

16.04.2024

Ct. no.654

Sl. No.6

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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

W.P.A. 9720 of 2024

Sadhana Roy Mahanta
Vs.
State of West Bengal & ors.

Mr. Ramesh Dhara
... for the petitioner

Mr. Sirsanya Bandopadhyay
Ms. Tapati Samanta
... for the State

Affidavit of service filed on behalf of the petitioner is taken on record.

This writ petition has been filed by the petitioner challenging the decision of rejection of the petitioner's application for grant of FPS dealership against vacancy notification dated 21st October, 2022.

The brief fact of the case is that the petitioner applied for engagement of FPS dealership against vacancy notification under Memo No.779/MR/SCFS/Gmp dated 21st October, 2022 at Village Bagduar, P.O. Singadaha, Ward Ganguria, Police Station Banshihari, District Dakshin Dinajpur. Enquiry was conducted in respect of the application of the petitioner. The size of the shop counter/office as mentioned in the application did not tally with the physical measurement held during enquiry. On 4th September, 2023 the petitioner submitted a fresh sketch map for consideration by the authorities. After

lapse of certain period the petitioner checked the status of her application in the official portal of State-respondents and came to learn that her application has been rejected and the vacancy is about to be re-notified. Challenging such action on the part of the State-respondents the petitioner has preferred the present writ petition.

Mr. Ramesh Dhara, learned Advocate for the petitioner submits that the measurement of the godown as per application of the petitioner is 564.20 Sq.ft. and the size of the shop counter/office is 211.47 Sq.ft. Since during enquiry the area of shop counter/office did not tally with the measurement given in the application, the petitioner submitted another application on 4th September, 2023 annexing the correct sketch map of the offered godown and sales counter/office. The said sketch map has not been considered by the State-respondents rather upon searching in the official portal the application of the petitioner showed to have been rejected and the vacancy is about to be re-notified. He submits that in similar circumstances the State authorities have held re-enquiry in respect of other vacancy. Placing reliance on the decision of this Hon'ble Court in WPA 22152 of 2023 (*Sk. Mustak Ali Vs. State of West Bengal & ors.*) he submits that in the said case also re-enquiry report was considered. In light of his aforesaid submissions, he prays that the decision of rejection of the application of the petitioner be set aside and direction be

issued to the State-respondents for causing re-enquiry of the godown and office offered by the petitioner taking into account the sketch map submitted by the petitioner vide her letter dated 4th September, 2023.

Learned advocate for the State-respondent files copy of the enquiry report which is taken on record. Copy served.

In reply to the contention raised on behalf of the petitioner, learned Advocate for the State-respondent submits that upon physical enquiry it was found that the size of the sales counter of the applicant was of 168 Sq.ft. which is noted in Point No.50 of the enquiry report. The size of the sales counter is less than the requirement as per the vacancy notification dated 21st October, 2022 and for such reason the application was rejected on 31st July, 2023. Therefore, the rejection of application of the petitioner is precisely on the ground of non-fulfilment of the requirement as per notification, which cannot be called for interference. The petitioner did not take any step after enquiry held in March, 2023 and sat tight over the matter. In view of the above, he prays for dismissal of the writ petition.

On the contrary, Mr. Dhara, learned Advocate for the petitioner submits that the enquiry report at Point No.65 shows that the godown and the office room of the petitioner was as per the notification of the Government and for such reason the name of the petitioner was recommended. Thus the findings of the enquiring

authority at Point Nos.50 and 65 are contradictory to each other. He seeks for appropriate order for re-enquiry.

Having heard the learned Advocates for the respective parties, following issues have fallen for consideration, *firstly*, whether the petitioner fulfilled the eligibility criteria as per the vacancy notification so far as size of the sales counter/office space is concerned, and *secondly*, whether a fresh enquiry is required in the facts and circumstances of the case.

Both the aforesaid issues being interlinked are taken up together. In order to find an answer to the aforesaid, it would be apposite to reproduce clause 12(iv) of the vacancy notification dated 21st October, 2022 as hereunder:

“12(iv) The applicant should possess a suitable godown (as per the notification issued by Deptt. of Food & Supplies vide No.1707-FS/Sectt/Food/4P-9/2012 (Pt-II) Dated 21.07.14 as amended vide Notification No.2749-FS dated 17.08.2021) within the vacancy location for storage of public distribution commodities and running the dealership. The area of the godown should be minimum 400 Sq.ft. (300 Sq.ft. in case of hill areas of Darjeeling and Kalimpong district) along with covered space of 200 Sq.ft. (100 Sq.ft in case of hill areas of Darjeeling and Kalimpong district) adjacent to godown to be used for office purpose and for FPS automation. There must be shade in front of the shop to accommodate at least 20 people (5 people in case of hill areas of Darjeeling and Kalimpong district) who may wait in the queue. The godown must be well ventilated pucca structure with a concrete floor.”

As per the aforesaid notification the applicant should have a suitable godown with minimum area of 400 Sq.ft. along with a covered space of 200 Sq.ft. adjacent to the godown to be used for office purpose and for FPS automation. The petitioner in her application has mentioned the area of godown as 564.20 Sq.ft. and the size of the shop counter/office as 211.47 Sq.ft. From the enquiry report in respect of enquiry held on 28th March, 2023 it is found that upon physical measurement the area of godown of the petitioner was found to be 692.58 Sq.ft. and the size of the sales counter was 168 Sq.ft. Thus, the area of sales counter/office is less than the required area of 200 sq.ft. as per the vacancy notification. By letter dated 4th September, 2023 the petitioner submitted a revised sketch map. Be that as it may, as on physical measurement the area of the office was found to be 168 Sq.ft, hence such area would not and cannot be different on re-enquiry. The petitioner relying on the orders of State-authorities passed for re-enquiry and the decision of this Court in *Sk. Mustak Ali* (supra) prayed for re-enquiry. However, in the facts and circumstances of this case, where upon physical measurement it was found that the office space was less than the requirement, this Court finds that the re-enquiry as prayed is short of merit.

Mr. Dhara, learned Advocate for the petitioner urged that the petitioner's name was recommended to the District Legal Fair Price Shop Selection Committee and

thus, it cannot be said that she did not fulfil the eligibility criteria. The enquiry report clearly shows that the office area is less than 200 Sq.ft. as required under the vacancy notification. Thus such argument advanced on behalf of the petitioner does not stand to reason.

In light of the aforesaid discussion, this Court finds that the decision arrived at by the State authorities rejecting the application of the petitioner for engagement of FPS dealership does not call for interference.

In view of the above, the writ petition being **W.P.A. 9720 of 2024** stands dismissed.

All connected applications, if any, stand dismissed.

Interim order, if any, stands vacated.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)