

19.12.2023
Ct. 654
D/L 5 & 6
ab/ss

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 28045 of 2023

Amit Singha

-Vs-

The State of West Bengal & Ors.

With

WPA 14547 of 2023

Chumki Saha Mondal

-Vs-

State of West bengal & Ors.

Mr. Ram Anand Agarwala,
Ms. Nibedita Pal,
Mr. Ananda Gopal Mukherjee,
Ms. Sonam Ray

... for the petitioner in WPA 28045/2023

Mr. Pingal Bhattacharyya

... for the petitioner in WPA 14547/2023

Mr. Amritlal Chatterjee

... for the State in WPA 28045/2023

Mr. T. M. Siddiquie,
Ms. Amrita Panja Moulick

... for the State in WPA 14547/2023

The writ petition being WPA 28045 of 2023 has been filed for inaction on the part of the State authorities in issuing MR Distributorship Licence in favour of the petitioner.

The writ petition being WPA 14547 of 2023 has been filed for cancellation of approval for grant of MR Distributorship Licence being No. F&S Deptt. No. 1647-FS/Sectt./Sup/4M-77/18 dated 25th April, 2023 in

favour of the respondent no. 6 (petitioner of WPA 28045 of 2023).

Both the aforesaid writ petitions have been filed in relation to the vacancy notification being No. 2876-FMR/13L-36/14 (Pt-V) dated 1st September, 2022.

The brief fact in a nutshell is that in respect of the above vacancy notification, the petitioners of both the writ petitions were the applicants. Upon enquiry by the concerned authority, the petitioner in WPA 28045 of 2023 namely, Amit Singha was found eligible and letter of engagement of MR Distributorship against such vacancy notification was issued in his favour, however, the licence was not granted. The petitioner in WPA 14547 of 2023 namely, Chumki Saha Mondal was found ineligible. Hence, these writ petitions.

Mr. Ram Anand Agarwala, learned advocate for the petitioner in WPA 28045 of 2023 submits that as per the vacancy notification, the applicant must have a godown measuring minimum of 6310 Sq. ft. carpet area within a single compartment. As per the plan annexed to the lease deed submitted by Chumki Saha Mondal (petitioner in WPA 14547 of 2023) the godown consists of four compartment, which is not in consonance with the specification as stated in the notification for vacancy. He further submits that the father and mother of the applicant Chumki Saha Mondal have entered into an agreement with the Government of West Bengal for running rice mill and the father of Chumki Saha Mondal

is also holding wholesale licence. Referring to Clause 8 of Part 3 of the Notification, he submits the restriction contained therein makes the applicant Chumki Saha Mondal ineligible. He also indicates that Chumki Saha Mondal (petitioner in WPA 14547 of 2023) in her writ petition has never challenged the rejection of her candidature by State-respondents rather she has prayed for cancellation of letter of engagement granted in favour of Amit Singha (petitioner in WPA 28045 of 2023) and as such, she being not aggrieved by the action taken on behalf of the State-respondents rejecting her candidature cannot challenge the issuance of letter of engagement in favour of Amit Singha. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied legal right by someone who has legal duty to do something. To buttress his contentions, he relies on the following decisions:

- i. ***State of Orissa (In Both the Appeals) versus Ram Chandra Dev & Anr.*** reported in ***AIR 1964 SC 685***
- ii. ***Mani Subrat Jain etc. versus State of Haryana and Others*** reported in ***AIR 1977 SC 276***
- iii. ***Monalisa Banerjee Majumdar versus State of West Bengal & Ors.*** in ***WPA 10767 of 2023***

with WPA 12346 of 2023 (High Court at Calcutta).

In light of his aforesaid submissions, he prays that State-respondents be directed to issue MR Distributorship Licence in favour of Amit Singha (petitioner in WPA 28045 of 2023).

Mr. Pingal Bhattacharyya, learned advocate for the petitioner in WPA 14547 of 2023 submits that in order to give favouritism to the respondent no. 6, the last date of submission of application was extended from 21st October 2022 to 10th November 2023. Moreover, the godown of the respondent no.6 is not within the advertised location. As per notification only in the event there is no available godown within the advertised location, the godown in the adjacent block can be considered. The State-respondents failed to consider the available godown provided by the petitioner within the advertised location. In aforesaid backdrop, he submits the issuance of letter of engagement of MR distributorship in favour of the respondent no.6, Amit Singha is unreasonable and arbitrary and should be cancelled.

Ms. Amrita Panja Moulick, learned Advocate for the State-respondents in WPA 14547 of 2023 submits that the petitioner Chumki Saha Mondal has been found ineligible due to insufficient godown space. The report furnished by the State-respondents clearly shows that the godown of the applicant, Chumki Saha Mondal, is not in a single compartment and further no sanction plan, deed

of conveyance, tax receipts etc. of such godown were produced at the time of inspection. For such reasons, the applicant, Chumki Saha Mondal was found ineligible.

Mr. Amritlal Chatterjee, learned Advocate for the State-respondents in WPA 28045 of 2023 submits that the MR distributorship licence could not be issued in favour of the applicant, Amit Singha since there was an order of *status quo* passed by this Court in WPA 14547 of 2023.

Having heard the learned Advocates for the respective parties it is to be seen whether the State-respondent is justified in issuing the engagement letter in favour of respondent no.6, Amit Singha (petitioner in WPA 28045 of 2023).

Upon perusal of Annexure A to the report filed by the State-respondents in WPA 14547 of 2023, it is found that the applicant Amit Singha has been held to be eligible. The letter of engagement issued to applicant Amit Singha has been challenged on two-fold grounds; *firstly*, the application of Amit Singha has been filed after the time period for submission of form was extended and *secondly*, the godown of applicant Amit Singha does not fall within the advertised location. The report of the State in WPA 14547 of 2023 indicates that all the applicants including the private respondent no.6, Amit Singha, applied before the extended period. Such fact has not been denied by the petitioner Chumki Saha Mondal in WPA 14547 of 2023 nor any exception to such report has

been filed. The applicant Amit Singha in his writ petition being WPA 28045 of 2023 has annexed Form G/A2 (Annexure P1 at page 15) and upon perusal of the same it is found that the GRIPS receipt date shows 20th October, 2022 which is a day before the last date i.e. 21st October, 2022. Nothing has been placed on record by the petitioner in WPA 14547 of 2023 Chumki Saha Mondal showing that the applicant Amit Singha filed his application during the extended period. Be that as it may, even if for the sake of argument it is accepted that the applicant Amit Singha applied during the extended period there is no material on record to suggest that there was any act of favouritism made to Amit Singha. Coming to the second ground it is not in dispute that the godown of the applicant Amit Singha lies in the adjacent block. Part-2 of the notification of vacancy at Clause 6(I)(iii) provides that the location of the godown should preferably be within Sainthia Municipality. If no candidate is found eligible in Sainthia Municipality for want of suitable godown then candidature of otherwise eligible applicants, having suitable godown in the adjacent block or Municipality within the district of Birbhum will be considered. Since from the materials on record it is found that there was no eligible candidate having suitable godown within the Sainthia Municipality, the grant of engagement letter considering the godown of the petitioner within the adjacent block cannot said to be beyond the criteria as given in the notification.

Further, the sketch map appended to deed of lease submitted by the applicant, Chumki Saha Mondal, shows that it consists of four compartments. The notification clearly specifies that the godown should have a single compartment with minimum carpet area of 6310 Sq.ft. Thus, the applicant, Chumki Saha Mondal, failed to fulfil the eligibility criteria as per notification.

It has been strenuously argued on behalf of respondent no.6, Amit Singha (petitioner in WPA 28045 of 2023) that since the parents of Chumki Saha Mondal were running rice mill under an agreement with the government and the father is holding a licence, hence eligibility of applicant Chumki Saha Mondal is hit by restrictions under Clause 8 of Part 3 of such Notification. Be that as it may, such aspect has never been enquired or reported by the State-respondents towards making Chumki Saha Mondal ineligible. The Annexure 'A' to the report submitted by the State-respondents in WPA 14547 of 2023 clearly shows that said applicant has been held ineligible due to want of sufficient godown space. Hence, this Court recuses from making any observation to the aforesaid aspect raised.

Further, in the writ petition filed by Chumki Saha Mondal, no prayer has been made challenging her rejection of application holding her as ineligible candidate by State-respondents. I find substance in the submission of Mr. Ram Anand Agarwala, learned Advocate for the petitioner in WPA 28045 of 2023 referring to *Mani Subrat*

Jain (supra), *Ram Chandra Dev (supra)* and *Monalisa Banerjee Majumdar (supra)* that there must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied legal right by someone who has legal duty to do something.

In view of the above, the writ petition being **WPA 28045 of 2023** stands allowed.

The writ petition being **WPA 14547 of 2023** stands dismissed.

The State-respondents are directed to issue MR Distributorship licence for location of Sainthia Municipality, Suri, Birbhum in reference to F&S Deptt. No. 1647-FS/Sectt./Sup/4M-77/18 dated 25th April, 2023 in favour of the petitioner, Amit Singha within a period of two weeks from the date of communication of this order.

Petitioner is directed to communicate this order to respondent no.3, Deputy Director (Licence), Directorate of District Distribution, Procurement & Supply.

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.**)