

Court No. 13
(266239)

26.11.2024

(AD 34)

(S. Banerjee)

FMA 1228 of 2024

CAN 1 of 2024

The State of West Bengal & Ors.

Vs.

Rabindranath Singha

Mr. Sirsanya Bandyopadhyay

Mr. Ritesh Ganguly

...for the State-appellant

Mr. Debabrata Saha Roy

Mr. Pngal Bhattacharyya

Mr. Sankha Bswas

...for the writ petitioner/respondent

1. Let the affidavit of service filed in court today be kept with the record.
2. The instant appeal is directed against the order dated 5th December, 2024 passed by a Single Bench of this court. The State is aggrieved that the learned Single Bench has dispensed with the requirement of its own affidavit before a Magistrate, in respect of more than one owner of the property offered to set up the Fair Price Retail Shop.
3. It is submitted that while the advertisement may not by itself indicate the requirement of an affidavit sworn before a Magistrate containing the no-objection of other co-owners of the property, the

detailed Form C mentioned in the advertisement stipulates such a requirement.

4. The learned Single Judge has held that the notarized affidavit filed by the writ petitioner was sufficient compliance of Form C and the documents required to be submitted by an intending bidder for the Fair Price Retail Shop. The Single Bench further directed the State to give dealership to the writ petitioner respondent.

5. It appears to this court that the Single Bench was not assisted at all by the State. The State appears to have filed a report in the form of an affidavit and had left the matter without representation before the learned Single Bench.

6. Had the State been represented, it could have easily been pointed out to the learned Single Bench that a notarized affidavit would not serve the purpose of Form C and the Rules for allotment of Fair Price Retail Shops. What the rules prescribe is that a sworn affidavit and/or a no-objection before a Magistrate is a mandatory requirement to be complied with by all the applicants offering property owned by more than one person.

7. It further appears to this court that an impression has been given to the learned Single

Bench that the writ petitioner/respondent has fulfilled all and every other requirements and has succeeded in getting the allotment of the Fair Price Retail Shop for the area concerned and the matter except for the aforesaid requirement of an affidavit sworn before a Magistrate.

8. It is submitted by Mr. Bandyopadhyay, learned advocate for the State-appellant, that the selection process is still underway. There are several other applicants who are competing for the said retail shop allotment.

9. Mr. Saha Roy, learned advocate for the writ petitioner/respondent, has submitted that the State was not represented before the learned Single Bench on three occasions when the matter was taken up and has not given any assistance except by filing a report.

10. Mr. Bandyopadhyay fairly admits that the State ought to have been represented but, also submits that the writ petitioner has not taken an exception to the report filed by the State.

11. In the above circumstances this court directs that the writ petitioner/respondent will have to file an affidavit sworn before a Magistrate by all the other co-owners of the property in question including the writ

petitioner for completing his application form and participating in the selection process.

12. Let the selection process be completed by the District level Fair Price Retail Shop Selection Committee, within a period of one month from date in which the writ petitioner shall also be considered along with other bidders. The selection shall be made by the aforesaid Committee, strictly in terms of the applicable rules and the requirements of the State.

13. With the aforesaid observation the appeal is disposed of. The impugned order shall stand set aside.

14. There shall be no order as to costs.

15. Urgent xerox certified copy.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)