

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF
WPA 23922 of 2023
With
CAN 1 of 2024

Rejia Parvin
Vs.
State of West Bengal & Ors.

For the Petitioners : **Mr. Debabrata Saha Roy, Sr. Adv.,**
Mr. Syed. E. Huda, Adv.,
Mr. Sk. Aptabuddin, Adv.,
Mr. Nabeda Akbar Adv.

For the Private respondent : **Mr. Sk. Galib, Adv.,**
Mr. Rezaul Hossain, Adv.,
Mr. Parvez Hossain Adv.

For the State : **Mr. Suman Sengupta, Adv.**
Mr. Amritalal Chatterjee, Adv.
Mr. Sanatan Panja Adv.

Reserved on : **21.08.2024**

Judgment on : **27.11.2024**

Subhendu Samanta, J.

1. Sub Divisional Controller Food and Supply, Islampur, Uttar Dinajpur issued a vacancy notification for new FPS Dealership at Raiganj, Central Location is Patnour, FP School. Petitioner, Private respondent and others applied for the said vacancy. Respondent authority has selected private respondent for such dealership. Petitioner filed this writ petition challenging

the selection of private respondent by the respondent authority on several grounds and also seek issuance of writ of mandamus upon the respondent authority to select him as being the most suitable candidate.

2. It has been alleged by the petitioner that the concerned authority initially after enquiry at the proposed godown, rejected the application of private respondent after enquiry, thereafter due to some unknown reasons second enquiry was held and thereby, private respondent was selected.

3. In response, through the direction of the court, the concern authority has submitted report in the form of affidavit, thrice. The first report of the State Authority disclosed, there were second inspections at the godown of private respondent on the behest of the District level Fare Price Shop Selection Committee. After obtaining second report the District Level Fare Price Shop Selection Committee has selected private respondent No. 6 to be most suitable candidate. The first report of the State Authority contained reports of re-enquiry in the proposed godown of private respondent as well as the enquiry of petitioner.

4. On that situation, this Court directed to the State Authority to submit another report regarding the first enquiry report of proposed godown of the private respondent. The State Authority submit the detailed

report (2nd) regarding 1st enquiry at the proposed godown- cum- shop room of private respondent. This court has perused all the reports. It appears that initially the proposed godwon of the private respondent was inspected on 16.03.2023 by the concerned Inspector of Food Supply Department under the head of “overall comment” it has been commented as follows:-

The land of propsed godown is located within the vacancy location BUT PLINTH HEIGHT is not maintained, the floor of godown is almost 3ft below from road level so it is not sutiable at the time of enquiry AND HENCE the application is not recommended.

First report contain report of re-enquiry of the proposed godown-cum show-room of private respondent, dated 07.06.2023. Wherein the same inspector of concerned Food and Supply Department has reported under “overall comments” as follows:-

The land of proposed godown is located within the vacancy location AND the godown AND sales counter are suitable at the time of enquiry AND HENCE the application may be recommended.

Third report contains the score sheet and recommendation of candidates by District Level Fare Price Shop Selection Committee containing the noting of

ADM (FOOD), Uttar Dinajpur, who directed O/C (Food) for re-enquiry of the godown of private respondent.

5. Let me consider, in the attending facts and circumstances, whether the District Level Fare Price Shop Selection Committee has authority to direct re-enquiry of a particular godown of an applicant.

6. Clause 20 (iii) of WBPDS (Maintenance and Control Order), 2013 read as follows:-

Applications for filling up the vacancies as notified in Sub-Clause (ii) hereinbefore shall be invited from Self Help Groups/ Registered Co-operative Societies / Semi-Government bodies / individuals / group of individuals as an entity. In case of fresh vacancies preference may be given to Self Help Groups, specially women Self Help Groups. If the applicant be individual(s), he / she / they should be permanent resident of the concerned Sub-division. The applications received in Form C along with annexure I and requisite fee as prescribed in Schedule-A within the stipulated time shall be enquired by the Sub-divisional Controller, Food and Supplies within one month from the last date of receipt of the applications as notified, and the report so prepared shall be sent with his comments to the concerned District Controller, Food and Supplies. The said District Controller, Food and Supplies will forward the same with his comments through the concerned District

Magistrate to the Director, DDP&S, within a month from the date of receipt of the report from the Sub-divisional Controller, Food and Supplies. The Director, DDP&S, in turn, will forward the same to the Department with his specific opinion. Provided that if the Government so desires it may give such opportunities to only Self Help Groups or Cooperative societies or Semi Government bodies or such other public agencies by separate notifications.

7. The vacancy notification has specifically denoted the eligible criteria that applicants to possess a suitable godown vide notification No. 2749-FS dated 17.08.2021.

8. Through the said notification dated 17th August, 2021 the State Government has decided to devise a procedure for making system for selection of FPS dealer as well as to constitute District Level Fare Price Shop Selection Committee for the purpose of selection of FPS dealer in just and transparent manner. In the said notification, the Government has also adopted a score based enquiry criteria for selection of FPS dealer against new/resultant vacancy up to the District Level comprising of full 100 marks. For better understanding of the purpose of the State Authority the notification dated 17th August 2021 is set out as follows:-

No. 2750-FS/ Sectt/Food/4P-9/2012

Kolkata, the 17th August, 2021

ORDER

WHEREAS the selection against the new and resultant vacancies of the FPS dealer is being made under the West Bengal Public Distribution System (Maintenance of Control) Order, 2013 & the West Bengal Urban Public Distribution System (Maintenance of Control) Order, 2013 as per the procedure laid down in those two Control Order,

AND WHEREAS the State Government has decided to devise a procedure of marking system for selection of FPS dealer as well as to constitute a District Level Fair Price Shop Selection Committee in the every district for the purpose of selection of FPS dealer in just and transparent manner,

NOW, THEREFORE, the Governor is, in pursuance of clause 20 of the West Bengal Public Distribution System (Maintenance of Control) Order, 2013 and clause 17 of the West Bengal Urban Public Distribution System (Maintenance of Control) Order, 2013, do hereby pleased to devised the following procedure of enquiry for selection of FPS dealers:

(1) There shall be a score based enquiry criteria for selection of FPS dealer against a new/resultant vacancy upto the district level comprising of Full Marks of 100.

(2) Concerned SCF&S/RO shall conduct the enquiry either personally or through officer or officers of his office who shall assess the infrastructural criteria, as stipulated in the Control Order as well as in the vacancy notification and thereafter allocate marks as per the following Table:

Table
Total Score -75 marks

Sl No	Specification/criteria	Mark
1.	Size of Godwon: a) 601 sq ft or more b) 501 sq ft-600 sq ft c) 400 sq ft-500 sq ft	15 10 05
2.	Size of Attached Shop-cum distribution centre: a) 401 sq ft or more b) 301 sq ft-400 sq ft c) 100 sq ft- 201 sq ft	10 08 05
3.	Nature of Possession- of both shop and godown: a) ownership b) Long term Lease agreement of 10 year c) Registered Rental	10 8 5
4.	Proximity of shop cum distribution centre to godown a) Adjacent to each other b) Non adjacent	10 5
5.	Building type- shop and godown: a) located on same floor- ground floor b) located on different floors-shop cum distribution centre on ground floor c) located on different floors-godown on ground	10 8 5

	floor	
6.	Whether 10T Truck can reach the Godwon for unloading: a) Yes b) No	5 3
7.	Domicile: a) Resident of the GP/Ward b) Non- Resident of the GP/Ward	10 5
8.	Category of applicant: a) Scheduled Tribe b) Scheduled Caste c) Other Backward Classes d) Others	5 4 3 2 1

3) The concerned SCFS/RO shall submit his report to the concerned DCF&S within the stipulated period after completing the enquiry.

4) Before sending the report to DDP&S through the District Magistrate, the DCF&S shall place the matter before the District Level Fair Price Shop Selection Committee (DLFPSSC) constituted for the purpose comprising of the following officials:

Sl No.	Name of the Officers
i)	Additional District Magistrate of the district/Joint Commissioner of KMC dealing with the affairs of Food
ii)	District Controller, Food & Supplies/Joint Director of Rationing/Deputy Director of Rationing
iii)	Sub-Divisional Controller, Food & Supplies/Rationing Officer

(5) Each member the DLFPSSC shall evaluate the applicant on the Scale of 0-25 to determine the suitability of a Candidate from amongst the eligible applicants. The average of the marks received by the applicant shall be the gross marks secured by him. The DLFPSSC may, if considers necessary, take personal interview of the eligible applicant to find his suitability for the vacancy.

(6) DLFPSSC make its recommendation on the basis total marks of the SCFS plus gross marks given by the Committee.

(7) DLFPSSC or the Sub-committee while giving its report may take into following further consideration:

(a) In case of same Total Score, the applicant in the individual capacity will get the preference.

(b) In case of two or more individuals with same / similar credentials qualify for a particular dealership, preference would be given to following (in descending order):

(i) Single woman (unmarried / widowed / separated with a court decree/order)

(ii) Graduate Unemployed individuals;

(c) If two or more applicants get the same score, then youngest amongst them will get priority.

(8) In case, no applicant is found eligible for filling up the vacancy, the DLFPSSC may remand back the matter to the concerned SCFS for re-notification of the vacancy.

9. On plain perusal of the said notification, it appears that the SCFS/RO of the concerned Sub Division has bestowed duty to enquire either personally or through officer or officers of his office who shall assess the infrastructural criteria and shall allocate prefixed marks as per table, out of total 75 marks. The report so prepared by the concern SCFS shall be forwarded to the DCF&S who shall place the matter before the District Level Fare Price Shop Selection Committee (DLFPSSC). Clause 5 to Clause 8 of the said notification dated 17th August 2021 has enumerated the power of DLFPSSC to

evaluate each and every applicants on the scale of 0-25 to determined the suitability of **“a candidate from amongst the eligible applicants”**

10. Learned Senior Counsel, Mr. Debabrata Saha Ray appearing on behalf of the petitioner submits that the DLFPSSC has no authority to direct re-enquiry. After completion of the enquiry by the concern SCFS. Mr. Saha Ray also argued that the private respondent is an ineligible candidate who by arbitrary conduct of one of the member of the committee of DLFPSSC has become the selected candidate. He further submits that the act of the respondent authority concern is suffering biasness. Private respondent who have no suitable godown was given license to store huge food grains for supplied to the locality. He also argued action by the State Authority has to be fare, reasonable, non-discretionary, transparent, unbiased without favourism or nepotism in pursuit promotion of healthy competition and equitable treatment as guaranteed in Article 14 of the Constitution. In support of his contention he cited decision of Hon'ble Apex Court in:

Natural resources allocation, in Re: Special reference 1 of 2012 reported in **(2012) 10 SCC 1**

107. From a scrutiny of the trend of decisions it is clearly perceivable that the action of the State, whether it relates to distribution of largesse, grant of contracts or

allotment of land, is to be tested on the touchstone of Article 14 of the Constitution. A law may not be struck down for being arbitrary without the pointing out of a constitutional infirmity as McDowell case⁴⁷ has said. Therefore, a State action has to be tested for constitutional infirmities qua Article 14 of the Constitution. The action has to be fair reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14. This is the mandate of Article 14 of the Constitution of India.

11. Mr. Suman Sengupta, Learned Senior Government Advocate, submits that after conducting first enquiry and after scrutiny the material on record, under the supervision of Sub Divisional Controller and also receiving the enquiry report from the inspecting authority, it was forwarded District Level Fare Price Shop Selection Committee to select suitable candidate from amongst the eligible applicants. After careful consideration of materials on record, District Level Fare Price Shops Selections Committee perused the enquiry report along with the materials on record and was of view that they are not satisfied with the enquiry report and send it back before the enquiry committee for further

enquiry. Pursuant to the said direction of the DLFPSSC re-enquiry was held at the proposed godown of private respondent. It is the case of the State Authority that during re-enquiry it is found that proposed godown site of private respondent is adjacent to a national high way near a fly over for such proposed godown and sales counter was at lower level to the road but there is not history of water logging as per the report of the concerned enquiry authority. The said report was again forwarded to the DLFPSSC, who after verifying all reports has selected the private respondent to be the most suitable candidate.

12. Mr. Sen Gupta further argued that it is the only concerned of the State Authority for betterment of distribution of public commodities through FPS dealer. Mr. Sen Gupta also submits that according to the provisions of Clause 20 Sub- Rule (iv), if the State Government deems it necessary, in the exigency of public interest, the authority concern can take any decision or order re-enquiry for all that purpose.

13. In support of his contention he cited a decision of Hon'ble Apex Court reported in **KT Plantation Private Ltd. and Anr. Vs. State of Karnataka (2011) 9 SCC 1**

134. Hugo Grotius is credited with the invention of the term "eminent domain" (jus or dominium eminens) which implies that public rights always a overlap with private rights

to property, and in the case of public utility, public rights take precedence. Grotius sets two conditions on the exercise of the power of eminent domain: the first requisite is public advantage and then compensation from the public funds be made, if possible, to the one who has lost his right. Application of the above principle varies from countries to countries. German, American and Australian Constitutions bar uncompensated takings. Canada's Constitution, however, does not contain the equivalent of the taking clause, and eminent domain is solely a matter of statute law. The same is the situation in the United Kingdom which does not have a written constitution as also now in India after the Forty-fourth Constitution Amendment.

14. Mr. Sen Gupta further argued that the writ petitioner being unsuccessful candidate cannot substitute its view over the future of the selection committee **Akash Construction Vs. SB Construction and Company (2024) SCC Online Cal 4278**

36. Writ petitioners cannot call upon a writ court to substitute its views with that of the views of the authorities, in respect of a tender process, without establishing that, the view taken by the authorities is mala fide, or made in colourable exercise of power, or without jurisdiction or is such that, no reasonable person can accept such a view or was against public-interest.

15. Mr. Galib Learned Counsel appearing on behalf of the private respondent submits that the power of judicial

review of a High Court is very limited regarding the selection process or State Authority. He submits that it is not obligatory for a court to change the finding of the selecting authority by sitting as an appellate authority. He further argued the court does not sit in a judgment of merits of the decision. It is not open to the High Court to re-appreciate and re-appraise of the evidence laid before the enquiry officer and examine the findings recorded by the enquiry officer and as a Court of Law and reached its own conclusion. He cited decision of Hon'ble Supreme Court in **State of UP Vs. Manmohan Nath Sinha (2009) 8 SCC 310**

The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court.

**In Reshmi Metalics Ltd. and Anr. Vs. State of West
Bengal 2017 SCC Online Cal 8831**

It is well settled that the power of judicial review is not intended for the Court to assume a supervisory role or don the robes of the omnipresent or to sit in appeal over the decisions of administrative bodies. The Writ Court ought not to transpose itself as an appellate authority when a particular authority has performed its obligation to abide by the specific directions given by this and rendered a decision in the matter supported with cogent reasons. The discretionary jurisdiction of this Court under Article 226 of the Constitution of India ought not to be invoked in such cases, unless of course, the decision so rendered by the concerned authority is palpably wrong or is arbitrary or perverse or smacks of mala fide motive or has been rendered without adhering to the specific directions given by the Court. A decision which is within the exclusive domain of an administrative authority is not liable to be interfered with in a petition under Article 226 of the Constitution of India. It is only when findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant and inadmissible material or if the same outrageously defies logic and suffers from the vice of irrationality, the powers of judicial review can be exercised.

16. Mr. Galib further argued that the District Level Fare Price Shop Selection Committee has seen the enquiry report forwarded by the concerned SCFS. On

perusal of the report it appeared to them that private respondent has scored highest mark in enquiry report but he was mentioned as ineligible candidate. This is the reason the concerned District Level Fare Price Shop Selection Committee has re-enquired the proposed godown-cum-shop room of private respondent. He submits that there is not illegality in the act of the State Authority and selecting the private respondent as a suitable candidate.

17. Heard the Learned Advocates. Perused the necessary observation of the Hon'ble Apex Court.

18. By virtue of the notification dated 17th August 2021, DLFPSSC is bestowed to award marks on the scale of 0 – 25; to determine the suitability of a candidates from amongst the **eligible applicants**. Admittedly when the report of SCFS concern in respect of the applicants were placed before the District Level Fare Price Shop Selection Committee, private respondent was marked as ineligible candidate. Thus according to the Clause 5 of notification dated 17th August 2021 District Level Fare Price Shop Selection Committee cannot consider the candidature of an ineligible candidate.

19. Mr. Sengupta has argued before this court regarding the authority of the State Government in the exigency of public interest as enumerated under Sub-Clause (iv) of Clause 20. The domain of the State

Government to do in exigency of public interest is only when it is required to expedite the process of engagement of dealer. In the present case I find no such circumstances to expedite the process of engagement of dealer at the vacancy location. Moreover the WBPDS (M&C) Order, 2013 and/or the notification dated 17th August 2021 never empower any of the member of District level Fare Price Shop Selection Committee to cause re-enquiry.

20. On perusal of the enquiry reports, it appears to me that the proposed godown of the petitioner is much nearer to the Central Location than the private respondent, moreover the area of godown of petitioner is much bigger than the private respondent. I find no justification in the act and action of the State respondent to select the private respondent the said vacancy notification.

Third report of the respondent authority disclosed that the DLFPSSC has awarded final marks to all candidates including petitioner. Private respondent awarded '0' marks. Thereafter suddenly, without any reason directed re-enquiry. I find no reason to disbelieve the first enquiry report of enquiry inspector in respect of the private respondent. After awarding final marks the DLFPSSC lost its authority to again re-consider the candidature of any applicant.

I make it clear that the act and action of the concerned DLFPSSC directing re- enquiry of the proposed godown of the private respondent is de hors to the provision of West Bengal Public Distribution System (Maintenance and Control Order) 2013 as well to the notification dated 17th August 2021.

21. Under the above observation the instant writ petition succeeds.

The offered letter in favour of the private respondent, subsequently the issuance of licence in his favour is hereby quashed.

Concerned Respondent Authority is directed to issue the license of FPS in respect of the concerned vacancy notification in favour of the petitioner, if he found eligible according to law, within 06 weeks from the date of communication of this order.

22. Under the above observation the writ petition is disposed of. Connected applications if pending are also disposed of.

23. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)