

1.

23.12.2024
Ct. No. 13
(ARPAN)

MAT 2203 OF 2024
CAN 1 of 2024

Dipak Kumar Singha
Vs.
State of West Bengal & Ors.

Mr. Subir Sanyal, Sr. Adv.
Mr. Shaharayar Alam, Adv.

...for the Appellant

Mr. Suman Sengupta
Ms. Amrita Panja Moulick

...for the State

Sk. Aptabuddin

...for Respondent No.6/
Writ Petitioner

1. The appeal is directed against judgment and order dated November 27, 2024 whereby the private respondent's, in the writ petition, license for a Fair Price Shop (FPS) dealership was set aside and the Court directed the writ petitioner to be awarded the license and dealership. The said private respondent is the appellant herein.

2. The relevant facts of this case are that for the purpose of the selection of FPS dealership at Patnour in Raiganj town, the respondent authorities advertised and invited applications on November 16, 2022. The writ petitioner as well as the appellant submitted applications. An enquiry was conducted by the F & S Inspector *inter alia* in respect of the Godown shop offered by the applicants. It was observed by the

Inspector, Food & Supplies, Karandighi, Uttar Dinajpur that plinth height of the appellant's godown is almost 3 feet below the road level. The location of the appellant's godown was, otherwise satisfying the requirements of the respondents. His application was therefore not recommended.

3. When the matter came to be considered by the District Level Fair Price Selection Committee in terms of Clause 13 (iv) in the 2024 Control Order, the appellant's case was sent back for re-enquiry by the Inspector concerned The District Level Fair Price Shop Selection Committee, is comprised of the A.D.M, (Food), Uttar Dinajpur, District Controller (F&S), Uttar Dinajpur and Sub-Divisional Controller (F&S), Islampur, Uttar Dinajpur.

4. Upon re-enquiry it was found that since the shop is adjacent to a National Highway near a flyover, the proposed godown like all other shops, establishments and residences in the vicinity are located 3 feet below the main road. In fact it appears to this Court that the residential areas and shops may be more than 3 feet below the National Highway and more so as there is a flyover located thereat.

5. After talking to local people it was found by the Inspector concerned that there was no likelihood of water logging at the road level where the proposed

godown is located or even 3 feet further below the road level, where the other residential and shop areas are also located.

6. Based on the above, the case of the appellant came to be recommended now by the Inspector. The appellant was thus marked by the members of the Selection Committee. He had secured total 71 out of 75 marks from the earlier inspection. Adding the marks given by the Committee members, the appellant secured a total 85 marks. The private respondent/ writ petitioner admittedly secured 83 marks. The appellant therefore, admittedly secured higher marks than the writ petitioner.

7. The learned Single Judge faulted the selection of the appellant on two fold grounds. Firstly, that the State authorities did not have the power to order re-enquiry, and secondly that the writ petitioner's godown was larger in size than the appellant's.

8. This Court finds that the power of re-enquiry is clearly conferred on the State and the FPS authorities in terms of Clause 20 (iv) of the Control Order of the year 2013. Such power of re-enquiry is more fully elaborated in the equivalent clause being Clause 13 (iv) of the 2024 Control Order. The learned Single Judge, therefore, committed error in that regard.

9. The second ground relied upon by the learned Single Judge is equally erroneous and wholly outside the scope of judicial review under Article 226 of the Constitution of India. Where a candidate is found eligible fulfilling the criteria stipulated by the FPS authorities for running a Fair price shop, the size of the godown of a rival candidate, exceeding the stipulated conditions, cannot be a ground for interference by a Writ Court.

10. This Court has on several occasions and particularly on **December 09, 2024** in **MAT 2084 of 2024 (Md. Basir Ali v. M.M. Enterprise & Ors.)** has held that a Writ Court does not sit in appeal over the findings of an administrative authority. If two views are possible in respect of a decision taken by the administrative authority, a Writ Court cannot impose the other view on it.

11. This Court finds that apart from law that “play in the joints” is to be allowed to the State in tender matters, if the selection of an applicant is fully within the rules for selection process of grant of a FPS License the procedure adopted by the respondent authorities and result thereof cannot be interfered with.

12. Yet another ground calling for interference by this Court with the impugned judgment is that, even assuming for the sake of argument that the appellant

may have been found ineligible, the Writ Court could not have directed license to be granted in favour of the writ petitioner. The matter then would have called for a fresh advertisement and invitation of applications. Even on this score, therefore, the impugned judgment calls for interference.

13. For the reasons state hereinabove, the impugned order dated November 27, 2024 cannot be sustained in law or facts, and is liable to be set aside.

14. The grant of license to the appellant is declared valid. Let his dealership be made operational in accordance with law, forthwith by the respondent authorities.

15. MAT 2203 of 2024 is allowed and disposed of.

16. In view of the above, connected application being CAN 1 of 2024 shall stand disposed of.

17. There shall be no order as to costs.

18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

19. Urgent photostat certified copies of this order, if applied for, be given to the parties, upon compliance of all requisite formalities.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)