

08.04.2024
S/L. No. 2
Court No. 3
Suvayan

**MAT 1354 of 2022
With
CAN 1 of 2022**

**Md. Fakuruddin Biswas
Vs.
The State of West Bengal & Ors.**

Mr. Prosenjit Mukherjee

...for the appellant.

Mr. T. M. siddiqui

Mr. Suddhadev Adak

...for the State.

Mr. Debabrata Saha Roy

Mr. Neil Basu

...for the private respondent.

1. Heard learned Counsel for the parties.
2. The order dated 23.06.2022 passed in WPA 10072 of 2022 is impugned in this appeal by the writ petitioner on different ground including the ground that on the cut off date of submission of application, i.e., 26.02.2021, the private respondent no. 7 had also not maintained the balance of Rs. 5,00,000/- since one year preceding the cut off date.
3. This is the only ground on which the writ petition was dismissed though the dealership of the petitioner/appellant was rejected on ground of non-fulfillment of eligibility criteria for godown space as revealed during enquiry.
4. It is fairly submitted at the Bar and especially by learned Counsel for the State that as the

petitioner/appellant was not otherwise eligible for he having not maintained the balance of Rs. 5,00,000/- in his bank account preceding one year to the date of application, i.e., 26.02.2021, his writ petition was dismissed on the ground that he himself was not eligible otherwise.

5. Learned Counsel for the appellant submits that the private respondent no. 7 had also not maintained the required bank balance since one year preceding the cut off date, i.e., 26.02.2021. It is further submitted by him that the bank account submitted by him in the application form should have taken been into consideration only and any amount deposited in another bank account by the private respondent no. 7 should not have been taken into consideration to reach at a conclusion regarding the requirement of financial solvency as on the cut off date.
6. Learned Counsel for the State had filed a report to show that on the cut off date the petitioner/appellant though had balance of Rs. 5,00,000/- and odd in his account but he had not maintained that balance since one year preceding the cut off date, i.e., 26.02.2021. On the other hand the private respondent no. 7 in two accounts, i.e., account no. 22880100003496 and another account no. 22880500000719 had maintained amount of Rs. 5,00,000/- and more

since one year preceding next the cut off date i.e., 26.02.2021.

7. Learned Counsel for the petitioner/appellant submits that as per Clause 6 of the vacancy notice dated 14.08.2020, the applicant for dealership must have bank balance of at least Rs. 5,00,000/- as working capital reflected on the day of application and one year preceding the date of application. It is further submitted by learned Counsel for the petitioner/appellant that the petitioner/appellant having given one bank account in his application the State could not have combined two bank accounts to hold that the respondent no. 7 had requisite financial balance in his bank one year preceding next the cut off date, i.e., 26.02.2021.
8. Learned Counsel for the State and learned Counsel for the respondent no. 7, *per contra*, submits that Clause 6 nowhere speaks of a single bank account and an applicant may have the balance in multiple bank accounts also.
9. Before proceeding to discuss the submission advanced by the learned Counsel for the parties, let us make it clear that an applicant who is otherwise ineligible has no right to challenge selection of another on the ground that the persons selected also had no eligibility criteria. Such a petitioner if he wants to succeed in a writ

petition has to establish by pleadings and documents that he or she is also otherwise eligible but his or her case has not been considered favourably and provision of Article 14 has been grossly violated.

10. In the present case, admittedly the petitioner/appellant had not maintained the balance of Rs. 5,00,000/- since one year preceding next the cut off date, i.e., 26.02.2021. So far as the respondent no. 7 is concerned it is clear from the statement given by the State Counsel in the form of an affidavit that from the bank statement supplied by learned Counsel for the respondent no. 7 that the respondent no. 7 had maintained the balance of Rs. 5,00,000/- and odd in two bank accounts one year preceding next to the cut off date.
11. Clause 6 nowhere says that an applicant should maintain the balance in one requisite bank account. Many persons have the habit of maintaining multiple bank accounts in different banks for their convenience of transaction etc. The requisite balance can be assessed, therefore, from multiple accounts of an applicant and Clause 6 (Supra) does not put an embargo on such an assessment or does not bar, in other word, such an assessment. Clause 6 if we read the language employed therein cursorily is found

to be a mandatory provision as it lays stress on the solvency of an applicant continuously for a period of one year at least to see that if license is issued in his favour, he can carry on the business of fair price shop, etc. entrusted to him. The word 'at least' before Rs. 5,00,000/- mandatorily indicate that any amount less than Rs. 5,00,000/- even if it is less by one rupee or ten rupee shall not qualify a person to be considered for the dealership. Similarly, if the requisite balance has not been maintained preceding one year next the cut off date, then no judgment can be arrived at regarding the financial stability of the applicant.

12. If both these conditions are read together, we feel constrained to reiterate here that Clause 6 is mandatory so far as the requisite balance of Rs. 5,00,000/- is concerned and the period for which such balance should be maintained is concerned.
13. The petitioner/appellant having not fulfilled the aforesaid eligibility criteria does not have the right to challenge the selection of private respondent no. 7 whom the appropriate department in its wisdom has found to be eligible after taking into consideration all the eligibility criteria.

14. Regard being had to the discussion (Supra), we do not find any merit in the appeal and the same is accordingly dismissed.
15. The order passed by the Hon'ble Single Bench is hereby affirmed.
16. Accordingly, the appeal being MAT 1354 of 2022 along with the interim application being CAN 1 of 2022 is dismissed.
17. No order as to costs.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)