

ASR. Item no14.
Ct. no. 24.
14.07.2025

WPA 13372 of 2025

**Renjuma Khatun
Vs.
State of West Bengal & Ors.**

Mr. Suvra Lahiri
Md. Habibur Rahaman
.....For the petitioner

Mr. Swapan Datta
....For the State

Petitioner applied for license in terms of vacancy notification dated 18th October, 2022 issued by the Sub-Divisional Controller, Islampur. Her candidature was rejected on the ground that proposed shop-cum-godown of the petitioner was constructed over a plot of land which was recorded as a Sarak (road) instead of “Dokan commercial/ Bastu”.

Petitioner approaches this court by virtue of a writ petition being no. WPA 11229 of 2024 on the ground that the record of right in respect of the land over which the proposed shop-cum-godown was constructed was erroneously made by the concerned authority. Latter, on the prayer of the petitioner the same was corrected to ‘Bastu’ from ‘Sarak’.

This court disposed of the writ petition vide its order dated 4th April, 2025 and directed the petitioner to approach the authority concerned on the basis of corrected record of right.

The direction of this court in the said writ petition is set out herein below:

“Concerned authority is directed to review their stand in respect of allowing the petitioner to be a licensee in respect of vacancy notification dated 18th October, 2022 in the changed facts and circumstances as mentioned herein above.

The petitioner is directed to approach the concerned authority within two weeks from the date of passing of this order with the copy of this order along with a specific representation with all documents.

The concerned authority shall dispose of his representation and shall issue the licence in favour of the petitioner, if she otherwise appears to be suitable according to the provisions of law. The decision of the authority shall be arrived at within six weeks from the date of communication of this order

after giving a reasonable opportunity of being heard to the petitioner.

The authority must not confine/confused themselves in mere point of limitation or other technical points, but they shall act according to the true letter and spirit of order of this court. The decision of the authority shall be communicated to the petitioner within two weeks thereafter.

Subsequent, Notification dated 9th May, 2024 issued by the concerned SCFS which was stayed by this court during the pendency of the instant writ petition be made final.

The State authority shall not proceed to the said notification (09.05.2024) till their reasoned decision as directed hereinabove.”

In pursuance to the direction of this court the petitioner approaches the authority concerned and had passed a reasoned order on 27th May, 2025 after giving a reasonable opportunity of being heard by the petitioner.

By passing the reasoned order the concerned authority rejected the candidature of the petitioner on the ground that:

1) The reason for rejection of candidature against the vacancy notification dated 18.10.2022 is her failure to have a bank balance of Rs. 50000/- (Rupees fifty thousand) only in her bank account.

As per submitted bank statement she had only Rs. 2575.42, failing short of required working capital.

2) Consequently, the petitioner is found ineligible for issuance license against the vacancy notification dated 18.10.2022.”

It is the contention of the learned counsel for the petitioner that the respondent authority has rejected the candidature of the petitioner by a new ground. At the time of disposing of the earlier writ petition the concerned authority has placed on record a report in the form of affidavit. In the same report they appended the enquiry report regarding proposed shop-cum-godown of the petitioner, from wherefrom it would be revealed that the petitioner was disclosed to be financially solvent. The report itself discloses that the petitioner was solvent when the enquiry was made at the proposed shop-cum-godown of the petitioner i.e. on 11th April, 2023.

Learned counsel for the petitioner submits that the respondent authority now rejected the candidature of the petitioner on the ground that the petitioner was not solvent at the time of making application.

He submits that the issue was never raised by the State authority at the time of affirmation of affidavit before this court, rather they have issued only single ground that the character of land is “Sarak”. Learned counsel for the petitioner also submits that the act and action of the respondent authority is arbitrary. They have raised altogether new ground in deciding the candidature of the petitioner which was not raised before this court on the earlier occasion. He further submits that the respondent authority for reasons best known to them has rejected the candidature of the applicant by new issue which they cannot raise at this later stage.

He further submits that the enquiry report was conducted by the authority concerned which specifically demonstrated the date of application on 29th January, 2023. The respondent authority has taken note of the bank detail as on 24th January, 2023 to be Rs. 52,575 (rupees fifty two thousand five hundred seventy five) and they were satisfied regarding solvency of the petitioner. Now on the same ground they rejected the candidature of the petitioner. In support of his contention the learned counsel for the petitioner has cited a decision of Hon’ble Apex court passed in Mohinder Singh Vs. Chief Election Commissioner reported in AIR 1978 Supreme Court 851.

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by freshy reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16).”

Learned counsel for the petitioner on the basis of the observation of the Hon’ble Apex court submits that the respondent authority cannot supplement a fresh reason to reject the candidature of the petitioner, while they were otherwise they were satisfied at the time of first instance.

The learned counsel for the respondent authority raised strong objection and submits that the petitioner has applied for license by making online application on 29th January, 2023. At the time of making application she demonstrated her bank account to be Central Bank of India having account no. 3326001662. Admittedly on the date of application i.e on 29th July, 2023 the petitioner had only Rs. 2575. 04 paise. According to the vacancy notification one applicant must have a bank

balance Rs. 50,000/- as a working capital on the date of his application. In this case, the petitioner had no sufficient bank account at the time of making the application. Accordingly, the authority concerned at the time of re-considered the issue has find out that the petitioner is not a solvent person thus his candidature was rejected.

Learned counsel for the respondent authority further submits that this court has issued direction upon the authority concerned to consider the representation of the petitioner and to issue license in favour of the petitioner if she otherwise appears to be suitable according to the provision of law.

Reasons thereby the authority concerned had re-visited the issue afresh and after re-considering of all materials it appears to the authority that the petitioner was not solvent at the time of making application thus her candidature was rejected.

He further submits that there is no arbitrariness by the concerned authority for rejecting the application of the petitioner. He further submits that though at the time of making enquiry enquiry officer has reported that the petitioner was solvent but the concerned officer after direction of this court while revisiting the issue afresh has found that the petitioner was not financial solvent as per notification. He submits that at the time of making affidavit before this court on the earlier occasion

the concerned authority has only demonstrated the justification of issue of rejection on the basis of character of the land thereby the present ground of non-solvency acts not dealt with, they only proceeded to revisit when this court directed the authority to revisit the same.

Having heard learned counsel for the parties and considering the facts involved in this matter it appears that the authority concerned on the earlier occasion while the petitioner was before this court submitted an affidavit containing, inter alia, that the candidature of the petitioner was rejected only on the ground that the land where the proposed shop-cum-godown shown was constructed as 'Sarak'. This court after finding corrected record of right has directed the authority concerned to consider the representation of the petitioner. This court was also directed the concerned authority to issue license in favour of the petitioner if she otherwise appears to be suitable in all respect.

It is the contention of the respondent authority they have consider and revisit the matter afresh wherefrom they found that the petitioner was not solvent at the date of making application.

Let me consider whether the State authority can reject the candidature of the petitioner in a separate ground which they have not raised in the initial stage. It is true that this court is directed the authority

concerned to consider the representation of the petitioner on the basis of the document placed before the court regarding correction of record of right. This court is also directed the concerned authority to issue a license in favour of the petitioner if he otherwise suitable according to law.

According to the provisions of Clause 12 (VI) of the vacancy notification, one application must have a bank balance of Rs. 50,000/- as a working capital as reflected on date of application.

Admittedly the petitioner has filed an application on 29th January, 2023 through the bank statement it appears that on 24th January, 2023 he had a bank balance Rs. 52575/- on the date of making application he had only a bank balance of Rs. 2575/-. Rs. 50000/- was withdrawn from the said bank on 25th January, 2023. So admittedly the reasoned order passed by the concerned authority is based on the facts of this particular case but the question is whether this issue can be revisited at the later stage.

The authority concerned has given liberty to revisit the issue by the order of this court which includes they must reasonable clarify the candidature of the petitioner. It is admitted fact that the respondent authority has rejected the candidature of the petitioner on a new ground which appears to be justified but in the later stage whether they have refrained to cancel the

candidature of the petitioner in the subsequent decision making process.

It appears that the authority concerned has given liberty to decide the issue afresh that the authority concerned has offered opportunity to decide all and every particular issue connected with the notification.

It appears that the present petitioner admittedly had no bank balance at the date of making application. Though the concerned authority has considered the same to be sufficient at the time of enquiry but on further consideration it appears to them that the petitioner was not solvent which is justified in the facts and circumstances of this case.

Thus the petitioner can not allowed to carry on his candidature which is actually not in consonance with the principle laid down of the vacancy notification.

If the petitioner is allowed to continue with her candidature that would tantamount to be violative to the direction of the tender procedure. It is classified that the selecting authority can always re-verify, revisit correctness of a candidature unless and until they finally take a decision. The observation of enquiry officer is tentative in nature and it is not always binding upon decision making authority.

In this case, the decision of the authority is appeared to me not flimsy, illegal or arbitrary

Considering the same I find no justification to entertain the petitioner.

Accordingly the instant writ petition is disposed of.

[Subhendu Samanta, J]