

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/23889/2022

Sk Ataul

-Vs-

The State of West Bengal & Ors.

For the Petitioner: Mr. Rabilal Maitra, Sr. Adv.,
Mr. Haridas Das, Adv.,
Mr. Ujjwal Trivedi, Adv.,
Mr. Sujal Dey, Adv.,
Mr. Avijit Das, Adv.

For the Private Respondent: Mr. Debabrata Saha Roy, Adv.,
Mr. Subhankar Das, Adv.,

For the State:- Mr. Susovan Sengupta, AGP.,
Mr. Sanatan Panja, Adv.

Heard on: 24 August, 2023.

Judgment on: 31 August, 2023.

BIBEK CHAUDHURI, J. : –

1. This writ petition registers a challenge to a selection process for FPS dealership to fill up vacancy of Madhya Sahapur Goffar Hazi Masjit within Mouza Sahapur under Baharal Gram Panchyat, by virtue of which the respondent No.10 was declared selected for licence for the dealership of FPS shop under the West Bengal PDS (Maintenance and Control) Order, 2013.

2. It is the case of the petitioner that he submitted an application along with relevant documents and requisite fees/charges to the office of the Sub-Divisional Controller, Food and Supplies, Chanchal Sub-Division for grant of licence in respect of FPS dealership in the aforementioned area as per vacancy notification dated 9th February, 2022. The application of the petitioner was received online on 19th April, 2022. The respondent No.10 also filed an application for dealership on 28th April, 2022 i.e., beyond the date of filing of the application. It would not be out of place to mention that though the vacancy notification was issued on 9th February, 2022 and Clause 9 of Part 1 of the vacancy notification stated that the application could be submitted during working hours of any working day in the office or online within 21 days from the date of publication of the vacancy notice in the official gazette or indicative advertisement thereof in the newspaper, the last date of submission of application was fixed on 24th April, 2022. It is contended on behalf of the petitioner that as the respondent No.6 submitted his application beyond the stipulated date, his application was liable to be rejected.

3. However, the respondent authority informed the petitioner that a physical inquiry would be held on 18th May, 2022 at the proposed shop cum godown site of the petitioner and he was directed to remain present with all original documents and requisite papers at the time of conducting inquiry. Inquiry was accordingly done as scheduled. Subsequently, the petitioner came to know that the respondent No.10, who is the sister's husband of one Abdur Rahim Boxi, the local MLA as well as the District

President of the ruling party, was allowed to submit his application beyond the date of filing of the application on 28th April, 2022 and his application was accepted by illegally extending the date of submission of the application form till 30th April, 2022. It is alleged by the petitioner that the respondent No.10 is not eligible for FPS dealership but the respondent authority issued licence illegally in favour of the respondent No.10. The petitioner made a letter of complaint to the officers of the department who have been made respondents in the instant writ petition praying for relief but the respondent authority did not pay any heed to the prayer made by the petitioner. It is alleged that the specific act of granting licence in favour of the respondent No.10 by the respondent No.8 is arbitrary, illegal and mala fide. Under such circumstances, the petitioner has prayed for issuance of writ in the nature of mandamus, commanding the respondent to conduct the selection process afresh for the FPS dealership for the above mentioned vacancy and also directed the respondent to consider the complaint and representation dated 3rd September, 2022 and 20th September, 2022 respectively filed by the petitioner before the respondent authority against grant of licence in favour of respondent No.10.

4. The respondent No.10 has filed an affidavit in opposition controverting all allegations made by the petitioner in his writ application. It is the specific case of the respondent No.10 that he has been appointed as Fair Price Shop dealership and on the strength of dealership licence, he has been running his business in the aforesaid locality. The licence was granted by the Sub-Divisional Controller, Food and Supplies Chanchal,

Malda on 2nd September, 2022. It is also stated by the respondent No.10 that he was a constable of Border Security Force. However, during his service he had met with an accident and has been declared permanently unfit for further service in BSF. Therefore, he was forced to resign from his service. Vacancy notification in respect of the Fair Price Shop was published in the official gazette as well as a Bengali newspaper, “Anandabazar Patrika” on 3rd July, 2022. Pursuant to the said vacancy notification he duly filed an application in the Official Portal of the Food and Supplies Department on 24th April, 2022. However, the Official Portal of the Food and Supplies Department was not functioning due to technical reason and he submitted his form in offline mode to the office of the Sub-Divisional Controller, Food and Supplies, Chanchal by hand in a sealed cover 24th April, 2022. Subsequently, inquiry was made in respect of eligibility criteria of both the petitioner and respondent No.10 and as per the inquiry report, respondent No.10 was selected for dealership of Fair Price Shop and accordingly he was granted licence. It is emphatically denied by the respondent No.2 that the local MLA is his brother-in-law and he has exhorted political power to obtain licence for FPS dealership as alleged by the petitioner.

5. The Sub-Divisional Controller, Food and Supplies, Chanchal has filed a report in the form of affidavit in the instant writ petition and it is stated on behalf of the Sub-Divisional Controller that at the time of inquiry, the godown, shop and office room area of the applicants were examined and a report was prepared by the Food Inspector. On the basis

of the said report the respondent No.10 got 86 marks, while the petitioner got 77 marks. Accordingly the respondent No.10 was granted licence. There is no foul play, arbitrary action or mala fide by the state respondents. It is also stated on behalf of the State respondent that the respondent No.10 submitted his application in offline mode on 24th April, 2022. Therefore, his application cannot be said to be filed after the expiry of the period within which an applicant was under obligation to file application for grant of licence.

6. The petitioner in turn has filed an exception to the report submitted on behalf of the Sub-Divisional Controller, Chanchal stating, inter alia, that the petitioner made an application under the Right to Information Act on 7th November, 2022 and obtained the inquiry report dated 18th May, 2022 in respect of the application filed by the respondent No.10. Surprisingly enough, in the inquiry report it was recorded that the last date of submission of application was 30th April, 2022 and the respondent NO.10 filed his application on 28th April, 2022. Therefore, the application was filed by the respondent No.10 after expiry of the period and in order to accept the application the State respondents manipulated the inquiry report stating, the last date for submission of application as on 30th April, 2022. However, paper publication was made on 3rd April, 2022 and as per the paper publication of notice the last date of submission of application form was 24th April, 2022.

7. I have heard the learned Advocates on behalf of the petitioner, State respondents and respondent No.10. The Sub-Divisional Controller in his

report in the form of affidavit stated that the respondent No.10 filed his application in offline mode on 24th April, 2022 i.e., on the last date of submission of application. However, in his report, the Sub-Divisional controller did not produce any scratch of paper to show that his office received the application on 24th April, 2022 in offline mode. On the contrary, the inquiry report which was prepared by the Food Inspector on 18th May, 2022 shows that the respondent No.10 filed his application on 28th April, 2022 and the last date of the application was shown as on 30th April, 2022. This appears to the court that the Food Inspector recorded a wrong date after the expiry of last date of filing application for submission of application. In order to validate the application of the respondent No.10 dated 28th April, 2022, the inspector report was wrongly made and from the inspection report mala fide of the State respondents is clearly established.

8. In view of such circumstances, the order granting licence to the respondent No.10 is quashed and set aside.

9. Since the respondent No.10 filed his application after the expiry of the stipulated period of time as disclosed from the inquiry report, his application is set aside.

10. The Sub-Divisional Controller, Food and Supplies Department, Chanchal is directed to consider the complaint submitted by the petitioner dated 3rd September, 2022 as well as the representation dated 22nd September, 2022 in accordance with law and make independent decision with regard to grant of FPS dealership in favour of the petitioner

in accordance with law after giving him or his representative an opportunity of hearing. The instant writ petition is accordingly allowed on contest. However, there shall be no order as to cost.

(Bibek Chaudhuri, J.)