

**WPA 8500 of 2024
(CAN 1 of 2024)**

**Milani Kandar Bisai
Vs.
The State of West Bengal & Ors.**

Mr. Aswini Kumar Bera
Mr. Arijit Bera

....for the petitioner

Mr. Sk. Md. Galib, Sr. Govt. Adv.
Ms. Ashmita Chakraborty

....for the State

Affidavit-in-Opposition filed on behalf of the respondent Nos. 1 to 4 is taken on record.

Affidavit-in-Reply filed on behalf of the petitioner against the Affidavit-in-Opposition by the State authority is also taken on record.

The instant writ petition is preferred by the petitioner, who applied for engagement of a new FPS with the notified area. By virtue of her application, she was called for an interview on 24th February, 2023 along with private respondent No. 5. In the interview the private respondent No. 5 appears disqualified in respect of his godown area. Thus, it is the legitimate expectation of the petitioner that she is the successful candidate; but she has not given licence of the said dealership. She made several representations with authority concerned but the authority has not replied any of her representations. Hence, the instant writ petition.

It is the case of the present petitioner that the respondent authority must have acted upon the representation made by the petitioner but they have not acted according to the representation, though the

present petitioner appears to be a successful candidate. During the pendency of the instant writ petition it appears that one fresh notification was issued by the State authority on 13th May, 2024 in respect of the same location. The said new notification was challenged by filing CAN 1 of 2024, which was disposed of by this Court with a view that this is a new cause of action, which cannot be entertained in this instant writ petition by the order of this Court dated 21st August, 2024.

The respondent authority has filed an Affidavit-in-Opposition containing, *inter alia*, that in respect of vacancy notification dated 4th November, 2022, only two applicants, that is the present petitioner and the private respondent No. 5 submitted their application against the said vacancy. The field enquiry was conducted on 11th January, 2023. The District Level Fair Price Shop Selection Committee, called both the applicants to appear on interview on 24th February, 2023. The District Level Fair Price Shop Selection Committee finally disqualified both the applicants on the same day that is on 24th February, 2023. For that reason the new notification was issued. The respondent authority in the Affidavit-in-Opposition also annexed the enquiry report in respect of godown-cum-shop room of the present petitioner. It is the case of the private respondent that the godown-cum-shop room of the present petitioner does not fulfill the GO

and it is not suitable for FPS further “location is in corner of the vacancy area and approached road is very narrow and not accessible for four wheelers”.

The authority also pleaded that the approached road is only about 3 ft. wide thus a four wheeler cannot approach to the proposed FPS godown of the petitioner. It is the further case of the respondent that the character of the land offered by the present petitioner is ‘Jal’ in nature. Thus the petitioner found ineligible for the said vacancy. It is the further case of the respondent that the size of godown is less than specification as contained in the notification.

Refuting the contention of the State authority the petitioner file an Affidavit-in-Reply along with a site plan prepared by one Subhas Chandra Das in respect of the godown. It is the case of the petitioner that godown is 403.5 sq.ft. and office area is 232 sq.ft. It is the further case of the petitioner that the approach road of the proposed Fair Price Shop is 6 ft. wide where a loaded four wheeler vehicle is accessible from the Government Road.

Learned counsel for the petitioner submits that the enquiry report submitted by the concerned authority is erroneous. The area of godown is more than 400 sq. ft. but they have mentioned in the enquiry report that it is less than 400 sq.ft. He further pointed out that the necessary re-enquiry is required to be made in respect of the cited godown. He further

pointed out that the present petitioner as well as the private respondent No. 5 appeared before the District Level Fair Price Shop Selection Committee. The report of the FPS Selection Committee is required to be placed before this Court for proper disposal of the instant writ petition.

Having heard the learned counsel appearing on behalf of the petitioner, it appears to me that the present petitioner initially challenge the conduct of the respondent authority regarding their behaviour for not appointing the petitioner as a successful candidate. It is the notion of the present petitioner that the private respondent No. 5 is disqualified so she would be the only successful candidate for the said vacancy.

After perusing the field enquiry report of the concerned authority which was conducted on 11th January, 2023, much prior to initiation of the instant writ petition, it appears to me that the enquiring officer has depicted the area of the proposed godown of the petitioner to be 385 sq.ft. Moreover, the nature of the land was mentioned as 'Jal' according to the record of rights. It appears from the report that the present petitioner was present at the time of inspection. However, the writ petition has disclosed the document which was placed at the time of filing the application online, along with a deed of lease standing in the name of the present petitioner. The

area of the godown as stated in the deed of lease is 660 sq.ft. which was leased out by one Dipak Mandal in favour of the present petitioner on 27th December, 2022. Now at the time of filing Affidavit-of-Reply the petitioner has placed one hand sketch map prepared by one Subhas Chandra Das in respect of area of the godown which is about 403.5 sq.ft.

Now the fact of the petitioner regarding the area of godown as per the enquiry report is 385 sq.ft., as per her hand sketch map appended with the Affidavit-in-Reply 403.5 sq.ft., and the lease deed disclosed the area to be 660 sq.ft. Now the petitioner could not explain what would be the correct area of the said godown. If the fact of the petitioner be taken to be true in respect of the lease deed the area of the godown be 660 sq.ft., then the affidavit filed by the petitioner appending the site plan is appears to be incorrect. So the stand of the petitioner is not clean before this Court. Moreover, the petitioner has admitted that at the time of filing of the application before the authority concern for the proposed FP licence the nature of the offered land was 'Jal'.

Considering the submission it appears to me that the present petitioner is not at all qualified to have the FPS. Thus the decision of the authority concern appears to me justified.

However, it appears that the authority concern has not replied any of the representation to the

present petitioner though she has made several representations with the authority concern. Considering the aspect I make a caution to the authority, so that all and every representation of the individuals who made an application to the authority concerned be replied within reasonable time. Under the above observation, I find no merit to entertain instant writ petition. Thus the instant writ petition is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after completion of all necessary formalities.

(Subhendu Samanta, J.)