

11.6. 2024
item No.2
n.b.
ct. no. 24

WPA 14853 of 2024

Sri Monoranjan Das.
Vs.
The State of West Bengal & Ors.

Mr. Mukteswar Maity,
Ms. Nupur Chaudhuri,
.... For the petitioner.
Mr. Suman Sengupta,
Mr. Avishek Prasad,
..... for the State.

The instant writ petition was preferred for setting aside/quashing the order dated 6.5.2024 passed by the Sub-Divisional Controller (F & S), Kakdwip, South 24-Parganas.

Learned advocate for the petitioner submits that the petitioner was initially MR Dealer for the areas of Indrapur. Due to ill health, he surrendered his dealer ship, which was tagged with the another MR dealer. The said licence was continuing.

After recovering from his physical ailments, the petitioner filed specific application for granting a fresh licence with a prayer to revive his earlier licence. However, considering the application to be an application for fresh licence, the concerned Authority has turned down the same, against which a writ petitioner was preferred before this Court. Subsequently, the Notification for inviting application for issuance of fresh licence was

cancelled by earlier Memo dated 17.8.2015 in terms of National Food Security Act, 2013. Consequently, the writ petition was dismissed, against which the present petitioner preferred an appeal before the Hon'ble Division Bench of this Court, wherein the Division Bench in MAT 466 of 2021 has disposed of the appeal by passing an order dated 6.3.2024. It is the submission of the present petitioner that by virtue of the order passed by the Division Bench on 6.2.2024, petitioner preferred an application before concerned authority (off line). Such application of the petitioner was not considered vide impugned order dated 6.5.2024 against which the present writ petition was preferred.

Learned advocate for the petitioner submits that it has been observed by the Division Bench of this Court that the appellant could not file the specific application before the concerned authority in view of the pendency of the appeal. The submission of the appellant was specifically noted by the Division Bench and on the basis of submission, the Division Bench had allowed the present petitioner to file specific application, if the vacancy still exists.

Mr. Maity, learned advocate appearing on behalf of the petitioner submits that the vacancy is still existing and the petitioner filed an application in view of the order passed by the Hon'ble Division Bench. He argued that the order passed by this Hon'ble Division Bench was

misinterpreted by the concerned authority and refused only on the ground that the application was not filed within the stipulated date mentioned in the Notification itself.

Mr. Maity, learned advocate further argued that the matter has already been considered by the Hon'ble Division Bench of this Court and the non-filing of the application within stipulated time is appearing in the order of the Division Bench. The Division Bench was in seisin with the matter regarding the fact that no application was filed till the date of order passed by this Division Bench. In spite of the fact that the Hon'ble Division Bench has passed a favourable order in favour of the appellant that cannot be interpreted otherwise. He further argued the Hon'ble Division Bench has allowed the petitioner to file an application before the concerned authority and the concerned authority is directed to consider the application, if he is otherwise eligible.

Mr. Maity, learned advocate further argued that the present petitioner was refrained from filing the specific application within the stipulated time due to pendency of the instant appeal being, MAT 466 of 2021; the order passed by the concerned authority is illegal in the eye of law. The present petitioner may be allowed to include his application in the said proceeding, and/ if the present petitioner appears to be eligible/qualified, the petitioner may be granted the license.

Learned advocate appearing on behalf of the State submits that the issue for filing the application in respect of Notification dated August 9, 2023 was not placed before the learned Single Bench, however, for the first time it was placed before the Division Bench. He specifically read out the paragraph nos. 4 and 5 of the order passed by the Hon'ble Division Bench and submits that the Hon'ble Division Bench has specifically pointed out that if the petitioner filed an application, in the mean time, that may be considered. It is the fact that the petitioner did not file the application within the stipulated date mentioned in the Notification dated August 9, 2023. Thus, the authority has correctly passed the impugned order. He submits that the order passed by the Hon'ble Division Bench is crystal clear and it is unambiguous to explain that if the application is filed within the time period that can only be considered. So, he submits that the authority concerned has not committed any error by passing the impugned order.

Heard the learned advocates. Perused the observation of the Hon'ble Division Bench in MAT 466 of 2021 on 6.3.2024. Paragraphs 2, 3, 4 and 5 are required to be set out for the proper determination of this matter:-

"2. The learned Counsel for the appellant submits that on 9th August, 2023, the Government has invited an application for grant of licence against the vacancy and the petitioner may be allowed to apply in respect of such vacancy.

3. The learned Counsel for the appellant has submitted that in view of the pendency of the appeal, no application was filed.

4. This was not the issue before the learned Single Judge. The learned Counsel for the State has submitted that if the vacancy still exists the application of the petitioner if filed could be considered. In view thereof we dispose of the appeal with the observation that if the petitioner is eligible to apply and the vacancy still exists in terms of Memo dated 9th August, 2023 as disclosed at page 32 of the application, the application of the petitioner, if filed in the meantime, may be considered.

5. We make it clear that we have not gone into the eligibility of the petitioner to apply in terms of the Notification dated 9th August, 2023."

It is an admitted position that the present petitioner was a MR dealer and he had same experience regarding the fair price shop. Such experience of the petitioner cannot give him any weightage in respect of a notification dated August 9, 2023, where fresh applications were invited. It is also the fact that the present petitioner did not file the application (on line) in time in terms of Notification dated August 9, 2023. The last date of application in terms of Notification dated August 9, 2023 was 18.9.2022. When the matter was heard by the Hon'ble Division Bench on March, 2024 the date of filing of application has already been expired. The same was argued before the Hon'ble Division Bench by the appellant/petitioner.

After hearing the petitioner and also taking note of the submission of the State that "if any application was filed by the petitioner within the time period that will be considered". The replica of the submission made by the State was mentioned unequivocally by the Hon'ble Division Bench to the effect that if the petitioner is eligible

to apply the vacancy still exists in terms of the Memo dated August 9, 2023; the application of the petitioner, if filed, in the mean time, may be considered. Paragraph 5 of the order passed by the Hon'ble Division Bench is very much clear regarding the fact that the eligibility of the petitioner to apply was never touched by the Hon'ble Division Bench.

Finally, Mr. Maity, learned advocate further argued the only point of limitation can be entertained by the instant writ court in this writ application.

I make it clear that the point of limitation may be considered in terms of Section 14 of the Limitation Act that if a person is proceeded, otherwise in good faith in wrong forum, the time of limitation in proceeding in the wrong forum may be condoned; but in this case, it appears to me that the order passed by the Hon'ble Division Bench is very distinct and clear, which did not condone the delay in filing petition to the authority concerned.

Considering the time frame, I do not find justification to entertain the prayer of the present petitioner to pass any appropriate order. The petitioner may have an opportunity to have an order from the Hon'ble Division Bench regarding the clarification of the order passed in the appeal. The instant Writ Court cannot interpret the order passed by the Division Bench of this Court.

Considering the same, the instant writ petition is disposed of.

As such affidavit-in-opposition is not called for, the allegation made in the writ petition shall be deemed to have been not admitted.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)