

12.10.2023
Court No. 13
Item No. 21
pk

**MAT 1734 of 2023
With
CAN 1 of 2023**

**Nargis Parvin
Versus
State of West Bengal and others**

Mr. Saptangshu Basu,
Mr. Ramesh Dahra,,
Mr. Manoranjan Jana,
Ms. Mousumi Choudhury

..For the appellant.

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

... For the State.

Mr. Pingal Bhattacharya,
Mr. Rajdeep Sinha

... For the respondent no. 8.

1. The appeal is directed against judgement and order dated 29.08.2023 passed by a Single Bench of this Court in WPA No. 12372 of 2023.

2. By the impugned judgement and order, the Single Bench dismissed the writ petition.

Facts of the Case

3. The brief facts relevant for the case are that by a vacancy notice dated 11.04.2022, the department of Food and Supply, Government of West Bengal invited applications for allotment of FPS Dealership at Village- Rahana (Part II) within Amdanga G P in the district of North 24 Parganas. The writ petitioner/appellant applied for the same.

4. Admittedly, the appellant's mother is an existing fair price dealer. The petitioner's application was rejected by Sub-divisional Controller, Barasat. Subsequently, for some strange reason on the same day, four minutes later, the online status of the petitioner's application indicated that it was approved and successfully submitted and enquiry notice was generated. Enquiry/inspection was conducted at the petitioner's proposed location.

5. It was subsequently found "online" that the petitioner's application was rejected with the endorsement "Minister-in-Charge deeming eligible but not approved". There are admitted facts.

6. The writ petitioner's advocate was communicated on 08.04.2023 by the SDC that her application was rejected on the grounds that

(a) she had only Rs. 1,247.45/- in her bank account on 09.08.2022 and Rs. 34,247.45/- on 16.08.2022.

(b) that there was no space to set up a shed for queuing customers in front of the petitioner's proposed outlet.

(c) loading and unloading of goods was not possible in view of the narrow approach roads to the proposed location.

(d) The agreement of a registered tenancy was also not submitted during course of enquiry.

The Decision Impugned

7. After hearing the parties and receiving a report from the State, the learned Single Bench found that the petitioner's application was, otherwise, ineligible since she fell within the mischief of the expression "relative" under Part-III, Clause 13(I) of the vacancy notice dated 11.04.2022. Her mother is an existing FPS dealer.

Arguments of the Appellant

8. Assailing the said order of the Single Bench, Mr. Saptangshu Basu, learned Senior Counsel would argue that the real reason behind the rejection of the petitioner's application is the non-approval of the Minister-in-Charge.

9. It is argued by reference to the doctrine of dictation and the decision of the Supreme Court in the case of ***Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and others*** reported in ***(2004) 2 SCC 65***, particularly, paragraph 24, 25 and 26, and the decision of the Single Bench of this Court in the case of ***Rani Sati Kerosene Supply Company and others Vs. State of West Bengal and others*** reported in ***2004 SCC Online Cal 327***, that a person having no authority under the statute cannot dictate any order to a statutory authority. Such order would be ultra vires and illegal.

10. In the instant case since there is evidence that the petitioner's application was not approved by the

Minister-in-Charge, the rejection of the petitioner's application on such basis is ex facie illegal and calls for interference by this Court, according to Mr. Basu.

11. Ld. Counsel has, however fairly admitted that this point was not urged or argued in the Single Bench and the same is confirmed by the learned counsel appearing for the respondents.

Analysis of this Court

12. It is a settled law that when a statute or Rules framed under authority confirmed by statute, prescribe a particular authority to decide grant of licence or any act on behalf of the State, it is only such authority that can take a decision in such matter.

13. Ex facie the interference by the Minister-in-Charge, Food & Supply Department, Government of West Bengal is grossly illegal, completely unwarranted. If the rejection of the petitioner's application was based on such orders of the Minister, it would have called for interference. Such interference can also be at the instance of a Division Bench despite that the point may not have been raised before the Single Bench, since it would be a question of law.

14. The dicta of the Hon'ble Supreme Court in the ***Bahadursinh Lakhubhai Gohil (supra)*** is clear and explicit in this regard.

15. What, however, strikes this Court is the fact that the petitioner's application was rejected at the first instance by the District Level Selection Committee on

the ground that the petitioner did not meet the financial criteria in the vacancy notice. The Single Bench, however, specifically found that the petitioner's application is foul of Clause 13(I) of Part-III of the notice of vacancy, which stipulated that a "relative" of an existing FPS dealer was ineligible to make an application.

16. There are other grounds that are evident before this Court which may not have been addressed by the counsel before the learned Single Bench that the petitioner did not have an appropriate loading and unloading facility or infrastructure for essential commodity into her godown. The tenancy agreement and/or entitlement of the petitioner to the godown space was seriously questionable. No such agreement was produced at the time of enquiry.

17. In the backdrop of the aforesaid facts, the rejection of the petitioner's application by the State cannot be faulted on any score.

18. While it is true as already indicated hereinabove that the Minister-in-Charge had no business or authority whatsoever to interfere in the decision making process of FPS dealership, the ineligibility of the petitioner on many counts, is writ large on the face of the record.

19. The argument that the petitioner mistakenly did not furnish the bank account with the Punjab National

Bank having a good financial balance, as stated in paragraph 5 of the writ petition does not cut any ice.

20. In a highly competitive process for obtaining FPS dealership, financial criteria or evidence thereof is fundamental. The non-fulfillment of such criteria is a vital omission and/or deficiency in the petitioner's application. The principle of "Substantial Compliance" therefore cannot be applied in the facts and circumstances of the case.

Conclusion

21. For the reasons stated herein above, the impugned decision calls for no interference. The instant appeal is dismissed.

22. In view of the above, CAN 1 of 2023 shall also stand dismissed.

23. There shall be no order as to costs.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)