

OD 1

WPO 2439 of 2022
IA GA 1 of 2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SUKHENDU SINGH & ORS.
VERSUS
STATE OF WEST BENGAL & ORS.
AND
JAMINI BHUSAN ROY & ORS.

BEFORE:
The Hon'ble JUSTICE BIBEK CHAUDHURI
Date : 28th July, 2023.

APPEARANCE:
Mr. Timir Baran Saha,Adv.
Mr. Sudip Sarkar,Adv.
....for petitioner nos. 1 & 2.

Mr. Debabrata Saha Ray,Adv.
Mr. Rupayan Deb,Adv.
Ms. Sarbani Mukhopadhyay,Adv.
Mr. Souvik Mondal,Adv.
...for petitioner no. 3.

Mr. Debabrata Saha Roy,Adv.
Mr. Pingal Bhattacharyya,Adv.
Mr. Neil Basu,Adv.
...for added respondent.

Mr. Amitesh Banerjee,Sr. Adv.
Ms. Ipsita Banerjee,Adv.
...for State of West Bengal.

The Court: - Right of selection is not a vested right of a person. It is at best a reasonable expectation which a candidate may hold. However, it is the authority in all cases where a process of selection is undergone which is absolutely empowered to select suitable candidates according to some sort of

eligibility test and on the basis of such selection, the selected candidate gets the right to be appointed.

The above jurisprudence is universal in respect of all sorts of selection, be it in service matter or also in the matter of selection of any person for distributorship, wholesalership, dealership etc. under the State Authority. In other words, State Authority is empowered to carry on a very fair selection on the basis of which the candidates may be selected.

Bearing the above mentioned principle, let us now deal with the factual aspect of the matter.

As many as 41 writ petitioners filed W.P. No. 10346(w) of 2012 for issuance of writ in the nature of mandamus and other prerogative writs commanding the respondents to conclude the selection process for appointment of AP Shop owners in 41 tea gardens of Siliguri sub division pursuant to the advertisement in Uttar Banga Sambad on 26th August, 2011. The said writ petitioners also prayed for a direction upon the respondents to issue appointment letter and grant licence in favour of the petitioners as AP Shop owners in 41 tea gardens of Siliguri sub division forthwith. The above mentioned writ petition was disposed of on 17th May, 2012 with the following order:

“I, accordingly, direct the State respondents to take decision for appointment of 41 fair price shop owners whose selection is under consideration upon completing the selection process within a period of ten weeks from the date of communication of this order.”

I make it clear that I have to be adjudicated of the rights or eligibility of the individual applicants in this order and the authority shall take decision in this regard in accordance with law applying the established norms (emphasis supplied)."

Thus, the writ petition while disposing of AST 16 of 2016 empowered the licensing authority to fill up the vacancy of MR Shop dealers in 41 tea gardens following the rules and procedure within ten weeks from the date of communication of the order.

Indubitably, by a letter dated 9th September, 2021, the Joint Secretary to the Government of West Bengal, Food and Supplies Department wrote a letter to the DDPS, Food & Supplies Department requesting him to submit a report in relation of engagement of APS dealers in 41 tea gardens and surrounding areas of Siliguri sub division of Darjeeling district in a format. The Sub Divisional Controller, Food & Supplies, Siliguri submitted the said information to the District Controller of Food & Supplies, Darjeeling at Siliguri on 7th October, 2021 as per the format prescribed in the letter dated 9th September, 2021. It is pointed out by the learned Advocate for the petitioners that the names of 38 candidates were stated in the report. However, in respect of Matigara, Atal and Thanjhora tea gardens, the present petitioners who were also the parties to W.P. No. 10346(w) of 2012 did not find place in the said report submitted by the Sub Divisional Controller. This led the petitioners to file the instant writ petition.

It is submitted by the learned Advocate for the petitioners that 38 numbers of writ petitioners were granted licence without any objection in respect of MR Shop. The petitioners have the right to be considered in the same manner with the remaining 38 candidates as they stand on the same footing. However, their application was rejected without considering such aspect of the matter.

It is also contended on behalf of the writ petitioner no. 3 that the rival candidates who claimed licence in the said three tea gardens were contractual employees of original dealers and they were claiming licence as contractual employees. It is needless to say that a contractual employee does not have any right of getting regular licence in respect of a MR Shop.

Ms. Ipsita Banerjee, learned Advocate for the State respondents has submitted a detailed report wherefrom it is ascertained that in respect of Atal tea garden along with the petitioner no. 2, Dipu Mallick and another person, namely Debasish Chakraborty also filed an application in prescribed format for licence in respect of the MR Shop. Same is the condition in respect of Thanjhora tea garden where one Jamini Bhusan Roy and in respect of Matigara tea gardens where Bobita Singha Barman were the applicants along with the writ petitioners. Since there are two contending candidates, it is incumbent upon the State respondents to carry on selection process as described in WBPDS (Maintenance & Control) Order, 2013.

I am also not in dispute that the Sub Divisional Controller, Food & Supplies Department is under obligation to conduct the selection process in

accordance with the rules. Moreover, I have perused the order passed by this Court in AST No. 16 of 2016 dated 1st October, 2016 and CPAN 278 of 2016 in AST 16 of 2016 dated 8th April, 2016 where on the basis of an undertaking given on behalf of the persons who are contesting for licence as against the three writ petitioners, more particularly, described in paragraph 2(xii) of the report that they were allowed to supply ration materials to all 40 tea gardens since the appointment of those self-help group as well as other tea gardens on the basis of the order dated 18th November, 2015 have been stayed by such order dated 1st February, 2016.

Thus, the persons who prayed for licence against the writ petitioners have the right to take part in the selection process.

In view of such circumstances, the instant writ petition is disposed of directing the Sub Divisional Controller, Food & Supplies, Siliguri to consider the applications of the petitioners and the contesting parties whose names do appear in paragraph 2(12) of the report submitted by the State. If required, they shall be asked to file appropriate application in the prescribed format with all eligibility criteria. The ACFS shall complete the entire process of selection following inspection of site and documents etc. strictly as per the control order and issue licence in favour of the best selected candidates.

It is made clear that the ACFS shall not consider the affidavits of either of the parties filed during the course of long pending litigations.

(BIBEK CHAUDHURI, J.)