

26.06.2024
SL No.7
Court No.24
Ali

WPA 24915 of 2023

Ashok Halder
Versus
The State of West Bengal & Ors.

Mr. Syed E. Huda,
Mr. Sk. Aptabuddin,
Mr. Himadri Roy,
Ms. Nabeela Akbar

.....for the petitioner.

Mr. Samim Ahammed,
Mr. Arka Maity,
Ms. Gulsanwara Pervin,
Ms. Saloni Bhattaacharya

..... for the respondent No.6.

Mr. T.M. Siddiqui
Mr. Amritlal Chatterjee

....for the State

The vacancy Notification being No. 412/JFS/2023 dated 6th May, 2022 was issued inviting applications for FPS Dealership near Gandheswari Mandir Silda.

The present petitioner as well as private respondent No.6 applied for the said vacancy. On the basis of applications an enquiry was conducted by the concerned authority, after such enquiry the concerned respondent State authority had issued an offer letter in favour of the respondent No. 6 dated 3rd October, 2023. The present petitioner filed the instant writ petition challenging the said offer letter in favour of respondent No.6.

It is the case of the present petitioner that the present petitioner has issued a representation through a letter of an advocate challenging some grounds there on, but, the concerned authority has not considered the representation. Thus, the instant writ petition was preferred.

The State authority has used a reply on the form of affidavit, wherein it has been specifically pleaded by the State that after receiving the applications, a field inspection was conducted by an inspector as per order of FPS, Jhargram. The said inspector after through inspection has submitted a report. In the enquiry report, it appears that the area of proposed godown and shop room of the petitioner are 523.37 sq.ft. and 140.07 sq.ft. respectively, whereas the area of proposed godown and shop of the private respondent are 463 sq.ft. and 205.53 sq.ft. respectively.

It is the further submission of the State that a score sheet was prepared on the basis of such enquiry report and after considering the scores of each and every candidates, the present petitioner found to be successful by the report of DLFPSSC.

It is the further contention of the State that the proposed shop room of the present petitioner is not come under the criterion of the notification so he

is not at all an eligible candidate. Thus, he is not entitled to file a writ petition.

Learned advocate appearing on behalf of the private respondent No. 6 was not given liberty to use affidavit. However, learned advocate for the respondent No. 6 raised the point of maintainability before this Court. It is the submission of the learned advocate for the respondent No. 6 that the instant writ petition is not at all maintainable. He submitted that the petitioner is an unsuccessful candidate. The result was based on the substantive satisfaction of the District Level Fair Price Shop Selection Committee (DLFPSSC) which cannot be challenged in a writ petition.

In support of his contention, he cited a decision report in ***State of Madras V. P.B. Gajendragadkar (AIR) 1965 SC 1103*** wherein the Hon'ble Apex Court has held that:

“High Court can only enquire whether the finding is based on evidence but cannot reassess evidence”.

By citing the observation of Hon'ble Apex Court, learned advocate for the respondent No. 6 submits that the authority has given a specific score in favour of the petitioner as well as the respondent No. 6. The score given by the authority is the substantive satisfaction of the authority concerned. The High Court in writ jurisdiction can only

ascertain that whether such satisfaction of the authority is based on evidence, but, High Court cannot interfere or reassess the evidence which was already assessed by the authority concerned.

Learned advocate for the respondent also cited another decision of Hon'ble Apex Court passed in ***N.G. Projects Limited Versus Vinod Kumar Jain and Others reported in (2022) 6 SCC 127***. In ***N.G. Projects Limited (supra)*** the Hon'ble Supreme Court has held that:

“Unsuccessful parties or parties not even participating in the tender, seek to invoke the jurisdiction of the High Court under Article 226 of the Constitution is not maintainable”.

By citing the decision of Hon'ble Apex Court, the learned advocate for the respondent No. 6 submits that the present petitioner is an unsuccessful candidate. Thus, by virtue of the decision of the Hon'ble Apex Court he cannot maintain a writ application.

Learned advocate appearing on behalf of the State also raised the point of maintainability. On the ground that the present petitioner cannot be termed as an aggrieved person.

In support of his contention he cited a decision of Hon'ble Apex Court in ***Ayaubkhan Noorkhan Pathan Versus State of Maharashtra***

and Others reported in (2013) 4 SCC 465. He referred the paragraph of the said decision:

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court, the legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same”.

By citing the decision by Hon'ble Apex Court learned counsel for the State submits that the present petitioner cannot be termed as an aggrieved person as his candidature was not considered to be successful, he do not have any legal right to file the instant writ application.

Refuting the contention of the respondent No. 6 as well as the State. The petitioner submits that the writ application is always maintainable by a person who is a candidate or files an application for getting FPS dealership. He submits that this Court in several occasions has considered the writ application an applicant, who was unsuccessful in terms of the order of the State. He further argued this writ Court on several occasion has quashed the order of issuance of licence in favour of the private respondent.

In support of his contention he cited a decision of a Co-ordinate Bench of this Court passed in **WPA 9700 of 2022** wherein a Co-ordinate Bench of this Court has set aside the order of issuance of licence by the Government authority in favour of private respondent. He also cited another decision of the Division Bench of this Court passed in **M.A.T. No. 127 of 2018** wherein the objection of a bidder in a tender was considered by the Division Bench of this Court and the tender was canceled.

Heard the learned advocates, perused the materials on record. In considering the grounds of maintainability it appears to me that the present petitioner as well as the respondent No. 6 and other persons have applied for the said vacancy. The candidature and the application of the present petitioner as well as the private respondent were considered by the State authority. In terms of their application a specific enquiry was conducted at the spot and the necessary documents were obtained. After such enquiry it was placed before the District Level Fair Price Shop Selection Committee (DLFPSSC), wherein the concerned committee has awarded marks in favour of the present petitioner as well as the private respondent and others.

Considering the entire facts it appears to me that the present petitioner cannot be termed as an outsider in this proceeding. At this juncture, he is entitled to challenge the action of the State under Article 226 of the Constitution. The objections raised in the impugned order passed by the concerned authority by the present petitioner can very well consider in the writ jurisdiction.

The observation of Hon'ble Apex Court in **G. Sundaram (supra)** is totally different wherein the Hon'ble Apex Court has considered the intervention of High Court in a departmental proceeding. In **N.G.**

Projects Limited (supra) Hon'ble Apex court has decided the writ petition of one of the bidder and also considered that the writ petition is not maintainable as the bidder was not successful. In the present case, the present petitioner cannot be termed as an outsider/stranger as he has always participated in the proceeding. Term of consideration of a tender process as well as the process in the impugned vacancy notification are totally different thus, in my view, the instant writ application is very much maintainable.

However, in considering the merits of this matter it appears to me that the present petitioner has challenged the issuance of offer letter in favour of the private respondent No. 6. In perusing the enquiry report of the State it appears that the private respondent No. 6 is not the owner the property proposed to be offer for godown and shop room. It was cited to the enquiry committee the godown and the proposed shop is possessed/owned under the name of one Shyama Prasad Dey; it was reported in the report that 10 years agreement was said to be executed by said Shyama Prasad Dey in favour of the private respondent No. 6. It has also been mentioned in the report that the agreement was prepared on the stamp papers but not registered.

In the vacancy notification under the heading of “Eligibility Criteria” at Part-2 point No. IV denoted that applicants must possess a suitable godown according to specification. Part-4, directed candidly to attach relevant documents. Para 14(VII) (b) reads as follows:

“b) for leased/rented property: Registered Lease Deed or Tenancy Agreement with copies of rent receipts for all the months from the date of agreement till date of application and Registered Deed/RoR in the name of the land owner (or lessor)”.

The Notification allowed applicant may own or possess the proposed godown and shop room by way of a registered. In the case of the respondent No. 6, the enquiry report disclosed about an agreement is for 10 years but it was not registered. The notification specifically imputed the term that the lease or tenancy agreement must be registered.

More surprisingly, during the enquiry, the respondent No. 6 did not submit any agreement or registered deed of lease of tenancy. On that ground the enquiry officer, has commented that:

“tenancy agreement or lease deed for shop-cum-godown are not submitted hence, the overall report are not satisfactory”.

However, in terms of G.O. dated 17th August, 2021 the marketing system was adopted wherein the nature of possession had three category.

Ownership was given 10 marks, long term lease agreement of 10 years was given 8 marks and, registered rental was given 5 marks. In the score sheet the present respondent No. 6 was awarded 8 marks, as if, his nature of possession is under long term lease agreement for 10 years.

G.O. dated 17th August, 2021 enumerated, concerned SCF&S/RO shall conduct the enquiry either personally or through officer and thereafter to allocate marks according to the G.O. In this case the enquiry officer has not allocated any marks to the applicants, but it was given by the concern SCF&S/RO. The respondent No. 6 has admittedly could not produce any document regarding his nature of possession in respect of the proposed godown and shop room. Respondent No. 6 failed to fulfill the criteria, but, still then, his candidature was placed irregularly before the DLEPSSC. When the matter was entirely placed before the concerned District Level Fair Price Shop Selection Committee (DLFPSSC). They have given 22 marks in favour of respondent No. 6 and 17 marks in favour of the petitioner out of total 25 marks.

Let me consider whether the act and action of the authority concerned, in deciding the issue and given the relevant marks of the candidates are at all according to the law and according to the

notification. In deciding the said issue the paragraph (5) of G.O. dated 17th August, 2021 required to be set out as follows:

“(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”.

According to the said G.O. the each member of DLFPSSC has the authority to evaluate the applicant on the scale of 0-25 marks to determine the suitability of a candidate from amongst eligible applicant. The present petitioner admittedly did not possess the godown or proposed shop room through long term registered lease agreement. Moreover, he failed to produce any lease agreement or any document at the time of enquiry.

On that score, he cannot be termed as eligible applicant in terms of the notification. At this juncture, it further appears to me that the present petitioner do not have the specified shop room having area of 200 sq.ft. According to the notification but the G.O. dated 17th August 2018

has provided some accommodation for those persons who have such attached shop comprising area of 100 sq.ft. to 200 sq.ft. When there is a deviation of area from the notification to the G.O., there must have a specific view of the State authority why such matter was considered or not considered.

In this case, the authority concerned has considered the candidature of the respondent No. 6 who is not at all eligible as per the said notification.

Considering the entire aspects, it appears to me that the action of the concerned State authority regarding considering the present respondent No. 6 to be a suitable candidate for the said FPS dealership is illegal and baseless; the impugned offer letter dated 03.10.2023 in favour of the present respondent No. 6 appears to me not justified.

On the above observation, the offer letter dated 3rd October, 2023 issued by the concerned authority in favour of the private respondent No. 6 is hereby set aside and quashed.

The authority concerned is to act according to the law and in terms of notification and G.O. dated 17th August, 2021 to fill up the proposed vacancy. On the above terms and circumstances, the instant application being **WPA 24915 of 2023** succeeds and the same is hereby disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)