

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

WPA 24039 of 2023

Nurul Islam.

Vs.

State of West Bengal & ors

For the Petitioner	: Mr. Subir Sanyal, Adv., Mr. Goutam Dey, Adv., Mr. Abhijeet Mondal, Adv.,
For the private respondent 4	: Mr. Sharyar Alam, Adv.,

Reserved on : 24.06.2025

Judgment on : 03.09.2025

Subhendu Samanta, J.

1. Petitioner challenged an action of the State Authority in connection with FPS license granted in favour of private respondent 4 in terms of vacancy notification dated 16th February, 2022 issued by SCFS Islampur.
2. A very short question is involved in the instant writ petition. Admittedly petitioner as well as private respondent applied for license. Both of them were eligible. Admittedly, the private respondent having more spacious godown than the petitioner and also scored more marks than the petitioner, thus private respondent was selected by the authority for granting license.

3. Only challenge of the petitioner in the instant writ petition is that the authority concern has accepted the private respondents possessional document, that is, the lease agreement which is not according to the terms of the vacancy notification. Facts suggests that the private respondent has placed a lease showing his possession over the proposed shop-cum-godown, which is admittedly a notarised document and agreement not registered. It is the contention of the petitioner that authority concern can not allow the private respondent to use such lease agreement which was not registered.

4. This is being the sole issue in the instant matter, let me first consider what is the term in the vacancy notification.

Clause 14 (vii) (b) read as follows :-

For leased/rented property: Registered Lease Deed or Tenancy Agreement with copies of rent receipts for all the months from the date of agreement till date of application and Registration Deed/RoR in the name of the land owner (or Lessor)

5. Mr Subir Sanyal Learned Senior Counsel appearing on behalf of the petitioner submits that above clause of the vacancy notification is very clear that a candidate has to place a registered deed lease. The lease deed filed by the private respondent is notarised and for 25 years with a provision for renewal.
6. He submits that in the provisions of Section 105 Transfer of Property Act, the lease has been defined. He further argued that Section 17 of the Registration Act, 1908, has properly

mentioned that lease of immovable property from year to year or for a term of exceeding one year or reserving an yearly rent is necessarily registrable.

7. He submits that the authority concern has illegally allow the private respondent to use such lease deed which was not registered. He submits that lease deed for more than one year required registration, when it is not registered the document is void; he submits the authority concern has shown favouritism to the private respondent to give him license.
8. Respondent authority used a report in the form of affidavit containing inter alia that proposed shop-cum- godown of private respondent is more specious than petitioner. The authority concern during inspection has noted the proposed shop-cum-godown of both petitioner and private respondent. In the marking system, the petitioner has obtained 72 marks while the private respondent has obtained 84 marks; accordingly, private respondent being most suitable candidate, licence was granted. He further submits that the authority concerned has not taken any illegal decision or no favouritism was shown to the private respondent.
9. Learned counsel appearing on behalf of the private respondent submits that it is settled principal of law that in any legal document, some clauses are substantive and mandatory and on the other hand some clauses discretionary and not mandatory. He submits that the issue with the instant writ application relates to the public distribution of Essential

Commodities which involves interest of general public, in such a situation interpretation is liberal interpretation.

10. He further submits that the intention behind to produced registered lease deed was to ensure absolute possession without any future legal intervention so that the distribution runs smoothly or for longer time.
11. He further submits that in the instant case before the process of selection being concluded, the father of respondent No. 4 has gifted the property in question in favour of private respondent, thus, he became absolute owner having absolute possession and under this situation, the possession of the petitioner cannot be questioned. Learned counsel for the private respondent pointed out part 2 of the said vacancy notification wherein it was mentioned that the applicant “must “ fulfil following eligible criteria. He submits that the Part-2 of the notification has made it mandatory that the applicant must have to fulfil the eligible criteria. He further submits that in the vacancy notification, Clause 14 is directory and not mandatory. He submits that the authority concern is the best person to select suitable candidate, the authority concern has selected private respondent by the dint of his specious shop-cum-godown. Thus the license of the authority cannot be interfered with.
12. In support of his contention Learned Counsel for the Private respondent cited a decision of Hon’ble Apex Court in **State of UP Vs. Manbodhanlal Sribastava reported in 1957 SCC Online SC 4**

"...The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th Edn., p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done".

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other...."

13. Learned Counsel for the private respondent has also stated by Hon'ble Supreme Court In **State of Hariayana and Anr. Vs. Raghbir Dayal** Reported in (1995) 1 SCC 133

The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word 'shall' as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory.

The question whether a particular provision of a statute was mandatory... or directory cannot be resolved by laying down any general rule and it should depend upon the facts of each case and for that purpose the object of the statute in working out the provision is a determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from the provision or other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

After exhaustive consideration of the subject, it was held that though there was a technical defect inasmuch as the local paper in which the publication had been made, was in Urdu and not in Hindi, there was a substantial compliance and it was held to be directory and the tax imposed was upheld.

14. Having heard the Learned Counsel for the parties also considering the situations herein, it appears that the respondent authority has accepted documents (unregistered lease deed) used by the private respondent regarding his possession. Thus respondent authorities admittedly accepted an unregistered Lease Deed. Let me considered whether the action of the authority is reasonable, or suffered any biasness. In

perusing vacancy notification it appears that the vacancy notification requires some eligible criteria which one application “must” fulfil. Para 4 of the said vacancy notification required every applicant must upload the documents which has to be attached along with online application. The Clause 14 of the said vacancy notification starts as follows:-

The applicant must submit the following copies or original supporting documents along with Application in Form C

15. Clause 14 suggests, an applicant must submit the copies of original supporting documents along with application in Form C. So it appears from Clause 14 that the applicants are directed to submit which they “must” attach along with online the application.
16. Admittedly, Sub-clause iv (b) Clause 14 requires the applicant must place a registered lease deed. In the present case, the present respondent has used unregistered lease deed. The authority concern in using the affidavit has never disclosed whether the Clause (vi) (b) of Clause 14 is mandatory or discretionary. However it is true that words used in a statute can only be considered to be mandatory or discretionary on the basis of intention of the maker. It is true that the particular provision of statute or tender document whether discretionary or mandatory can only be gathered upon intention of legislature but not upon the languages which is used.
17. The true intention of the maker of the document is to be construed from entire vacancy notification. In the instant

vacancy notification the candidates are directed to submit relevant documents in support of their possessional right. Vacancy notification itself requires a registered lease deed. Storage godown is meant for storing ration commodities, which is the property of Government such storage facility should not be such a nature in which the possessor have defective title. The intention of the maker of the document thus, categorically noted in the first line of Clause 14, which mentioned "the applicant must submit," perusing such, it appears that Clause 14 of the vacancy notification is entirely mandatory not discriminatory.

18. The authority concerned have considered the proposed shop-cum-godown of the private respondent to be specious and has allowed him to grant the license but at the time of verification they failed to appreciate the mandatory requirement of the vacancy notification. The authority concern are to act upon the vacancy notification which they published at the time of inviting tender. The authority concerned may have from other reason or may have such consideration for the purpose of smooth distribution of ration articles but for that reasons, they are not authorised to flout any provision of vacancy notification. It further appears that the private respondent became the owner of the said property by virtue of added of gift which admittedly executed after the last date of submission of the application. Hence it cannot be considered to be a document required in the vacancy notification. It further appears that law suggests a

document to be registered compulsorily, the authority concern cannot accept the unregistered lease deed violating on provisions of law u/s 17 (1) (d) of the Registration Act 1980.

17(1) (d)—Documents of which registration is compulsory

d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

19. Under the above observation it appears to me that the authority concern though has considered the specious godown of the private respondent to be a suitable place for storing ration articles but for that reason of mandatory terms of the vacancy notification as well as provisions of law u/s 17 (1) (d) of Registration Act 1980 cannot be violated. They should not accept unregistered lease deed to justify possessional right of the private respondent.
20. Under the above observation the decision of the authority concerned for selecting private respondent on the basis of unregistered lease deed appears to be unreasonable and illegal.
21. Thus issuance of license in favour of the private respondent by the concerned authority is hereby quashed.
22. The authority concerned is at liberty to take a fresh decision, according to law to select a candidate in respect of impugned vacancy notification, if anyone found otherwise eligible.
23. Under the above observation the instant writ petition is disposed of.

24. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)