versus State of Madhya Pradesh* 2011(5) SCC 29 and in *Barun Ghosh* (supra), strong emphasis had been laid on the requirement of publication in the Official Gazette in matters of Government largesse.

10. In the present case, admittedly the vacancy notification was displayed in the office notice board, was uploaded in the official website of the Department and was published in two widely circulated newspapers, one English and the other one vernacular. But, the same was evidently not published in the official Gazette.

11. A mere substantial compliance would not suffice when the provisions relate to publication of notice in respect of public employment or engagement or Government largesse. In such matters, one has to follow the best practices of transparency and adequate dissemination of information and act strictly in terms of what law provides.

12. In view of the above discussions, this Court has no hesitation to hold that even for renotification of a vacancy in terms of the provisions of the Control Order of 2013, a Gazette notification is a mandatory requirement.

13. Therefore, the vacancy declaration notice dated 27.04.2022 issued by Sub-Divisional Control Order, Gangarampur and all consequential steps taken in this regard by the respondent authorities are quashed and set aside.

14. The respondent authorities shall be at liberty to renotify the vacancy in accordance with law.

15. With these observations, the writ petition is disposed of. However, there shall be no order as to costs.

16. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)