

14.7. 2025
item No.13
n.b.
ct. no. 24

WPA 11496 of 2025

**Krishna Pada Jana
Vs.
State of West Bengal & Ors.**

Mr. Subhamoy Bhattacharya,
Mr. Arkadipta Sengupta,
Mr. Shankar Mukherjee,
..... for the petitioner.

Mr. S. Majumdar,
Ms. Somashree Dey,
..... for the State.

Mr. Ram Anand Agarwala,
Ms. Nibedita Pal,
Mr. Ananda Gopal Mukherjee,
Ms. Sonam Ray,
Ms. Nasrin Khatoon,
..... for the respondent.

Petitioner applied for licence in terms of vacancy notification dated May 13, 2024 issued by the Sub-Divisional Controller, Food & Supply, Jhangram.

It is the contention of petitioner that after he submitted online application, his proposed shop cum godown was inspected by the concerned authority but though he was a suitable candidate the private respondent was granted licence though he is not eligible to hold the licence.

At the initiation, learned counsel appearing on behalf of the private respondent raised point of maintainability of the instant writ petition.

Mr. Agarwala, learned counsel for the private respondent submits that the petitioner though

challenged the selection of private respondent but never pray for any relief on behalf of him (the petitioner). He submits that petitioner only asked for issuance of mandamus upon the concerned authority for declaration of fresh vacancy over the some area. He further submits that the petitioner has not demonstrated that how he is an aggrieved person in respect of act and action of the respondent authority, so the instant writ petition is not at all maintainable.

Learned counsel appearing on behalf of the petitioner submits that the petitioner applied for licence in the said impugned vacancy notification and filed online application. The concerned authority inspected his proposed shop cum godown. Thereafter, the authority concerned had not intimated the rejection of the petitioner but has selected the private respondent. He submits that the private respondent was not a resident within the Jhargram Sub-Division, so as per Clause 1(A) of part 1 as well as Clause 7(i) of part II of the said impugned vacancy, the private respondent is not eligible candidate.

Petitioner further submits the application for sanction building plan by the respondent was only made to the authority on August 12, 2024. Thus, it appears that the private respondent has constructed proposed shop cum godown without any proper sanction plan. Learned counsel for the petitioner submits that the

candidature of the private respondent was required to be cancelled on the basis of these two grounds but the respondent authority has arbitrarily selected the private respondent and granted her licence.

He further submits that there are other materials to entertain the instant writ petition accordingly to justify the fact stated in the writ petition. The authority may be directed to submit a detailed report in the form of affidavit.

Learned counsel appearing (virtual mode) on behalf of the State respondent submits a short report contending inter alia that private respondent has already granted licence and it appears that private respondent is distributing ration articles. The report also demonstrates the brief fact of the matter, which disclosed that private respondent has scored highest mark in the score base system of selection procedure adopted by the Government of West Bengal. Thus, private respondent being the most eligible candidate granted the licence.

Having heard learned counsel for the parties, let me consider the submission on behalf of the private respondent regarding point of maintainability, it appears that petitioner is one of the applicant of the impugned vacancy notification. He submitted online application after providing necessary, his proposed shop cum godown was inspected by the concerned authority.

In the writ petition in prayer ('A') petitioner seeks issuance of mandamus upon the respondent authority for setting aside the selection of private respondent.

In prayer (b) a prayer of mandamus also made for direction upon the concerned authority for taking steps for declaration of fresh vacancy in the same location.

In prayer 'c' and 'd' are the in the nature writ of certiorari. Prayer 'e' contains Rule NISI and prayer 'f' contains interim relief for such an allotment of food grains in favour of the private respondent.

In the entire pleadings in the writ petition, the petitioner never demonstrated before this Court that if the candidature of selection of private respondent were cancelled, the petitioner would be benefited. In this case, the petitioner has also not demonstrated any grounds or has not made any prayer to understand that if the candidature of the private respondent was rejected the petitioner would be benefited. That is to say, it is not clearly pleaded how due to the selection of private respondent, petitioner became aggrieved. In this case, the petitioner's writ is only to challenge the act and action of the respondent on some points, which if decided to be true and lawful then also the petitioner would not be benefited. At this juncture, the private respondent has already granted licence and is distributing food grains to the locality. After completion

of entire exercise, the petitioner cannot be challenged the said selection procedure on some flimsy grounds.

At this juncture, it appears to me that the petitioner is not at all aggrieved person in respect of act and action of the respondent authority in selection the respondent.

Learned counsel appearing on behalf of the petitioner submits that Hon'ble Supreme Court in **Poddar Steel Corporation Vs. Ganesh Engineering Works & Ors.** reported in **(1991) 3 SCC 273** has categorically observed that the authority, who invites the tender condition are bound to give effect of every terms amongst in the notice in meticulous detail, and they are not entitled to waive even a technical irregularity of little or no significance. Some portion of paragraph 6 of the observation of Hon'ble Supreme Court set out as follows:

“6. It is true that in submitting its tender accompanied by a cheque of the Union Bank of India and not of the State Bank clause 6 of the tender notice was not obeyed literally, but the question is as to whether the said non-compliance deprived the Diesel Locomotive Works of the authority that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories – those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases. This aspect was examined by this Court in C.J. Fernandez v. State of Karnataka a case dealing with tender. Although not in a

entirely identical situation as the present one, the observations in the judgment support our view. The High Court has, in the impugned decision, relied upon Ramana Dayaram Shetty v. International Airport Authority of India but has failed to appreciate that the reported case belonged to the first category where the strict compliance of the condition could be insisted upon. The authority in that case, by not insisting upon the requirement in the tender notice which was an essential condition of eligibility, bestowed a favour on one of the bidders, which amounted to illegal discrimination. The judgment indicates that the Court closely examined the nature of the condition which had been relaxed and its impact before answering the question whether it could have validly condoned the shortcoming in the tender in question. This part of the judgment demonstrates the difference between the two categories of the conditions discussed above. However it remains to be seen as to which of the two clauses, the present case belongs.”

Learned counsel for the petitioner submits that the respondent authority has flouted the tender condition by not following the provisions of vacancy notification. He submits that the private respondent is not resident of Jharkhand Sub-division. In support of his contention, he placed a document at page 33 of the writ petition, which disclosed that the private respondent has applied for transfer his Voter card from Kharagpur General Constituency to Jharkhand (General) Constituency on October 2024. It is the positive case of the petitioner that the private respondent has no residence of Jharkhand Sub-Division. She applied for transfer of Voter card from Kharagpur Constituency(General) to Jharkhand Constituency much after the last date of application.

On the other hand, the State authority has submitted report contending the Aadhar Card of private

respondent, which prima facie shows that the petitioner's Aadhar Card disclosed that she is the permanent resident of Nayagram under Jaharkhand Sub-division. Aadhar Card was issued in the year 2014.

Considering the report and documents thereof by the authority concerned, I am of view tht the authority concerned has not acted arbitrarily in selecting the private respondent in this matter. A person may have several place of residence, among them the person may choose to use one of the residence for issuance of Aadhar card and he may also choose another residence for his right of enfranchisement. In this case, the challenged raised by the petitioner appears not so meritorious.

However, as I have already considered that the instant writ petition is not a person aggrieved. Thus, the instant writ petition appears to me not maintainable.

Under the above observation, the writ petition is disposed of.

Report submitted by the authority concerned is taken on record, copy of which is served upon parties.

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

(Subhendu Samanta, J.)

