

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Gaurang Kanth**

***M. A. T. 173 of 2024  
(CAN 2 of 2024)***

***The State of West Bengal & Ors.  
-Vs-  
Latib Ali Paik & Ors.***

**For the Appellant-State:** Mr. Sirsanya Bandyopadhyay, Jr. Standing Counsel  
Mr. Ritesh Ganguly, Adv.

**For the Respondent : Mr. Debabrata Saha Roy, Adv.  
No.1/writ petitioner : Ms. Pampa Dey (Dhabal), Adv.  
Mr. Biswarup Chatterjee, Adv.  
Mr. Neil Basu, Adv.**

**Heard on : 20.08.2024**

**Judgment on : 20.08.2024**

**Joymalya Bagchi, J. :-**

1. Appellant-State has appealed against judgment and order dated 16.08.2023 passed by the Hon'ble Single Judge whereby the Hon'ble Judge set aside the decision of the Sub-Divisional Controller, Food & Supplies, Diamond Harbour, 24-Parganas (South) holding the respondent

no.1/writ petitioner ineligible and remanding the matter for fresh enquiry on the basis of the observations made in the judgment and after considering the financial solvency of preceding one year from the date of enquiry of the applications of respondent no.1/writ petitioner and private respondent no.2 i.e. successful applicant.

2. Facts giving rise to the appeal are as follows :-

3. A vacancy notification for engagement of dealership of fair price shop in respect of Village: Bhushna, P.O. & G.P. – Kamarpole, P.S. Diamond Harbour, Block: Diamond Harbour-II, District: South 24-Parganas was issued on 11.03.2020.

4. In response to the vacancy notice, respondent no.1/writ petitioner and private respondent no.2 made applications for dealership. One of the eligibility criteria set out in the vacancy notice i.e. Clause 6 reads as follows :-

*“6. The applicant, for dealership must have Bank Balance of at least Rs.5.00 lakh (Five Lakh) as working capital reflected on the day of application and one year preceding the date of application.”*

5. Referring to the said clause, Sub-Divisional Controller, Food & Supplies, held respondent no.1/writ petitioner ineligible and recommended private respondent no.2 as the successful applicant.

6. Challenging the said order respondent no.1/writ petitioner approached the Hon'ble Single Judge. It was argued respondent no.1/writ petitioner had bank balance of more than Rs.5 lakhs from the date of application and preceding eight months from the said date. Though

private respondent no.2 also did not have a minimum balance of Rs.5 lakhs for the entire year preceding the date of his application, his candidature was recommended whereas the candidature of respondent no.1/writ petitioner was turned down.

7. Accepting the said argument, Hon'ble Single Judge, inter alia, held as follows :-

*"I have also held that the father of the respondent No.6 has a subsisting licence of kerosene oil dealership. Prima facie the application of respondent No.6 cannot be considered in view of the provision contained in Clause 20(IIa). Secondly, it is found that the Enquiry Officer considered solvency of the petitioner with effect from 16.10.2019, which ought to be looked into with effect from 13<sup>th</sup> October, 2019. When the respondent No.6 was given relaxation in order to prove his solvency, why such relaxation was not provided to the petitioner. Thirdly, the Enquiry Authority failed to consider that the petitioner has his godown at Village Bhushna where the fair price shop was intended to be set up, whereas the godown of respondent No.6 is situated at Village Sarisha under Police Station Diamond Harbour. Village Sarisha is not even within the Gram Panchayat area of Kamarpole G.P. "*

8. In view of the aforesaid, Hon'ble Single Judge directed Sub-Divisional Controller, Food & Supplies, to conduct fresh enquiry in light of the aforesaid observations and after considering the financial solvency of preceding one year from the date of enquiry of the applications of both the parties.

9. We are informed the order has been implemented and Sub-Divisional Controller, Food & Supplies, has not recommended private respondent no.2 on the ground that his shop room was not within the vacancy area and has recommended the case of the respondent no.1/writ petitioner.

10. Mr. Sirsanya Bandyopadhyay, learned Junior Standing Counsel for the appellant-State argues the order was implemented under threat of contempt. This would not render the appeal infructuous. He strenuously argues the observations made in the impugned judgment are erroneous as the direction to consider financial solvency preceding one year from the date of enquiry alters the terms of vacancy notice itself. Accordingly, the judgment is liable to be set aside and the impugned decision which is a product of the said judgment is also liable to be set aside.

11. Mr. Debabrata Saha Roy for the respondent no.1/writ petitioner contends private respondent no.2 had appealed against the selfsame order in MAT 1640 of 2023 but the same was dismissed. He further contends the Hon'ble Single Judge was right in remanding the matter for fresh consideration as private respondent no.2 was given relaxation with regard to maintenance of minimum bank balance of Rs.5 lakhs as required under Clause 6 but his client was not extended the same benefit. Furthermore, the shop room of his client was in Village: Bhushna which is within the vacancy area but that of private respondent no.2 is beyond the service area.

12. A preliminary issue with regard to maintainability of the appeal has been raised. It is argued the impugned order has since been implemented. It is also contended the selfsame order was unsuccessfully challenged by private respondent no.2 in MAT 1640 of 2023. Hence, the appeal is not maintainable.

13. We have given anxious consideration to the aforesaid submissions.

14. Appellant-State contends the impugned order had been implemented on the threat of contempt during the pendency of the appeal. It is trite law in the event an order is implemented under the threat of contempt, the jurisdiction of the appellate court is not forfeited to examine the validity of the said order more so when the appeal was pending at the time of implementation.

15. The other issue also does not find favour with this court. Private respondent no.2 had appealed against the selfsame order in MAT 1640 of 2023. But the ground of challenge was that the order was passed ex-parte without giving an opportunity of hearing to him. No argument with regard to merit of the order had either been advanced or decided. Accordingly, the appeal of private respondent no.2 was disposed of giving him liberty to file a recalling application before the Hon'ble Single Judge. We are informed private respondent no.2 has not filed any such application. In this factual matrix, we are of the opinion the State's appeal requires to be decided on merits.

16. Coming to the impugned order we note Hon'ble Single Judge, inter alia, held decision of the Sub-Divisional Controller, Food & Supplies, Diamond Harbour that respondent no.1/writ petitioner was ineligible for non-compliance of Clause 6 of the vacancy notice was arbitrary as relaxation of the selfsame condition had been given to private respondent no.2.

17. Respondent no.1/writ petitioner had minimum balance of Rs.5 lakhs on the date of application and for a major period of one year i.e.

eight months preceding thereto. Though private respondent no.2 did not have minimum balance for the entire period of one year preceding the date of application, relaxation of the said condition was given so far as he was concerned but not to respondent no.1/writ petitioner.

18. Mr. Bandyopadhyay submits the said relaxation was given as private respondent no.2 had a minimum balance for nine months but respondent no.1/writ petitioner had minimum balance for eight months during the year preceding the date of application.

19. None of the parties had complied with Clause 6 of the vacancy notice. Respondent no.1/writ petitioner had maintained minimum balance for eight months during the year preceding the date of application while private respondent no.2 had maintained the same balance for nine months i.e. only one month more. In this backdrop, decision of the Sub-Divisional Controller, Food & Supplies, to grant relaxation in favour of private respondent no.2 vis-a-vis Clause 6 and not to respondent no.1/writ petitioner is wholly arbitrary and unreasonable in nature. Hon'ble Single Judge rightly held the decision making process was vitiated on this score.

20. Moreover Hon'ble Judge also noted the respondent no.1/writ petitioner had his shop room in village: Bhushna within the vacancy area whereas that of private respondent no.2 was in a different village i.e. Sarisha which is not within the Gram Panchayat area.

21. In this backdrop, the matter was remanded for fresh enquiry and the decision of the Sub-Divisional Controller went in favour of respondent

no.1/writ petitioner on the ground that private respondent no.2 did not have shop room within the vacancy area whereas the respondent no.1/writ petitioner's shop room was within the said area.

22. Mr. Bandyopadhyay contends the Hon'ble Judge had changed the rules of the game by altering Clause 6 in the vacancy notice and directing the Sub-Divisional Controller, Food & Supplies, to consider the financial solvency preceding one year from the date of enquiry of the applications of the parties. He submits the said clause requires maintenance of minimum balance of Rs.5 lakhs for one year from the date of application and not the date of enquiry.

23. We are in agreement with Mr. Bandyopadhyay that the Hon'ble Judge ought not to have changed the eligibility criteria set out in the vacancy notice. However, in the facts of the case we note the Sub-Divisional Controller, Food & Supplies, in the earlier enquiry had given relaxation of the said condition in favour of private respondent no.2 and not with regard to respondent no.1/writ petitioner. This stance of the Sub-Divisional Controller, Food & Supplies, gives an impression that the said condition was not considered mandatory with regard to private respondent no.2 but was treated as a ground for disqualification of respondent no.1/writ petitioner.

24. Accordingly, remanding the matter for fresh decision was wholly justified. However, while passing the order of remand, the Hon'ble Single Judge ought not to have directed consideration of the financial solvency

position from the date of enquiry of the applications which would alter the terms of the vacancy notice itself.

25. However, this direction, though not finding favour with this court, has not prejudiced the parties for the following reason.

26. Decision taken pursuant to the impugned judgment to disqualify private respondent no.2 and recommend respondent no.1/writ petitioner was not on the issue of financial solvency but on the ground that the shop room of respondent no.1/writ petitioner was within the vacancy area and that of private respondent no.2 was beyond the said area. Accordingly, the direction pertaining to financial solvency of the parties did not affect the decision making process. In the event, private respondent no.2 is aggrieved by the reasons ascribed to disqualify him, he is at liberty to challenge the decision of the Controller in accordance with law.

27. In light of the aforesaid discussion, we are of the opinion the impugned judgment does not call for interference.

28. Appeal is accordingly, dismissed.

29. In view of dismissal of the appeal, connected application being CAN 2 of 2024 is also disposed of.

30. We make it clear impact of Clause 6 of the vacancy notice in the selection process has been interpreted in the peculiar facts of the case where the same was treated as relaxable for one candidate and not the other. The judgment shall not be treated as a binding precedent with regard to the mandatory nature of the said clause in other cases.

31. There shall be no order as to costs.
32. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

**(Gaurang Kanth, J.)**

**(Joymalya Bagchi, J.)**

**akd**