09.09.2024
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Sl. No. 208
Ct. No. 01

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

MAT 80 of 2024
With
CAN 1 of 2024

Md. Imran Karim
-Versus-
The State of West Bengal & ors.

Mr. Debabrata Saha Roy
Mr. Pinjan Bhattacharya
Mr. Bodhisatya Ghosh
..... for the petitioner

Mr. Pretom Das
Mr. Sumit Kumar
..... for the State

The writ petition, challenging the decision of respondent authorities in rejecting the application of the writ petitioner/appellant having not fulfilled the conditions enshrined in the notification duly published in the official website as well as the newspaper, stood dismissed by the trial Court on the ground that there is no infirmity in the decision of the authorities in rejecting the candidature of the petitioner/appellant.

The facts, as unfold would, reveal that a notification was issued on 18.08.2023 inviting an application from the eligible persons for allotment of fair price shop at the relevant locality. Pursuant to the said notification, the petitioner/appellant, considering himself to be the most suitable person for allotment of a fair price shop, applied on 14.10.2023 through online. The enquiry was conducted on 17.11.2023 and an interview was held inviting all the candidates on 28.02.2023. According to the authorities, the property document was not submitted on the said date meaning thereby the said document could not find place at the time when the petitioner/appellant offered his candidature for such allotment. The appellant is not ad idem on the aforesaid stand. According to him, the documents were submitted prior to 17.11.2023 and, therefore, the decision of the authorities cannot withstand on the factual basis. Since there was no communication made to the petitioner/appellant pertaining to the fate of the said application, an application under RTI was made and the reply would reveal that the application of the appellant was rejected as he could not produce "up to date property tax" receipt. This communication led the appellant to move the writ Court for appropriate relief based upon the assertion that the property tax receipt was submitted before the authority and, therefore, the stand is factually incorrect.

Mr. Debabrata Saha Roy, learned advocate appearing for the petitioner/appellant is very much vocal in his submission that the authorities can not reject the application on arbitrary ground overlooking the facts emanating from the record and, therefore, such decision of the authorities is liable to be struck down. He further submits that the appellant was called for an interview obviously being satisfied that all the conditions enshrined in the said notifications were fulfilled and, therefore, the stand of the authorities in this regard is unsustainable. He strenuously submits that there is no provision relating to a second enquiry or the interview to be conducted by the authorities on 15.03.2023 and relies upon a notification dated 17th August, 2021.

The counsel for the State authorities cannot take a stand which is contrary to the stand of the authorities nor can take additional ground but should confine within the four corners of the decisions taken by the authorities and relied upon a judgment of the Apex Court of No. 2809759H Ex-Recruit **Babanna Machched Vs. Union of India & ors.** reported in **(2024)5 SCC 306**. He lastly submits that the order passed by the Single Bench warrants interference and should be quashed and set aside.

On the other hand, learned counsel appearing for the respondent authorities submits that pursuant to the notification dated 18.08.2023, 14 persons offered their candidatures for allotment of a fair price shop in a specified place and after the enquiry was conducted, they were called for interview on 28.02.2023 in order to verify the documents which are condition precedent to application for allotment of the fair price shop and it was found that the petitioner did not have the up to date property tax receipt. Subsequently, another enquiry was held in the month of March, 2024 but the petitioner could not emerge successful therefrom. At the last, it is submitted that after exhausting the entire procedures laid down in the advertisement, all the candidates could not fulfill the conditions as enshrined in the said notification and ultimately a decision has been taken by the competent authority to call for a fresh applications and the approval has already been granted but because of the pending litigations, no steps for advertisement could be taken.

On the conspectus of the aforesaid facts and the submissions so advanced, let us examine whether the authorities have, within their contour of power, rejected the application filed by the petitioner in the manner mandated in the said notification.

The notification dated 18.08.2023 is divided into five parts with an intent to allot the fair price shop to streamline the public utility services mandated under the constitution. Part 1 relates to the mode of making applications and the last date of submission of an application both online and offline. Part II is relatable to an eligibility criteria wherein a candidate must have the minimum 300 sq. ft. space along with the covered space of 100 sq. ft. adjacent to the godown to be used for office purposes for weighing and e-pos operation. Part III contains disqualification clauses to which we are not concerned with. Part IV is indicative of the documents to be submitted along with application including the up to date property tax receipt and Part V is the general terms and conditions embodied therein.

From the respective stands of the parties, the Clauses relatable to a minimum space in relation to a fair price shop in Panchayat area the necessary documents to be submitted along with the applications have assumed significance in the instant matter. There appears a dispute whether the up to date property tax receipts were submitted by the petitioner along with the application being a *sine quo non* for making him eligible. Admittedly, the petitioner made an application on 14.10.2023 in terms of the said notification and the so called property tax receipt appears to have been downloaded on official website on October 12, 2023. Whether it is a sufficient compliance or not as according to the petitioner, the requisite as perceived by the authorities in this regard was the Panchayat receipt and not Khazna receipt. It is submitted that subsequently the said Panchayat receipt was also obtained and submitted to the authorities but the same has not been taken into account.

So far as the compliance of the mandates are concerned, we find that the application was initially rejected on the ground that petitioner has not submitted the property tax which does not appear to us on the face of it to be tenable. The Khazna receipt itself is indicative of payment of the tax in respect of the property and there is no indication in the said notification that it should be issued by Panchayat. However, in course of hearing, we find that after the application was processed, all the applicants were called for the interview and were allotted marks. Subsequently, after aggregating the total marks, the petitioner was found to stand on a second position.

Mr. Saha Roy relied upon a notification dated 17th August, 2021 issued by the Governor providing a complete mechanism and/or modalities in assessing the eligibility by awarding the marks. According to him, the second level enquiry can only be done after the candidates has secured a position in the first level of enquiry and moment the petitioner has been called for an interview it, *ipso facto*, makes him eligible in all respect and, therefore, the rejection on such score was not tenable. Even we, for the argument's sake, accept the contention on Mr. Saha Roy that the authorities should strictly follow the relevant guidelines and/or orders issued by the Governor which we notify on 17th August, 2024. We find that a conscious decision was taken to cancel the entire selection process as none of the candidates were found suitable for allotment of the fair price shop. It is to be remembered that mere applying on the basis of an advertisement does not confer an indefeasible right to get the allotment. It is within the domain of the authority to cancel the entire selection process unless it is tainted with malice. We are conscious that the ground not taken by the authorities in rejecting the application cannot be taken at the bar as the authority has to confine within the four corners of the ground taken by the authority as held by the Apex Court in **Babanna Machched(supra)** as under:

> **"26. At the same time in Mohinder Singh Gill v. Chief Election Commr., it has been provided that the validity of the order impugned has to be tested on the basis of the reasoning contained therein and that the authorities are not supposed to supplement the same by means of extraneous material or affidavit before the courts.**
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> **27. In the case at hand, it was not the case of the respondents ever that the vacancies on which the appellants have been enrolled/recruited were only supposed to be filled up by the relatives of the servicemen/ex-servicemen and not by a general category person or that the posts advertised were only for the alleged reserved category. They never even took any defence based upon the newspaper clipping as referred to earlier. This is a subsequent improvement in their defence which as discussed earlier does not stand established. It is nothing but supplementing the reasoning of discharge/dismissal which is not contained in the order impugned. It is thus**

not permissible in law in view of Mohinder Singh Gill.”

Even we accept the contention to be true, the moment, the authorities have cancelled the entire process by which the allotment of the fair price shop was undertaken and decided to undertake a fresh selection process, the candidate applying under the aforesaid notification does not have an inchoate right for such allotment. The facts as revealed in course of the writ petition does not appear to us that the decision of the authorities in scraping and cancelling the entire selection process can be impinged and, therefore, the cause of action lapsed on the cancellation of the entire process undertaken by the authorities.

We thus do not find any infirmity in the ultimate decision of the Single Bench.

However, it will not debar the petitioner to apply his candidature in future if such advertisement is made.

Accordingly, the appeal being MAT 80 of 2024 is dismissed without any order as to costs.

The connected application being CAN 1 of 2024 is also dismissed.

(Harish Tandon, J.)

(Apurba Sinha Ray, J.)