

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Madhuresh Prasad

MAT 786 of 2020

with

I.A No. CAN 1 of 2020

Kuntal Sinha

Vs.

State of West Bengal & Ors.

with

MAT 788 of 2020

I.A No. CAN 1 of 2020

Gautam Sarkar

Vs.

State of West Bengal & Ors.

With

MAT 789 of 2020

I.A No. CAN 1 of 2020

Koushik Das

Vs.

State of West Bengal & Ors.

with

MAT 790 of 2020

I.A No. CAN 1 of 2020

Raju Datta Banik

Vs.

State of West Bengal & Ors.

With

MAT 791 of 2020

I.A No. CAN 1 of 2020

Amit Mondal

Vs.

State of West Bengal & Ors.

with

MAT 792 of 2020

I.A No. CAN 1 of 2020

Krishna Ghosh

Vs.

State of West Bengal & Ors.

For the Appellants

: Mr. Debabrata Saha Roy,
Mr. Subhankar Das,
Mr. Neil Basu,
Mr. Sankha Biswas.

Heard on

: March 05, 2024

Judgment on : April 05, 2024

Madhuresh Prasad, J.:

1. The present batch of MATs are by way of an intra Court appeal being aggrieved and dissatisfied with the order dated 03.12.2020, rejecting the prayer of the writ petitioners for interim relief seeking stay of Government notification dated 06.03.2020 whereby and whereunder a vacancy notice for Fair Price Shop (FPS) was issued by the Government.

2. The learned Single Judge has refused the prayer for interim relief at the ad interim/ preliminary stage, on the ground that the same would not be prudent in view of the public purpose involved in the impugned notice dated 06.03.2020, that also without affording the state an opportunity to place its stand by way of affidavit/s. The learned Single Judge thereafter has directed affidavit-in-opposition to be filed and the matter has been directed to be listed under the heading for hearing.

3. Mr. Debabrata Saha Roy appearing for the appellant submits that the requirement of maintaining an amount of Rs. 5 lakh in deposit for a period of one year, preceding the date of application is an unreasonable restriction imposed by the impugned notification. Such a condition is arbitrary and unsustainable. It is not in furtherance of; rather it is detrimental to the objective of running Fair Price Shop by an unemployed youth, and would serve no useful purpose.

4. This was the only issue raised by the appellant/petitioner before the learned Single Judge. In these proceedings, however, the learned Counsel representing the appellant/petitioners has submitted that the impugned notification suffers from various other infirmities rendering it legally and constitutionally unsustainable. He has alleged the same to be discriminatory.

5. Though “individual” applicants are required to be residents of the locality where the vacancy has arisen, there is no such requirement in the case of Co-operative Societies, Self-help Groups and Companies.

6. Another discrimination alleged is regarding the requirement specified in eligibility criteria No. 8 of the impugned notice that applicant (in case of individual) should not be employed in any Government/Semi-Government Organization/ School and should not be an elected Member of any Panchayati Raj institution/ urban local body. Whereas there is no such restriction operating against applicants under the category self-help groups/ registered co-operative societies, semi Government bodies, group of individuals.

7. At this juncture we consider it appropriate to record that the instant appeal was listed earlier on 04.03.2024 only to be adjourned for sending intimation to the learned Advocate General and enabling his appearance. The matter was thus fixed at 02:00 pm. Unfortunately, the learned Advocate General could not appear in the matter, when it was called on 02:00 pm, whereafter it was adjourned to the next date (05.03.2024). On 05.03.2024 also the State

remained unpresented and we thus proceeded to hear the learned Counsel for the appellant/petitioner.

8. We find the impugned notification containing notice of vacancy for appointing FPS under the West Bengal Public Distribution System (Maintenance and Control) order 2013 ('the Control Order 2013' for short) was issued in furtherance of the statutory objective contained in the Section 3 of the Essential Commodities Act for control, protection supply and distribution of essential commodities for securing their equitable distribution and availability at fair price. The entire exercise of issuing the impugned notification, therefore, is to achieve the social objective of securing supply of essential commodities for the public. The public purpose is, therefore, overwhelming.

9. Having said so, we consider it appropriate to deal with the objections taken by the appellant to the requirements under the impugned notice dated 06.03.2020. The premise for the objection regarding the requirement of maintaining 5 lakh rupees in deposit for a year preceding the advertisement/notice is founded on a misconception that since applicants are expected to be unemployed youth, requirement of maintaining such an amount idle for a year preceding the advertisement is unreasonable. Upon going through the impugned notice/notification, we find that the notice/notification is not restricted to appoint an unemployed youth as FPS. The impugned notice merely excludes a particular class of employed persons, namely those who are employed in any Government/ Semi-

Government Organization/ School. It also excludes person elected to a Panchayati Raj institution/ urban local body. The petitioners are not claiming to be employee/s of the restricted category, and are not affected by this exclusion. This exclusion is also in terms of the provisions contained in the Control Order 2013 as contained in Clause 20 thereto dealing with engagement of dealers. Clause 20 (iii a) specifies persons who are ineligible to apply for a license sub-Clause (b) and (e) thereof reads as follows:-

“(iii a) Following person shall not be eligible to apply for a licence of a dealer, namely –

... ”

(b) a member of local bodies, local authorities, Panchayati Raj Institutions, board or corporation, or Member of Legislative Assembly or a Member of Parliament during his tenure as such capacity;

... ”

(e) a person holding a post in the establishment of any State Government or Central Government or any authority or body or institution of local self-Government established or constituted by or under the Constitution or by any other law made by the Parliament or a State Legislature or by notification issued or order made by the Central Government or a State Government;

... ”

The very premise for assailing the requirement of maintaining 5 lakh rupees, that advertisement has been issued for unemployed youth like the petitioner, therefore, is unsustainable. In fact, such requirement would enable assessment of requisite solvency of the person to be appointed as FPS as the dealership, which is required to be operated uninterruptedly by procuring and getting transported the foodgrains and other essential commodities from the lifting points for their distribution to the beneficiaries through FPS.

10. Another ground urged by the learned Counsel for the appellant/petitioner regarding the requirement of individual applicants being a permanent resident in the sub-division where the vacancy occurs, to be discriminatory, we find the same also to be *prima facie* unsustainable from bare perusal of the impugned notice as well as the provisions contained in the Control Order 2013.

11. From bare perusal of the impugned notice, it is apparent that the same contains a policy decision of the State Government to give preference to self-help groups specially the women's self-help groups. Such preference for promoting self-help groups is only in furtherance of the constitutional directive of promoting the co-operative movement as enshrined in Article 43 B of the Constitution of India and, therefore, is apparently based on a valid classification. No individual, therefore, can be heard to complain that the same is discriminatory in nature. The policy of the State to give preference to self-help groups is explicit from the impugned notification as well as the provisions in the Control Order 2013 under which the notification has been issued.

12. On further scrutiny of the provisions of the Control Order 2013, we find that the same also prescribed duties and responsibilities of dealers in Clause 19 at part III of the Control Order 2013. The nature of duties and responsibilities cast upon the dealer under the Control Order 2013 is such that it would require the Fair Price Shop dealer's presence and personal participation in the day to day distribution of essential commodities to the beneficiaries. We, therefore, find that

the requirement of an “individual” applicant to be a permanent resident of the sub-division wherein the vacancy occurs also has a rational, and is based on such social objective sought to be achieved by appointment of FPS. The associations, including co-operatives, self-help groups, etc. on the other hand, would be comprised of more than one person so as to ensure that anyone of them is present and operates the FPS on a day to day basis uninterruptedly for ensuring equitable distribution of essential commodity/s for the local beneficiary.

13. For the reasons indicated hereinabove, and since we are also of the opinion that there is a very distinct and pronounced element of public purpose involved in the impugned notice dated 06.03.2020, we find no infirmity in the order under appeal. Rather we affirm the order dated 03.12.2020 in as much as the learned Single Judge has refused to grant any interim order of stay so as not to frustrate the process of appointment of Fair Price Shop, that also at the very initial stage of the writ proceedings, without affording any opportunity to the State to even file its affidavit in the writ petition.

14. We, therefore, dismiss the instant appeal. Interim order/s, if any shall stand vacated.

(Madhuresh Prasad, J.)

15. I agree.

(Harish Tandon, J.)