

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

WPA 1917 of 2023

**Umar Faruk Sarkar
Vs.
State of West Bengal & Ors.**

For the Petitioners : *Ms. Matan Chakraborty*

For the State : *Mr. Hirak Barman
Mr. Pretom Das*

For the Respondent No. 10 : *Mr. Nabankur Paul
Ms. Sutapa Sen Paul
Mr. Bodhysatya Ghosh*

Heard on : 07.11.2024

Judgement on : **14.11.2024**

BISWAROOP CHOWDHURY J. :

The writ petitioner before this Court was an applicant for FPS Dealership under the West Bengal Public Distribution System (Maintenance and Control) Order 2013 at village Madhya Hudumdanga near Hudum Danga A.P. School, Gram Panchayat – Dewanganj, Post Office – Fatehmamud, Police Station – Haldibari, District – Coochbehar as issued by the Sub-Divisional Controller Food and Supplies,

Mekhliganj, and is aggrieved by the decision of respondent no. 7, 8 and 9 in appointing Respondent No. 10 as FPS dealer instead of the writ petitioner.

The case of the writ petitioner may be summed up thus;

1. While searching for suitable work, the writ petitioner came across a notice of inviting vacancy ID 202200217901 of the Department of Food and Supplies, Government of West Bengal for filling up the vacancy of FPS dealership under the West Bengal Public Distribution System (Maintenance and Control) Order 2013 at Village – Madhya Hudumdanga, near Hudum Danga A.P. School, G.P.- Dewanganj, Post Office- Fatehmamud, Police Station- Haldibari, District- Coochbehar, PIN- 735122, as issued by the Sub-Divisional Controller, Food and Supplies Mekhliganj vide Memo No.- 263/SC/F&S/MKG/22 dated 08.08.2022.
2. In the said advertisement, it was stated that the application should reach the Office on or before 16.12.2022 and the application received after the stipulated date will not be entertained and liable to be cancelled without assigning any correspondences. The said advertisement contained the following eligibility criteria:-
 - i) The applicant shall be:
 - a) An individual permanently residing in Mekhliganj sub-division.

- b) registered partnership firm.
 - c) registered Co-operative society.
 - d) Sangha or Mahasangha or Self-Help Groups working within Cooch Behar District.
- ii) Individual applicant or partners of the registered partnership firm or members of the registered Co-operative Society or member of the Sangha or Mahasangha of Self-Help Groups applying for FPS dealership must be adult Indian Citizen(s).
 - iii) If the applicant be Sangha or Mahasangha of Self-Help Groups, it shall be working in the COOCH BEHAR District.
 - iv) The applicant should possess a suitable go-down (as per the notification issued by Department of Food and Supplies district vide No. 1707 – FS/Sectt/Food/4P-9/2012 (Pt – II) dated 21.07.2014 as amended vide Notification No. 274-FS dated 17.08.2021 within the vacancy location for storage of public distribution commodities and running the dealership. The area of the go-down should be minimum 400 sq. ft. (300 sq. ft. in case of hill areas of Darjeeling and Kalimpong district) along with covered space of 200 sq. ft. (100 sq. ft. in case of hill areas of Darjeeling and Kalimpong district)

adjacent to go-down to be used for office purpose and for FPS automation. There must be shade in front of the shop to accommodate at least 20 people (5 people in case of hill areas of Darjeeling and Kalimpong district) who may wait in the queue. The go-down must be well ventilated pucca structure with a concrete floor.

- v) There has to be adequate space in front of the go-down for unloading of stock.
- vi) Working Capital – Applicants for dealership must have a bank balance of Rs. 50 thousand (Rupees fifty thousand) only in the form of Saving Account, Current Account, and or fixed term/flexi deposit in a Scheduled Commercial Bank and Post Office as working capital as reflected on the date of application.
- vii) In case of engagement as FPS dealer, the applicant must be prepared to furnish a security deposit of Rs. 25,000/- (Rupees twenty five thousand) only and license fee of Rs. 10,000/- (Rupees ten thousand) only through GRIPS under Head of Account 84403-00-103-001-07 and 0405-00-101 0010-13 respectively within the time as stipulated.

3. The petitioner has complied with all the criteria stated in the advertisement under the Heading – Eligibility Criteria Part- 2, Part – 3, Part- 4 and Part- 5.

4. On the basis of such advertisement published and application submitted therein, an enquiry was conducted towards the area of the go-down of the petitioner by the respective authority on 10.01.2023 for appointment of dealership at Village- Madhya Hudumdanga, near Hudum Danga A.P. School, G.P.- Dewanganj, Post Office – Fatehmamud, Police Station- Haldibari, District- Coochbehar, PIN – 735122.
5. After making such enquiry, nothing was communicated to the petitioner by the respondent authority but the petitioner at his own effort, came to know that his application was rejected and respondent no. 10 got the offer letter for the dealership against the vacancy for running FPS.
6. Upon enquiry, the petitioner came to know that the respondent no. 10 filed her application by showing her land at Mouza No. 12, Madhya Hudumdanga J.L. No. 17, Khatian No. 320, Dag No. 370, measuring an area of 4 decimals out of 7 decimals, classified as Bastu but the said bastu has been recorded as permissive possession which cannot be considered as rayat in the name of the person from whom lease was taken by her. Further, there is no go-down in Dag No. 370, the same is situated at Dag No. 371 which is a barga land in which without cancellation of Barga, and without conversion no go-down can be made, on the other hand, the petitioner has shown his go-down measuring 400 sq. ft. along with cover space of 200 sq. ft.

adjacent to go-down to be used for office purpose and for FPS automation as per advertisement and he has fulfilled other eligibility criteria including financial capabilities by showing his bank account but the respondent no. 10 cannot show her solvency before the date of advertisement.

7. That since the respondent no. 10 could not fulfill the eligibility criteria her appointment letter is not sustainable in the eye of law and liable to be cancelled and upon verification of all relevant papers appointment of FPS should be issued upon the petitioner.
8. The respondent authorities have made the enquiry in a capricious manner with colourable exercise of power and thereby even after fulfillment of all eligible criteria, the petitioner has been deprived by not appointing him as M.R. Dealer.

Pursuant to the filing of the Writ Petition, notice was issued upon the Respondents. Respondent No. 1 to 9 and Respondent No. 10 appeared and contested the application Respondent No. 7 to 9, and Respondent No. 10 also filed Affidavit in opposition.

It is the contention of the Respondent No. 7, 8 and 9 that the 'Department of Food and Supplies', Government of West Bengal issued one Notification No. 1707-FS/Sectt/Food/4P-9/2012(Pt-II) dated 21.07.2014 as amended vide Notification No. 2750-FS/Sectt/Food/4P-9/2012 (Pt-II) dated 17.08.2021 for selection against the new and resultant vacancies of the FPS Dealer under

West Bengal Public Distribution System (Maintenance of Control) Order 2013, and the West Bengal Urban Public Distribution System (Maintenance and Control) Order 2013 as per the procedure laid down in those two control orders. Subsequently, as per approval of Department FPS vacancy, notice has been issued vide Office Memo No. 263/5CF and S/MKG/22 dated 08.08.2022 for inviting the application. On the basis of that, total 08 (eight) applications have been received through online web portal. Among them, 01 candidate submitted double application and later withdrew and another one wrongly submitted application against the said vacancy and later withdrawn. Thus, there were 06 (six) actual candidates who applied for that FPS vacancy. Among the 6 candidates except petitioner and respondent no. 10, all 04 candidates were found ineligible by the Enquiry Officers. It is contended that total marks scored by the petitioner from enquiry is 52, and total marks scored by respondent no. 10 is 66. It is contended that the writ petitioner had fulfilled all criteria except eligible criteria Part 2, point no. (iv). As per this point, the applicant should possess a suitable Go-down as per notification issued by Department of Food and Supplies vide No. 1707-FS/Sectt/Food/4P-9/2012 (Pt-II) dated 21.07.2014 as amended vide Notification No. 2749-FS dated 17.08.2021 within the vacancy location for storage of public distribution commodities and running the dealership. The area of the Go-down should be minimum 400 sq. ft. (300 sq. ft. in case of hill areas of Darjeeling and Kalimpong District) along with covered space of 200 sq. ft. (100 sq. ft. in case of

hill areas of Darjeeling and Kalimpong District) adjacent to Go-down to be used for office purpose and for FPS Automation. At the time of physical enquiry of the petitioner's proposed 'storage Go-down' and 'Office', Enquiry Officer measured the storage Go-down as 519.14 sq. ft. (25.7 x 20.2) and size of the sale counter 174.44 sq. ft. (19.6 x 8.9) for office purpose. Although minimum size of office is required to be '200 sq. ft. covered space', but petitioner possessed only '174.44 sq. ft.' without cover. The proposed Office cum sale counter was Tin Shed verandah and that of the proposed storage Go-down had three sides open not covered. At the time of enquiry, pictures were taken from different angles through 'Enquiry App' of the Department which was directly inserted to the web portal and fetched the GPS location of the proposed storage Go-down and office. Even the character of land was 'seyom' not dokaan/commercial/Bastu, as it required as per Part-4 of vacancy notice. So the application of the petitioner was recommended by the enquiry officer in said condition. It is also contended that respondent no. 10 Rahila Parvin fulfilled and scored more marks than the petitioner in accordance of Order No. 2750-FS/Sectt./Food/4P-9/2012 dated 17.08.2021. She has shown rental possession of storage Go-down and sale counter cum office. As per application and enquiry report storage go-down and office details is standing on Plot No. 370, Khatian No. 320JL No. 017. Mouza- Madhya Hudumdanga, Village- Madhya Hudumdanga, Gram Panchayat – Dewangaunj, Block- Haldibari. The size of storage Go-down is '826.2 sq. ft. (48.6 x 17)' and sale counter cum office is '301.74 sq. ft. (21.4 x 14.10)'. The

owner of the said premises Samiyal Haque Sarkar executed a registered Lease Agreement with the applicant Rahila Parvin vide Deed No. – 1-0808-02275/2022 dated 14.12.2022. In the said deed premises details properly mentioned and tallied with the khatian of Samiyal Haque Sarkar. The location of proposed Go-down and office also marked in lay out map was prepared by Saikul Islam Amin Surveyor, Haldibari. It is contended that Smt. Rahila Parvin also submitted Bank statement of balance of Rs. 1,05,100/- (one lakh five thousand one hundred only) as on date of application which fulfill the eligibility criteria of Part-2, point no. (vi) of said vacancy notice. It is further contended that Rahila Parvin Respondent No. 10 scored better than Umar Faruk Sarkar, the writ petitioner herein. Thus, Respondent No. 10 was recommended from the end of Sub-Divisional Controller (F and S) Mekhliganj. The matter was discussed in District Level Fair Price Shop Selection Committee (DLFPSSC) and recommended RAHILA PARVIN respondent no. 10 as most eligible candidate. It is also contended that marks awarded by District Level Fair Price Shop Selection Committee (DLFPSSC) to Respondent No. 10 and writ petitioner are 87 and 67 respectively. It is on such basis 'Food and Supplies Department' had approved Respondent No. 10 Rahila Parvin against the above FP vacancy in Web Portal.

The respondent no. 10 also filed affidavit in opposition denying the allegation made by the petitioner. It is the contention of the respondent no. 10, that the said respondent having the requisite

eligibility applied for the said vacancy against application bearing ID 202200217-901013 and out of 8 applicants, candidature of respondent no. 10 and writ petitioner were short listed by the Enquiry Officers. Thereafter, on evaluation of the marks awarded during enquiry and by District Level Fair Price Shop Selection Committee the respondent no. 10 was recommended based on the criteria as she outperformed the writ petitioner by securing total 87 marks out of 100, whereas the writ petitioner secured total 67 marks out of 100. It is further contended that the petitioner after being unsuccessful has challenged the order of appointment of the respondent no. 10 as a FPS dealer by preferring this writ petition. The respondent no. 10 has denied the allegation of the writ petitioner that plot no- 370 classified as bastu has been recorded as permissive possession or that there is no go-down in dag no- 370 or that the same is situated in dag no- 371 or that the petitioner showed go-down measuring 400 sq. ft, along with cover space of 200 sq. ft. adjacent to the go-down to be used for office purpose or that the respondent no. 10 could not show her solvency before the date of advertisement as alleged or at all. It is contended by the respondent no. 10 that one Samiyal Haque Sarkar being the recorded owner in possession vide lease deed no. I- 227/2022 leased out land measuring 0.04 acres of bastu land out of 0.07 acre of land appertaining to Plot No. 370 under Khatian No. 320, JL. No. 017, Mouza- Madhya Hudumdanga, Village- Madhya Hudum Danga, Gram Panchayat- Dewangaunj, Block- Haldibari in favour of the respondent no. 10. Go-down measuring 826.2 sq. ft. and sale

counter cum office measuring 301.74 sq. ft has been constructed therein which has been verified by the enquiry officers upon field verification and inspection. Location of the said go-down and office has also been marked in the layout map prepared by Saikul Islam, Amin Surveryor Haldibari and further leased out portion is not under permissive occupation.

The writ petitioner filed an exception to the report submitted by the Respondent No. 7, 8 and 9 in the form of affidavit and the exception taken by the writ petitioner in the form of affidavit is treated as affidavit in reply.

It is contended by the writ petitioner in the affidavit in reply/exception that the petitioner has fulfilled all eligible criteria by showing his go-down measuring 500 sq. ft. out of required go-down 400 sq. ft. It is further contended that he has shown the sale counter measuring more than 200 sq. ft with the cover space whereas respondent no. 10 namely Rahila Parvin shows her storage go-down upon an open land in Plot No. 370, Khatian No. 320, JL No. 017, Mouza- Madhya Hudumdanga, Gram Panchayat- Dewanganj, Block- Haldibari, Police Station – Mekhliganj, District- Coochbehar, PIN- 735122, which is far away from the Plot No. 370 and further in Plot No. 370 there does not exist any shop cum go-down. The respondent no. 8, the Sub-Divisional Controller while submitting such report did not file any such documents with the record of right filed by the

respondent no. 10 and if the same being properly verified, it will be clear that the record filed by the respondent no. 10 is completely different from the go-down as shown by her but she has been selected for the FPS Dealership license in the back door process by suppressing material facts by giving unclear statement of the go-down as well as the sale counter. It is contended that the land as shown by the writ petitioner in the record of right shows that the total land possessed by him is 0.02 decimal which has been clarified as 'doka ghor' and that apart the petitioner has fulfilled all eligible criteria much more than the required go-down and sale counter. Whereas the respondent no. 10 shows some fictitious document at Plot No. 370 but originally the go-down is lying and situated at Plot No. 371. It is further contended that the score sheet as shown in the report is totally mistake of fact with some colorable exercise of power at the instance of MIC Food and Supplies Department which will be clear from a certificate issued by one Pankaj Roy SURVEYOR vide Government Registered No. STVT6121346007 Haldibari, Coochbehar wherein he had certified and confirmed that Plot No. 370, Khatian No. 320, JL No. 017, Mouza- Madhya Hudumdanga, G.P.- Dewanganj, Block- Haldibari, Police Station- Mekhliganj, District- Coochbehar, PIN- 735122 is vacant and there is no go-down. The writ petitioner has also contended that Gram Panchayat member of Dewanganj, Panchayat Office by his certificate confirmed that there is no go-down in plot no. 370, Khatian No.- 320, JL No. 017, Mouza- Madhya Hudumdanga, G.P.- Dewanganj, Block- Haldibari, P.S.- Mekhliganj,

District- Coochbehar, PIN- 735122. The petitioner contends that report submitted by respondent authority is mistake of fact with a motive to give extra privilege to respondent no. 10 and Fair Price Shop license granted to respondent no. 10 is liable to be cancelled.

Heard learned Advocate for the petitioner and learned Advocate for respondent no. 1 to 9, and Learned Advocate for the respondent no. 10. Perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that her client is entitled to the grant of Fair Price Shop license but the respondent authority have arbitrarily granted license to respondent no. 10. Learned Advocate further submits that the respondent no. 10 has no go-down in Plot No. 370, Khatian No.- 320, JL No. 017, Mouza- Madhya Hudumdanga, G.P.- Dewanganj, Block- Haldibari, P.S.- Mekhliganj, District- Coochbehar, PIN- 735122 as will appear from report of Gram Panchayat member thus a special officer should be appointed to enquire as to whether there is go-down in Plot No.-370 Khatian No.- 320, JL No. 017, Mouza- Madhya Hudumdanga, Dewanganj Gram Panchayat. Learned Advocate for the respondent no. 1 to 9 and Learned Advocate for respondent no. 10 submit that the writ petitioner has not been able to make out a case for grant of relief, thus the writ petition is liable to be dismissed. Learned Advocates submit that the Lease Deed will go to show that in Plot No.

370 and Khatian No.- 320, there is a go-down and owner is Samiyal Haque Sarkar.

Upon perusal of the writ petition, it will appear that the ground of challenge by the writ petitioner was that respondent no. 10 filed her application by showing her land at Mouza – 12 No. Madhya Hudumdanga, JL No. 17, Khatian No.- 320, Dag No. 370 measuring an area of 4 decimals out of 7 decimals classified as Bastu but the said bastu has been recorded as permissive possession which cannot be considered as rayat in the name of the person from whom lease was taken by her. It is further contended that there is no go-down in Dag No. 370, the same is situated at Dag No. 371 which is a Barga land in which without cancellation of Barga, no go-down can be made without conversion. However, upon perusal of the Affidavit in opposition_submitted by Respondent no. 7, 8 and 9 annexing relevant documents, it will appear that enquiry was conducted by Enquiry Officer documents were verified from original and physical inspection is also done. It further appears from lease Agreement that the said agreement was entered into between the respondent no. 10 and one Samiyal Haque Sarkar in respect of land situated at Mouza- 13, Taluk- Madhya Hudumdanga, JL No.- 17, LR- 320 comprising of 10 decimals of land out of which 4 decimals of land being recorded as bastu at L.R. Plot No. 370/Dag No.- 370 was given on lease and in the said land there is 1200 sq. ft. go-down. Thus, from the agreement of lease it is clear that Plot No. 370 has a go-down which was taken

note of at the time of inspection. It will appear from land details as per land record that L.R. Plot No. 370, and LR Khatian No. 320 mentions Samiyal Haque Sarkar as owner. From the record of rights annexed by the respondent no. 7, 8 and 9, it will appear that at Khatian No. 320, JL No. 17, Mouza- Hudumdanga, name of Samiyal Haque Sarkar is shown as Rayat. Plot No/Dag No.- 370 is shown as Bastu and there is shop and Sabdiya Muhammad is in permissive possession. Thus the contention of the writ petitioner that the bastu land which is taken on lease is recorded as permissive possession in the name of person from whom lease was taken and that there is no go-down in Plot No. 370/Dag No.- 370 and there is go-down in Plot No. 371 which is a Barga land and that without cancellation of Barga, no go-down can be made without conversion all stands negated by the report in the form of affidavit submitted by the respondent no. 7, 8 and 9 mainly the record of rights. It appears from the record of rights that Samiyal Haque Sarkar from whom respondent no. 10 took lease, is shown as Rayat. Dag No./Plot No. 370 is shown as bastu land, there being permissive possession in the name of Sabdiya Muhammad. Thus, it is clear from the Record of Rights, permissive possession was in the name of Sabdiya Muhammad and not Samiyal Haque Sarkar from whom respondent no. 10 took lease, Samiyal Haque Sarkar is the Rayat. It is well-settled principle of law that when a person is permitted to possess land for a specific purpose, he is said to be in permissive possession. At any point of time, permission can be withdrawn by the owner/Rayat and vacant possession can be

obtained and the said land can be given on lease to some other person by the original owner. Thus, the stand of the writ petitioner that Samiyal Haque Sarkar is in permissive possession cannot be sustained. It further appears that in Plot No. 370, there is a shop room on .03 acre of land. Although nomenclature of shop room is used, but a room which may be used as a shop by one person may be used as go-down by another person and it is a fact that there is a structure on .03 acre of land at Dag No.- 370. The writ petitioner upon filing of report in the form of affidavit by respondent no. 7, 8 and 9 took a different stand in exception to the report/affidavit in reply. The writ petitioner relying upon a certificate issued by one Pankaj Roy Surveyor has contended that Plot No. 370, Khatian No. 320, JL No.- 017, Mouza- Madhya Hudumdanga, G.P.- Dewanganj, Block- Haldibari, Police Station- Mekhliganj, District- Coochbehar, PIN- 735122 is vacant and there is no go-down. The writ petitioner has further relied upon a certificate issued by Gram Panchayat Member of Dewanganj Panchayat Office which states there is no go-down in Plot No.- 370, Khatian No.- 320, JL No.- 017, Mouza- Madhya Hudumdanga, G.P.- Dewanganj, Block- Haldibari, Police Station- Mekhliganj, District- Coochbehar.

Upon considering the rival submissions and the materials on record this Court is of the view that as the respondent no. 7, 8 and 9 conducted the selection process of FPS dealer in a fair and reasonable manner upon compliance of the rules and upon considering the

Enquiry Report of the Enquiry Officer where physical inspection was done, no fruitful purpose will be served by keeping this writ petition pending to adjudicate as to whether there is go-down at Plot No.- 370 which is a disputed question of fact. However, as the writ petitioner has annexed two documents with regard to non-existence of go-down in Plot No. 370, Khatian No. 320, JL No.- 017, Mouza- Madhya Hudumdanga, G.P.- Dewanganj, Block- Haldibari, Police Station- Mekhliganj, District- Coochbehar, PIN- 735122 and the fact the report of the Enquiry Officer who conducted inspection does not mention as to who identified the plot of land it would be just and reasonable to refer the matter to respondent no. 8 to conduct an enquiry and take a decision in accordance with law.

Thus this Writ Application stands disposed by referring the matter to respondent no. 8 to conduct an Enquiry by visiting Mouza- Madhya Hudumdanga, JL No.- 017, Khatian No. 320, G.P.- Dewanganj, Block- Haldibari, Police Station- Mekhliganj and ascertain as to whether at L.R. Plot No. 370, L.R. Khatian No.- 320, there exists any shop room or it is vacant land. Such inspection shall be carried out upon notice to the writ petitioner and respondent no. 10 and their Learned Advocates and in their presence. The plot of land at the respective Mouza must be identified by Staff of BLLRO Office or by any Registered Surveyor competent to do such work. In the event, respondent no. 8, Sub-Divisional Controller, Food and Supplies, Mekhliganj finds that there is shop-room of respondent no.

10 at Plot No. 370, the issue will stand disposed and closed. However, if the respondent no. 8 does not find shop room at Plot No. 370 and finds it a vacant land the respondent no. 8 shall ascertain in which plot the respondent no. 10 has a shop. In the event, the shop of the respondent no. 10 is found at some other plot and in the opinion of respondent no. 8, it is a bona fide mistake on the part of respondent no. 10 and not fatal to the grant of Dealership of FPS such mistake may be condoned. However, if the respondent no. 8 finds that there was willful suppression of some fact or supply of wrong information by respondent no. 10 and is fatal with regard to grant of Dealership license, the respondent no. 8 may proceed in accordance with law. In the event, the respondent no. 8 seeks to take a decision to the prejudice of respondent no. 10, the said respondent shall be given an opportunity of being heard. The entire process of enquiry shall be completed within a period of 2 months from the date of communication of the order and the decision shall be communicated to both writ petitioner and respondent no. 10.

(Biswaroop Chowdhury, J.)