

30.07.2024
Item No.11
Court No.24.
S. De

W.P.A. 23291 of 2015
With
I.A. No. CAN/1/2016 (Old No. CAN/8090/2016)
I.A. No. CAN/2/2020 (Old No. CAN/1935/2020)
I.A. No. CAN/3/2020

Lailur Rahaman.
Vs.
The State of West Bengal & Ors.

Mr. Lutful Haque,
Ms. Tahanima Khahu,
...for the petitioner.

Mr. Sirsanya Bandopadhyay, Ld. Jr. Standing Counsel
Mr. Ritesh Kr. Gangully,
...for the State.

Exception to the report filed by the petitioner is taken on record.

An advertisement was published on 21st February, 2014, bearing Memo No. 587/19/MRADMN/SCFS/BER/14 issued by the Sub-Divisional Controller (F&S), Berhampore, for appointment of dealer at Uttar Pakurdiar Faridpur G.P. under Jalangi Block.

The present petitioner applied for the vacancy and necessary formalities regarding the license has been conducted by the State authority. The inspection was held at the site. It is the case of the present petitioner that after such inspection, the State authority has issued a correspondence for enhancement of the bank deposit from Rs.50,000/- to

Rs. 5,00,000/- and also directed to enhance the arrears of go-down facility and the shop room. On such communication, the petitioner acted upon.

Suddenly, after compliance of such formalities, the State authority kept themselves mum and thereafter suddenly, it issued a notification on 17.08.2015 contending inter alia that in view of the implementation of National Food Security Act, 2013, the notification wherein the present petitioner was appeared to be most suitable candidate has been cancelled.

Challenging the act and action of the State authority for issuance of such notification dated 17.08.2015, the instant writ petition was preferred.

During the admission of the instant case, the State authority had submitted that due to the implementation of National Food Security Act, 2013, the number of targeted beneficiary has been drastically reduced. Thus, in view of such reduction, the opening of more FPS dealerships has been rendered redundant.

Learned counsel for the petitioner submits that the present petitioner has acted according to the communication of the State Authority and huge expenses have been incurred by the present petitioner to enhance the area of go-down and shop room as well

as the enhancement of the bank deposit from Rs. 50,000/- to Rs. 5,00,000/-.

The act and action of the State authority by issuing notification on 17.08.2015 is illegal and arbitrary. So, the notification is liable to be set aside.

The State submitted a report in the form of affidavit containing inter alia, that the impugned notification was challenged by other petitioners in different writ before a Co-ordinate Bench. The Co-ordinate Bench has held that it cannot be said that the State has acted with material irregularity in issuing the impugned notification dated 17.08.2015.

Against the said order, the petitioner preferred an appeal before the Division Bench of this Court wherein the Division Bench has set aside the order passed by the learned Single Bench, against which the State preferred an SLP. The Hon'ble Apex Court, in Civil Appeal No.4354 of 2022, arising out of S.L.P. (C) No.30438 of 2019 has set aside the observations of Division Bench and upheld the order passed by the learned Single Judge.

Learned counsel appearing on behalf of the State submits that the impugned notification dated 17.08.2015 has already been affirmed by the Hon'ble Supreme Court after considering all materials. So, the instant writ petition has become infructuous.

Heard the learned counsel for the parties.
 Perused the impugned orders. In deciding the issue,
 the Hon'ble Supreme Court has held as follows :

“31. In the instant case, we have already noticed that the appellants were reposed with a responsibility of implementing the mandate of the 2013 Act, and more importantly, to bring about reforms in the existing Public Distribution System as stipulated under Section 12 of the said Act. The respondent herein being a mere applicant in an un-finalised selection process, has no Vested right in his favour to seek continuation of the notified vacancies, when by recalling the vacancy notification, the appellants endeavored to enforce the statute. Moreover, as discussed above, there can be no estoppel against a statute. Even going by the observations of the Division Bench in the impugned judgment, that the State was aware of the 2013 Act while issuing the 30.01.2014 vacancy notification, the said notification cannot be sustained, being contrary to the mandate of the National Food Security Act, 2013, more importantly of Section 12 thereof as held in A.P. Dairy Development Corpn, Federation (supra).

32. There is also no merit in the contention of the respondent that the Authorities have taken into

consideration the parameters laid down in 2013 Act while declaring the vacancies on 30.01.2014. There is nothing on record to suggest that when the vacancies were declared on 30.01.2014, the Authorities kept in mind the provision of the 2013 Act. The 2013 Act came into effect on 10.09.2013. The vacancy notice is dated 30.01.2014. The vacancy notice does not refer to the provisions of 2013 Act. In our view, it would be improper to infer that the provisions of 2013 Act were kept in mind while issuing vacancy notice dated 30.01.2014. The respondent has not made out a case of arbitrariness or unreasonableness or mala fide. In our view, the Division Bench ought to have held that the notification dated 17.08.2015 was issued to keep the public distribution system in tune with the mandate of 2013 Act, more specifically Section 12 which provides for reform in the public distribution system.”

Having heard the parties and having considered the observations of the Hon’ble Apex Court, it is true that the present petitioner has acted on the promise of the State authority. However, the State authority is duty-bound under Section 12 of the National Food Safety Act, 2013 to rescind all earlier vacancy notifications. Thus, the act and action of the State

authority was affirmed by the Hon'ble Supreme Court. In the present case, it is true that the petitioner has acted on the promise of the State authority and the performance on such assurance, he has incurred a huge sum of money. The claim of damages against the State may very well lie by the petitioner in appropriate proceeding.

However, in considering the entire materials in the present writ petition and the prayers thereof, it appears to me that the instant writ petition has got no merit at all after decision of Hon'ble Apex Court mentioned above, thus, the same is disposed of along with the connected applications.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Subhendu Samanta, J.)