

5.8. 2024
item No.11
n.b.
ct. no.24

WPA 16849 of 2024

**Sarwar Jahan
Vs.
State of west Bengal & Ors.**

Mr. Haridas Das,
Mr. Ujjwal Trivedi,
Mr. Sujal Dey
..... for the petitioner.
Ms. Munmun Ganguly,
Mr. Sayan Ganguly,
..... for the State.
Mr. Debabrata Saha Roy,
Mr. Subhankar Das,
..... for the private respondent.

Report submitted by the State along with annexure thereof be taken on record.

The present petitioner challenged the selection of private respondent no.6 for MR Dealership a new the vacancy of Jagadishpur FP School, Mouja Jadadishpur, P. O. Panchagram , P. S. Gangarampur, District. Dakshin Dinajpur. It is the case of the petitioner that the private respondent no.6 is not at all resident of the locality, wherein the vacancy notification was issued. He further submits that the document annexed with the application of private respondent no.6 regarding the godown and shop room is antedated, it was registered after the last date of submission of the application. He further submits that the specific representation was made to the authority

concerned on March 4, 2024 against the candidature of private respondent no.6. But the authority concerned has not acted upon the representation of the petitioner. Hence this writ petition.

Learned advocate appearing on behalf of the petitioner submits that the authority concerned with the reasons, unknown to the petitioner, has allowed the private respondent no.6 in the said new vacancy without considering objection of the present petitioner. He further submits that there are sufficient materials in this case. So the order passed by the concerned authority is issuing the licence in favour of the private respondent no.6 is required to be set aside.

Learned advocate appearing on behalf of the State submits that the objection as raised by the present petitioner is not tenable in the eye of law.

Learned advocate for the State also placed the detained report regarding the vacancy notification dated 19.12.2022 and procedure adopted by the concerned authority in appointing private respondent no.6 in the said vacancy notification. The enquiry report in respect of private respondent no.6 as well as present petitioner were placed. The copy of voter identity card as well as the Aadhar Card of the respondent no.6 was placed including the certificate of concerned Pradhan. It appears that the concerned authority after receiving the application has conducted enquiry over the proposed godown of the shop

room of the petitioner as well as the respondent no.6. The shop room and godown of the private respondent no.6 appears to be within the specification of the notification. But during the inspection, it appears from the enquiry report that the godown and the shop room of the present petitioner was incomplete. From the Aadhar card of the private respondent, it appears to me that she is permanent resident of the locality wherein the vacancy notification was issued. Moreover, the certificate of the Pradhan of the concerned Gram Panchayat certified that the private respondent no.6 is within the locality.

Perusing the report along with document by the State authority, it appears to me that the act and action of the State authority cannot put under question before this Court. It appears that the concerned authority during inspection has found that the godown cum shop room of the present petitioner was incomplete. So, I find justification for rejection of the candidature of the present petitioner in appointing for MR dealer in cited location. It further appears that the present petitioner has not placed any document pertaining to the petitioner either the title deed or any particulars of his application etc. on the basis of which she applied for the said vacancy.

Learned counsel appearing on behalf of the respondent no.6 submits that the present petitioner has not locus standi to maintain the instant writ petition. He submits that the present petitioner is one of the contesting

candidates who do not qualify the terms of the said notification but only filed the instant writ petition to challenge the appointment of respondent no.6 So, he submits the instant writ petition is liable to be set aside.

In support of his contention he cited a decision of Hon'ble Supreme Court in **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors.** reported in **(2013) 4 SCC 565.**

9. *It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfied the authority/court, that he falls within category of aggrieved persons. Only a person who has suffered, or maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach or statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfied the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It*

is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.

10. *A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardized.*

On perusing the guideline of the Hon’ble Supreme Court it has been clarified that the legal right as defined by the Hon’ble Supreme Court to maintain a writ application and the term “person aggrieved” as determined by the Hon’ble Supreme Court, in the above mentioned citation; it is clear that the present petitioner, who is an unsuccessful candidate cannot maintain a writ petition to challenge appointment of successful candidate.

On the above observation, I find no merit to entertain the writ petition. Accordingly, the instant writ petition is dismissed and disposed of.

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

(Subhendu Samanta, J.)