
(2019) 03 CAL CK 0025

In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) No. 1339, 1340, 1341, 1344 Of 2018 With
CAN No. 9180, 9688, 9690, 9692 Of 2018

Gitashree Dutta (Dey)

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

National Food Security Act 2013 — Section 8, 2, 9, 9(1), 10, 10(1)(b), 24(5), 24(5)
(c), 25, 26

Essential Commodities Act, 1955 — Section 3, 3(1)

West Bengal Public Distribution System Mtc. And Control Order, 2013 — Section 20, 26
Constitution Of India, 1950 — Article 21, 47

Citation : (2019) 03 CAL CK 0025

Hon'ble Judges : Soumen Sen, J; Ravi Krishan Kapur, J

Bench : Division Bench

Advocate : Debabrata Saha Roy, Supriyo Chattopadhyay, Susovan Sengupta,
Subir Pal, Manas Sadhu, Amitesh Banerjee, Tarak Karan, Jahar Lal Dey, Smita
Das Dey

Final Decision : Disposed Off

Judgement

Soumen Sen, J

Four appellants aggrieved by a common order passed on 24th August, 2018 have filed four separate appeals against the said judgment. The learned Single Judge has dismissed the writ applications on the ground that the State was justified in recalling the declaration of vacancy in view of implementations of the National Food Security Act, 2013.

Since all the four appeals involve similar issues, the judgment in MAT 1341 of 2018 [Gitashree Dutta (Dey) Vs. State of West Bengal & Ors.] would govern the remaining three appeals.

Shorn of details, the petitioner pursuant to an advertisement issued in the newspaper on 1st February, 2014, inviting applications from eligible candidates

for appointment of Modified Ration Dealer (in short "M.R. Dealer") at Ajoynagar, Raichanga Gram Panchayat II, Falakata Gram Panchayat, Falakata II Block, District - Alipurduar submitted his application. The petitioner has stated that he is an eligible candidate. He has constructed shop-cum-godown in the said location. He has financial capability and he fulfils other eligibility criteria required for the appointment of a dealer. He had submitted an application pursuant to the vacancy declared on 30th January, 2014. The Sub-Divisional Controller (F&S) Alipurduar after receiving the said application made enquiries; the Area Inspector conducted a detailed enquiry including spot verification of the proposed shop of all the candidates, and thereafter submitted a detailed report before the Sub-Divisional Controller (F&S) Alipurduar recommending the case of the petitioner. The Sub-Divisional Controller (F&S) Alipurduar thereafter prepared the comparative statement in respect of vacancy at Ajoynagar, Raichanga Gram Panchayat, Falakata II, Falakata Block. The comparative statement prepared by the said officer would show that the petitioner was recommended as the first priority candidate in respect of the said vacancy. On 29th August, 2014, the authorities addressed a letter to the petitioner requiring him to fulfil certain criteria including a bank balance of Rs.5 lakh. The petitioner complied with the said criteria. Thereafter, the said Sub-Divisional Controller (F&S) on 24th November, 2014 submitted his report regarding the said new Fair Price Shop at Ajoynagar to the District Controller. The District Controller, in turn, on 18th December, 2014 forwarded the said memo dated 10th December, 2014 to the District Magistrate, Alipurduar for perusal and if found suitable the same may be approved so that the file can be forwarded to the District Distribution Procurement and Supply Food and Supply Department (in short "DDP&S Department") for next course of action. The petitioner contends that the entire paper was submitted to the DDP&S Department who in turn also recommended the name of the petitioner against the subject vacancy at Ajoynagar and forwarded the same to the Government Food and Supply Department for necessary approval. The Principal Secretary, Food and Supply Department is also claimed to have accorded approval regarding the selection of the petitioner as a Fair Price Shop Dealer at Ajoynagar. However, on 17th August, 2015, to the utter shock and surprise to the petitioner the impugned notification dated 17th August, 2015 was issued by the Joint Secretary, Government of West Bengal, Food and Supply Department, whereby the vacancy invited on 30th January, 2014 in pursuance of approval of the Government in Food & Supplies vide Memo no. 152-FS dated January 20, 2014 was recalled. The impugned memo dated 17th August, 2015, was ostensibly issued on the ground of implementation of National Food Security Act, 2013 ("NFSA").

This memo by which the vacancy was cancelled on the ground of implementation of NFSA 2013 was the subject-matter of challenge in the writ petition in which the impugned order was passed.

Before we advert to the submissions made on behalf of the parties, we would like to refer to the stand taken by the respondent nos. 5 and 6 namely the District

Controller (F&S), Alipurduar and the Sub-divisional Controller (F&S), Alipurduar District - Alipurduar (previously Jalpaiguri) in their affidavit filed before the learned Single Judge. Apart from the said two respondents, no other respondents namely, the Secretary, Food and Supplies Department, Government of West Bengal, Commissioner of Food and Principal Secretary, F&S Department Government of West Bengal, Director District Procurement and Supply (F&S) Department and O.S.D. & E.O., Joint Director and License, Directorate of DDP&S (F&S) Department Government of West Bengal, has filed any affidavit.

In the affidavit-in-opposition, the said respondents have stated that a proposal was sent by the Sub-divisional Controller (F&S) Food and Supplies Alipurduar to the District Controller of Food and Supplies Jalpaiguri vide memo no. 29793 dated 21st June, 2010, for creation of vacancy of M.R. Shops at Ajoynagar, Raichanga Gram Panchayat, Falakata II, along with nine other proposals which were subsequently sent to the Director, DDP&S Food and Supply Department vide District Controller of Food Supplies Jalpaiguri Food memo no. 2167/1(1) dated 22nd June, 2010. The National Food Security Act, 2013 came into force on the 5th July, 2013. Following the provisions laid down in section 10 of the NFSA 2013, the Government of West Bengal issued notification vide No. 1913-FS dated 11.08.2014 for identification of households to be covered under "Antyodaya Anna Yojana" (AAY) and Priority households. The said proposed vacancy was approved by the Food and Supplies Department vide Memo No. 152-FS dated 20.01.2014 and accordingly vacancy notice of the above noted place were issued by the Sub-Divisional Controller, Food and Supplies, Alipurduar vide Memo No. 403 dated 30.01.2014. The notice for filling up of fair price shop was also published in a local newspaper "Uttar Banga Sanbad" dated 01.02.2014 by the Sub-Divisional Controller, Food and Supplies, Alipurduar. The approval of the vacancy of the fair price shop at Ajoynagar, Raichanga Gram Panchayat, Falakata-II, Falakata Block was accorded by the Department of Food and Supplies.

There were number of applicants who had filed their applications along with requisite documents for the subject vacancy. The writ petitioner was one of them. The Sub-Divisional Controller, Food and Supplies, Alipurduar enquired and verified all the applications including the papers and documents submitted before him by the applicant for the said subject vacancy of Fair Price Shop at Ajoynagar, Raichanga Gram Panchayat, Falakata-II, within Block Falakata and prepared a comparative statement and sent the same to the Divisional Controller, Food and Supplies, Alipurduar along with all relevant documents.

The Divisional Controller, Food and Supplies, Alipurduar in his turn again sent the entire file to the Director, D.D.P & S again sent the entire file to the Director, D.D.P & S with his comments and recommendations of the District Magistrate, Alipurduar vide memo No. 23/ESTD/DCF&S/ APD/14 dated 19/12/2014 regarding the next course of action. The said vacancy was cancelled by the notification issued by the Joint secretary, Food and Supplies Department, Government of West Bengal vide Memo No. 2643-FS/O/Sectt/Food/6F-82/2015 dated

17/08/2015 in view of the implementation of provisions of National Food Security Act, 2013.

We are not referring to vacancy notice published on 17th October, 2015 in relation to few tea gardens as the writ petitioner has fairly submitted that the writ petitioner has no grievance to such vacancy notice. The said vacancy notice was referred to in the writ petition only to show that the eligibility criteria as indicated in the notification dated 17th October, 2015, with regard to arrangement of godown and financial arrangement have been substantially relaxed.

However, since this is not the main issue on which the impugned order has been challenged, we need not have to dilate on the said issue.

Mr. Debabrata Saha Roy, the learned Senior Counsel appearing on behalf of the appellant, has argued that the ground for recalling of the vacancy is on extraneous consideration and not on the basis of the stated ground, namely, for implementation of National Food Security Act, 2013. It is submitted that the National Food Security Act, 2013 was published in the gazette on 10th September, 2013. The said Act came into force on and from 5th July, 2013. The declaration of vacancy was notified in the Calcutta Gazette on 30th January, 2014 and until the impugned notification dated 17th August, 2015 was issued, the authorities have taken various steps including processing application filed by the candidates and preparation of a list of candidates on the basis of their eligibility criteria. Mr. Saha Roy has referred to the note sheet prepared by the office of the District Controller Food and Supply, Alipore and the communication dated 24th November, 2014 made to the District Controller by the Sub-Divisional Controller by which name of 28 candidates with the enquiry reports along with comparative statement along with other related documents were forwarded for consideration and taking necessary action. Mr. Saha Roy has submitted that the note sheet would show that the matter was submitted to the District Magistrate for her perusal and if found suitable the District Magistrate was requested to approve the same and forwarded the file to the Director DDP&S for next course of action. All these actions clearly show that the respondent authorities proceeded with the selection after coming into force of NFSA 2013. It is submitted that the reference to the purported notification dated 11th August, 2014 which was not disclosed in the affidavit would not justify recalling of vacancy notification and the licence did not disclose that the same was for "Antyodaya Anna Yojana (AAY) and Priority Households". It is submitted that the existing license also deals with and includes Priority Households (PHS), Special Priority Households (SPHS), Rajya Khadya Suraksha Yojana (RKSJ-I) and Rajya Khadya Suraksha Yojana (RKSJ-II). Mr. Saha Roy submits that at the time of the notification in the petitioner's case there was mentioning of AAY, BPL (below poverty line) and APL (above poverty line).

Mr. Saha Roy has referred to Section 24(5)(c) of the National Food Security Act, 2013 and submits that for implementation and monitoring of schemes for

ensuring food security, the State is required to establish institutionalised licensing arrangements for fair price shops in accordance with the relevant provision of the Public Distribution System (Control) Order 2001 made under the essential commodities act, 1955 (10 of 1955) as amended from time to time. It is submitted that in implementation of the said provision vacancy notice was issued for appointment of fair price shops dealer. The relevant provisions of Public Distribution System (Control) Order 2001 requires that for dealership, the dealer must have bank balance of Rs.5 lakh as working capital, the size of the godown should be minimum 400 sq. ft. along with a covered space of 200 sq. ft. adjacent to the godown to be used for office purpose and for fair price shop automation a shed in front of the shop that can accommodate at least 20 people who might wait in queue and the godown must be well ventilated pucca structure with concrete floor. The petitioner has fulfilled all the aforesaid obligations and in fact, in the list prepared by the authorities concerned the name of the petitioner no.1 has appeared at the top and she was found to be the most suitable candidate and is first in the priority list.

Mr. Saha Roy submits that the Government Notification no. 1706-FS/Sectt./Food/4P-09/2012 (Pt.II) would show that the applicants for dealership must have bank balance of Rs.5 lakh as working capital as reflected on the day of application and one year preceding the date of application. This is one of the conditions mentioned in the communication being Memo No.5167/1(1) dated 29th August, 2014 issued by the Sub-Division Officer, in reference to the application made by the writ petitioner for MR dealership. In the said communication the Sub-Division Officer referred to two Government orders being G.O. No. 1706-FS/Sectt./Food/ 4P-09/2012 (Pt.II) dated 21st July, 2014 and G.O. No. 1707-FS/Sectt./Food/4P-09/2012 (Pt.II) dated 21st July, 2014. It is submitted that the conditions required to be fulfilled for appointment of a fair price shop in the vacancy notice is an amalgam of the said two government orders. The said notifications have been issued after the National Food Security Act, 2013 has come into operation. The respondent authorities have accordingly proceeded under Section 24(5)(c) of the National Food Security Act, 2013 and, therefore, the reasons shown for withdrawal of the vacancy notice is unfair, mala fide and in colourable exercise of power.

Mr. Saha Roy has submitted that the writ petitioner has a legitimate expectation that they should be fairly treated and even if a candidate may not have the vested right of getting appointment, it is the duty and obligation of the State to act fairly and not arbitrarily. The decision not to fill up the vacancy must be bona fide and for justifiable and appropriate reasons. In this regard the learned Counsel has relied upon a decision of the Hon'ble Supreme Court in LT. CDR. M. Ramesh v. Union of India and Ors. reported at AIR 2018 SC 1965.

Mr. Saha Roy has also referred to a recent unreported Division Bench decision of our Court in State of West Bengal and Ors. vs. Nihar Biswas & Ors. decided on 12th October, 2018 (C.A.N. 10110 of 2017, C.A.N. 3206 of 2018 in F.M.A. 1615

of 2018) for the proposition that a decision on the part of the Government not to fill up the advertised vacancy should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Mr. Saha Roy has in particular referred to paragraphs 37, 39 and 40 of the said decision.

Mr. Saha Roy concludes his argument by submitting that the impugned notification is required to be quashed as it is arbitrary and there is no justification to recall the vacancy.

Per contra Mr. Sengupta the learned Counsel representing the State has submitted that there is no mala fide and/or unreasonableness in the decision to recall the vacancy notice as the said recalling was necessitated for implementation of National Food Security Act, 2013. Mr. Sengupta has referred to Section 10 of the NFS, 2013 and submits that in terms of the said provision the State Government is required to prepare guidelines and to identify priority household for rural and urban areas. The State Government would be required to identify the households to be covered under the Antyodaya Anna Yojana and the remaining household as priority household to be covered under the targeted public distribution system in accordance with such guidelines as the State Government may specify. Mr. Sengupta submits that following the provisions laid down in Section 10 of NFS Act, 2013 the Government of West Bengal issued notification vide no. 1913-FS, dated 11.08.2014 for identification of households to be covered under Antyodaya Anna Yojana and priority households. The said proposed vacancy was approved by the Food and Supplies Department vide memo no. 152-FS dated 20.01.2014 and accordingly vacancy notice of the above noted place was issued by the Sub-Divisional Controller, Food and Supplies, Alipurduar vide memo no. 403 dated 30.01.2014. The said vacancy was cancelled by the notification issued by the Joint Secretary, Food and Supplies Department Government of West Bengal vide memo no. 2643-FS/Sectt/Food/6F-82/2015 dated 17.08.2015 in view of the implementation of provisions of National Security Act, 2013.

Mr. Sengupta submits that no vested right is created in favour of the writ petitioner the name of the petitioner is appearing in the list. Moreover, by reason of the implementation of NFS Act, 2013 the respondents have taken a policy decision and there is no infirmity in the notice dated 17th August, 2015 by which the vacancy was cancelled. The learned Counsel has referred to an unreported

Division Bench decision in MAT 201 of 2016 (Kultali Food Marketing Pvt. Ltd. vs. Barun Ghosh and Ors.) and FMA 2272 of 2016 (State of West Bengal and Ors. vs. Barun Ghosh and Anr.) dated 25th September, 2018 for the proposition that mere notings in the file does not create any legal right to the petitioner for appointment.

In order to appreciate the rival submission, it is necessary to refer to some of the provisions of the NFSA, 2013. The said legislation was long overdue. The right to life enshrined in Article 21 of the Constitution of India means the right to live

with dignity. It is the duty of the nation both Central and State to ensure that people of the nation does not die of hunger. "Life" in Article 21 does not mean mere animal existence. It embraces livelihood and everything that makes life worth living. It includes the right to live with dignity; and free of starvation. In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are bare basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights or Convention or under the Constitution of India cannot be exercised without these basic human rights. (See. Chameli Singh v. State of U.P. reported at (1996) 2 SCC 549 and Narinderjit Singh Sahni v. Union of India reported at (2002) 2 SCC 210.) "We the people of India" in the Preamble and various other provisions of our Constitution mandate the government to fulfil the aspiration of its citizens and to ensure that they live with dignity. Food and nutritional security is a mandate of the Constitution. The Statement of Objects and Reasons of the NFSA, 2013 refers to Article 47 of the Constitution of India which, inter alia, provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of the public health as among its primary duties. This is also in consonance with the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights, to which India is a signatory. It recognises the right of every individual to adequate quantity and quality of food. Everyday we find children are dying of starvation or malnutrition whereas food is wasted or hoarded by unscrupulous businessman trying to make illegal and unlawful gain. The existing regulatory measures have failed to ensure food for all. It remained an illusion. Government regulations were ineffective and profiteering by unscrupulous businessmen flourished. It is painful that even after 65 years of independence, we have failed to eradicate poverty. Every human being has a right to adequate nutritional food. It is important for intellectual development of a child. This Act casts responsibilities on all State parties to recognise the right of everyone to adequate food. Eradicating extreme poverty and hunger is one of the goals under the Millennium Development Goals of the United Nations.

The National Food Security Bill, 2013, inter alia, has the following salient features:-

"(e) require the State government to identify and provide meals through the local anganwadi, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II, and implement schemes covering entitlements of women and children in accordance with the guidelines, including cost sharing, between the Central Government and the State Governments in such manner as may be prescribed by the Central

Government.

(f) entitle the eligible persons under Chapter II of the proposed legislation, to receive such food security allowance from the concerned State Government to be paid to each person, in case of non-supply of the entitled quantities of foodgrains or meals, within the time and manner prescribed by the Central Government.

(g) provide subsidised foodgrains under the Targeted Public Distribution System to specified percentage of rural and urban population, at the all India level and empower the Central Government to determine the State wise percentage coverage.

(h) enable the State Government to prescribe guidelines for identification of priority households, for the purposes of their entitlement under the proposed legislation and identify such households and the households to be covered under the Antyodaya Anna Yojana, in accordance with guidelines applicable to the scheme."

The NFSA, 2013 has come into force on 5th July, 2013, in recognition of the right to live as a human being with dignity. Section 2 of the said Act is the definition clause. Amongst various things, it defines "eligible household", "fair price shop", "foodgrains", "food security allowance", "local authority", "priority household" and "targeted public distribution system". The said definitions are relevant for the present purpose. The said definitions are stated thus:-

"2(3) - "eligible households" means households covered under the priority households and the Antyodaya Anna Yojana referred to in sub-section (1) of Section 3.

2(4) - "Fair price shop" means a shop which has been licensed to distribute essential commodities by an order issued under Section 3 of the Essential Commodities Act, 1955 (10 of 1955), to the ration card holders under the Targeted Public Distribution System;

2(5) - "Foodgrains" means rice, wheat or coarse grains or any combination thereof conforming to such quality norms as may be determined, by order, by the Central Government from time to time;

2(6) - "food security" means the supply of the entitled quantity of foodgrains and mean specified under Chapter II;

2(7) - "food security allowance" means the amount of money to be paid by the concerned State Government to the entitled persons under Section 8;

2(8) - "local authority" includes Panchayat, municipality, district board, cantonment board, town planning authority and in the States of Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura where Panchayats do not exist, the village council or committee or any other body, by whatever name called, which is authorised under the Constitution or any law for the time being in force for self-governance or any other authority or body vested with the control and

management of civic services, within a specified local area;

2(14) - "priority households" means households identified as such under Section 10;

2(23) - "Targeted Public Distribution System" means the system for distribution of essential commodities to the ration card holders through fair price shops;"

Chapter IV of the NFSA, 2013 envisaged identification of the eligible households. Section 10 casts an obligation on the State Government to prepare guidelines and to identify priority households. The said Section reads:-

"10. State Government to prepare guidelines and to identify primary households:

1. The State Government shall, within the number of persons determined under Section 9 for the rural and urban areas, identify-

a) the households to be covered under the Antyodaya Anna Yojana to the extent specified under sub-section (1) of Section 3, in accordance with the guidelines applicable to the said scheme;

b) the remaining households as priority households to be covered under the Targeted Public Distribution System, in accordance with such guidelines as the State Government may specify:

Provided that the State Government may, as soon as possible, but within such period not exceeding three hundred and sixty five days, after the commencement of the Act, identify the eligible households in accordance with the guidelines framed under this sub-section:

Provided further that the State Government shall continue to receive the allocation of foodgrains from the Central Government under the existing Targeted Public Distribution System, till the identification of such households is complete.

(2) The State Government shall update the list of eligible households, within the number of persons determined under Section 9 for the rural and urban areas, in accordance with the guidelines framed under sub-section

(1)."

Thus, first proviso to Section 10(1)(b) requires the State Government within such period not exceeding 365 days after the commencement of the Act to identify eligible households in accordance with the guidelines framed under the said sub-section.

Section 3 refers to right to receive food grains at subsidised prices by persons belonging to eligible households under the Targeted Public Distribution System. The said section mentions the quantity of food grains to be received per person per month at subsidized prices from the State Government under the Targeted Public Distribution System. It also separately refers to the entitlement of households covers under Antyodaya Anna Yojana. Chapter IX of NFSA, 2013

casts a responsibility upon the State Government for implementation and monitoring of the schemes of various Ministries and Departments of the Central Government in accordance with the guidelines issued by the Central Government for each schemes and their own schemes, for ensuring food security to the direct beneficiaries in their State. For efficient operations of the targeted public distribution system, every State Government in terms of Section 24(5) shall:-

"(a) Create and maintain scientific storage facilities at the State, District and Block levels, being sufficient to accommodate foodgrains required under the Targeted Public Distribution System and other food bases welfare schemes.

(b) suitably strengthen capacities of their Food and Civil Supplies Corporations and other designated agencies.

(c) establish institutionalised licensing arrangements for fair price shops in accordance with the relevant provisions of the Public Distribution System (Control) Order, 2001 made under the essential Commodities Act, 1955 (10 of 1955), as amended from time to time."

The local authorities under Sections 25 and 26 are responsible for the proper implementation of the Act in their respective areas. The local authorities shall be responsible for discharge such duty and responsibility as may be assigned to them by notification of the respective State Government.

The argument of Mr. Saha Roy that the vacancy notice was for appointment of MR Dealers for fair price shops in terms of Section 24(5)(c) cannot be ignored. The vacancy notice was published on 30th January, 2014 almost after six months after NFSA, 2013 came into operation. The authorities require

the applicants to fulfil all the conditions laid down in the notification no. 1706-FS/Sectt./Food/4P-09/2012(Pt.II) dated 21st July, 2014 and 1707-FS/Sectt./Food/4P-09/2012(Pt.II) dated 21st July, 2014. The said two notifications are reproduced below:

"No.1706-FS/Sectt./Food/4P-09/2012 (Pt.-II) Date:21.07.2014 Consequent upon issue of West Bengal Public Distribution System (M& C) Order 2013, while determining the eligibility of an applicant for engagement as a Dealer/Distributor, it has become necessary and expedient to adopt a suitable guideline in respect of working capital/financial capacity of the applicants required for smooth running of FPS/Distributorship in the State.

Now, therefore, in exercise of the powers conferred under Section 3 of the EC Act, 1955 and in cancellation of all previous orders and circulars on this subject, the Governor is pleased hereby to make the following guideline, inter alia, in respect of working capital/financial capacity at the time of filing application for engagement as Dealer/Distributor under Section 20/ under Section 26 of the West Bengal Public Distribution System (M & C) Order, 2013.

1. Applicants for Dealership must have bank balance of Rs.5.0 Lakh as working

capital as reflected on the day of application and one year preceding the date of application.

2. Applicants for Distributionship must have bank balance of at least Rs.50.0 lakh as working capital as reflected on the day of application and one year preceding the date of application.

This Order shall also be applicable while processing vacancies for which enquires may be ongoing or complete but have not been approved by the Department for engagement or issue of licence."

"No.1707-FS/Sectt./Food/4P-9 (Pt.-II) Date: 21.07.2014.

In view of coming into force of the West Bengal Public Distribution System (M & C) Order, 2013 and its subsequent amendment vide No. 1284-FS/Sectt./Food/4P-09/2012 dtd. 06.06.2014 published in Kolkata Gazette, and in keeping with various reforms undertaken by the Department for safe and scientific storage of food grains to be utilized under PDS it has become necessary and expedient to adopt a uniform policy in respect of specification of storage godowns both for FPS and Distributors.

Now, therefore, in exercise of the powers conferred by Section 3 of the EC Act, 1955, the Governor is pleased hereby to make the following guidelines to be followed while inviting applications for new licences and in case of renewal of licences. The existing dealers/distributors shall also upgrade their godowns accordingly within 6 (six) months from the date of issue of this order.

F.P.S. (Fair Price Shop)

1. The size of the godown should be minimum 400 sq. ft. along with a covered space of 200 sq. ft. adjacent to the godown to be used for office purpose and for FPS automation.
2. There must be a shade in front of the shop to accommodate at least 20 people who may wait in the queue in consonant with point 23, NB-1 of 'Form C' of the W.B.P.D.S (M&C) Order, 2013.
3. The Godown must be a well-ventilated pucca structure with concrete floor.

Distributor

1. The size of the godown should be to accommodate at least 1100 MT of food grains along with a space of 25% for provision of alleys in between the stacks of different commodities with view to keeping the stock of each commodity separately and neatly arranged for easy identification. There must be a covered space 200 sq. ft. adjacent to the godown to be used for office purpose as well as for computer operations.
2. The minimum height of the godown should be 15 feet high.
3. The Godown must be a well-ventilated pucca structure with concrete floor.

4. Equivalent Insurance coverage should be there to cover the loss of food grains due to any natural or manmade disaster.

This order shall also be applicable while processing vacancies for which enquiries may be ongoing or complete but have not been approved by the Department for engagement or issue of licence."

The vacancy notice was for appointment of MR Dealer at Ajoy Nagar. A preference was given to Self-Help Groups, especially woman Self-Help Groups.

The communication made by the Sub-Divisional Controller on 29th August, 2014 refers to Government Orders vide G.O. No. 1706-FS/Sectt./Food/4P-09/2012(Pt.II) dated 21st July, 2014 and G.O. No. 1707-FS/Sectt./Food/4P-09/2012(Pt.II) dated 21st July, 2014. This procedure in our view was for effective operations of the Targeted Public Distribution System. The said system means the system for distribution of essential commodities to the ration card holders through fair price shops. The Government wanted to establish institutionalized licensing arrangement for fair price shops, in accordance with the provision of the Public distribution system (Control) Order, 2001 made under the Essential Commodities Act 1955 (10 of 1955) as amended from time to time.

All the applications were processed in terms of the aforesaid Control Order and Notification and a list of the candidates thereafter has been prepared in which the name of the petitioner appears at the top. The affidavit in opposition does not say that the petitioner is ineligible. It also admits that the approval of the vacancy was for a fair price shop at Ajoy Nagar. The affidavit in opposition shows that on 24th November, 2014, the list of the candidates with the comparative statement was forwarded to the District Controller who in turn has submitted the said list to the District Magistrate. In the writ petition in paragraph 11 it has been categorically stated that entire paper was submitted to the Director, DDP&S for consideration and DDP&S in turn recommended the name of the petitioner against the said vacancy and forwarded it the same to be governed Food and Supplies Department for necessary approval and the Principal Security of Food and Supplies Department and thereafter agreed government approval regarding the selection of the petitioner as fair price shop dealer. This assertion has not been denied in the affidavit in opposition. Having regard to the importance of the matter the court would have expected a more responsible officer to affirm the affidavit on behalf of the State. The affidavit in opposition was filed by the respondent nos. 5 and 6 only. The solitary statement that due to implementation of the NFSA, 2013, the recall notice was issued has remained unsubstantiated. In fact, it is alarming that although the vacancy of MR shops at Ajoy Nagar along with nine other proposals were sent to DDP&S Food Supply on 21st June, 2010 till coming into force of NFS Act, 2013, no step was taken by the State to ensure that the supply of foodgrains to the persons entitle to receive is ensured. The declaration of vacancy was after the 2013 Act came into operation. The State has not contended that the declaration of vacancy was made disregarding Section 10 of the NFS Act, 2013. Even today we are unable to find any satisfactory reply

from the State as to whether they have been able to identify priority households. It is not contended as stated that the declaration of vacancy was made without such exercise being carried out by the State in accordance with Section 10 of the NFS Act, 2013. On the contrary in paragraph 6 of the affidavit in opposition the deponent has inter alia stated:

"In this regard I state that a proposal was sent by the Sub-Divisional Controller, Food and Supplies, Alipuruar to the District Controller of Food and Supplies, Jalpaiguri vide Memo no. 2973 dated 21.06.2010 for creation of vacancy of MR shops at Ajoynagar, Raichanga Gram Panchayet, Falakata - II within Block Falakata along with 9 other proposals which were subsequently sent to the Director, DDP& S, Food and supplies Department vide District Controller of Food and Supplies, Jalpaiguri Memo No. 1627/1(1) dated 22.06.2010. I state that the National Food Security Act, 2013 has come into force on the 5th day of July, 2013. Following the provisions laid down in Section 10 of the National Food Security Act, 2013 the Government of West Bengal issued notification vide No.1913-FS dated 11.08.2014 for identification of households to be covered under Antyodaya Anna Yojana and Priority households. It is stated that the said proposed vacancy was approved by the Food and Supplies Department vide Memo No.152 FS dated 20.01.2014 and accordingly vacancy notice of the above noted place were issued by the sub-Divisional Controller, Food and Supplies, Alipurduar vide Memo No. 403 dated 30.01.2014. I state that notice for filling of up of fair price shop was also published in a local newspaper 'Uttar Banga Sanbad' dated 01.02.2014 by the sub-Divisional Controller, Food and Supplies, Alipurduar. It is stated that the Raichanga Gram Panchayat, Falakata II within Block Falakata was accorded by the Department of Food and Supplies. I state that there were number of applicants who had filed their application along with requisite documents for the said subject vacancy arose at sub-Divisional Controller, Food and Supplies, Alipurduar. The writ petitioner, was one of the candidate amongst them who had submitted her application along with required papers and document and application fees of Rs.1000/- to the concerned department. I state that sub-Divisional Controller, Food and Supplies, Alipurduar enquired and verified all the applications including the papers and documents submitted before him by the applicants for the said subject vacancy of Fair Price Shop at Ajoynagar, Raichanga Gram Panchayat, Falakata II, within block Falakata and prepared a comparative statement and sent the same to the District Controller, Food and Supplies, Alipurduar along with all relevant documents."

The "Antyodaya Anna Yojana" means the scheme by the said name launched by the Central government on 25th December, 2000 and as modified from time to time.

These steps are in fact, in implementation all the obligations of the State Government under Chapter IX of the NFSA, 2013. Although we are not unmindful of the fact that the court would be extremely chary in interfering with the policy decision of the Government and that merely because a person is elected it does

not create a vested right in his favour, however, in the event it is found that such decision is arbitrary, unreasonable, discriminatory and issued in colourable exercise of power and without justification the court should not hesitate to strike it down. In the case of State of West Bengal (supra) the Division Bench in paragraphs 37, 39 and 40 referred to several decisions of the Hon'ble Supreme Court where this issue was discussed. The said paragraphs reads:-

"37. The first is the Constitution Bench decision in Shankarshan Das Vs. Union of India, (1991)3 SCC 47. Paragraph 7 of the decision is relevant and hence, quoted below:-

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amount to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reason. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. (emphasis supplied)

39. The next decision is the one in R.S. Mittal Vs. Union of India, 1995 Supp (2) SCC 230, wherein it was held as follows:-

"10.it is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the selection board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel....." (emphasis supplied)

40. Yet again, the Supreme Court in Manoj Manu Vs. Union of India (2013)12 SCC 171 the Court held:

12. It is, thus, manifest that a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertise vacancies should not be arbitrary or unreasonable but must be based on sound rational and conscious application of mind. Once it is found that the decision of the Government is based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies." (emphasis supplied)

It is clear from the said decisions that though the State is not under any legal duty to fill up the vacancies but it does not mean that it has "the license of acting in an arbitrary manner." The decision not to fill up or recall has to be bona fide. There has to be justifiable reason to recall the vacancy notice. As stated in Manoj Manu (supra) the decision "should not be arbitrary or unreasonable but must be based on sound rational and conscious application of mind." It must be on some valid reason.

If the submission of the State were to be accepted that the recall notice was due to implementation of NFS Act 2013, then it would mean that the State Government has failed to identify priority households in terms of Section 10 of the NFS Act, 2013 for the area under consideration which is extremely alarming and shocking as the persons to be benefited by the said legislation would be deprived of such benefits. Moreover State needs to justify on what basis approval was issued on 20th January, 2014 for filling up vacancy. It cannot simply evaporate. All subsequent steps are for implementation of NFS Act, 2013. The said Act by that time had come into force.

Mr. Sengupta has submitted that the pursuant to the notification dated 11th August, 2014 the Government has taken steps and on completion of the required steps it was found that it would be no more viable to continue with the vacancy notice as the number of beneficiaries would be very small. However, there is nothing on record to show that the vacancy notice has lost its relevance or become non viable. In the affidavit in opposition no such statement has been made on behalf of the State respondents in this regard. That the vacancy notice is become non viable because of reduced number of beneficiaries is as oral submission from the bar. The affidavit is silent in this regard. Moreover, it appears that the vacancy was notified on 30th January, 2014 in pursuance of approval of the Government, Food and Supplies Department vide Memo No. 152-FS dated 20th January, 2014 from intending self help groups especially women self help group. It is inconceivable that such exercise was made without assessing the requirements under NFS Act, 2013. In fact, for three years immediately preceding NFS Act, 2013 the respondents did not take any step to fill up the vacancy. The State in our view has miserably failed to demonstrate that it has taken steps to protect the interest of the beneficiaries of the concerned area which is now incumbent upon them under the NFS Act, 2013.

There is no explanation offered in the affidavit as to why from December, 2014 till August, 2015 the authorities did not take any steps although they were in possession of all the documents. In fact, in the affidavit in opposition before the trial court, it has been admitted that the file was sent to the DDP&S for approval and there is no denial that the petitioner was selected. Moreover the affidavit clearly shows that the vacancy notice was declared in contemplation of implementation of the NFS Act, 2013. The respondents have failed to justify its decision to recall the vacancy.

On such consideration the notification dated 17th August, 2015 is quashed. The

order impugned dated 24th August, 2018 is set aside. The appeal is allowed. M.A.T. No. 1339 of 2018 with CAN No. 9180 of 2018, M.A.T. No. 1340 of 2018 with CAN No. 9688 of 2018 and M.A.T. No. 1344 of 2018 with CAN No. 9692 of 2018 are disposed of in terms of this order. The State respondents are to take steps accordingly. However, there shall be no order as to costs.

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

I agree