

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**W.P.A. 26543 of 2023
Bapi Pradhan
versus
The State of West Bengal & Ors.**

For the Petitioner	: Mr. Sudipto Moitra, Senior Advocate Mr. Vijay Verma, Advocate Mr. Dwaipayan Biswas, Advocate
For the Respondent Nos. 10 to 14	: Mr. Timir Baran Saha, Advocate Mr. Sudip Sarkar, Advocate
For the State	: Mr. Sirsanya Bandopadhyay, Advocate Mr. Ritesh Kr. Ganguly, Advocate
Heard on	: 22.01.2024, 28.02.2024, 04.03.2024, 22.03.2024, 24.04.2024, 24.05.2024
Judgment on	: 22.11.2024

Bivas Pattanayak, J. :-

1. This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking direction upon the respondents authorities not to give effect to the purported engagement of the respondent no.10 as a M.R Distributor at Chandipur Block, District-Purba Medinipur vide Memo no. 1076-FMR/13L-36/14 (Pt-V) dated 27th April, 2023 and the license granted pursuant thereto vide License no.25/MR Distributor/Tamluk/23 dated 3rd May, 2023 and to recall, rescind, cancel the said license granted in favour of respondent no.10 and engage the

petitioner as M.R. Distributor in respect of the subject vacancy in place of respondent no.10.

2. The brief fact of the petitioner's case is as follows:

(i) The petitioner having all the requisite qualification and being eligible for being appointed as M.R. Distributor in respect of the subject vacancy made online application on 10th November, 2022 pursuant to the advertisement published by the authority concerned of the Department of Food and Supplies vide memo No. 3393-FS/Sectt/Sup/4M-77/18 dated 22.08.2022 issuing vacancy notice under memo No. 2877-FMR/13L-36/14(Pt-V) dated 1st September, 2022.

(ii) The petitioner along with four others including respondent no.10 were applicants in respect of the aforesaid vacancy notification.

(iii) Upon such application being made by the petitioner, enquiry was held in respect of petitioner's godown.

(iv) A report was submitted to the effect that the petitioner's godown was not constructed as per requirement and therefore the candidature of the petitioner for being appointed as M.R. Distributor was cancelled.

(v) Since the godown of the petitioner had less space as per requirement of the vacancy notification, the enquiry officer after being satisfied with the sanction plan and layout plan granted 25 days to the petitioner to complete the construction of the petitioner's godown and intimate the concerned authorities.

(vi) After completion of the work of construction of the godown the petitioner duly intimated the concerned authority, however, no steps were taken by the concerned authority for engagement of the petitioner as M.R. Distributor in the subject location.

(vii) The petitioner alleging inaction on the part of respondent authorities preferred a writ petition being no. WPA 6327 of 2023. In the said writ petition, report was submitted by the State authorities intimating that the respondent no.10 has already been engaged as M.R. Distributor and on submissions of learned advocate for the petitioner, the said writ petition was held to be infructuous.

(viii) Being aggrieved by the purported appointment of respondent no.10 as M.R Distributor in respect of the subject vacancy location the petitioner preferred another writ petition being no. WPA 15521 of 2023. However, on 31st August 2023, said writ petition was disposed of as not pressed as per submissions advanced by learned advocate for the petitioner. Thereafter, an application being CAN 1 of 2023 was filed for recalling of the order dated 31st August, 2023. Though the said order was not recalled but liberty was granted to the petitioner to file a fresh writ petition on the self-same cause of action. Hence, this writ petition for appropriate orders for grant of licence in favour of the petitioner upon cancellation of the license granted in favour of the respondent no.10 in respect of the subject vacancy location.

3. The State-respondent nos.1 to 9 filed its affidavit-in-opposition with the following contentions:

(i) As per the eligibility criteria under Clause 6 of the vacancy notification dated 1st September, 2022, for engagement as M.R Distributor, the candidate must possess a godown with a minimum storage capacity of 1000 MT and a minimum area of 6310 Sq. ft. in order to apply for the said selection process. On the date of physical enquiry, it was found that the applicant's godown and shoproom were not constructed. Thus, the petitioner was ineligible from the very inception and his application itself was an act of fraud as he tried to assert a claim on something for which he was not qualified.

(ii) The applicant repeatedly assured the enquiry team that he would construct the said godown within 25 days is an act only to put a veil upon the fraud committed by him in disclosing that he has a ready godown of 7500 Sq. ft. in his application from dated 10th November, 2022. The contention of verbal assurance given by members of the inspection team regarding second enquiry is to cover up the petitioner's *lacuna*. Neither the members of the Inspection team gave assurance for second enquiry nor they were authorised to provide such assurance.

(iii) Since the one out of four candidates namely respondent no.10 was found to be eligible, he was selected having suitable godown situated in an adjacent block as per Clause 6(e)(iii) of the vacancy notification.

(iv) Though the petitioner claimed that an amount of Rs.44,78,319/- was his available balance in the bank account but during enquiry the

petitioner failed to submit any bank account statement in support of the same.

(v) On such score it is prayed that the writ petition is liable to be dismissed.

4. The respondent no.10, *M/s Shree Krishna Enterprise* also filed its affidavit-in-opposition contending, *inter alia*, that in response to the vacancy notification the respondent no.10 submitted application for his engagement in respect of the subject vacancy location. The inspection team conducted enquiry and were satisfied that the respondent-firm fulfilled all the requisite conditions contained in the vacancy notification. The godown of the respondent-firm situated in the adjacent block was found to be most suitable. No suitable candidate was found within the Chandipur Block having the requisite godown as per specification. Thus, as per Clause 6(e)(iii) of the vacancy notification the respondent-firm having suitable godown in the adjacent block was rightly selected. Since admittedly, the godown of the petitioner was not as per requirement he has no right to challenge the appointment of respondent no.10. The contention of the petitioner that the inspection team gave assurance is a false story without any basis. The writ petition should be dismissed in *limini*.

5. Mr. Sudipto Moitra, learned Senior Advocate appearing on behalf of the petitioner submitted that the petitioner is one of the applicants in respect of the vacancy of M.R. Distributorship declared by the respondent-State authorities on 1st September, 2022 pertaining to vacancy at Chandipur Block. At the time of inspection since godown of the petitioner was not as per the specifications mentioned in the vacancy notification,

the petitioner sought for 25 days accommodation for making construction of the godown as per the requirement and such period was granted by the State authorities. Subsequent thereto, upon completion of the work of construction of the godown, the petitioner made a representation for considering his application, however the same was not disposed of. Alleging inaction of the respondent authorities, the petitioner filed a writ petition being WPA 6327 of 2023. During the pendency of the aforesaid writ petition the M.R. Distributorship licence was granted in favour of respondent no.10. As per Clause 26 of the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 (*hereinafter referred to as the "Control Order 2013"*), the State Government should be furnished with all the relevant materials submitted before the District Controller, Food & Supplies and thereafter the State Government may consider if necessary cause further enquiry in this regard and the period for forwarding the material to the State Government is 75 days from date of receipt of the application. Before the expiry of the aforesaid period petitioner completed the work of construction of his godown as per requirement and duly intimated the authority concerned. However, instead of forwarding the materials including the intimation of the petitioner of completion of the construction of the godown to the State Government, the respondent-authorities issued licence in favour of respondent no.10 whose godown is situated in an adjacent block to the subject vacancy location at Chandipur Block. The petitioner is an eligible candidate to be appointed as M.R. Distributor and has all requisite qualification including the godown as per specifications within the subject vacancy location.

Furthermore, he submitted that the doctrine of '*legitimate expectation*' clearly applies to the facts and circumstances of the case since there was verbal assurance given to the petitioner by the State authorities that upon construction of the godown space, as per specification given in the notification with stipulated period of 25 days, the application of the petitioner would be considered and processed. To buttress his contention, he relied on the following decisions of Hon'ble Supreme Court:

- (i) ***Madras City Wine Merchants' Association and Another versus State of T.N. and Another*¹**
- (ii) ***Bannari Amman Sugars Ltd. versus Commercial Tax Officer and Others*²**
- (iii) ***State of Jharkhand and Others versus Brahmaputra Metallica Limited, Ranchi and Another*³**

He further submitted that the partnership entered by and between the parties under the name and style of '*M/s Shree Krishna Enterprise*' (respondent no.10) is not in accordance with law inasmuch as no capital investment by the partners has been disclosed in the partnership deed. Furthermore, the lease agreement shows that the respondent no.10 has been given only permissive possession of the land with godown and no lease has been created in favour of the respondent no.10. As per Form 'G' for appointment of a M.R. Distributor, the concerned authorities/applicant should have land under ownership or on rental basis. Since no lease is created in favour of respondent no.10, therefore, the grant of licence in his

¹ (1994) 5 SCC 509

² (2005) 1 SCC 625

³ (2023) 10 SCC 634

favour is in violation of the Rules contained in Control Order, 2013. Moreover, though the petitioner has fulfilled all the eligibility criteria in respect of the vacancy notification including having godown constructed within the subject location yet the licence has been granted in favour of respondent no.10 whose godown is situated in an adjacent block. Further though the petitioner had necessary financial capacity, yet the authorities held otherwise which is unreasonable. To be precise, the appointment of respondent no.10 is done on a mechanical basis by the State authorities which is uncalled for. In support of his contention, he relied on the decision of this Court passed in ***Rajesh Dhanuka versus State of West Bengal***⁴. Further it is a settled principle of law that if any of the ground required is found to be not satisfied, the entire process vitiates. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Kuso Sah versus The State of Bihar and others***⁵.

In light of his aforesaid submissions, he prayed that the appointment of respondent no.10 as M.R. Distributor in respect of subject location be cancelled and the State authorities be directed to engage the petitioner as M.R. Distributor at the subject location.

6. In reply to the contentions raised on behalf of the petitioner, Mr. Sirsanya Bandopadhyay, learned advocate representing the State-respondents submitted that, as per Clause 6(e) of the notification, the applicant is required to possess a godown as per specification given in the notification on the date of application. The notification does not provide for

⁴ **2014 (2) CHN (Cal) 341**

⁵ **AIR 1974 SC 156**

possessing a godown in a future date or within a specified period. The petitioner though in his application stated that he has godown as per specification contained in the notification, however, during enquiry, no such godown was found in existence. Thus, the petitioner purposefully/knowingly made a wrong/false statement in his application. Since the petitioner, admittedly, did not have any godown as required under the notification, he was not eligible on the date of application. Therefore, the question of giving assurance by the inspection team for consideration of the application of the petitioner does not arise at all. To place on record, there are also no provisions under the Control Order, 2013 to consider the application of an applicant on a future compliance who is not eligible on the date of application. The fact of giving assurance is a disputed fact which cannot be decided in a writ petition. Further in the earlier round of litigation, the petitioner did not deny the averments made by the State-respondents in its affidavit-in-opposition. Therefore, the doctrine of non-traverse applies against the petitioner. In support of his contention, he relied on the decision of this Court passed in ***Subhasis Chakraborty versus State of West Bengal and Others***⁶.

The petitioner by raising a story of verbal assurance being given by the State-respondents to hold a second enquiry has tried to cover up his *lacuna*. The provisions under Clause 26(iii) of Control Order, 2013 to hold a further enquiry is a discretionary power and is not mandatory in all cases. The assertion of the State-respondents in this regard has not been denied by the petitioner.

⁶ 2022 SCC OnLine Cal 706

The assertion that the partnership deed submitted before the State-respondents is not in accordance with law does not merit consideration since those allegations do not affect the eligibility of respondent no.10 to participate in the selection process. Since there was no eligible candidate within the subject location following the terms of the notification, respondent no.10, who possessed godown as per specification of the notification, was accepted. Such action of the State-respondents cannot be called into question.

So far as the lease deed is concerned, the same is registered one and it grants respondent no.10 the possession of the godown offered by it for a period of 10 years. Thus, the respondent no.10 was able to qualify the criteria mentioned in Clause 10(p) of the vacancy notification which requires that an applicant should provide a lease deed or a tenancy agreement for a period of 10 years.

The decision of the State-respondents in engagement of respondent no.10 cannot be substituted by the Court since the same has been done following the rules and regulations contained in the Control Order, 2013 and in terms of the notification. Merely because the petitioner's application was processed, it does not give him the right to enforce a non-existing right since the petitioner was ineligible. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Dinesh Kumar Kashyap and Others versus South East Central Railway and Others***⁷.

The petitioner in the facts and circumstances of the case has suppressed the fact that on the date of application, he did not possess godown as per

⁷ (2019) 12 SCC 798

specification. No Court will allow a person to keep an advantage which he has obtained by fraud. Fraud unravels everything. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***State of Orissa and Another versus Bibhisan Kanhar***⁸.

He further submitted that fraud avoids all judicial acts, ecclesiastical or temporary. It is a settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and *non est* in the eyes of law. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage, then he would be guilty of playing fraud on Court as well as on the opposite parties. The act of the petitioner in making a false/wrong statement in the application of having a godown as per specification is an act of fraud. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in:

- (i) ***S. P. Chengalvaraya Naidu (Dead) By LRs. versus Jagannath (Dead) By LRs. and Others***⁹
- (ii) ***A. P. Public Service Commission versus Koneti Venkateswarulu and Others***¹⁰

Relying on ***B. R. Chowdhury versus Indian Oil Corpn. Ltd. and Others***¹¹, he submitted that as the petitioner has knowingly provided wrong information in his application, as such it is within the State's authority to cancel the candidature of the applicant.

⁸ (2017) 8 SCC 608

⁹ (1994) 1 SCC 1

¹⁰ (2005) 7 SCC 177

¹¹ (2004) 2 SCC 177

Further the doctrine of '*legitimate expectation*' as argued on behalf of the petitioner has a very limited scope. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere '*legitimate expectation*' without anything more cannot *ipso facto* give a right to invoke such principles. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Sethi Auto Service Station and Another versus Delhi Development Authority and Others***¹².

He further submitted that the decision in *Kuso Sah (supra)* is factually different.

In light of his aforesaid submissions, he prayed for dismissal of the writ petition.

7. Mr. Timir Baran Saha, learned advocate appearing for respondent no.10, at the outset, submitted that after the amendment to Clause 26 of the Control Order, 2013 incorporated on 12th April, 2022, the question of causing a second enquiry has been set at rest. Therefore, the assertion of the petitioner that there was assurance to cause further enquiry is not sustainable. The writ petitioner has to substantiate his pleadings. Since there is no evidence of assurance, he is not entitled to raise such issue. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Ritesh Tewari and Another versus State of Uttar Pradesh and Others***¹³.

¹² (2009) 1 SCC 180

¹³ (2010) 10 SCC 677

The petitioner knowingly suppressed material truth in his application and made a false statement of possessing godown as per specification. Clause 11(c) of the notification clearly provides that any suppression of fact or providing of wrong information in the application form would lead to rejection of the application. The information sought for in the application by the authorities has not been disclosed as required and thus would definitely amount to suppression of material information. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Devendra Kumar versus State of Uttaranchal and Others*¹⁴**.

He further submitted that the materials before this Court clearly show that on the date of application, the petitioner was not eligible to be engaged as M.R. Distributor since he was not possessing godown as per specification of the notification. It is well settled that a writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and corresponding legal obligation on the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated. It is trite law that there cannot be equality in illegality. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Union of India and Another versus Arulmozhi Iniarasu and Others*¹⁵**.

Further once a person takes part in the process of appointment and is found to be not fit for appointment, the said person is estopped from challenging the process of selection. In support of his contention, he relied

¹⁴ (2023) 9 SCC 363

¹⁵ (2011) 7 SCC 397

on the decision of Hon'ble Supreme Court passed in ***D. Sarojakumari versus R. Helen Thilakom and Others***¹⁶.

Moreover, he submitted that as per the Partnership Act there is no requirement for mentioning capital investment by each partner. The only requirement is an express or implied consent to share profits, which is stated in the partnership entered between the parties. Therefore, the argument on behalf of the petitioner that the partnership is not in form does not stand to reason.

He further submitted that a lease created under the Transfer of Property Act is between a lessor and a lessee on certain terms and conditions and hence no third party can raise any issue with regard to legality and/or validity of such lease deed.

Furthermore, he submitted that as per the notification, if no eligible candidate within the subject location is found, then the applicant having godown within 20 kilometres of the subject location can be considered. The godown of the respondent no.10 is within 15 kilometres. Therefore, the appointment of respondent no.10 having godown in the adjacent block cannot be questioned on such ground.

In light of his aforesaid submissions, he prayed for dismissal of the writ petition.

8. Having heard learned advocates for respective parties, following issues have fallen for consideration:

- (i) Whether the petitioner on the date of application was an eligible candidate in terms of notification dated 1st September, 2022?

¹⁶ (2017) 9 SCC 478

- (ii) Whether the grant of licence of M.R. Distributorship in favour of respondent no.10 by the authorities is arbitrary, *malafide* and borne out of biasness?
- (iii) Whether the doctrine of '*legitimate expectation*' applies to the facts and circumstances of the present petition?
- (iv) Whether the petitioner has the right to intervene in the appointment of respondent no.10 as M.R. Distributor?

ISSUE NO.1: WHETHER THE PETITIONER ON THE DATE OF APPLICATION WAS AN ELIGIBLE CANDIDATE IN TERMS OF NOTIFICATION DATED 1ST SEPTEMBER, 2022?

9. By notification under Memo No. 2877-FMR/131-36/41(Pt-V) dated 1st September, 2022 of Directorate of DDP & S, Department of Food and Supplies, Government of West Bengal, online applications were invited for filling up vacancy of distributor under the Control Order, 2013 in respect of Block Chandipur, Sub-Division-Tamluk, District-Purba Medinipur. As per Clause 6(e), contained in Part-2 of the notification, the applicant was required to possess godown with certain specification as per the eligibility criteria which is reproduced hereunder:

“(e) The applicant should possess a godown with the specification mentioned below:-

(i) The size of the godown should be to accommodate at least 1000 MT of food grains along with a space of 25% for provision of alleys in between the stacks of different commodities with a view to keeping the stock of each commodity separately and neatly arranged for easy identification. There must be covered space of 200 sq. ft. adjacent to the godown to be used for office purpose as well as for computer operations.

(ii) The godown must have a single compartment with following specification:

(A) Godown size (for 1000 MT):

- (I) Minimum Godown size (carpet area) – 6310 sq. ft.
 (II) Standard Dimension – 27.74 m x 21.34 m (91 ft. x 70 ft.)”

9.1. The petitioner submitted application pursuant to the said notification. Upon perusal of the application of the petitioner at page 47 of the writ petition, it is found that the petitioner has submitted his application with the following specification of the godown:

<i>11.(a)Size/Measurement of the Proposed Godown(s)</i>	
<i>Length (in ft.)</i>	<i>100</i>
<i>Breadth (in ft.)</i>	<i>75</i>
<i>Height (in ft.)</i>	<i>18</i>
<i>Area (in sq. ft.)</i>	<i>7500</i>
<i>Plinth level (in ft.)</i>	<i>3.5</i>
<i>Rolling shutters:</i>	
<i>Numbers</i>	<i>8</i>
<i>Size (in metre)</i>	<i>4.2*4.2</i>
<i>Bottom ventilators:</i>	
<i>Numbers</i>	<i>6</i>
<i>Size (in metre)</i>	<i>30*1.5</i>
<i>Top ventilators:</i>	
<i>Numbers</i>	<i>7</i>
<i>Size (in metre)</i>	<i>30*0.5</i>
<i>(b) Nature</i>	<i>Ownership</i>
<i>12. Storage Capacity (in MT):</i>	<i>8000.00</i>

9.2. The petitioner in his writ petition and the State-respondents in its affidavit-in-opposition has annexed the proforma report of inquiry made into the application for engagement as distributor under Clause 26 of the Control Order, 2013 in respect of the application of the petitioner. On perusal of the aforesaid enquiry report, it is found that on enquiry, the inspection team found that the godown of the petitioner was not constructed on the date of inspection. The writ petitioner also states in his writ petition that upon enquiry of the petitioner’s godown, report was

submitted by the enquiry team to the effect that the petitioner's godown was not constructed. Such finding of the enquiry team has not been disputed by the petitioner. Thus, it is an admitted position that the godown of the petitioner was not constructed on the date of inspection. The vacancy notification dated 1st September, 2022 clearly provides that the applicant must fulfil the following eligibility criteria including that he/she should possess a godown with certain specification morefully described in Clause 6(e) of the vacancy notification. Since on enquiry it was found by the inspecting team that godown was not constructed, hence the specification of the godown provided by the petitioner-applicant in his application was clearly a wrong statement. Clause 11(c) of the vacancy notification at Part-5 provides that any suppression of fact/information or incorporation/providing of wrong information in the application form or uploading of false or fabricated documents will be considered as a good and justifiable reason for disqualification for a candidate or rejection of application and taking appropriate legal action. Therefore, the application of the petitioner was liable to be rejected and/or cancelled since the petitioner admittedly provided wrong details of specification of his godown. This court is in consonance with submissions advanced on behalf of the State-respondents relying on *B. R. Chowdhury (supra)* in this regard that it is within the right of the authority to terminate/cancel the candidature if the information provided are untrue/incorrect or false. The petitioner had the knowledge on the date of making application that he was not possessing the required godown as per specification in the notification. There is no explanation in the writ petition by the petitioner for providing

such wrong information. Thus, such act of providing wrong details by the petitioner amounts to suppression of material information. Non-disclosure of relevant and material information with a view to obtain advantage amounts to fraud. No Court will allow a person to keep an advantage which he has obtained by fraud. Fraud unravels everything. This court finds substance in the submissions of learned advocate for the State-respondents relying on *Bibhisan Kanhar (supra)*, *S.P. Chengalvaraya Naidu (supra)* *Koneti Venkateswarulu (supra)* as well as learned advocate for respondent no.10 relying on *Devendra Kumar (supra)*. As it is found that the petitioner did not possess requisite godown as per specification of the vacancy notification, on the date of application, hence the petitioner-applicant was not an eligible candidate for engagement as M.R Distributor in respect of the subject location. Thus the contention of the petitioner that he had all requisite qualification and was eligible is not substantiated. This Court finds substance in the submissions made on behalf of respondent no.10 relying on *Ritesh Tewari (supra)* that the petitioner is to substantiate his claim.

ISSUE NO.2: WHETHER THE GRANT OF LICENCE OF M.R DISTRIBUTORSHIP IN FAVOUR OF RESPONDENT NO.10 IS ARBITRARY, MALAFIDE AND BORNE OUT OF BIASNESS?

10. The grant of licence in favour of respondent no.10 has been challenged on four-fold grounds. *Firstly*, that the registered partnership pertaining to 'M/s Shree Krishna Enterprise' (respondent no.10) since does not disclose the capital investment of the partners, hence is not sustainable in law. *Secondly*, as per the lease agreement furnished by

respondent no. 10, no lease has been created and only a permissive right of usage of the premises is given and hence respondent no.10 failed to fulfil the criteria as per notification. *Thirdly*, that the godown of respondent no.10 is not within the subject location. *Lastly*, that the enquiry as to the financial capacity of the petitioner is incorrect.

10.1. With regard to the first ground of challenge to the existence of partnership, on perusal of the deed of partnership dated 24th May, 2022 (Annexure P/13 at page 88 of the writ petition) it is found that capital investments of the partners have not been disclosed. At this juncture the question arises whether such non-disclosure of capital investment by the partners makes the partnership untenable in the eye of law. In order to examine the aforesaid aspect it would be profitable to reproduce the definition of partnership under Section 4 and mode of determining existence of partnership under Section 6 of the Partnership Act as hereunder.

“4. Definition of “partnership”, “partner”, “firm” and “firm-name”.–“Partnership” is the relation between persons who have agreed to share the profit of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually “partners” and collectively “a firm” and the name under which their business is carried on is called the “firm name”.”

“6. Mode of determining existence of partnership.–*In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.*

Explanation 1.–*The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.*

Explanation 2.—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not itself make him a partner with the persons carrying on the business;

and, in particular, the receipt of such share or payment—

(a) by a lender of money to persons engaged or about to engage in any business,

(b) by a servant or agent as remuneration,

(c) by the widow or child of a deceased partner as annuity, or

(d) by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof,

does not itself make the receiver a partner with the persons carrying on the business.”

Upon cursory reading of the aforesaid provisions, it manifest that a “Partnership” as per the act is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Further in determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together. Precisely, a partnership should have the following— (1) there must be an agreement entered into by all parties concerned, (2) the agreement must be to share profits of business and (3) the business must be carried on by all or any of the persons concerned acting for all. None of the aforesaid provisions envisages that capital investment by partners are essential for creation or determination of existence of the partnership. From the partnership deed it is apparent that the partners would carry on business dealing with grains, edible oils, vegetable oils etc. and each partner would have share of $\frac{1}{3}$ rd each in the profit of such business. Thus, primarily the requirement of partnership is fulfilled. Therefore, the

issue raised by the petitioner that since the partnership deed does not disclose the capital investment of the partners, hence is not sustainable in law falls short of merit.

10.2. As far as the second ground is concerned relating to validity of the lease agreement, on going through the lease deed dated 24th May, 2022 (Annexure P/14 at page 103 of the writ petition) it is found that the said deed records at paragraph nos.5 and 6 that a permissive right to use the demised premises is given the lessee and that no lease is created, which is also stated at page no.7 of the deed. Be that as it may, at paragraph no.8 it clearly states the lease rent to be paid for the respective periods and paragraph no.9 also states that the lessee shall pay lease rent to the lessor. Section 105 of Transfer of Property Act defines 'Lease' as follows :

“105. Lease defined.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.”

Bearing in mind the aforesaid definition, thus, primarily it appears that a lease has been created as required under the notification for carrying the business by the partnership firm namely “M/s Shree Krishna Enterprise’. Further a document is to be read in its entirety and not in piecemeal to decide the rights created by an instrument. Moreover, a lease created is a jural relationship between the lessor and the lessee, which is primarily a

private matter. The rights and obligations arising from this relationship are generally enforceable between the parties involved. A third party typically do not have standing to challenge the validity of a lease agreement unless they demonstrate a direct legal interest or claim that is adversely affected by the lease. For instance, if a third party has a claim to the property that conflicts with the lease, they may have ground to challenge it. In the aforesaid backdrop, the ground so asserted does not stand to reason.

10.3. With regard to the third ground that since the godown of respondent no.10 is not within the subject location, hence he is not eligible, it would be apposite to reproduce clause 6(e)(iii) of the notification dated 1st September, 2022 as hereunder:

“The location of the godown should be preferably within Chandipur Block. If no candidate is found eligible in Chandipur Block for want of suitable godown then candidature of otherwise eligible applicants, having suitable godown in the adjacent Block or Municipality within the district of Purba Medinipur will be considered subject to the condition that he will be entitled to the allowance of transport rebate for door step delivery upto 20 Kilometer only. If more than one candidate of adjacent Block or Municipality are found suitable, the candidate having the godown nearest to the boundary of Chandipur Block will be selected.”

On perusal of the proforma report of inquiry made into the application for engagement as distributor under Clause 26 of the Control Order, 2013 in respect of the application of the respondent no.10, it is found that the godown of respondent no.10 is situated within Nandakumar Block which is adjacent to Chandipur Block. In the foregoing paragraph it has already been found that the petitioner was not an eligible candidate. There is no case made out that any other candidate within Chandipur Block was eligible. Thus, from the material it is palpable that there was no candidate

found eligible within the subject location at Chandipur Block. In the above circumstances as per the aforesaid clause it was well within the power of the authority to select a candidate having suitable godown at the adjacent block. Therefore, selecting respondent no.10 having suitable godown at the adjacent block cannot be questioned.

10.4. With regard to the last ground, although the finding of the authority with regard to financial capacity of the petitioner has been challenged, but since the petitioner is found to be ineligible for not possessing requisite godown as per notification, such ground loses relevancy.

10.5. In light of the above discussion this court is of the opinion that the appointment of respondent no.10 is not arbitrary, malafide, unreasonable or borne out of biasness. The extraordinary power of Court should be used only in an appropriate case to advance cause of justice and not to defeat the rights of other or create arbitrariness. The Court does not sit as a Court of Appeal but merely reviews the matter in which the decision was made. The Court does not have the expertise to correct the administrative decision. If review of the administrative decision is permitted, it will be substituting its own decision without necessary expertise which itself may be fallible. The right to choose or select a particular candidate cannot be said to be an arbitrary action. Any judicial interference in such selection would amount to encroachment on the exclusive right of the executive to take a decision. Of course, if the said power is exercised for any collateral purpose, the exercise of that power will be struck down. The power of judicial review thus can only be exercised if there is unreasonableness, irregularities, arbitrariness and in order to avoid biasness or malafide.

Thus, the argument of the petitioner relying *Rajesh Dhanuka (supra)* that the appointment has been made mechanically does not hold good. Further the facts involved in *Kuso Shah (supra)* is distinguishable and does apply to the present case at hand.

ISSUE NO.3 : WHETHER DOCTRINE OF 'LEGITIMATE EXPECTATION' APPLIES TO THE FACTS AND CIRCUMSTANCES OF THE PRESENT PETITION?

11. Relying on *Madras City Wine Merchants' Association (supra)*, *Bannari Amman Sugars Ltd. (supra)* and *Brahmputra Metallica Limited, Ranchi (supra)* it has been strenuously argued by Mr. Moitra, learned Senior advocate appearing on behalf of the petitioner that on being satisfied with the sanctioned plan and lay out plan, the inspecting authority gave assurance to the petitioner of considering the candidature/application of the petitioner in the event the petitioner completes the work of construction of the godown within 25 days which has been duly complied with by the petitioner and hence the application of the petitioner should be directed to be processed applying the doctrine of '*legitimate expectation*'. The aforesaid submissions have been refuted by learned advocate for the State-respondents contending that no such assurance was given and/or could be given as per provisions of the Control Order, 2013. The petitioner has made false/wrong statement in his application and, therefore, the doctrine of '*legitimate expectation*' cannot have a bearing on the facts and circumstances of this case. He also relied on the decision of Hon'ble Supreme Court passed in *Sethi Auto Service Station (supra)* and submitted

that the claim of the petitioner cannot exist only on the basis of '*legitimate expectation*' without anything more.

11.1. "*Legitimate expectation*" may arise – (a) if there is an express promise given by a public authority, (b) because of the existence of a regular practice which the claimant can reasonably expect to continue and (c) such an expectation must be reasonable. [**See *Madras City Wine Merchants' Association (supra)***]. In light of the aforesaid principle, let me examine as to whether the doctrine of '*legitimate expectation*' applies to the facts and circumstances of this case.

11.2. It is contended in the writ petition at paragraph no.9 that since the godown of the petitioner was small compared to the required specification, the petitioner submitted the sanctioned plan and the lay out plan of the proposed godown. Furthermore, the enquiry team on being satisfied with the sanctioned plan and lay out plan granted 25 days to the petitioner to complete the work of the construction of the petitioner's godown. In support of his contention, the petitioner has appended letter being Annexure P-5 at page 57 of the writ petition. Upon perusal of the said letter dated 30th January, 2023, it is found that the petitioner prayed for 25 days for completing the work of construction. Nowhere in the aforesaid letter it is contended that the inspecting team considered such prayer of the petitioner and granted him 25 days' time to complete the work of construction. The enquiry report also records that the petitioner pledged for completing the work of construction within 25 days. Therefore, the contention that the petitioner was granted a period of 25 days by the inspecting authority to complete the work of construction of godown does

not hold good. In view of the aforesaid, it is quite clear that there was no such express promise given by the public authority to the petitioner for completing the work of construction within a specified period.

11.3. Furthermore, the provision of Control Order, 2013 does not contain any Clause providing for extension of any time to complete the work of construction. To be precise, on the date of application, the applicant should possess godown as per specification given in the notification. Therefore, the public authority was in no way empowered to give assurance to the petitioner for completing the work within a period of 25 days. There is no existence of a regular practice of extending time to complete the work of construction of godown by which the petitioner could have reasonably expected. Such being the position, there is no reasonability for the petitioner to expect for extension of time by the inspecting authority for a period of 25 days in completing the work of construction. Learned advocate for respondent no.10 has placed the amended notification pertaining to Rule 26 of the Control Order, 2013. Upon perusal of the same, it is found that there is no such provision for holding re-inquiry.

11.4. Moreover, even if for the sake of argument, it is assumed that assurance was given by the authority, in such even the petitioner, who had the knowledge on the date of application that he was not eligible, cannot have any reasonable and legitimate expectation of further consideration of his prayer for grant of licence.

11.5. Bearing in mind the aforesaid, the doctrine of '*legitimate expectation*' does not apply to the facts and circumstances of this case. This Court

finds substance in the submissions of the learned advocate for the State-respondents that the claim of the petitioner cannot be based merely on doctrine of ‘*legitimate expectation*’ relying on *Sethi Auto Service Station (supra)*.

ISSUE NO.4 : WHETHER THE PETITIONER HAS THE RIGHT TO INTERVENE IN THE APPOINTMENT OF RESPONDENT NO.10 AS M.R. DISTRIBUTOR ?

12. To find an answer to the aforesaid issue, the only aspect which is to be examined is whether the petitioner who himself was not eligible on the date of application has any right to intervene and challenge the appointment of respondent no.10. In order to appreciate the above query, it would be profitable to reproduce the proposition laid down by Hon’ble Supreme Court in the following decisions.

12.1. The Hon’ble Supreme Court in ***Mani Subrat Jain and Others versus State of Haryana***¹⁷ observed as follows:

“**9.** *The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (See Halsbury’s Laws of England 4th Ed., Vol. I, paragraph 122; State of Haryana v. Subash Chander Marwaha & Ors; Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors. and Ferris : Extraordinary Legal Remedies, paragraph 198.*”

12.2. Further in ***Ayaaubkhan Noorkhan Pathan versus State of Maharashtra and Others***¹⁸, the Hon’ble Supreme Court observed as follows:

¹⁷ (1977) 1 SCC 486

¹⁸ (2013) 4 SCC 465

“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. [Vide *State of Orissa v. Madan Gopal Rungta*, AIR 1952 SC 12; *Saghir Ahmad & Anr. v. State of U.P.*, AIR 1954 SC 728; *Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. & Ors.*, AIR 1962 SC 1044; *Rajendra Singh v. State of M.P.*, AIR 1996 SC 2736; and *Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar & Ors.*, (2009) 2 SCC 784].

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide *Shanti Kumar R. Chanji v. Home Insurance Co. of New York*, AIR 1974 SC 1719; and *State of Rajasthan & Ors. v. Union of India & Ors.*, AIR 1977 SC 1361).

x x x

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.”

12.3. Bearing in mind the aforesaid proposition as laid down by the Hon’ble Court, since it is found from the materials on record that on the

date of application the petitioner was not eligible, hence he has failed to establish that he suffered any legal injury or he has any judicially enforceable right. A person having no right to the engagement of distributorship cannot be permitted to intervene or meddle with the right of others. This court is in consonance with the submissions of learned advocate for the State-respondents relying on *Dinesh Kumar Kashyap (supra)* that the petitioner has no right to enforce a non-existing right since the petitioner was ineligible. Further the Hon'ble Supreme Court in *Arulmozhi Iniarasu (supra)* has also held that a writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and corresponding legal obligation on the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated. It is trite law that there cannot be equality in illegality.

13. So far as decision in *D. Sarojakumari (supra)* is concerned, the same is factually distinguishable. The ratio does not apply to the case at hand.

14. Relying on the decision in *Subhasis Chakraborty (supra)*, it is submitted by learned advocate for the State-respondents that since the petitioner did not deny the averments in the earlier round of litigation, the doctrine of non-traverse would apply. It is relevant to note that upon liberty been given to the petitioner by this Court to file afresh, the present writ petition has been filed. Therefore, the doctrine of non-traverse does not apply in the present case.

15. In light of the aforesaid discussion the writ petition falls short of merit and is liable to be dismissed.

16. Accordingly, the writ petition being no. **W.P.A. 26543 of 2023** stands dismissed.

17. All connected applications, if any, stands disposed of.

18. Interim orders if any stand vacated.

19. Urgent photostat certified copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)