

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

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

WPA 25040 of 2023
IN THE MATTER OF

Puspa Begam
Vs.
The State of West bengal & Ors.

For the Petitioner : Mr. Ram Anand Agarwal, Adv.,
Ms. Nibedita Pal, Adv.,
Mr. Ananda Gopal Mukherjee Adv.,
Ms. Sonam Ray Adv.

For the private respondent: Mr. Debartha Saha Roy, Adv.
Mr. Pingal Bhattacharyya, Adv.
Mr. Subhankar Das, Adv.
Mr. Neil Basu, Adv.
Mr. Sankha Biswas Adv.

For the State : Mr. Supratim Dhar, Adv.,
Ms. Rajyashree Mukherjee Adv.

Reserved on : 02.07.2024

Judgment on : 02.08.2024

Subhendu Samanta, J.

1. SCFS, Chanchal, Department of Food & Supplies, Government of West Bengal issued FPS, Vacancy notification on 5th February, 2023 in the location of Mollabari, Janamdol, Jama Masjid, P.O.- Bishanpur, P.S.- Harishchandrapur, District- Malda.

Present petitioner, private respondent No. 5 and other persons applied for the said vacancy.

2. Enquiry has conducted. After such enquiry petitioner came to know that the concern authority had issued an offer letter for dealership in respect of the said vacancy in favour of private respondent No. 5. The present petitioner challenged the said offer letter in this writ petition. The grounds of challenge of act and action of the respondent authority are as follows:-

- 1. Offered land of private respondent is surrounded by burial ground, there is not approach road for egress and ingress to the offered godwon from public road.*
- 2. The area of offered shop room is not at par with the notification.*

3. Special Divisional Controller (Food & Supply) Chanchal, submitted a report in the form of affidavit against the writ petition.

4. The respondent No. 5 also used affidavit-in-opposition against the writ petition; petitioner filed affidavit-in-reply against both the affidavits filed by the respondents.

Point No. 1 It is the case of the petitioner that respondent no. 5 offered godown and showroom over LR plot No. 400. There is no approach road for loading and unloading of ration articles. Moreover, the said land was surrounded by a burial grounds (plot no-399). Mr. Agarwal submits that the burial ground is a sacred place thus it cannot be used for the purpose of FPS dealership. It is the further case of the petitioner that the concern respondent authority has overlooked the situation and awarded the dealership in favour of respondent No. 5 which is the case of biasness.

5. Mr. Saha Ray, Learned Counsel appearing on behalf of the private respondent submits that which beside the offered plot No. 400, plot No. 399 is situated. The said plot of land (399) is vested to the government of West Bengal and being used by the local people for conducting "Urus" mela. It is the further submission of Mr. Saha Ray, that there are other shops situated at the same place; one Nursery School is also being run in the said plot of land. It is the further case of the respondent No. 5 that for the better purpose of egress and ingress from the offered

land to the public road, the right to way over plot No. 398 which is connecting over plot no. 400 and the public road, has been declared by one Rejaul Haque & others by way of a deed of declaration. It is the submission of the private respondent that “the right of easement to way” has been declared in favour of the petitioner thus there is no obligation to run FPS dealership over the offered plot no. 400.

6. The State Authority by using affidavit submits that the private respondent No. 5 constructed the shop-cum-godown over plot No. 400. During inquiry it appears that there is huge space for loading and unloading in front of Plot No.- 400, whereas the Panchayat road is only 20 meters away, vehicle of food grain can be easily parked at the godown or at the adjacent to it. There is also 06 shops beside FPS of respondent no. 5. On Dag no. 399, there is a big ground, where a village fair namely “Urus” takes place every year on that ground and it is further case of the petitioner is that none was buried in the ground since the last 50 years. It is the further submission of the State Authority that considering the entire

circumstances the respondent no. 5 appears to be more suitable and his candidature was approved by the competent authority.

7. In reply to the said submission of the State Authority, the petitioner used reply wherein she has pleaded that the nature of plot no. 399 is burial ground (kabarsthan). It is the further reply of the petitioner that the secretary of Janamdol, Kabarsthan Committee had issued a letter contending inter alia that, the plot no. 399 is burial ground and it is a sacred place. No permission was granted to the "Urus Mela Committee" to conduct Mela over the said burial ground. However, some unruly persons has placed some shop room over the burial ground with their personal interest without any permission from the Kabarsthan Committee. By citing this memo of the Kabarsthan Committee, the petitioner submits that the plea of the private respondent as well as the state respondent is false in nature and it cannot be accepted.

8. Heard the Learned Advocates. Perused the pleading of the parties and also perused the necessary

documents it appears that the plot no. 399 is recorded as Kabarsthan but it is also the fact that “Urus Mela” is conducted over the said burial ground. The respondent has placed a deed of declaration, declaring easement right of the respondent no. 5 from offered plot no. 400 to the public road. It is argued by the Learned Advocate, that the petitioner that, notarial deed of declaration is anti dated, the connecting documents of the notarial certificate itself proved that the information was obtained on 27.10.2023 whereas, the notarial certificate was issued on 25.04.2023.

It is true that the notarial certificate has annexed some documents which is itself after the date of 24.05.2023 but that does not itself invalidated the deed of declaration executed by the donor in favour of the private respondent on 25th April 2023. Whether the plot no. 399 was forcefully grabbed by unscrupulous persons including the present petitioner, is not the issue involved herein. The only fact emerges the pleadings of the parties that apart from the proposed godown of private respondent no. 5, there are some other shop rooms in/about the

burial ground. It is the report of the State that no person was buried there since last 50 years. Considering the same it appears to me that just beside offered land of the private respondent there exist a huge open ground which was recorded by a burial ground, but that itself cannot disentitle the private respondent to have license according to the law. Moreover, the approach road for egress and ingress from the offered godown to the public road is also there by virtue of deed of declaration in favour of the private respondent. Thus I find no justification in the objection raised by the petitioner.

Point No. 2 Mr. Agarwal submits that the notification disclosed that “the applicant should possess a suitable godown with minimum area of 400 square feet along with covers space of 200 square feet adjacent to the godwon for office purpose and shed in front of shop to accommodate at least 20 people who may wait in the que”. He submits that the offered land of the private respondent specifically the shop room is not consisting area of 200 Sqft.

9. Mr. Agarwal referred the inquiry report which was submitted by the State along with their affidavit and submits that there is arithmetic error by the concern officer who conducted enquiry. He submits that the size of area of sales counter was mentioned in the report as length- 7.80 ft.; width- 10.50 ft. and height- 10.70 ft.; the area was mentioned as 213.15 sqft. Mr Agarwal submits that the only area of the said sales counter according to the correct mathematical calculation would be 186.9 sqft. He submits that the State Authority was biased in considering the application of the private respondent actually the private respondent is an ineligible candidate according to the notification but he was allowed the license. The state submits that the offered godown and the sales counter of the private respondent is according to the specification.

10. It is true that according to mathematical calculation the area of the sales counter offered by the private respondent is 186.9 sqft. However the State Authority has conducted the enquiry and they also conducted the enquiry over the shop room and

godown of the present petitioner; after conducting the inquiry it appears to the State Authority that the Private respondent No. 5 is a suitable candidate. It is the view of the State Authority that storage godown of the private respondent No. 5 is more specious than the present petitioner and it is located more nearer than the petitioner from the 'Central point of vacancy location'. The State Authority is to determine the candidature of persons who applied for the vacancy. In deciding said issue the State Authority has opted view that private respondent no. 5 is more suitable candidate than the petitioner. The area of the sales counter of respondent no 5. may be less than the specification of the notification, but the State Authority thinks it necessary and deems it fit to give a license for the purpose of smooth public distribution system of the food grain to the locality. The authority to select and domain to determine suitability is only upon the State to determine the candidature of any person. In the writ petition it is only to looked into whether the decision of the State Authority is biased, purposive or illegal. Considering the entire facts and

circumstances it appears to me that the State Authority is the competent Authority to determine the suitability of candidates, the decision of the State Authority is purely administrative in nature. Though there are may have some ineligible imperfection according to the notification, but administrative the decision as arrived at by the State cannot be said to be biased decision.

11. Considering the above aspect in my view the point no. 2 also decided in favour of the private respondent.

12. Under the above observation the instant writ application appears to me meritless and the same is disposed of.

13. Connected applications are also disposed of. Any order of stay passed by this court during the pendency of the writ petition is hereby vacated.

14. 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.)