

17.06.2026
Sl. No.114(DL)
Ct. No.6
srm

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 2008 of 2023

Jiban Barman

Versus

The State of West Bengal & Ors.

Mr. Suman Sehnabis (Mondal),
Mr. Salok Sah,
Ms. Anwisha Chakraborty

...for the Petitioner.

Mr. Jagriti Mishra, AAAG
Ms. Supriya Singh,
Ms. Rajni Singh Dev

...for the State.

Mr. Himadri Sikher Chakraborty,
Mr. Sudip Guha

...for the Respondent No.7.

1. By the present writ petition, the petitioner seeks direction upon the respondent authorities and its men and agents to forthwith cancel/rescind/withdraw and/or revoke the licence of Fair Price Shop (*in short FPS*) in respect of Nalgram Fragment issued in favour of the respondent No.7 in violation of notification under memo no. 650/SCF & S/MTB/2021 dated 2nd December, 2021 and also for cancellation of the enquiry report dated 27th April, 2023 of Sub-Divisional Controller (Food & Supplies), Mathabhanga, Cooch Behar as well as the note-sheets dated 31st March, 2023 and 3rd May, 2023

of District Controller (Food & Supplies), Cooch Behar.

2. The petitioner contends that on 12th November, 2020, the office of the Sub-Divisional Controller (Food & Supplies), Mathabhanga, Cooch Behar issued a vacancy notification *vide* Memo No.736/SCF&S/MTS/2020 inviting applications for filling up vacancies of FPS dealership at Falnapur Chitmahal as well as Nalgram Fragment under Mathabhanga Sub-Division, Mathabhanga, Cooch Behar. Pursuant to such vacancy notification, the petitioner applied for the said dealership and submitted the application in Form C along with the necessary documents on 22nd November, 2021. The previous vacancy notification dated 12th November, 2020 was cancelled and subsequently a fresh notification was issued by the Department of Food & Supplies, Mathabhanga on 2nd December, 2021 *vide* memo no. 650/SCF & S/MTB/2021. The petitioner again applied against notification dated 2nd December, 2021 in the prescribed Form C alongwith all requisite documents. However, on 19th February, 2022 one Bishnupada Adhikary, private respondent no.7 herein, was selected for the dealership of Nalgram Fragment and dealership licence was granted to him. The petitioner challenges such

grant of licence in favour of the respondent No.7 precisely on the ground that brother-in-law of respondent No.7, namely Bhabesh Chandra Barman, being his near relative is having FPS dealership licence which contravenes Clause (i) of Part 3 of the vacancy notification dated 2nd December, 2021. Challenging such grant of dealership licence in favour of respondent no.7, the petitioner has preferred the present writ petition.

3. In an earlier round of litigation being WPA 2884 of 2024, the petitioner raised the similar issue and upon hearing the parties, the Co-ordinate Bench of this Court disposed of the writ petition on 30th November, 2022 with the following direction:

“Upon perusal of the said document and upon considering the notification and the control order, this court is of the view that the allegation made by the petitioner must be probed deeper.

The writ petition is disposed of with a direction upon the District Controller, Food and Supplies, Coochbehar, to treat this writ petition as a representation of the petitioner and dispose of the same, in accordance with law.

While doing so, the petitioner, the respondent no. 7 and Bhabesh Chandra Barman, shall be heard. Both the petitioner and the respondent no. 7 shall be permitted to file documents in support of their individual contentions.

Upon hearing the parties and upon perusing the documents as also the records maintained in the office of the Sub-Divisional Controller, Food and Supplies, Mathabhanga, a reasoned order shall be passed and communicated to all concerned.

If it is found that the allegations are correct, appropriate steps shall be taken, in accordance with law.

The entire exercise shall be completed within a period of six weeks from the date of communication of this order.”

4. Pursuant to such order, the Sub-Divisional Controller (Food & Supplies), Mathabhanga Sub-Division, Cooch Behar, respondent No.6 caused enquiry and submitted its report on 27th April, 2023. It is recorded in the said enquiry report that both Bhabesh Chandra Barman, MR dealer at Patakumari, Unishbisha GP under Mathabhanga Block-II and his wife Kabita Barman denied to have relationship with MR dealer Bishnupada Adhikary and he is not their relative. On the basis of the said enquiry report the District Controller (Food & Supplies), Mathabhanga in its note-sheet dated 3rd May, 2023 concluded that Bishnupada Adhikary and Bhabesh Chandra Barman are not related and the allegation of the petitioner in the earlier writ petition is not sustainable.
5. Ms. Suman Sehanabis (Mondal), learned Advocate for the petitioner submits that clause (i) Part 3 of notification dated 2nd December, 2021 provides that a person holding the licence of FPS dealer or distributor or wholesaler in his name or person whose relative already has FPS dealership or distributorship or wholesaler licence shall not be eligible to apply for the licence of FPS dealership. Thus, notification dated 2nd

December, 2021, clearly puts an embargo in issuance of licence of FPS dealer or distributor or wholesaler in the name of a person who is holding a licence or whose relative is holding FPS dealer or distributorship of wholesaler licence. As per clause 2(xa) of West Bengal Public Distribution System (Maintenance & Control) Order, 2013 (*hereinafter referred to as 'Control Order, 2013*), sister, her spouse, son or daughter are included within the definition of relative. The brother-in-law of respondent No.7, namely Bhabesh Chandra Barman, a near relative as per definition under 2(xa), is holding FPS dealership licence. Therefore, the grant of FPS dealership licence in favour of respondent No.7 contravenes clause (i) Part 3 of notification dated 2nd December, 2021. She seeks for specific direction upon the respondent No.4, District Controller (Food & Supplies), Cooch Behar to forthwith cancel the FPS dealership licence issued in favour of respondent No.7.

6. On the contrary, Mr. Himadri Sikher, Chakraborty, learned Advocate appearing for the respondent No.7 submits that once a Hindu female is married, she becomes the member of the family of the husband and her ties with the parental family is severed. Therefore, the grant of licence in favour of respondent No.7 dated 20th

September, 2022 cannot be set aside or cancelled on the ground that the brother-in-law is holding FPS licence, since the sister now belongs to her husband's family and not in the family of her parents. The definition of relative, as provided under clause 2(xa) of the Control Order, 2013 is not happily drafted. To buttress his contention, he relies on a decision of Hon'ble Division Bench of this Court passed in **Smt. Mousumi Das Maity versus State of West Bengal & Ors.** reported in **2009(1) CLJ (Cal) 615**. Further as per the enquiry report of respondent no. 6, Sub-Divisional Controller (Food & Supplies), Mathabhanga and the note-sheet of respondent no.4, District Controller (Food & Supplies), Cooch Behar it is conclusive that there is no relation between respondent no.7 and Bhabesh Chandra Barman. Such fact has also been stated by respondent no.6 in its report in the form of affidavit dated 15th December, 2023 filed before the court. Therefore, the allegation made in the writ petition that a near relative of respondent no.7 is holding FPS licence and as such his licence should be cancelled is not tenable in law. He seeks for dismissal of the writ petition.

7. Mr. Jagriti Mishra, learned Assistant Additional Advocate General for State submits that

respondent No.7, Bishnupada Adhikary has denied any relation with one Kabita Barman. At the same Kabita Barman and her husband Bhabesh Chandra Barman has denied and disputed of having any relationship with respondent no.7, Bishnupada Adhikary. Such disputed questions of fact cannot be decided in a writ petition and is to be decided before the Civil Court.

8. Upon hearing learned Advocates for the respective parties, the question which falls for consideration is whether the grant of licence in favour of respondent No.7 is in contravention of notification under memo no. 650/SCF & S/MTB/2021 dated 2nd December, 2021 or not.
9. In order to examine the aforesaid issue, it will be profitable to reproduce Part 3 of the notification dated 2nd December, 2021 as follows:

“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 WBPDS (M&C) Order 2013] already has a FPS dealer or distribution or wholesaler license,*
- (ii) A member of local bodies local authority, Panchayati Raj Institutions, board or corporation, or Member of legislative Assembly or a Member of Parliament during his tenure in such capacity,*
- (iii) A minor or person of unsound mind or an insolvent.*
- (iv) A person convicted by the court under the EC Act or in any other criminal proceeding connected with Essential Commodities.*
- (v) A person holding a post in the establishment of any State Government or Central Government or any authority or body or institution of Local self*

government established or constituted by or under the Constitution or by any other law made by the parliament or a State Legislature or by notification issued or order made by the Central Government or State Government.

(vi) A Limited Liability Partnership,

(vii) A corporation or company”

10. Upon bare reading of Clause (i) of Part 3 of the said notification dated 21st December, 2021, it manifests that person holding a licence of FPS dealer or distributor or wholesaler in his name or a person whose relative [as per clause 2(xa) of the WBPDS(M&C) Order, 2013] already has a FPS dealer or distributor or wholesaler licence will not be eligible to apply for licence of FPS dealership.

11. Clause 2(xa) of the Control Order, 2013 provides definition of relative as hereunder:

“2(xa) "relative" includes the family member and the following kin:

(i) son's son or daughter;

(ii) daughter's spouse, son or daughter;

(iii) brother, his spouse, son or daughter;

(iv) sister, her spouse, son or daughter;]

(v) parents brother or sister;

(vi) spouse brother or sister:”

12. Thus clause (iv) of 2(xa), includes sister, her spouse, son or daughter in the definition of relative.

13. The petitioner contends that respondent No.7 is the brother of one Kabita Adhikary whose husband Bhabesh Chandra Barman is holding an FPS licence, i.e. sister's spouse is having an FPS dealership licence and therefore, the grant of

FPS dealership licence in favour of respondent No.7 contravenes clause (i) Part 3 of notification dated 2nd December, 2021.

14. Now it is to be examined whether the respondent No.7 has got any relationship with Kabita Barman and Bhabesh Chandra Barman or not.
15. Pursuant to order passed in WPA 2884 of 2022, an enquiry report was prepared and submitted by the Sub-Divisional Officer dated 27th April, 2023. Upon going through the aforesaid enquiry report, it is found that the authority concerned recorded the statement of respondent No.7 who has denied to have any relationship with MR or S.K oil dealer and in support he also submitted an affidavit executed before the 1st Class Judicial Magistrate, Mathabhanga. It is recorded in the said enquiry report that both Bhabesh Chandra Barman, MR dealer at Patakumari, Unishbisha GP under Mathabhanga Block-II and his wife Kabita Barman denied to have relationship with MR dealer Bishnupada Adhikary and he is not their relative. On the basis of the said enquiry report the District Controller (Food & Supplies), Mathabhanga in its note-sheet dated 3rd May, 2023 concluded that Bishnupada Adhikary and Bhabesh Chandra Barman are not related and the allegation of the petitioner in the earlier writ petition is not sustainable. Be that as it may, in

the present writ petition, report in the form of affidavit is filed by respondent No.6, Sub-Divisional Controller (Food & Supplies), Mathabhanga Sub-Division, Cooch Behar. In paragraph no. 3 of the said report, it has been stated that as per the office record there is no relationship between Kabita Barman and the private respondent No.7, Bishnu Pada Adhikary. However, the Sub-Divisional Officer in the said report in subsequent paragraph no. 6 stated that pursuant to an RTI application filed by the petitioner in its office, he enquired the matter and collected the data and information from ration card register of Ex-Fair Price Shop dealer Niamuddin Mia, near local resident of late Girishankar Adhikary, wherefrom it appeared that Kabita Barman and private respondent No.7 are daughter and son of the late Girishankar Adhikary and such information obtained and collected satisfy the query of the said RTI application.

16. Pursuant to order dated 13th December, 2023 passed in the writ petition report is submitted by respondent No.6, Sub-Divisional Controller (Food & Supplies), Mathabhanga Sub-Division, Cooch Behar vide Memo No.560/SCF&S/MTB/2023 dated 14th December, 2023. It is stated therein that Bishnupada Adhikary and Kabita Barman

both are son and daughter of Girishankar, Adhikary as is evident from RC register of Ex-FPS dealer Naimuddin Mia. Further Annexure P/3 to the report (typed copy of which is available at page 9) also shows that Kabita Adhikary and Bishnupada Adhikary are daughter and son of Girishankar Adhikary. Thus, though in paragraph no.3 of the report it has been stated by respondent no.6 that as per the office record there is no relationship between Kabita Barman and private respondent No.7, Bishnupada Adhikary but that statement is without any basis inasmuch as the document annexed by the deponent in the said report speaks otherwise. Considering the document annexed to the report it appears that the fact stated in paragraph no.6 pertaining to relation of respondent no.7 and Kabita Adhikary is found to be the true and correct state of affairs. Thus, it seen from the above materials on record that respondent no.7, Bishnupada Adhikary and Kabita Adhikary are son and daughter of Girishankar Adhikary and hence are in the relation of brother and sister. It is not in dispute that Kabita Adhikary is married to Bhabesh Chandra Barman and such fact is evident from the voter's list at page 70 of the writ petition.

17. Further in the light of the above findings, the argument of the State-respondents that since the relationship is a denied and disputed the same cannot be adjudicated by a writ court does not stand to reason.

18. It is not in dispute that brother-in-law (sister's spouse) of the respondent No.7 namely Bhabesh Chandra Barman is holding an FPS licence. Such being the position, the grant of licence in favour of respondent No.7 contravenes clause (i) of Part 3 of notification dated 2nd December, 2021 which provides that a person who is 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 WBPDS (M&C) Order 2013] already has a FPS dealer or distribution or wholesaler license, shall not be eligible to apply for a license of FPS Dealership.

19. In *Mousumi Das Maity (supra)* the writ petitioner challenged the order of the learned trial Judge rejecting the challenge to the selection of a candidate for the post of 'Auxilliary Nurse-cum-midwife'. In the writ petition the petitioner applied for a vacancy of the said post in Gangapur Sub-centre contending that though she is a housewife but she a resident of her matrimonial home for the last ten years which is within the jurisdiction of the said post. On the

backdrop of such fact court observed that the *gotra* and residence of the Hindu female automatically changes to husband's family. It is found that the facts of the cited decision contextually distinguishable from the case at hand and therefore is not applicable.

20. In view of the above discussion, the enquiry report dated 27th April 2023 of respondent no.6, Sub-Divisional Controller (Food & Supplies), Mathabhanga, Cooch Behar as well as the note-sheet dated 3rd May, 2023 of respondent no.4, District Controller (Food & Supplies), Cooch Behar is set aside.
21. Consequently, respondent No.4, the District Controller (Food and Supplies), Cooch Behar is directed to issue order cancelling the FPS dealership licence issued on 20th September, 2022 in favour of the respondent No.7, Bishnupada Adhikary in respect of Nalgram Fragment under Mathabhanga Sub-Division within a period of eight weeks from the date of communication of this order.
22. Prior to issuing such order of cancellation, respondent No.4, District Controller (Food & Supplies), Cooch Behar shall ensure that the Public Distribution System in Nalgram Fragment is not affected by such cancellation and make necessary arrangements in such regard till the

vacancy pertaining to Nalgram Fragment is notified by it for grant of FPS licence.

23. Learned Advocate for the petitioner is directed to communicate this order to the respondent No.4, District Controller (Food & Supplies), Cooch Behar, for necessary compliance.
24. With the above direction, the writ petition being **WPA 2008 of 2023** stands disposed of.
25. Interim order, if any, stands vacated.
26. All connected applications, if any, stand disposed of.
27. There shall be no order as to costs.
28. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.
29. Urgent Photostat certified copy of the order, if applied for be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)