

09-12-2024
ct no. 13
Sl. 3, 4, 29 and 31
sp

MAT 2084 of 2024
With
CAN 1 of 2024
Md. Basir Ali
-Versus-

M.M. Enterprise & Ors.
With

MAT 2137 of 2024
With
CAN 1 of 2024
With
CAN 2 of 2024
With
CAN 3 of 2024
Md. Istekar Alam
-Versus-

M.M. Enterprise & Ors.
With

MAT 2116 of 2024
With
CAN 1 of 2024
With
CAN 2 of 2024

Ratanpur Biswasi Jubo Self Help Group Rep. by its
Secretary Sangita Das
-Versus-

M.M. Enterprise & Ors.
With

MAT 2161 of 2024
With
CAN 1 of 2024

The State of West Bengal & Ors.
-Versus-

M.M. Enterprise & Ors.

Mr. Kalyan Bandyopadhyay, Sr. Adv.,
Mr. Ramesh Dhara,
Ms. Mousumi Chowdhury
...for the applicant in MAT 2084 of 2024 and
private respondent in MAT MAT 2137 of 2024

Mr. Debabrata Saha Ray, Sr. Adv.,
Mr. Pinjal Bhattacharyya,
Mr. Subhankar Das

..for the respondent/writ petitioner in all the matters

Mr. T.M. Siddiqui, Id. AGP,

Ms. Amrita Panja Moulick

..for the State in all matters

Mr. Soumya Majumder, Id. Sr. Adv.

Mr. Samrat Dey Paul

..for the appellant in MAT 2137 of 2024

Mr. Abhratosh Majumder, Id. Sr. Adv.

Mr. A. Sengupta,

Mr. Tirthankar Dey,

Ms. Aayushi Mukherjee

..for the applicant/appellant in MAT 2116 of 2024

Mr. T.M. Siddiqui, Id. AGP,

Mr. Suman Sengupta,

Ms. Amrita Panja Moulick

..for the State/appellant in MAT 2161 of 2024

1. Leave to appeal is granted to the appellant in MAT 2137 of 2024 and MAT 2116 of 2024.
2. The instant appeal has been filed against the judgment passed by a Single Bench of this Court dated 7th November, 2024 whereby the writ petition was allowed. The allotment of M.R. Distributorship in favour of the appellant was directed to be cancelled and the respondent/writ petitioner was directed to be awarded the distributorship.
3. The brief facts relevant to the case are that pursuant to notice of fresh vacancy of

MR Distribution at the Shamsheergang Block, District- Murshidabad dated 1st September, 2022, the appellant and the writ petitioner, along with several other persons submitted applications. The selection process comprised inter alia a procedure of marking against fulfillment of each of the heads under the eligibility criteria. Such criteria, inter alia, included the size of the godown, the title thereof and the violation, financial status of the distributorship. The appellant and the respondent were the last two completed applications. The appellant was awarded the distributorship. The writ petition was filed by the unsuccessful applicant.

4. Mr. Debabrata Saha Ray, learned Senior Advocate, representing the writ petitioner has taken this Court through the application submitted by the appellant/successful bidder and has pointed out several defects, viz.,
 - a) The land offered by the petitioner was purchased after the last date of submission of the application;

- b) The godown constructed by the appellant did not have sufficient ventilation;
 - c) There is no varanda in the land offered by the appellant;
 - d) The marking given to the appellant was contrary to the proforma for marking advertised by the respondent;
 - e) The appellant has been deliberately favoured by the final Committee, each member whereof has given 8 marks to the appellant and 2 marks to the private respondent.
5. The State has on record two reports before the Single Bench. The State has also produced inspection reports of the appellant's godown before this Court.
6. The reports indicate that the appellant has produced title deeds and conversion certificates of the land. The plan for the godown have also been produced. Both the writ petition and appellant have been given a fair chance to complete in the selection process.
7. Having regard to the entire facts and circumstances of the case, this Court is of

the view that there is some evidence of the eligibility of the appellant. Such evidence is clearly borne out from the record.

8. It is not for a Writ Court to weigh the evidence and to decide how much more marks the private respondent ought to have been given, as opposed to the appellant. It is equally not for this Court to see as to whether the final deed of conveyance was obtained by the appellant after last date of the applications. This Court finds that these are subjective issues within the realm of the State since it is quite possible that an agreement of sale along with possession can in some cases be also accepted.
9. The learned Single Bench has erred in entering into the disputed question of facts of the selection process. It is true that the State distribution of largesse is required to be transparent, fair and devoid of the arbitrariness or capriciousness on the lines of the decision of the Supreme Court from ***Ramanna Dayaram Shetty Vs International Airport Authority of India & Ors.*** reported in ***(1979) 3 SCC***

489 and in the more recent decision of the Supreme Court in the Coalmine Allocation Case being **Natural Resources Allocation in re: case no. 1 of 2012** reported in **(2012) 10 SCC 1**, particularly, at paragraph no. 107 thereof.

10. An important principle of law on the subject of State distribution largesse and particularly the Government tenders is the concept of “play in the joints” has emerged from the decision of the Supreme Court in the case of **Tata Cellular Vs. Union of India** reported in (1999) 6 SCC 651 and has been reiterated in the case of **Ranauq International Vs. IVR Consultant & Ors.** reported in **(1999) 1 SCC 492**.
11. The dicta laid down in the aforesaid two decisions is that while it is possible that the private respondent/writ petitioner may have fulfilled all and every criteria to Letter and Spirit and the appellant may have missed out on fulfillment of some criteria, the Courts should refrain from sitting in an appeal over the decision of the State.

12. The reason, therefor, is that the State is best placed to determine, which contenders is most suitable for being awarded distributorship. A Writ Court does not sit in an appeal over the administrative decision when more than one view is possible. The Court cannot and does not substitute its own view with that taken by the administrative authority.
13. As already stated hereinabove, the appellant prima facie appears to have fulfilled the eligibility. In such a situation, it would be graciously inappropriate for a Writ Court to enter roving enquiry to exercise the selection process with a microscope, much less sit in an appeal over an administrative authority's decision.
14. This Court notices a further error committed by the learned Single Bench pointed out by Mr. Soumya Majumder, learned Senior Advocate appearing for the applicant in MAT 2137 of 2024. Even for the sake of argument if the Single Bench was right in setting aside the award of

distributorship to the appellant, it could not have ordered the distributorship to be awarded to the writ petitioner. Where a Writ Court sees glaring and gross illegality on the part of the State authority in a tendering process, cancellation of the process of tendering is ordered and a fresh tenders are directed to be called for.

15. In the instant case, as this Court found some evidence of the eligibility of the appellant, there is no need to order in any fresh tender process.
16. The impugned judgment dated 7th November, 2024 shall stand set aside. The writ petition shall stand dismissed. MAT 2084 of 2024 is allowed.
17. Consequently, in view of the above, the appeal of the State being MAT 2161 of 2024 is also allowed. MAT 2137 is disposed of without any orders.
18. In view of the above, all connected applications shall stand disposed of.
19. There shall be no order as to costs.
20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)