

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

WPA 16220 of 2019

Shyama Self Help Group

vs

State of West Bengal & Ors.

For the Petitioner	:	Mr. Debabrata Saha Roy, Adv. Mr. Pingal Bhattacharyya, Adv. Mr. Neil Basu, Adv. Mr. Subhankar Das, Adv.
For the Private respondent	:	Mr. Ram Anand Agarwal, Adv. Ms. Nibedita Pal, Adv. Mr. Ramesh Dhara, Adv. Mr. Ananda Gopal Mukherjee, Adv. Ms. Sonam Ray, Adv.
For the State	:	Mr. Susovan Sengupta, Adv. Mr. Sanatan Panja, Adv.

Last Heard on : 17.01.2024

Delivered on : 23.02.2024

Moushumi Bhattacharya, J.

1. The petitioner is a registered and recognised Self-Help Group run by 12 women in the State of West Bengal. The petitioner has challenged a vacancy declaration Notice dated 17.7.2019 issued by the District Controller, Food and Supplies Department, at Jamtalahat, Kultali, South 24 Parganas for appointment of a Modified Rationing Distributor (M.R. Distributor) on the ground of the Notice being contrary to Articles 14, 19(1)(g) and 21 of the Constitution of India. The petitioner seeks a direction on the respondents, including the Commissioner of Food & Supply, the Directorate Food & Supplies Department as well as the District Controller (F & S) to withdraw the impugned Notice. The respondent no. 5 / the added private respondent, namely Kultali Food Marketing Company Limited was one of the applicants against the impugned vacancy Notification dated 17.7.2019 and was made a party to the writ petition by an order dated 1.10.2020.
2. The petitioner's case is that the vacancy Notification dated 17.7.2019 does not give preference to self-help groups run by women. The petitioner has also challenged the financial criterion of the applicant being required to have a bank balance of Rs. 50 lakhs as on the date of application and one year preceding that date.

3. Learned counsel appearing for the petitioner submits that preference given to women run self-help group (SHG) was withdrawn by a Notification dated 18.12.2018 but that 38 vacancies were Notified in 2019 giving preference to such SHGs. Counsel submits that 38 vacancies for M.R Distributors were withdrawn on 7.8.2019 to the extent of the requirement of a bank balance of Rs. 50 lakhs save and except the impugned vacancy Notification dated 17.7.2019 which related to Jamtalahat. It is also submitted that that fresh vacancies have since been notified all over West Bengal with the condition of Rs. 25 lakhs as bank balance except the impugned vacancy Notice at Jamtala Hat, Kultali. Counsel also places earlier proceedings filed by the added respondent no. 5 and one Barun Ghosh in 2015 challenging an earlier vacancy Notice dated 13.7.2015. Counsel places the judgment dated 3.2.2016 passed by a Co-ordinate Bench by which the vacancy Notification dated 13.7.2015 was stayed. On appeals filed by Kultali Food Marketing Private Limited and the State, the Division Bench directed the State Government to notify a fresh vacancy at Jamtalahat Kultali pursuant to which the impugned vacancy was notified on 17.7.2019.

4. Learned counsel appearing for the State submits that the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 was amended on 18.12.2018 removing the preferential treatment given to self-help groups. Counsel submits that the impugned vacancy Notice of 17.7.2019 was published only after the amendment. Counsel submits that the petitioner did not challenge the amended Notification dated 18.12.2018. Counsel submits

that the Food & Supplies Department, Government of West Bengal issued an Order on 21.7.2014 prescribing the guidelines in respect of the financial capacity of the applicants in exercise of the power conferred upon it under section 3 of The Essential Commodities Act, 1955. It is further submitted that the impugned vacancy Notice at Jamtalahat was not cancelled by the State in view of the two appeals filed before the Division Bench. Counsel submits that the Division Bench directed the State to initiate steps for issuance of fresh advertisement in accordance with the provisions of the Control Order, 2013. The impugned vacancy Notice of 17.7.2019 was published pursuant to the direction of the Division Bench.

5. Learned counsel appearing for the added respondent no. 5 / Kultali Food Marketing Company Limited reiterates the submissions made on behalf of the state by urging that the impugned vacancy Notice is in compliance with the direction passed by the Division Bench in its judgment dated 25.9.2018. Counsel submits that the vacancy at Jamtalahat was not cancelled in view of the direction passed by the Division Bench. Counsel submits that the Government Order dated 22.12.2020 by which the financial solvency was reduced is not applicable in the present case since the order mentions that it will not be applicable to the vacancies which have already been notified on or before its publication.

6. The primary issue which is evident from the arguments made by the petitioner, the State and the added respondent is whether the vacancy notice dated 17.7.2019 issued by the District Controller (F&S) is discriminatory and

offends the petitioner's right to carry on business under Article 19(1)(g) of the Constitution of India.

7. To answer this, the relevant facts must be placed against the background of the judgment of a Coordinate Bench dated 3.02.2016 in the writ petitions filed by Barun Ghosh and the added respondent. The Single Bench decision was passed in a challenge to an order of the OSD and the Special Secretary, F&S as well as an order passed by the District Controller (F&S) in relation to cancellation of a vacancy for M.R. Distributorship at Jamtala Hat, Kultali, South 24 Parganas. The learned Single Judge quashed the order dated 31.1.2014 and stayed the vacancy notice dated 13.7.2015. The State respondents were restrained from taking any steps to fill up the vacancy for distributorship as invited in the memorandum dated 13.07.2015.
8. The Single Bench order was challenged by Barun Ghosh and the State and the Division Bench by its judgment dated 25.9.2018 set aside the Single Bench order as well as the vacancy notice published by the State on 13.07.2015. The Division Bench directed the appropriate authority of the State Government to initiate steps for issuing of a fresh Advertisement for filling up the vacancy at Jamtalahat, Kultali in accordance with the West Bengal Public Distribution System (Maintenance and Control) Order, 2013.
9. The impugned vacancy notice dated 17.7.2019, which is under challenge in the present writ petition, is in terms of the directions given by the Division Bench.

10. The petitioner's grievance with regard to the impugned vacancy notice not giving any preference to women run Self-Help Groups has to be seen in context of the judgment passed by the Division Bench. While the Division Bench cancelled the earlier Advertisement vacancy notice published by the State on 13.07.2015, the State Government was directed to issue a fresh Advertisement for filling up the vacancy at Jamtalihat. The respondent was specifically directed to fill up the vacancy in accordance with the Control Order of 2013. The relevant part of the Division Bench judgment however reflects that emphasis was placed on the preference given to women run self help groups in the 2013 Control Order. Therefore, it is clear that the Division Bench considered the preference to women run self help groups in the 2013 Control Order as an opportunity for the State to select the best possible candidate against the vacancy for M.R. Distributorship.

11. While the observation of the Division Bench in relation to women self help groups is relevant, the contention of the State as well as the added respondent of the amendment of the Control Order of 2013 also cannot be ignored. According to the State and the added respondent, the preference to self help groups in Clause 26 of the Control Order of 2013 was amended on 18.12.2018 and was done prior to the vacancy notice of 17.7.2019. The relevant paragraph of the amended notification dated 18.12.2018, which is part of the affidavit of the State respondents, shows that the zone was widened to include not only self help groups but also registered cooperative societies, semi Government bodies, individuals and group of individuals. Admittedly, the

petitioner did not challenge the amendment made to the 2013 Control Order. It is therefore arguable whether the petitioner can now question the dilution of preference given to women run self help groups after publication of the impugned vacancy notice on 17.7.2019.

12. Further, the petitioner's contention that 38 vacancies were declared giving preference to self help groups save and except the impugned vacancy notice loses relevance in light of the stand taken on behalf of the respondents that all vacancy notifications, which were published contrary to the 18.12.2018 amended Control Order, were subsequently cancelled.

13. The petitioner's other grievance with regard to the requirement of financial solvency in the form of bank balance of Rs. 50 lacs on the date of application and 1 year preceding thereto must also be seen against the Government Order dated 21.7.2014 which required a bank balance of Rs. 50 lacs as working capital. The petitioner has not challenged this Order. Since the Order dated 21.7.2014 forms the foundation of the impugned notice, the petitioner's challenge to the latter may also not be sustainable. It is also relevant to state that a subsequent order dated 22.12.2020 reduced the solvency requirement from Rs. 50 lacs to Rs. 25 lacs but specified that the change shall not be applicable to the vacancies which have already been notified by the licensing authority on or before the publication of this notification. Hence, the order reducing the financial solvency from 50 to 25 lacs will only be applicable to notifications issued after 22.12.2020. Since, the

impugned notification was issued prior thereto, i.e., 17.7.2019, the petitioner cannot claim benefit of this Order.

14. However, the petitioner's grievance with regard to change of location of the distributorship only for favouring the private respondent has some substance. The Division Bench categorically mentioned the change of location of the distributorship and found the change to be without any plausible reason and effected for favouring a candidate who did not have his godown within the advertised area. The change of location was specifically found to be wrongful and was set aside by the Division Bench. Therefore, the stand taken by the State and the added respondent of the petitioner not challenging any of the earlier notifications pertaining to change of location is not acceptable and is rejected on that count.

15. *Vaishnorani Mahila Bachat Gat vs. State of Maharashtra; 2019 SCC OnLine SC 353* and *Gour Sankar Pani vs. State of West Bengal; AIR 1996 Cal 13* were on actions taken contrary to an order of Court which were held to be null and void. In *Vaishnorani*, the Supreme Court commented on conditions favouring only some of the parties and found the same to be contrary to the National Food Security Act, 2013 which aims to reform the public distribution system of bringing in transparency and accountability.

16. *Sanjay Kumar Shukla vs. Bharat Petroleum Corporation Limited; (2014) 3 SCC 493* dealt with the power of the State to fix the terms of invitation to tender and that such terms not being open to judicial scrutiny. *Edukanti Kistamma vs. S. Venkatareddy; (2010) 1 SCC 756* held that a challenge to a

consequential order without challenging the basic order / statutory provision, on the basis of which the consequential order was passed, cannot be entertained. *Five Star Logistics Private Limited vs. Union of India*; WPA 10716 of 2023 was decided on the same line, i.e., the petitioner would have to first challenge the basic order before challenging the consequential order / the final tender process. *Sher Singh vs. Union of India*; (1984) 1 SCC 107 dealt with the word “preference” to mean prior right and advantage. The word “preference” was explained in the context of the earlier Motor Vehicles Act, 1939. The Supreme Court held that preference of the nature envisaged under the said Act would not deny the right to equality guaranteed under Article 14 of the Constitution.

17. The contention of the added respondent that the petitioner has been set up by Barun Ghosh is not being given much weight since the contention is speculative in nature. The more relevant fact is that the Division Bench found some of the actions taken on behalf of the State to be arbitrary in the sense of not being backed by any reason; for instance, the change of location of the distributorship.

18. The petitioner’s contention that the respondent no. 5 is not entitled to apply against the impugned vacancy notification will be subject to the decision of the tendering/selection authority and further subject to the respondent being otherwise eligible for participating in the process of selection. The petitioner’s other grievance of the vacancies being cancelled in other parts of the State save and except the vacancy at Jamtalahat must be seen against the

direction passed by the Division Bench which set aside the earlier vacancy notice of 13.07.2015 and directed the State Government to initiate steps for issuing of fresh advertisement for filling up the vacancy at Jamtalahat Mouza, Kultali P.S in accordance with the Control Order of 2013.

19. After considering the cases made out by the parties, the only conclusion which is reasonable in the present facts is that the parties must comply with the Division Bench Order dated 25.9.2018. A part of this compliance is in the form of the impugned vacancy notification dated 17.07.2019. The State must however ensure uniformity in all the notifications advertised by it in respect of M.R. Distributorships across the State. It is of utmost importance that the conditions/criteria specified for participation and eligibility are kept uniform throughout the State including in respect of financial solvency. The State has already reduced the threshold of financial solvency from Rs. 50 lacs to Rs. 25 lacs by the Order dated 22.12.2020. The State Government Order has however not been made applicable to the vacancies which were notified on or before its publication. Since the Court has found a few unexplained lacunae in the impugned vacancy notice dated 17.07.2019, including in respect of discrepancies with the other vacancy notifications throughout the State, the State Government is directed to modify the impugned vacancy Notification for Jamtalahat in conformity with the directions passed and observations made by the Division Bench in its judgment dated 25.9.2018 and also in terms of the relevant Government Order/notification issued by the State Government, which are presumed to be in line with the directions of Division Bench.

20. The modification should be made in line with the reduced financial solvency limit of the other notices across the State where the margin has been halved. The zone of consideration including for self help groups will be in accordance with the latest notifications/Government Order which was published pursuant to the Division Bench judgment. The eligibility of the petitioner will be assessed in conformity of the directions of the Division Bench.

21. The Court is not inclined to cancel the impugned Notification since it is undisputed that the vacancy in question could not be filled up for more than 20 years due to one litigation after another. The State respondent is hence directed to modify the vacancy notification dated 17.7.2019 for appointment of M.R. Distributorship at Jamtalahat Mouza, Kultali P.S, South 24 Parganas within a period of 4 weeks from the date of this judgment. The State shall ensure that the selection is done in a transparent manner without favouring any candidate. WPA 16220 of 2019 along with all connected applications is disposed in terms of this judgment.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)