

11.12.2023

Ct. no.654

Sl. No.1

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THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

W.P.A. 22152 of 2023

Sk. Mustak Ali
Vs.
State of West Bengal & ors.

Mr. Debabrata Saha Roy
Sk. Samim Akhter
... for the petitioner

Mr. T. M. Siddique
Mr. Amritalal Chatterjee
... for the State

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India for taking immediate steps to open the portal for issuance of offer letter after setting aside the word 'rejected' appearing at the portal of the department and take steps for issuance of licence for Fair Price Shop dealership in favour of the petitioner.

The brief fact of the case in nutshell is that the petitioner made an application for grant of Fair Price Shop licence in relation to FPS vacancy notice being No.1031/SCFS/MDN(S)/2022 dated 7th November, 2022 of SCFS, Medinipur Sadar. Upon such application, enquiry was conducted by the Inspector, (F & S), Keshpur Block as well as Sub-Divisional Controller, Food & Supplies on 13th February, 2023 and on 1st June, 2023

respectively. The application along with documents and enquiry report was sent to the District Controller, Food & Supplies for its recommendation. The petitioner was asked to appear for interview before the District Level Fair Price Shop Selection Committee and upon interview and consideration of the documents and enquiry report, the application of the petitioner for getting the Fair Price Shop licence was rejected by the District Level Fair Price Shop Selection Committee. Hence, this writ petition.

Mr. Debabrata Saha Roy, learned Advocate for the petitioner submits as follows. The petitioner submitted his application for Fair Price Shop licence in terms of eligibility criteria required under the notification dated 7th November, 2022. On two occasions the enquiry was conducted by the State authorities and as per the report submitted by the respondent no.5 the petitioner was found to be most eligible candidate for consideration for issuing licence for Fair Price Shop. The District Level Fair Price Shop Selection Committee without properly considering the enquiry report of Sub-Divisional Controller, Food & Supplies, have arbitrarily rejected the application of the petitioner, firstly on the ground that there is mismatch between the enquiry report and the sketch map, so far as the physical measurement of the shop-cum-godown is concerned and secondly, no lease/tenancy agreement with the owner was appended

instead no objection certificate vide affidavit of co-owners of the plot was submitted. The Sub-Divisional Controller, Food & Supplies, who has physically inspected the shop-cum-godown of the petitioner, has found the petitioner to be the most eligible candidate. Thus the rejection of the application of the petitioner holding that the enquiry report does not match with the physical measurement by the Committee, is unreasonable. He also indicates that since the petitioner is a co-owner of the plot the only requirement as per notification is to submit no-objection certificate by the other co-owners and therefore, question of filing a lease/tenancy agreement with the owner does not arise in the facts and circumstances of the case. Further the District Level Fair Price Shop Selection Committee does not have the authority to declare a candidate ineligible since as per notification such right lies with the licensing authority or the State Government, as the case may be. In light of the aforesaid submissions, Mr. Saha Roy prays for setting aside the rejection of the application by the District Level Fair Price Shop Selection Committee and issuance of offer letter in favour of the petitioner by opening the respective portal.

In reply to the aforesaid contention, Mr. Amritlal Chatterjee, learned Advocate for the State-respondents submits that since there is presence of staircase within the godown space the District Level Fair Price Shop

Selection Committee rejected the application of the petitioner. As per the norms of the Government the godown should not have a staircase within it. He also submits that the petitioner did not submit any layout map in respect of the godown, office and space for unloading of stock of FPS commodities and approach road, shed for persons in queue, which is a requirement under the notification and thus the application of the petitioner is not in proper form. In the aforesaid backdrop, he submits that the District Level Fair Price Shop Selection Committee has rightly rejected the application of petitioner holding him as ineligible.

Having heard the learned Advocates for the respective parties now it is to be seen whether the rejection of the application of the petitioner for grant of Fair Price Shop licence by the District Level Fair Price Shop Selection Committee is justified or not.

The petitioner in terms of notification under Memo No. 1031/SCFS/MDN(S)/2022 dated 7th November, 2022 submitted application for getting Fair Price Shop licence. The application of the petitioner was duly accepted and acknowledged by the State-authorities. On the basis of application of the petitioner, enquiry was conducted at first on 13th February, 2023 by Inspector (Food & Supplies), Keshpur Block and then on 1st June, 2023, re-enquiry was conducted by Sub-Divisional Control (Food &

Supplies) Medinipur Sadar and report was prepared and submitted. Now it is to be examined whether the petitioner fulfilled the eligibility criteria.

The requirements as per notification under clause 12(iv) of Eligibility Criteria is as follows -

- (i) The area of the godown should be minimum 400 Sq.ft. along with covered space of 200 Sq.ft. adjacent to godown to be used for office purpose and for FPS automation;
- (ii) There must be shade in front of the shop to accommodate at least 20 people who may wait in the queue;
- (iii) The godown must be well ventilated pucca structure with a concrete floor;
- (iv) There has to be adequate space in front of the godown for unloading of stock.
- (v) Working capital: The applicant for dealership must have a bank balance of Rs.50,000/- in the form of Savings Account, Current Account and/or fixed/term/flexi deposit in a Scheduled Commercial Bank and/or Post Office as working Capital as reflected on the date of application.

The report of re-enquiry held on 1st June, 2023 (annexure P14 at page 23 of the writ petition) shows that the godown measurement is 501.086 Sq.ft. and the Sales

Counter measurement is 222.78 Sq.ft. and the shed is 69.678 Sq.ft. In the remarks column it is noted that the back door of such godown has been sealed with *pucca* and the entrance of the staircase has been sealed with plywood and the main entrance parallel to the sales counter is also sealed with *pucca*. Thus, it is found that the space requirement as per notification has been fulfilled by the applicant. So far as the financial solvency is concerned, it appears from the report that on the date of application the petitioner had bank balance of Rs.64,331.42, which also appears from the statement of account of State Bank of India (at page 42 of the writ petition) in the name of the applicant Mr. Sk. Mustak Ali. Thus, the financial solvency is also fulfilled by the applicant.

Although it has been urged on behalf of the State-respondents that presence of staircase within the godown disentitles the applicant from getting the licence, however, from the four corners of the notification there is no such clause disentitling the applicant on such ground.

The District Level Fair Price Shop Selection Committee has observed that there is mismatch in the measurement of the shop-cum-godown with that of the sketch map. There is no material to suggest that Selection Committee has made any physical verification. There are no contrary documents against the enquiry report of the

Sub-divisional control (Food & Supplies). The Sub-Divisional Controller (Food & Supplies) upon physical verification of the offered space and on being satisfied has forwarded the name of the applicant with remark '*most eligible candidate,*' as is appearing from the report filed by State-respondents. Therefore, such observations of the Selection Committee regarding mismatch is not sustainable. The other ground for rejection of the application is that the petitioner did not annex the lease/tenancy agreement with the owner instead has submitted no-objection certificate from the co-owners. It is not the case of the petitioner that he is a lessee or tenant in the plot comprising the Shop cum godown. So, the question of submitting lease/tenancy agreement does not arise. It is not in dispute that the petitioner had claimed himself to be a co-owner in the plot comprising the shop cum godown. As per the notification (Annexure P-11 of the writ petition at page 17) at clause 14 (vii) in case of shared ownership of the offered shop-cum-godown, no-objection certificate of other co-owners has to be submitted. Petitioner in compliance to the same has submitted the no-objection of the co-owners in the form of affidavit and thus, the criteria as required for submission of documents have been fulfilled.

It is urged on behalf of the State-respondent that the petitioner has not submitted any layout map of the

offered space as per requirement of the notification, hence, his application has been rightly rejected. It is a fact that as per the list of documents under notification a layout map is to be submitted. However, it is pertinent to note that the authorities concerned have accepted and acknowledged the application of the petitioner without such layout plan and has also undertaken physical verification of the offered space as stated in the application. Therefore, after the application of the petitioner has been duly accepted, acknowledged and processed by the State authorities, the plea that it is not in proper form, is not acceptable. Further the application of the petitioner has not been cancelled at the threshold on such ground that it is not in proper form and is not acceptable.

For the aforesaid reason, the rejection of the application for grant of FPS licence of the petitioner in respect of vacancy notification dated 7th February, 2022 by District Level Fair Price Shop Selection Committee is set aside.

Respondent no. 5, the Sub-Divisional Controller, Food & Supplies, Medinipur Sadar is directed to take necessary steps for grant of FPS licence in terms of vacancy notification no. 1031/SCFS/MDN (S)/2022 dated 7th November, 2022 in favour of the petitioner within a period of two months from date of this order.

With the aforesaid observations, the writ petition being **W.P.A.22152 of 2023** stands allowed and disposed of. There shall be no order as to costs.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat certified copy of the order, if applied for, be given parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)