

**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. 784 of 2024
(CAN 1 of 2024)***

***Sadhana Roy Mahanta
-Vs-
State of West Bengal & Ors.***

For the Appellant : Mr. Ramesh Dhara, Adv.

For the State : Mr. Sirsanya Bandopadhyay,
Jr. Standing Counsel,
Ms. Tapati Samanta, Adv.

Heard on : 13.06.2024

Judgment on : 13.06.2024

Joymalya Bagchi, J. :-

1. Appellant has assailed the order dated 16.04.2024 whereby the learned Single Judge has turned down her challenge to the decision of the respondent authorities to cancel her application and re-notify the vacancy on the ground that the size of the shop counter was less than the prescribed area as per the advertisement. In Clause (IV) of the

advertisement seeking engagement of FPS dealership at village: Hamlet: Bagduar, PO-Singadaha, Dakshin Dinajpur, a minimum 400 sq. ft. godown with a covered space of 200 sq. ft. was specified as an eligibility criteria. Applicant applied for dealership stating that the godown space was 564.20 sq. ft. and the shop counter was 211.47 sq. ft. On physical enquiry the shop room was found to be 168 sq. ft. i.e. less than the area prescribed in terms of the advertisement. Accordingly, the application was rejected by the respondent authorities. This came to be upheld by the learned Single Judge.

2. Learned Advocate for the appellant submits the specification for a shop space of 200 sq. ft. is not in consonance with the Government Order dated 22.05.2021 which allots marks for a shop room between 100-200 sq. ft. He also contends appellant had made a prayer for re-enquiry and re-measurement of the godown and shop room which was unfairly denied.

3. Learned Junior Standing Counsel contends appellant had not challenged the terms of the advertisement in the writ petition. Moreover, after having participated in the selection process he cannot turn around and challenge the eligibility criteria. He also submits appellant had belatedly raised the issue of re-enquiry without any justification. In the meantime, the selection process had been cancelled and the vacancy had been re-notified. Appellant is at liberty to participate in the new selection process.

4. Primary grievance of the appellant is that the terms of the advertisement specifying a shop room of 200 sq. ft. runs counter to the Government Order which prescribes marks for a shop room between 100-200 sq. ft.

5. We have perused the relevant Government Order which prescribes marks for shop room in the following manner:-

2.	Size of Attached Shop cum distribution centre:	
	a) 401 sq. ft. or more	10
	b) 301 sq. ft.-400 sq. ft.	08
	c) 100 sq. ft.- 201 sq. ft.	05

6. Plain reading of the three categories gives rise to some doubt whether category 'C' prescribing five marks for 100-200 sq. ft. is a typographical error or not. Be that as it may, appellant had not challenged the terms of the advertisement in the writ petition. She had accepted the said terms and participated in the selection process.

7. It is trite an unsuccessful candidate after having participated in the selection process without demur cannot turn around and challenge the eligibility criteria.

8. The other issue canvassed is that the enquiry with regard to the measurement of the shop room was incorrect. Enquiry was conducted in presence of the appellant in March, 2023. Appellant remained silent for more than six months and only in September, 2023 when the District Committee did not recommend her for selection, she made a prayer for re-enquiry.

9. In this factual matrix, I am of the considered view the prayer for re-enquiry appears to be belated and *mala fide*. That apart, the selection process has already been cancelled and a fresh advertisement has been published. Hence, impugned order calls for no interference.

10. Appeal is accordingly, dismissed.

11. In view of dismissal of the appeal, connected application being CAN 1 of 2024 is also dismissed.

12. It is open to the appellant to participate in the new selection process in accordance with law, if so advised.

13. There shall be no order as to costs.

14. 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.)

as/akd