

11.02.2025
DL No.7
Court No.24
Ali

WPA 2552 of 2025

**Gouri Das Biswas
Versus
The State of West Bengal & Ors.**

Mr. Ram Anand Agarwala,
Ms. Nibedita Pal,
Mr. Ananda Gopal Mukherjee,
Ms. Sonam Ray
Ms. N. Khatoon

.....for the petitioner.

Mr. Pingal Bhattacharyya,
Mr. Snehasish Dey,

.... for the Private respondent No. 6.

Mr. Sirsanya Bandopadhyay, Sr. Standing Counsel
Mr. Ritesh Kr. Ganguly

.....for the State.

Petitioner challenges the decision of Principal Secretary, Department of Food & Supplies, Government of West Bengal dated January 24, 2025 passed in pursuance to the direction of this court dated 8th of October, 2024 passed in WPA 22897 of 2024.

The Principal Secretary has passed the impugned order and thereby petitioner's candidature was considered to be ineligible; the said observation is the subject matter of this writ petition.

On the earlier round of litigation, petitioner prayed for re-enquiry in her proposed shop-cum-godown in respect of new FPS Vacancy Notification

No. 692/RFS/2023 dated 1st September, 2023. It is alleged by the petitioner before this court that the enquiring officer, during enquiry has obtained petitioner's signature over some blank paper. However, this court thought it necessary to relegate the matter before the Principal Secretary to decide the issue. The direction of this court on the earlier writ petition is as follows:

"After considering the submissions of the parties I kept the matter open for the concerned Secretary i.e. respondent No. 2 to decide the issue i.e. representation of the petition.

Under the above observation, the writ petition is disposed of. The respondent No. 2 is directed to consider the representation of the petitioner being annexure P-8 of this writ petition and shall pass a reasoned order after hearing the parties within eight weeks from the date of passing of this order. The decision shall be intimated to the petitioner within two weeks thereafter".

The decision of the Principal Secretary is placed with supplementary affidavit. The reason for cancellation of the candidature of the petitioner in the impugned order is set out as follows:

"Considering the vacancy notification following disparities are noted against Gouri Das Biswas:-

- 1. Possession of land is not established. The ROR is in the name of Bachu Das, husband of Smt. Gouri Das Biswas. At the time of submission of application against FPS vacancy no rent/tenancy agreement was uploaded in the portal. An unregistered rent/tenancy agreement was uploaded by the concerned inspector as an additional document in the portal. A notarized rent/tenancy agreement was provided on 11/12/2024, executed between Bachu Das & Gouri Das Biswas for 99 years, executed on 10th June, 2024 (i.e., after the submission of application for FPS vacancy on 12/4/2024).***
- 2. The layout map uploaded in the portal by Gouri Das Biswas and by the Inspector (Enclosure-11) is different from the one submitted during the re-measurement on 11/12/2024 (Enclosure-10), which***

suggests that modification has been done in the layout plan. It appears from the layout plan and physical observation that the portion shown as office in the first Inspection (29/05/2024) has been shown as godown during inspection on 11/12/2024 and the portion shown as shed in layout plan during first inspection (29/5/2024) and inspection dated 11/12/2024 are different.

3. From the uploaded GPS tagged pictures dated 29/5/2024, it appears that the godown was incomplete. The present physical observation suggests modification in construction of the godown and office/sales counter has been carried out, since first Inspection. The plinth height of the proposed godown in the GPS tagged picture of 29/5/2024 appears to be around 1 feet. The GPS tagged photos also suggest that the entrance to the proposed godown on 29/5/2024 and 11/12/2024 are different.

On account of the above mentioned grounds the candidature of Gouri Das Biswas appears to be ineligible”.

Mr. Ram Anand Agarwala, learned counsel appearing on behalf of the petitioner submits that the observations of the Principal Secretary are pervasive and it is not tenable according to the vacancy notification. He submits that the petitioner as well as the private respondent were given an opportunity by the Principal Secretary for hearing. After hearing the petitioner, the Principal Secretary was satisfied and directed re-enquiry.

During the re-enquiry the enquiring officer has noted down in the enquiry report regarding the specification of proposed Shop-cum-godown of the petitioner. He submits that the decision of the Principal Secretary regarding modification of godown as well as the lay out plan which appeared in 1st inspection (29.05.2024) and later inspection (11.12.2024) are different because the enquiring officer has obtained signature of the petitioner in the blank paper at the time of 1st inspection and he himself prepared the false report. The lay out plan was prepared by the Inspector himself. For the reasons thereof, when further inspection done on 11th of December, 2024, the lay out plan as

well as the proposed godown appears to be different.

He further submits that the vacancy notification itself suggest that certain relaxation in case of proposed godown is permitted. The entire wall of godown upto roof was complete, only some final cement work was not done. But, the inspection team has prepared a wrong report regarding proposed show-cum-godown of the petitioner.

He further submits that the impugned order was passed on 24th of January, 2025 which was communicated to the concerned SCFS on 30th January, 2025, "much prior to that, i.e. 22nd of January, 2025"; the offer letter was issued in favour of the private respondent.

He further submits that the Principal Secretary also is of opinion that the private respondent is also ineligible candidate in respect of the classification of land which was "Bansbagan" at the time of filing of the application. The Principal Secretary has relaxed the said criteria in respect of the private respondent which shows that the state authority was biased about forming the decision in respect of the said FPS vacancy.

He submits that the licence has not been issued till today. Let the licence be stalled. The

matter be again referred to the Principal Secretary for taking a fresh decision.

Mr. Sirsanya Bandopadhyay, learned Senior Standing Counsel appearing on behalf of state authority has placed a copy of enquiry report of the petitioner as well as the private respondent after supplying a copy of the same to the petitioner. The copies of inspection report are taken on record.

It appears from the copies of inspection report in respect of the petitioner that, the enquiring officer has mentioned about the status of construction of floor of the godown is "incomplete". In case of status of construction wall, it was mentioned that "one or more wall are not complete upto the roof level". At the bottom of the inspection report the inspecting officer not recommended the candidature of the petitioner on the ground that:

**"NOT RECOMMENDED,
PROPOSED SHOP CUM GODOWN NOT
MIDDLE OF THE SERVICE AREA. NO
SHED IN FRONT TO ACCOMMODATE
AT LEAST 5 PEOPLE AT THE TIME OF
INSPECTION SIZE OF GODOWN IS
LESS THAN THE ORDER OF PDS 2013
PLINTH LEVEL NOT FULFILLS PDS
CONTROL ORDER 2013 ELECTRICITY
NOT AVAILABLE, FLOOR NOT
CEMENTING. SKETCH MAP IS WRONG**

IN FOM-C LEASE DEED NOT SUBMITTED AS PER CONTROL ORDER. DISTANCE FORM THE LAND MARK APPROX 400 METRE STRUCTURE OF SHOP CUM GODOWN IS LIKE A HOUSE THE PROPOSED SHOP CUM GODOWN IS SITUATED AT LINK ROAD (DHALAI RASTA) EIGHT FEET WIDE APPROX".

The state authority has also annexed some photograph of the proposed godown of the petitioner.

Mr. Bandopadhyay further argued that the Principal Secretary has taken decision after causing hearing of the parties and also on the basis of the inspection report.

He further submits that the decision the Principal Secretary cannot be said to be perverse when it was passed on the basis of some inspection report. He argued that before a writ court, the merit of decision of a competent authority cannot be challenged rather it has to be looked into whether the decision making process was perfect or not. He further submits that conversion of land in respect of proposed shop-cum-godown of the private respondent was done prior to the issuance of the licence. So, there is no illegality in respect of the decision of the Principal Secretary who relaxed the condition.

He submits that the Principal Secretary is the competent authority; according to the provisions of the Control Order he has to take appropriate decision regarding the suitable person for running FPS licence. He submits that instant writ petitioner has no *locus standi* to file the writ petition. Accordingly, he prayed for rejection of the writ petition.

Mr. Pingal Bhattacharyya, learned counsel appearing on behalf of the private respondent submits that so far as the relaxation of proposed shop-cum-godown is concerned it would be appeared from the notification Part-2 V (A) (B) (C) that the wall has to be complete. He further submits that the wall of the proposed shop-cum-godwon of the petitioner was not completed upto roof level. So, his candidature cannot be considered to be an eligible candidate. The godown should be marked as "incomplete" godown according to the said notification.

He submits that several objections were raised against the private respondent by the petitioner. It was alleged that one of the relatives of the wife of the private respondent was running FPS business. It would be evident that the marriage between the private respondent and his wife was annulled by a decree of divorce much

prior to the date of submission of the application. He further submits that there are sufficient documents i.e. the voter list to show that the petitioner is permanent residence in the Ranaghat Sub-division.

He further submits that the enquiry report in respect of the proposed shop-cum-godown of the private respondent is also placed wherefrom it would reveal that at the time of inspection shop-cum-godown of the private respondent was complete.

Mr. Bhattacharyya further submits that it has been specifically mentioned that the classification of land has to be converted prior to the issuance of licence. The licence has not been issued, but the land where shop-cum-godown was situated was converted to "Bari" from "Bansbagan" on 4th of October, 2024. He submits that the decision of the Principal Secretary is in accordance with the provision of Control Order and it cannot be quashed.

Heard learned advocates, perused the direction of this court upon the Principal Secretary. It appears that the Principal Secretary was directed to take a decision in respect of the fact whether inspecting team has obtained a signature of the petitioner over the blank paper.

After hearing the petitioner and the private respondent Principal Secretary thought it fit to conduct a re-inspection. After receiving the report of the re-inspection the Principal Secretary has passed the impugned reasoned order.

The impugned reasoned order has categorically discussed about the possession of land in respect of the petitioner. Principal Secretary has also found some discrepancies in the lay out map as well as the report of the inspection done on 29th of May, 2024 as well as on 11th of December, 2024. The Principal Secretary on perusing such report is of opinion that there are some modifications in the lay out plan as well as the construction of proposed shop-cum-godown of the petitioner. The Principal Secretary also observed the GPS tagged pictures taken on 29th of May, 2024 as well as 11th of December, 2024. The GPS pictures of different dates pointed out some discrepancies in the plinth height as well as the modification in the proposed shop-cum-godown of the petitioner.

On the above score, the Principal Secretary is of opinion that the candidature of petitioner appears to be ineligible.

So far as the merit of the decision is concerned, it appears to me that the Principal

Secretary has arrived at the decision on the basis of the inspection report of the concerned inspector on 29.05.2024 as well as 11.12.2024. It is the firmed decision of the Principal Secretary on the basis of the positive report that there are some modifications in the proposed shop-cum-godown of the petitioner. The decision of the Principal Secretary may be construed otherwise by the learned counsel for the petitioner but such decision cannot be challenged as it is based upon some positive document which appears to me justified in the present facts and circumstances of this case.

The decision making process of the Principal Secretary appears to be justified and which is in pursuance to the provision of the control order. The petitioner has challenged the decision of the Principal Secretary in respect of the relaxation in favour of private respondent. It appears to me that the Principal Secretary is the highest authority to decide the issue who would be the fit candidate for issuance of licence. The decision of the competent authority regarding choosing a person to be fit for running a licence is the sole prerogative of the competent authority and who are the expert in that field.

It further appears to me that it is the mandate of the statute that proposed shop-cum-

godown should not be run over a land which is not "Dokan", "Commercial" or "Bastu". For that reason, it has been provided that prior to the issuance of licence, the classification of law where godown was constructed should be changed into "Dokan", "Commercial" or "Bastu"

In that event, the private respondent has made an application for conversion of the land on 30th September, 2024 (much after the date of application) and the conversion was done on 4th of October, 2024 i.e. prior to the issuance of licence.

In that score, I think it justified to hold that the decision of the Principal Secretary for relaxation of the condition is appears to me not irrelevant, illegal or bias.

I find no materials in the allegation that offer letter was issued in favour of private respondent and prior to the impugned order.

Under the above observation, I find no justification to entertain the writ petition.

The impugned order passed by the Principal Secretary appears to me justified.

Accordingly, the writ petition being **WPA 2552 of 2025** is dismissed and disposed of.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)