

14.05.2024
Sl. No.25
Ct. No. 09
Sws.M

W.P.A. 13233 of 2024

Ankan Nayek
-Vs-
The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharya
Mr. Debdas Khanna
Mr. Himadri Sikhar Chakraborty
Ms. Priyanka Chandra
... for the petitioner
Sk. Md. Galib
Mr. Abu Siddique Mallick

...for the State

Learned senior counsel appearing for the petitioner contends that the petitioner applied for renewal of his Economically Weaker Section (EWS) certificate. However, initially the same was not being issued by the respondent authorities, prompting the petitioner to prefer a writ petition, upon which a direction was given to the authorities to issue the same.

Even thereafter, no communication being made to the petitioner, the present writ petition was preferred. During pendency of the writ petition, a reasoned order refusing to renew the petitioner's EWS certificate was communicated to the petitioner, which has been annexed to a supplementary affidavit which is filed in Court with the leave of Court and is kept on record.

Learned senior counsel argues that the Additional District Magistrate (Dev.), Purba Burdwan proceeded on an erroneous premise in observing that there is no provision for renewal, since every year the EWS certificate is to be renewed.

More importantly, learned senior counsel places reliance on annexure-P2 at page 17 of the writ petition which is an income and asset certificate issued by the respondent authorities to the petitioner dated July 27, 2022 thereby certifying that the petitioner does not possess any asset beyond the ceiling limit required for grant of EWS certificate.

It is thus submitted that the impugned order refusing the renewal to the petitioner on the ground that the immovable asset holdings exceed the permissible limit is perverse.

Learned counsel appearing for the respondent authorities submits that there is no provision for “renewal” as such. It is an annual exercise to issue EWS certificate to the applicant and every time the applicant has to make an application for reissuance of such certificate and to satisfy the authorities that all criteria as stipulated therefor are satisfied.

Insofar as the immovable assets exceeding the permissible limit is concerned, learned counsel for the State hands over a bunch of documents in which the eligibility criteria for issuance of EWS certificate is enumerated. Out of the said criteria, one is that residential plot of 200 sq. yard and above cannot be held by the applicant. Learned counsel places reliance on a purported extract of records of rights to indicate that the petitioner holds more than such ceiling limit in respect of Dag No. 403.

As such, it is argued that the impugned order was passed on valid grounds.

A perusal of the impugned order dated April 24, 2024 indicates that there is no reflection as to exactly which documents were relied on by the Additional District Magistrate to come to the conclusion that the immovable asset holdings of the petitioner exceeds permissible limit in terms of homestead.

Moreover, there is nothing on record to show that copies of the documents which were relied on purportedly by the Additional District Magistrate while passing the impugned order were handed over to the petitioner in order for the petitioner to have an opportunity to controvert the same.

Insofar as the renewal of such a certificate is concerned, however, this Court is *ad idem* with the submission of the State that there is no concept of renewal of EWS certificate in the sense that once granted, the applicant would be entitled, as a matter of right, to have a renewal of the same without fulfilling the eligibility criteria every time. In that sense, the application of the petitioner has to be treated as a fresh application for grant of EWS certificate, on which the petitioner has to satisfy the respondent authorities as to the satisfaction of all the eligibility criteria as stipulated for issuance of such a certificate afresh.

However, so far as the conclusion of the Additional District Magistrate regarding the petitioner's immovable assets exceeding the permissible limit is concerned, the Additional District Magistrate acted palpably without jurisdiction and in contravention of basic norms of natural justice in arriving at such conclusion without furnishing any copy of the documents which were relied on by the said Magistrate for the purpose of coming to such conclusion, to the petitioner.

That apart, the reasoning is cryptic inasmuch as it does not reflect the exact

documents which were considered for coming to such finding.

As such, WPA 13233 of 2024 is allowed on contest, thereby setting aside the impugned order dated April 24, 2024 and directing the Additional District Magistrate (Dev.), Purba Bardhaman to give a fresh opportunity of hearing to the petitioner upon furnishing copies of all the documents, on which the Magistrate seeks to rely, to the petitioner well in advance for the petitioner to have a fair opportunity to controvert such documents. For such purpose, at least two weeks' notice has to be given to the petitioner for such hearing and accompanying the notice, the copies of the relevant documents are also to be supplied to the petitioner. Thereafter, upon giving an opportunity of hearing to the petitioner, the Additional District Magistrate shall pass an order afresh upon deciding the issue *de novo*. It is expected that the entire exercise shall be concluded within June 30, 2024.

It is made clear that the merits of the matter have not been gone into by this Court and it will be open to the concerned Magistrate to deal with all the issues independently without being prejudiced in any manner by any of the observations made herein.

No order as to costs.

Urgent Photostat certified copy of this order,
if applied for, be given to the parties, on priority
basis.

(Sabyasachi Bhattacharyya, J.)