08.04.2025
Court No.13
Item No. 25
pk

M.A.T. 1328 of 2024
Beauti Ghosh
Vs.
State of West Bengal and others

Mr. Saptangsu Basu, Sr. Adv
Mr. Ramesh Dhara
... for the appellant.

Mr. Suman Sengupta,
Mr. Sanatan Panja
... for the State.

1. The appeal is directed against a judgement and order dated 06.03.2024 passed by the Single Bench WPA 5218 of 2024 (Beauti Ghosh Vs. State of West Bengal and others).

2. By the impugned judgement, the writ petition was dismissed. The brief facts relevant to the case are that the writ petitioner/appellant participated in a notice inviting applications dated 1st June, 2023 for MR Distributorship vacancy at Malda, English Bazar Municipality.

3. In terms of the amendment dated 28th May, 2022 to the Control Order of 2013, the applicants for MR Distributorship were required to have a credit balance of Rs.25 lakh either in the current account, savings account or in the form of fixed deposit at the time of making application.

4. By a further administrative order dated 1st June, 2023 issued by the Director, DDP&S made

the financial solvency of Rs.25 lakh for the applicants to continue to be maintained till grant of licence.

5. Admittedly, the appellant/writ petitioner had Rs.25 lakh in his account as on the date of application. However, the said amount was withdrawn from the account during the time when the appellant's application was being processed.

6. Mr. Basu, learned senior counsel for the appellant would indicate that subsequently the said amount of Rs.25 lakh was replenished.

7. The State Government however did not accept the recommendation of the selection committee primarily on the ground that the appellant had not maintained the credit balance continuously in the said account.

8. The State therefore, by notification dated 06.02.2024, declared the vacancy afresh for Malda English Bazar Municipality and applications afresh were invited.

9. Mr, Basu, learned senior counsel would argue before this Court that as to whether the expression "shall maintain the credit balance of Rs.25 lakh until issuance of formal licence" cannot be understood as mandatory since no consequences has been specified in the administrative order dated

01.06.2023 for violation of the same. The said condition is at best directory, violation whereof cannot be a ground for rejection of his client's application.

10. To support his argument, Mr. Basu has relied upon two decisions of the Supreme Court, namely, **Sharif-Ud-Din Versus Abdul Gani Lone** reported in **(1980) 1 SCC 403** particularly paragraph 9 thereof and the decision of **Dinesh Chandra Pandey Vs. High Court of Madhya Pradesh and another** reported in **(2010) 11 SCC 500** particularly paragraphs 15 and 16 thereof.

11. It is argued that the aforesaid two decisions in **Sharif-Ud-Din (supra)** and **Dinesh Chandra Pandey (supra)** lay down that, as to whether a provision under a rule or subordinate legislation is mandatory or directory is a question of interpretation and must be seen in the light of the other provisions of such subordinate legislation or rule.

12. This Court has carefully heard the arguments of the learned counsel for the appellant and the State.

13. The financial capacity of a MR Distributor is vital and necessary for the purpose of ensuring smooth supply of essential commodities to MR Dealers and consequently the consumers who are

normally below the poverty line. Supply of basic essentials would affect life of the ultimate consumer. It is essentially for this purpose that financial capacity must be understood as a mandatory requirement particularly in the case of appointment of MR Distributorship.

14. The admitted position here is that the petitioner could not maintain Rs.25 lakh continuously during the period of consideration of his application. It is irrelevant for this Court to consider that the appellant may have replenished the amount of Rs.25 lakh in his account. The fact remains that the appellant did not continuously maintain a credit balance of Rs.25 lakh in his account.

15. For the aforesaid inability of the writ petitioner/appellant, his application could not have been considered by the Government notwithstanding the initial recommendation by the Enquiry Committee.

16. This Court is of the view that the State Government was fully justified in refusing to accept the recommendation for MR Distributorship given the admitted inability of the appellant/writ petitioner to maintain a continuous balance of Rs.25 lakh during the period of consideration of his application.

17. It is really of no consequence that the writ petitioner was not formally notified of the rejection of his application. The arguments and facts advanced before the Single Bench and this Court clearly establish that the writ petitioner/appellant was aware that his case for MR Distributorship was declined by the Government and rightly so.

18. The impugned order dated 06.03.2024 therefore calls for no interference.

19. Accordingly, the instant appeal fails and is hereby dismissed. In view of dismissal of the appeal, connected application being CAN 2 of 2024 is also dismissed.

20. There will be no order as to costs.

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

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)