

10.06.2024
SL No.35
Court No.24
Ali

WPA 5239 of 2023

**Joyashree Kabiraj
Versus
The State of West Bengal & Ors.**

Mr.Sidhartha Sankar Mondal,
Mr. Tirtha Pati Acharya,
Ms. Arunima Das Sharma,
Mr. Soumendu Roy
.....for the petitioner.

Mr.Anujit Mukherjee,
Mr. Amit Kumar Ghosh,
..... for the respondent No. 6.
Mr. T.M. Siddique,
Mr. Subhendu Sengupta
.....for the State.

The instant writ petition is preferred by the present petitioner seeking necessary direction upon the respondent authority being respondent Nos. 3 and 4 to rescind, revoke, cancel or quash the licence of MR dealership issued in favour of respondent No. 6 in terms of Notification No. 02/SCFS/SURI/BIRBHUM/2022 dated 03.01.2022.

The brief facts of the case is that the SCFS-Suri (Sadar) issued a Notification on 3rd January, 2022 inviting applications for MR dealership in respect of Mouza & J.L. No. 137, GP/Ward No.0013 under Post Office and P.S. Dubrajpur under Dubrajpur Municipality Dist. Birbhum. In response to such Notification the present petitioner, respondent No. 6 and other two candidates applied

for the licence. After exhausting procedure, the concerned authority has issued licence in favour of respondent No. 6. The present petitioner has challenged the said licence and filed the writ petition for setting aside or quashes the said licence in favour of respondent No. 6.

Hence this writ petition.

Learned advocate for the petitioner submits that the licence issued in favour of respondent No.6 is de-horse to the statue. He submits that the Notification dated 3rd of January, 2022 discloses the eligible criteria containing, inter alia, that the applicant should possess suitable godown within the vacancy location for storage of Public Distribution Commodities and running the dealership. It is the specific case of the petitioner that the respondent No. 6 do not possess a suitable godown within the vacancy location i.e. within Ward No. 0013 of the Dubrajpur Municipality, but the authority by violating the specific norms of eligible criteria had issued the licence in favour of respondent No. 6.

He further argued that the report was filed by the State by the direction of this Court wherefrom it appears that the present respondent No. 6 was not recommended in the inquiry report of the concerned inquiry officer though he was called in the interview.

He further argued that the inquiry authority has recommended the present petitioner to be fit for engagement of FPS dealership but ultimately in the interview, she was given less mark than the respondent No. 6. He also placed the specific marking of the concerned selection committee wherein the present petitioner was given 5 (five) marks under the head of "domicile", though she is a permanent residence of Ward No. 13 of the said Municipality. Learned advocate for the petitioner argued that the present petitioner should have awarded 10 (ten) marks. He argued that if the 10 (ten) marks was awarded to the petitioner she would be the successful candidate of this case. Finally, learned advocate for the petitioner argued that the brother of the respondent No. 6 had FPS dealership on the earlier occasion. Thus, the dealership issued on behalf of the respondent No. 6 is not legal.

On the above arguments, he submits that the licence issued in favour of respondent No. 6 is liable to be canceled.

Learned advocate appearing on behalf respondent No. 6 submits that the report of the State in the form of affidavit is very much clear that the present petitioner also did not possess any godown within the declared Ward No. 13 under the Dubrajpur Municipality. He referred the specific

paragraph of the report wherein it has been mentioned by the State that the Dubrajpur Municipality is a small Municipality consists of 16 numbers of Ward; Ward No. 13 is situated adjacent near Ward No. 16 wherein the godown of the respondent No. 6 is located. He further submits that the claim of the petitioner regarding her advantage as she is residing within the Ward No. 13, cannot be given priority as her godown is also located not within the Ward No. 13.

The counsel for respondent No. 6 further argued that the entire procedure of the selection procedure is a conjoin process wherein the reports and documents as well as the viva-voce conducted by the selection committee was taken into consideration as a whole but there is nothing to deny the prayer of any candidate who was not recommended by the inquiry officer. Finally, he argued that the State of West Bengal has amended the definition of “family” by way of a Notification dated 07.01.2023. The instant advertisement was issued on 3rd of January, 2022. The amendment dated 17.01.2023 had given no retrospective effect. Thus, the brother was not came under the purview of the “family” while deciding the vacancy application by virtue of Notification dated 3rd of January, 2022. Thus he argued, in this case, MR

dealership of the present respondent No. 6 cannot be denied only on the ground that his brother was already having one dealership licence.

Learned advocate appearing on behalf of the State submits that the State has considered all applications of the applicants. One selection committee was formed and after due scrutiny of each and every candidate. The selection committee had given a specific mark in respect of each and every candidate on the selection process. The respondent No. 6 has scored highest marks, so the MR dealership was issued in favour of the respondent No. 6; there is no illegality in the process.

Heard the learned advocates, perused the materials on records also perused the affidavit-in-opposition and the exception thereof. Before making any comment on the merit of this writ petition it is unequivocally admitted fact of this case that the MR dealership licence was issued by the concerned State respondents in favour of respondent No. 6, who do not possess a suitable godown within the vacancy location i.e. within Ward No. 13 of Dubrajpur Municipality. So, this position makes it clear that the authority has themselves violated the eligible criteria as notified on 3rd of January, 2022.

The learned advocate appearing on behalf of the State did not disclose any rule or authority regarding the fact that the selection committee may enhance their power de-hors to the statutory provision to select any person who possess a godown to the vicinity of the vacancy location.

So, without going through the other merits the matter, I make it clear that the MS dealership issued in favour of the respondent No. 6 is violative to the principle and eligible criteria as mentioned in paragraph 12 of Notification dated 3rd of January, 2022.

On the above score, I make it clear that the MS dealership issued in favour of respondent No. 6 by the concerned authority Nos. 3 and 4 is liable to be revoked and the same is canceled.

Hence, the instant writ petition appears to be meritorious. The MS dealership licence issued in favour of respondent No. 6 by the respondent Nos. 3 and 4 is hereby quashed.

The Government respondent is at liberty to initiate a fresh procedure for appointment of MS dealership in respect of the vacancy location and shall conclude the entire procedure within six months from the date of passing of this order; till then respondent No.6 shall carry on MS dealership

so that, the Public Distribution System may not be disrupted.

Accordingly, the application being **WPA 5239 of 2023** is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)