

18.10.2023
Court No. 13
Item No. 6
AP

MAT 2127 of 2023
With
IA NO: CAN 1 of 2023

Masadul Sk.
Vs.
Md. Firoz Muktadir Hossain and Ors.

Mr. Sagar Bandyopadhyay
Ms. Soma Kar Ghosh
Mr. Arabinda Pathak

.... For the Appellant.

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Neil Basu

.... For the writ petitioner/Respondent.

1. A server copy of the judgement and/or order of the Single Bench dated 16th October, 2023 filed in Court today is taken on record.

2. Despite service of notice, the State is not represented. A copy of the notice given to the State is also kept with the record.

3. The appeal is directed against a judgment and order dated 16th October, 2023 passed by a Single Bench of this Court in WPA 23327 of 2023. By the impugned judgement, the Single Bench has set aside a licence for FPS dealership granted to the appellant, who was a private respondent in the writ petition. The learned Single Bench further directed licence to be granted to the writ petitioner/respondent herein.

4. Admittedly, no affidavits have been called in the writ petition. The decision was passed on the basis of a

report of the State. Such report was not circulated to either parties.

5. The brief facts relevant to the case are that the writ petitioner/respondent as well as the appellant were competing under a vacancy notice dated 3rd February, 2023 for issuance of a FPS licence. Both the appellant and the writ petitioner/private respondent fulfilled all criteria under the notification and received 71 marks each. The rules in the notice of vacancy anticipated such eventuality and provided certain guidelines for the purpose of selecting between candidates, who obtained equal marks.

6. Applying such guidelines the appellant was found more suitable as opposed to the writ petitioner/respondent herein and has issued licence for FPS dealership by the State authorities.

7. However, the Single Bench placed reliance upon a report filed by the State in allowing the writ petition to cancel the appellant's licence and directed licence to be issued in favour of the respondent/writ petitioner. The report was not furnished to any of the parties. No opportunity was given to any party to file objection thereto.

8. This Court is of the view that the impugned order is vitiated by a fundamental principle of administrative law. The principle is that if two views are possible on a

subject and the administrative authority has taken one of such views, a Court cannot, does not and should not impose the other view on the administrative authority. There are other procedural lacuna that have been broadly indicated hereinabove.

9. In that view of the matter, this Court is of the view that the impugned judgement cannot be sustained. The judgement and order dated 16th October, 2023 shall stand set aside.

10. Counsel for the State before the Single Bench shall furnish a copy of the report filed by the State to the appellant as well as the writ petitioner/respondent herein.

11. In the event such copies are not furnished within a week from date, both the parties are entitled to obtain a certified copy of the report along with annexures from the record before the Single Bench from the Registry.

12. The appellant shall be entitled to file affidavit-in-opposition to the main writ petition as also file an objection to the report of the State within a period of one week after the long Puja vacation.

13. Likewise, the writ petitioner/respondent herein shall also be entitled to file affidavit-in-reply within a period of one week after the date of receipt of affidavit-in-opposition from the appellant. The writ petitioner may file an objection to the report of the State.

14. The writ petition shall be heard afresh after receiving affidavits and objections. A suitable decision may be taken thereafter. The Single Bench shall proceed to decide the matter independently. The observations made hereinabove, shall be deemed as tentative and ad interim in nature and only for the purpose of disposal of this appeal.

15. The appeal is allowed and disposed of.

16. In view of the disposal of the main appeal, connected pending applications, if any, shall also stand disposed of.

17. There shall be no order as to costs.

18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)