

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

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

IN THE MATTER OF
WPA 24910 of 2023
Rajesh Shaikh
Vs.
State of West Bengal & Ors.

For the Petitioner : **Mr. Debabrata Saha Roy, Adv.,**
Mr. Md. Hafiz Ali, Adv.

For the respondent
No. 6 : **Mr. Saptansu Basu, Adv.,**
Mr. Ramesh Dhara, Adv.,
Ms. Mousumi Choudhury, Adv

For the State : **Mr. Suman Sengupta, Adv.**
Ms. Amrita Panja Moulick Adv.,

Reserved on : **13.01.2025**

Judgment on : **13.02.2025**

Subhendu Samanta, J.

1. Petitioner challenged the appointment of FPS license in favour of private respondent No. 6 in respect of vacancy notification being No. 1118/SCK/2020 dated 29.07.2022 at Mahishgram Shibmandir, Mouja -Mahishgram, GP- Shabaldaha, PO- Mahishgram, PS- Burdwan under Kandi Sub Division in the District of Murshidabad.

2. It is the case of the petitioner that private respondent, petitioner and other candidates applied for the license. Sub-Divisional Controller, Food and Supply through inspectors have conducted enquiry to the proposed shop-cum-godown of petitioner as well as the

private respondent. It is the case of petitioner that pre respondent is blue eyed person and the authority concern has favoured respondent No. 6 and grant him license which is arbitrary action on the part of the respondent authority.

3. The main grounds of challenge are

Firstly, the private respondent's godown is situated in a narrow lane, where entry of track for delivery ration article is not possible at the proposed godown of the private respondent No. 6 whereas godown of the petitioner is located adjacent to the main road and there is 12 Ft. wide road in front of the petitioner's godown. It would be easy for the distribution of article food grains through the godown of Private respondent.

Secondly, private respondent has a fertiliser business and earning huge amount of money from the said business. Private respondent has shown the same place as a godown where the fertiliser business is running on the other hand, it is the case of the petitioner that godown of the petitioner is more specious than private respondent.

Thirdly, proposed shop-cum-godown of private respondent is situated over a land which was recorded as 'Danga', according to the notification proposed shop-cum-godown should be constructed over a land which is Dokan/Commertial/Bastoo.

Lastly, private respondent is an accused of criminal case wherein charge sheet has been submitted against the private respondent.

4. Learned Counsel appearing on behalf of the private respondent used affidavit against the writ petition and contended that petitioner has no locus standi to file the writ petition. It is the case of the Opposite Party that the petitioner is not an eligible candidate. The godown of the petitioner is less than 200 Sqft. thus he cannot challenge the apartment of private respondent.

5. It is the further contention of the private respondent that there is no bar in the statute regarding running of other business by a candidate who apply for license. It is further case of the private respondent that he was not entangled in any case concerning Essential Commodities Act. So, it is not barred to issue license of FPS in favour of the petitioner.

6. The state authority has submitted a report in the form of affidavit. It is the case of the State authority that proposed office-cum-shop room of the private respondent is in accordance with the notification but so far as the office room of petitioner is concerned, it is only 122.44Sqft. Notification has set out a criteria for office-cum-sales –counter that, It should be not less than 200Sqft. The state respondent has categorically mentioned in the report that proposed shop-cum-godown of the petitioner is not according to the notification.

7. The State authority has also placed the enquiry report of the proposed-shop-cum godown of petitioner as well as the private respondent. They have also placed the final score sheet prepared by DLFSSC for the appointment of suitable candidates after completion

of the entire formalities, in pursuance to the notification dated 17th August 2021.

8. I have perused the entire pleadings of the parties as well as the report submitted by the State Authority. It appears that the State authority has adopted marking system for selection of FPS dealer. In terms of the notification dated 17th August 2021, the score based enquiry criteria has been categorically followed by the inspecting team who has submitted report which was duly forwarded District Level Fair Price Shop Selection Committee (DLFSSC). After perusing score based enquiry report, on score based enquiry report, the petitioner has scored 60 marks while the private respondent has scored 70 marks. DLFSSC has awarded 21 marks to petitioner and 23 marks to the private respondent. In total, private respondent scored 93 marks whereas petitioner scored 84 marks.

9. I find no impediment or unreasonableness in the Act of the respondent authority in following the score based system as in terms of notification dated 17th August 2021.

10. In **Reliance Infrastructure Ltd. Vs. State of Maharashtra (2019) 3 SCC 352** the Hon'ble Supreme Court has held that the court while exercising its judicial review the court will ensure the statute is not breached.

38. MERC is an expert body which is entrusted with the duty and function to frame regulations, including the terms and conditions for the determination of tariff. The Court, while exercising its power of judicial review, can step in where a case of manifest unreasonableness or arbitrariness is made out.

Similarly, where the delegate of the legislature has failed to follow statutory procedures or to take into account factors which it is mandated by the statute to consider or has founded its determination of tariffs on extraneous considerations, the Court in the exercise of its power of judicial review will ensure that the statute is not breached. However, it is no part of the function of the Court to substitute its own determination for a determination which was made by an expert body after due consideration of material circumstances.

11. In **BC Mylarappa Alias Dr. Chikkamylarappa Vs. Dr. Venkatasubbaiah and Ors. 2008 14 SCC 306** the Hon'ble Supreme Court has held that a decision of expert body should not be interfered in judicial review if it appears to be not illegal invalid or without jurisdiction

24. There is another aspect of this matter which is also relevant for proper decision of this appeal. We have already indicated earlier that the Board of Appointment was constituted with experts in this line by the University Authorities. They have considered not only the candidature of the appellant and his experience as a Lecturer and Research Assistant along with others came to hold that it was the appellant who was the candidate who could satisfy the conditions for appointment to the post of Professor. Such being the selection made by the expert body, it is difficult for us to accept the judgments of the High Court when we have failed to notice any mala fides attributed to the members of the expert body in selecting the appellant to the said post.

26. Admittedly, there is nothing on record to show any mala fides attributed against the members of the expert body of the University. The University Authorities had also before the High Court in their objections to the writ petition taken a stand that the appellant had fully satisfied the requirement for appointment. In this view of the matter and in the absence of any mala fides either of the expert body of the University or of the University Authorities and in view of the discussions made hereinabove, it

would be difficult to sustain the orders of the High Court as the opinion expressed by the Board and its recommendations cannot be said to be illegal, invalid and without jurisdiction.

12. In **Md. Fakuruddin Biswas Vs. State of WB & Ors** the Division Bench in **MAT 1354/2022** has held ineligible candidate has no right to challenge the selection of successful candidate on the ground that the person selected also have no eligible criteria.

Before proceeding to discuss the submission advanced by the learned Counsel for the parties, let us make it clear that an applicant who is otherwise ineligible has no right to challenge selection of another on the ground that the persons selected also had no eligibility criteria. Such a petitioner if he wants to succeed in a writ petition has to establish by pleadings and documents that he or she is also otherwise eligible but his or her case has not been considered favourably and provision of Article 14 has been grossly violated.

13. In **Dhananjay Malik and Ors. Vs. State of Uttaranchal (2008) 4 SCC 171** the Hon'ble Supreme Court has held that having unsuccessfully participated in the process of selection without any demur, they are debarred to challenge the selection criteria.

14. Heard the Learned Counsels, perused the pleadings of the parties. It appears that the State authority has followed the procedure laid down in the law for selecting private respondent No-6 to be a successful candidate. There is no bar in the statute to issue license in favour of a person who has a running business. Moreover, private respondent No. 6 is not entangled in a case for violation of provision of

Essential Commodities Act. Thus, in my view objection raised by the petitioner in the instant writ petition cannot entertain.

15. Further it appears to me that the concerned appointing authority has followed the procedure and has selected private respondent No. 6 to be most eligible candidate. The licensing authority is an export body whose decision cannot be assailed before this court when it is not unreasonable or without jurisdiction.

16. Under the above observation I find no justification to entertain the instant writ petition. Accordingly, the writ petitioner is dismissed and disposed of.

17. 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.)