

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 27237 of 2022

Saharuk Ali

VS.

The State of West Bengal & Ors

For the Petitioner : Mr. Debabrata Saha Roy
Mr. Pingal Bhattattacharya
Mr. Subhankar Das
Mr. Neil Basu

For the State : Mr. Susovan Sengupta

For the respondent no. 6 : Mr. R. A. Agarwala
Ms. Nibedita Pal
Mr. A. G. Mukherjee
Ms. Sonam Ray

Heard on : 06.01.2023

Judgment on : 06.01.2023

Jay Sengupta, J.:

This is an application under Article 226 of the Constitution of India praying for direction upon the respondent authorities to grant FPS licence in favour of the petitioner against the vacancy notification being No. 11/SCFS/RHAT/2022 dated 06.01.2022 at village Amlai Purba Para, Jumma Mosjid, Block-Nalhati, Sub-Division Rampurhat, Birbhum and to cancel the recommendation of the Sub-Divisional

Controller (F&S) Rampurhat made in favour of the respondent no.6 herein.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner's father was a fair price shop dealer at village Amlai, Rampurhat, Sub-Division Birbhum. He died in 2014. At that time, the petitioner was only 13 years old and therefore, could not apply for appointment on compassionate ground. On 06.01.2022 the Sub-divisional Controller (F & S) Rampurhat notified vacancy of FPS at the said village. The petitioner and the private respondent both applied for the vacancy. On 09.06.2022 enquiry was conducted. The hearing took place on 08.09.2022. In course of hearing, the petitioner came to know that the shop room offered by the private respondent was not in accordance with the requirement and the shop room was situated at a place where no trucks could reach. Even otherwise, the petitioner was a better candidate than the respondent no. 6. The petitioner has learnt from reliable sources that in spite of all these, the name of the respondent no. 6 has been recommended for the dealership.

Learned counsel appearing on behalf of the respondent no. 6 vehemently opposes the contentions of the petitioner and submits that the respondent no. 6 is quite eligible for the dealership and satisfies all the requirements.

Learned counsel for the State submits as follows. First, the contentions of the petitioner that the respondent no. 6 did not satisfy the requirements are based on conjectures and are not supported by any document. Secondly, recommendation, if any, is not a final act and is subject to approval by superior authorities. Thus, the application preferred by the petitioner is premature. Reliance is also placed in the decision of the Hon'ble Apex Court passed in ***Sethi Auto Service Station Vs. Delhi Development Authority*** reported in ***AIR 2009 (SC) 904***.

I have heard the submissions of the learned counsels for the parties and have perused the writ petition.

First, the petitioner has not been able to produce any document to substantiate his claim that the respondent no. 6 did not satisfy the requirements of the dealership. Strangely, he claims that he obtained bulk of this information during a common hearing of all applicants before the respondent authorities.

In any event, recommendation, even if made, does not confer any right to anyone. It is not even a final act, but has to be approved by the concerned authorities.

In this regard, albeit in different fact situation, it may be germane to refer to the observations made by the Hon'ble Apex Court in "*Sethi Auto Service Station (supra)*".

"Mere favourable recommendations at some level of the decision making process, in our view, are of no

consequence and shall not bind the DDA. We are, therefore, in complete agreement with the High Court that the notings in the file did not confer any right upon the appellants, as long as they remained as such. We do not find any infirmity in the approach adopted by the learned Single Judge and affirmed by the Division Bench, warranting interference.”

In view of the above discussions, this Court is of the view that the application preferred by the petitioner is premature and cannot be entertained at this stage.

Accordingly, the writ petition is dismissed.

However, there shall be no order as to costs.

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.)