

Court no. 24
Item No.36
10.02.2025
(Suvendu)

WPA 31080 of 2024

Tusi Sadhukhan
Vs.
The State of West Bengal and Ors.

Mr. Rajendra Banerjee
...for the petitioner

Mr. Suman Sengupta
Mr. Sambuddha Dutta
.....for the State

Affidavit of service filed on behalf of the petitioner is taken on record.

Petitioner applied for Fair Price Shop License (for short, "FPS License") under the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013 vide Vacancy Notice dated 29th August, 2023. Thereafter, petitioner's proposed shop-cum-godown site was inspected and he was called for interview. Interview was held on 1st February, 2024. Since then there was a long silence on behalf of the concerned respondent authorities regarding issuance of FPS license. Accordingly, petitioner submitted an application under the Right to Information Act to the concerned authority on 27th August, 2024. In response to

such application of the petitioner, the authority concerned has replied as follows:-

“Since the applicant’s mother’s sister is an existing FPS dealer and she relationship fails within the definition of ‘relative’, she may be considered ineligible in terms of Clause 10(1) of Part-3 of the vacancy notice”

Learned counsel appearing for the petitioner submits that the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 and the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013 are repealed and in their place new Control Order namely the West Bengal Targeted Public Distribution System (Maintenance and Control) Order, 2024 has been promulgated on 1st August, 2024. In the said Control Order under the category of persons in definition of “relative” i.e. “mother’s sister” has been deleted. He submits that the authority concerned has not considered the new Control Order, 2024. According to learned counsel for the petitioner, if the authority followed the new Control Order of 2024 they should not have cancelled the candidature of the petitioner.

The petitioner has filed the instant writ petition with a specific prayer that purported order of rejection dated 14th June, 2024, as appearing in the reply to the petitioner's application under the Right to Information Act, be set aside and the petitioner's candidature may be considered from the stage of interview.

Learned counsel appearing for the petitioner has placed Clause 68 of the new Control Order, 2024, which is as follows:-

"68. Repeal and savings. –(1) The West Bengal Public Distribution System (Maintenance and Control) Order, 2013 and the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013, are hereby repealed.

(2) Notwithstanding such repeal, -

(a) anything done or any action taken under the said repealed Control Orders shall be deemed to be done or taken under the corresponding provisions of this Order.

.....
"

It is the argument of the learned counsel appearing for the petitioner that since the law has been changed and the relation, which was earlier

prohibited, was again allowed by the present Control Order of 2024; the petitioner's candidature cannot be cancelled. According to the petitioner, since the authority concerned decided the issue after the new Control order, 2024 has come into force, the petitioner has a right to challenge the decision of the authority by virtue of the new Control Order.

Learned Counsel appearing for the State authority has raised objection and has submitted that petitioner has applied for the license in terms of Notification dated 29th August, 2023 under the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013. Clause 10(i) of the said Vacancy Notification (in Part 3) is quoted herein below:-

"10. Following person/ entity shall not be eligible to apply for a license of FPS Dealership, namely –

(I) A person holding a license of FPS dealer or distributor or wholesaler in his name or a person whose relative [as per clause 2(xa) of the WBUPDS (M&C) Order, 2013] already has a FPS dealer or distributor or wholesaler license;

.....
"

Relying on aforesaid provision, learned counsel appearing for the State submits that since petitioner was within the prohibited relationship, that is to say applicant's mother's sister is an existing FPS dealer, her relationship falls within the definition of "relative" as defined in Clause 10(i) of Part 3 of Vacancy Notification dated 29th August, 2023 . He submits that the authority concerned has taken the decision in terms of the Control Order of 2013. He further submits that in terms of repealed and saving provisions of the new Control Order, 2024, the authority concerned has taken the right decision. According to learned counsel for the State, the decision as taken by the authority concerned is according to the statute and such decision cannot be challenged before the Writ Court. It is the further contention of the State authority that due to change of law the petitioner cannot take recourse before a writ court.

In reply, learned counsel appearing for the petitioner submits that since the entire decision of the authority was not brought before this Court, authority concerned may be directed to submit report in pursuance to their decision regarding cancellation of candidature of the petitioner.

Heard the learned counsel appearing for both the parties and perused the new Control

Order being the West Bengal Targeted Public Distribution System (Maintenance and Control) Order, 2024.

It is true that the impugned Vacancy Notification dated 29th August, 2023 was floated under the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013. In terms of Clause 10(i) of Part 3 of the said Vacancy Notification, the petitioner admittedly prohibited under the term “relative” and thus, she was actually an ineligible candidate to apply for the said license.

Furthermore, after taking an interview the concerned Selection Committee has come to an opinion that petitioner cannot be termed as eligible candidate since one of the applicant’s relative has an existing FPS license. The decision was taken on 21st March, 2024 when the old Control Order of 2013 was in force. Thus, it cannot be said that the authority concerned has taken any wrong decision. It appears that the authority has taken the decision correctly in terms of directives of the old Control Order of 2013. The new Control Order of 2024 was promulgated on 1st August, 2024 wherein the definition of “relative” has been changed and truly in terms of the new Control Order the petitioner’s relative, who is an existing

FPS dealer, cannot come under the definition of “relative”.

The petitioner has filed the writ petition with the ground that the change of definition of “relative” may be taken into consideration in deciding her candidature.

Considering the entire matter, It appears that petitioner is trying to take recourse of change of law against the decision which was taken by the authority when the earlier Control Order was in force. In my view, the petitioner cannot challenge the earlier decision of the authority which was made following the relevant statute and change of law cannot permit petitioner to challenge earlier decision of the authority, which is in conformity with the statute.

Hence, the writ petition stands dismissed.

There shall be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Subhendu Samanta, J.)