

05 10.04.2024

Ct-08

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MAT 1816 of 2023

with

IA No. CAN 1 of 2023

Enamul Ali Khan

Vs.

The State of West Bengal & Ors.

Mr. Bhaskar Chandra Manna

... For the Appellant

Mr. Priyankar Saha

Mr. Amritlal Chatterjee

... For the State

Mr. Shiv Shankar Banerjee

Mr. Nilarnab Paul

... For the Respondent nos. 2 to 7

1. We have heard the learned counsel appearing for the parties.

2. The appeal is arising out of an order dated 20th July, 2023 in a writ petition in which the appellant has challenged the decision to reduce the number of card holders from 7368 to 5000.

3. Mr. Bhaskar Chandra Mann, learned counsel appearing for the appellant, submits that Government of West Bengal in the Food and Supplies Department vide Memo No. 3004-FS dated 3rd September, 2023 directed that 6500-7500 ration cards were to be retained with an existing fair price shop for declaring a new vacancy. Later the above range of retained population was modified to 5000-6500 and a new vacancy was to be proposed with a range of DRC population of 3000-4500 vide Notification No. 328-

FMR dated 11th February, 2022. The said Notification was issued disregarding the fact based on the representation of the Government of West Bengal. The writ petitioner incurred substantial expenditure towards infrastructure. The reduction of number of card holders in the name of rationalization is clearly arbitrary as it fails to take into consideration the assurance given by the Government of West Bengal, at the time when the licence was granted, the writ petitioner would be entitled to 6500 to 7500 ration cards.

4. It is submitted though the petitioner caters 7368 members of beneficiaries from his Fair Price Shop, the Sub-Divisional Controller, Food and Supplies Department issued a declaration of vacancy on 3rd February, 2023 inviting application from individuals, registered partnership firm, registered co-operative society, Sangha or Mahasangha of self-help groups working within Purba Medinipur district for filling up the vacancy of FPS dealership under village-Nonari, Mukundapur without taking into consideration that such declaration of vacancy was contrary to the earlier Notification, on the basis of which the licence was granted, it would severely affect the petitioner.

5. It is submitted that the vacancy Notification dated 3rd February, 2023 was challenged on the ground that the respondent authority has no power under any of the provisions of control order to curtail the number of vacancies from Fair Price Shop of the petitioner and the authority concerned cannot go behind the policy declared in terms of the control order on the basis of which the petitioner was granted licence to cater the population of 6500 to 7500. The authorities did not have the power to curtail the number of beneficiaries once it was allotted to the petitioner based on the data available to the State respondents.

6. Per contra, Mr. Priyankar Saha, learned counsel representing the State, submits that the Government has taken a policy decision for modification of the beneficiaries after taking into consideration the issues raised from various quarters regarding the retained population and proposed population for a new vacancy which were under active consideration of the Department. Now the Government has taken a conscious decision for the purpose of proper and complete rationalization of existing ration card population for ensuring better service to the concerned

beneficiaries through PDS, a new vacancy may be proposed with a population which may be less than 3000 and DRC population retained with an existing FPS may be less than 5000 considering local scenario, convenience/inconvenience of the beneficiaries and in the larger interest of PDS in the locality. In this regard the following Memo is relevant:-

“5. Memo No.3004-FS dated 3rd September, 2021 prescribed a guideline stipulating two situations:-

Situation-I

In case of overpopulated F.P.S. having card population of more than 12000, proposals for the new vacancies may be given at appropriate locations of the areas under the service of the existing 2 F.P.S. through bifurcation of the card population as may be convenient for the concerned dealers.

Situation-II

In case of overpopulated F.P.S. having card population between 10000 to 12000, around 3000 to 5000 cards of the existing F.P.S. may be considered for detagging and to be clubbed with the detagged over populated card of any neighbouring F.P.S.(s) for declaration of suitable

new vacancy, the proposal of the same may be given at locations as may be convenient for the concerned beneficiaries.

6. Thus, it is contended by the learned advocate for the petitioner that an F.P.S dealer can cater at least 10000 beneficiaries and if the number of beneficiaries becomes higher than 10000 the concerned authority can bifurcate the beneficiaries and tag them with a new fair price shop for rationalization of public distribution system.

7. However, the office order dated 3rd September, 2021 has been superseded by Memo No. 834 dated 28th March, 2023. The relevant order issued by the Director of the Directorate of District Distribution, Procurement & Supply is quoted below:-

“Guidelines for rationalization of excess Ration Card population of existing FPSs through declaration of new vacancies or merger of small Ration Card population with neighbouring FPSs were issued by 3 the Department vide No. 3004-FS dated 03.09.2021. In the said guidelines, in case of shops having excess population, it was envisaged that 6500 to 7500 Ration Cards were to be retained with an existing FPS for declaring a new vacancy.”

7. It is contended that initially an F.P.S dealer can cater at least 10000 beneficiaries and if the number of beneficiaries becomes higher than 10000 the

concerned authority can bifurcate the beneficiaries and tag them with a new fair price shop for rationalization of public distribution system. This order, however, has been superseded by Memo No. 834 dated 28th March, 2023.

8. As mentioned above, the issue was revisited on the basis of certain issues being raised from some quarters regarding the retained population and proposed population for a new vacancy which were under active consideration of the Department. The Notification dated 28th March, 2023 has given a justification for reduction in the number of card holders to an existing fair price shop and the Government is the authority to issue fresh order superseding the previous one for rationalization of the public distribution system. The parties on such bifurcation is to provide food to the ration card holders without causing much inconvenience to such holders/beneficiaries in procuring their ration.

9. Mr. Manna on the last occasion had relied upon Memo being no. 3490-FS/O/Seett./IT-09/2014(III) and submitted that the writ petitioner would be entitled to 8000 DRC. Mr. Saha on instruction has submitted that return of additional ePOS for the FPS having less than 8000 DRC. We have read the said memo carefully. The subject of the Memo for return

of additional ePOS for the FPS having less than 8000 DRC. The said Memo has no relevance in the present case.

10. In view of the aforesaid, we do not find any reason to interfere with the order passed by the learned Single Judge.

11. In view of the above, the appeal fails.

12. MAT 1816 of 2023 stands dismissed.

13. In view of dismissal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2023 and the same is accordingly dismissed.

14. However, there shall be no order as to costs.

15. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)

