

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

**IN THE MATTER OF
WPA 431 (W) of 2016**

**Smt. Soma Mahato
Vs.**

The State of West Bengal & Ors.

**For the Petitioner : Mr. Shamim UI Bari, Adv.,
Ms. Asmita Mitra, Adv.**

For the State : Ms. Amrita Panja Moulick, Adv.

Reserved on : 04.07.2024

Judgment on : 20.08.2024

Subhendu Samanta, J.

1. The Government of West Bengal, Food & Supply Department approved declaration of vacancy of MR Dealership at Ranibandh under Khatra Sub Division, District- Bankura vide No. 2901-FS dated 15.06.2012, subsequently as per instruction of the DCF & S, Bankura vide memo No. 1012 dated 16.07.2012, the SCF & S, Khatra, issued notice vide memo No 381/SCFS/Khatra/MR/appointment/12 dated

18.07. 2012 inviting applications for filling up dealership vacancy at the approved place, Ranibandh. Several applications were submitted for the proposed license as per proforma under the provisions of West Bengal Public Distribution System (maintenance and control) Order, 2003.

2. The applications were duly inquired into by the area inspector (F&S) Ranibandh, Bankura and submitted a report to SCF & S concern. The present petitioner was considered to be the most eligible candidate since she has fulfilled the required criteria for dealership license. The SCF&S Khatra, forwarded the said file to DCFS, Bankura; and after examining all supporting documents recommended the case of the present petitioner and forwarded the file to the Director DDP& S for final approval. Thereafter the concerned authority has not taken any steps or did not intimated the present petitioner regarding the fate of his license. The petitioner made several representations and petitions to the

Authority concern but no positive response was received by the petitioners.

3. Thereafter the petitioner approached this court in a writ petition being no. WP19714(w) of 2015 wherein a Co-ordinate Bench of this Court has directed the authority concern to take appropriate decision within a specific period of time. In response to the said direction the authority concern has issued the impugned order on 18th November, 2015, and thereby rejected the prayer of the present petitioner on the ground that it is beyond consideration according to the law and merits.

4. Hence this writ petitioner.

5. Learned Advocate for the petitioner submits that the act and action of the concerned State Authority is unreasonable, illegal and in violation to the principle of natural justice, thus the same is required to be set aside. The respondent authority did not discharge their duties fairly or justifiably. They kept themselves silent for a long period, after processing the

application of the petitioner, now suddenly thereof opinion that in the mean time as the WBPDS (M&C) Order 2013 came into forces, thus, the vacancy notification wherein the present petitioner was applied has been cancelled.

6. He further submits that the State Authority has submitted a report as per direction of this court wherein they have stated that by virtue of notification No. 2643-FS, dated 17.08.2015 the impugned vacancy notification was cancelled.

7. Learned Counsel, for the petitioner submits that the impugned notification dated 17.08.2015 does not speaks about the notification in question, thus the impugned Order passed by the Concerned Authority on the basis of notification dated 17.08.2015 is palpably illegal in the eye of law and required to be quashed.

8. Learned Counsel on behalf of the States submits that the Concern Authority has correctly

passed the impugned order on 18.11.2015. In the course of processing the case of petitioner, WBPDS (M&C) Order, 2013 came into force on 8th August 2013 and the Department of Food & Supply issued an order on 20.01.2014 indicating that necessary steps may be taken for filing earlier vacancies for MR Dealership by making fresh Gazette Notification and Newspaper Advertisement etc.

9. In pursuance of the Government Order dated 20.01.2014, the concern District Controller directed to re-notify the vacancies. It is the further case of the petitioner that the delay in proceeding the application of the petitioner is completely procedural as various levels are involved in verifying documents and time is required for getting approval on each level. It is the positive case of the State that since the notification was cancelled by the Department and no final selection was made, petitioner cannot claim it as her legitimate claim.

10. It is the further case of the State that there has been a drastic and logical change in Public Distribution System with the introduction of National Food Security Act, 2013. If any order is passed conceding the prayer of the petitioner, that will adverse the establish process of Public Distribution System which will affect the spirit of National Food Security Act, 2013.

11. Heard the Learned Advocates. Perused the writ petition along with annexures thereof.

12. In perusing the impugned order, Firstly, it comes to my notice that the Concerned Department has taken decision vide memo No. 152-FS dated 20.01.2014 for taking necessary steps for filling earlier vacancies of MR Dealership of making gazette notification in terms of WB PDS (M&C) Order 2013. Surprisingly, in reply to RTI application of the petitioner the Concerned Department on 4th March 2015 has informed petitioner that his application was processed to the upper authority. More surprisingly, Learned Counsel, appearing on behalf of the State has

also submitted before this court [in WP-19714(W)/2015] on 31st August 2015 that the application of the present petitioner is still in process. I find no reason, as to why the State Authority has suppressed the fact of their decision (dated 20th January, 2014) to the petitioner as well as before this court.

13. Now it appears to me more surprising that one affidavit is placed by the concern Sub-Divisional Controller Food & Supply Khatra, by citing notification dated 17.08.2015 on the strength of which the reason order was passed and it has been decided that the application of present petitioner for appointment of M.R. Dealer at Ranibandh under Khatra Sub- Division Bankura District is beyond consideration. To substantiate the stand taken by the State before this court the notification dated 17.08.2015 is required to be set out as follows:-

Date: 17.08.2015
No. 2643-FS/O/Secrt/Food/6F-82/2015

NOTIFICATION

In view of the implementation of the National Food Security Act, 2013 in the State, the Governor is pleased to cancel with immediate effect the FPS vacancies notified vide Memo. Nos, 2480/FS/O/Sectt./C55/75-16/2013 dated 26.08.2013, 3062-FS/Sectt/Food/4M-04/2013 dated 06.11.2013, 152-FS/Sectt/Food/4M-16/2013 dated 20.01.2014. 540-FS/Sectt/Food/4M-16/2013 dated 04.03.2014 and G-295/FS/Sectt/Food/6F-19/2009 dated 08.01.2015. No further action will be taken in connection with applications received against such vacancies.

14. From the plaint perusal of the notification dated 17.08.2015 it appears that notification was passed after implementation of National Food & Security Act 2013. In respect of the vacancy notifications issued in the year 2013, 2014, and 2015. The present petitioner has applied for vacancy notification dated 18.07.2012 thus by virtue of the notification dated 17.08.2015 the vacancy notification while in which the present petitioner was applied for, was not even cancelled.

15. Learned Counsel appearing on behalf of the State has submitted a decision of the

Hon'ble Apex Court reported in **West Bengal and Ors VS. Gitashree Dutta (Dey)** reported in **2022 SCC Online SC 691**.

16. Learned Counsel appearing on behalf of the State submits that Hon'ble Apex Court in **Gitashree Dutta (Dey)** (Supra) has decided similar issue and as specifically ordered that :-

31. In the instant case, we have already noticed that the appellants were reposed with a responsibility of Implementing the mandate of the 2013 Act, and more importantly, to bring about reforms in the existing Public Distribution System as stipulated under Section 12 of the said Act. The respondent herein being a mere applicant in an un-finalised selection process, has no vested right in his favour to seek continuation of the notified vacancies, when by recalling the vacancy notification, the appellants endeavored to enforce the statute. Moreover, as discussed above, there can be no estoppel against a statute. Even going by the observations of the Division Bench in the impugned judgment, that the State was aware of the 2013 Act while issuing the 30.01.2014 vacancy notification, the said notification cannot be sustained, being contrary to the mandate of the National Food Security Act, 2013, more importantly of Section 12 thereof as held in A.P. Dairy Development Corpn. Federation (supra).

32. There is also no merit in the contention of the respondent that the Authorities have taken into consideration the parameters laid down in 2013 Act while declaring the vacancies on 30.01.2014. There is nothing on record to suggest that when the vacancies were declared on 30.01.2014, the Authorities kept in mind the provision of the 2013 Act. The 2013 Act came into effect on 10.09.2013. The vacancy notice is dated 30.01.2014. The vacancy notice does not refer to the provisions of 2013 Act. In our view, it would be improper to infer that the provisions of 2013 Act were kept in mind while issuing vacancy notice dated 30.01.2014. The respondent has not made put a case of arbitrariness or unreasonableness or mala fide. In our view, the Division Bench ought to have held that the notification dated 17.08.2015 was issued to keep the public distribution system in tune with the mandate of 2013 Act, more specifically Section 12 which provides for reform in the public distribution system.

17. Learned Counsel for the State further submits that the present petitioner being a mere applicant in an unfinalised selection process, has no vested right in her favour to seek continuation of the notified vacancies.

18. Learned Counsel appearing on behalf of the petitioner submits that the legal question involved in this issue is--- In the midst selection process a new rule come into effect, whether selection will be completed in terms of new rule or not.

19. Learned Counsel further argued that the Hon'ble Supreme Court and Hon'ble High Court has specifically dealt with the issue and has held that the selection will be completed in terms of old rules when the selection process was initiated, new rule will not be applicable.

20. In support of his contention Learned Counsel for the petitioner cited the decisions reported in 1. **State of Bihar and Others Vs. Mithilesh Kumar, (2010) 13 SCC 467**, 2. **Tulshi Ray Vs. Krishanu Ray (2011) 2 CHN CAL 1021.**

In **Mithilesh Kumar**, the Hon'ble Apex Court has held that :-

22. There is no reason for us to have any disagreement with the decision of this Court in All India

Railway Recruitment Board case regarding the right to appointment even of selected candidates, but this is not a case of the respondent having acquired any indefeasible right which has to be cancelled on account of certain exigencies. On the other hand, this is a case where although selected for the purpose of appointment by BPSC, Patna, the case of f the respondent was not even considered as there was a change in policy regarding recruitment in the meantime.

23. While a person may not acquire an indefeasible right to appointment merely on the basis of selection, in the instant case the fact situation is different since the claim of the respondent to be appointed had been negated by a change in policy after the selection process had begun.

In **Tulshi Roy**, the Hon'ble three Judges

Bench of this court has held that :-

21. We do not for a moment dispute with the Broad proposition of law that if the process of selection has already been initiated, it should be finished in accordance with law that it stood at the time of initiation of process even if a new law has come into force in the meantime. However, such principle cannot have any application to a case where the process of selection was complete, an appointment was given, the appointed candidate

joined service but subsequently, such appointment was found to be vitiated and the appointment given based on such selection has been set aside by an order of the Court. In such a case, on setting aside the appointment given to the appointed candidate, a new vacancy will arise in view of the order setting aside the appointment with effect from the date of such order. In such a situation, in our opinion, a fresh vacancy should be declared in accordance with the Rules of 2009 as if such vacancy has occurred on the date, the earlier appointment has been set aside and the post concerned should not be treated to have been lying vacant during the period when the person found to be illegally appointed by the Court worked. It is needless to mention that such a person illegally appointed whose appointment is set aside by the Court will be entitled to the remuneration for the said period so long his service was not terminated by the virtue of the order passed by Court. On termination of the service by the order of the Court, a fresh vacancy should accrue.

23. After the coming into operation of the new rules, if any illegal appointment earlier made is set aside by a Court, a duty is cast under the new Rule 8 to report such vacancy and to fill it up in accordance with the rules. However, in a given situation, where due to pendency of the Court proceedings challenging the process of selection

as illegal, for any reason, no appointment was made but the proceedings for selection remain stayed and the Court ultimately passes direction for selection after advertising, the process should restart from that stage and should be completed in accordance with the old rule and in those cases, the process of selection having already been commenced, there is no scope of including those vacancies while preparing the report of vacancy in terms of Rule 8 simply because the vacancy has not been filled up yet.

21. Perused the observation of Hon'ble Apex Court as well as this Hon'ble High Court. It is the trite law that when the selection process was initiated the same must be completed according to the rule at the time of initiation of the selection process. It is also true that in the midst of selection process the entire rules or process of selection cannot be changed at the whims of the State Authority. If the State Authority or the appointing authority was allowed to change the entire rules of selection which was already initiated at the time of making applications, then all the applicants would be in

a position that suddenly their candidature would be invalidated which was otherwise valid as per certain rules; such action is obviously, violative to the principle of Natural Justice.

21. In the case of **Gitashree Dutta (Dey) (supra)** the declaration of vacancy for FPS shop was notified on 30.01.2014 and was admittedly not in conformity with the 2013 Act. Moreover the State authority by issuing a specific notification on 17.08.2015 has cancelled of the policy notifications including the notification of **Gitashree Dutta (Dey) (Supra)** due to implement of National Food Security Act 2013. It is the observation of the Hon'ble Apex Court that since the notification was passed after the introduction of National Food Security Act 2013, thus, the notification dated 30th January 2014 is apparently illegal.

22. In the present case the notification was issued prior to the implementation of National Food Security Act 2013. Moreover, the

State has not been specifically declared the impugned vacancy notification to be invalid.

23. Let me consider whether the National Food Security Act, 2013, at all directed the authority concern to cancel all earlier notifications for the purpose of smooth distribution of food grains to the public at large. The National Food Security Act, 2013 came into force on 5th July, 2013. Section 32 of the said act reads as follows:-

32. (1) The provisions of this Act shall not preclude the Central Government or the State Government from continuing or formulating other food based welfare schemes.

(2) Notwithstanding anything contained in this Act, the State Government may, continue with or formulate food or nutrition based plans or schemes providing for benefits higher than the benefits provided under this Act, from its own resources.

24. Section 36 of the said Act as stated regarding the overriding effect of the said act as follows:-

36. The provisions of this Act or the schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law.

25. So from the above provisions it appears to me that the State Government is not precluded to continue other food based welfare schemes started prior to the Act, 2013.

26. Moreover, the overriding effect of the said Act, 2013, also enumerated that if anything inconsistent therewith contained in any other law shall have effect after implementation of the said Act 2013. The State Authority has failed to appreciate the fact that the continuation of the earlier notification by virtue of WBPDS (M&C) Order 2003, how far it in-consistent with the National Food Security Act 2013. Moreover, as the State Government has not specifically cancelled the vacancy notification dated 18.07.2021 in which the present petitioner was applied for, the respondent authority is duty

bound to finalise the process of recruitment of the present petitioner by virtue of State Control Order 2003.

27. However, the State authority may direct the petitioner to comply with the formalities as required under National Food Security Act 2013 or WBPDS (M&S) Control Order, 2013 as the case may, be for proper distribution of food grains in the locality. Subsequent notification/appointment in respect of impugned cite if any, consequently treated to be cancelled. Thus, the instant writ petition appears to me meritorious and the same is allowed and disposed of under the above observation.

28. The State is directed to issue the appointment in favour of the present petitioner in respect of the MR Dealership at Ranibandh under the notification dated 18.07.2012. if it appears that she fulfilled all criterias under the provision of WBPDS (M&C) Order 2003 and any other law for the time being inforce.

29. The respondent is directed to comply the Order as early as possible, more preferably within 08 weeks from the date of communication of this order.

30. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)