
(2023) 11 CAL CK 0008
In the Calcutta High Court
Case No : WPA No. 10767, 12346 Of 2023

Monalisa Banerjee Majumdar

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 17-11-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2023) 11 CAL CK 0008

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Kalyan Kumar Bandopadhyay, Ramesh Dhara, Mousumi Choudhury, Rahul Kumar Singh, Ram Anand Agarwala, Nibedita Pal, Ananda Gopal Mukherjee, Sonam Ray, Suman Sengupta, Amrita Lal Chatterjee

Final Decision : Dismissed

Judgement

Bibek Chaudhuri, J

1. Both the writ petitions involved similar issues of fact and law arising out of the same transaction and hence have been taken up together for hearing and disposal.

2. The petitioner submitted her application for distributorship of Fair Price Shop, along with the requisite documents and application fees against a vacancy notification dated 01.09.2022 by the Director, Directorate of District Distribution, Procurement and Supply, Food and Supplies Department, Government of West Bengal, (DDP&S), for filling up of vacancy under Block-Barasat-II, Sub-Division-Barasat in the District of North 24 Parganas. The petitioner submitted the said application on 17.10.2022. On 15.12.2022, the petitioner was informed that a spot inquiry would be conducted on 21.12.2022 at 12:30 P.M. The inquiry was conducted accordingly, and the petitioner states that she had fulfilled all the requisite criteria for the same and that the area inspector was satisfied with the godown-cum-shop. However, a copy of the inquiry report was not provided to the

petitioner, for which she had submitted an application under the Right to Information Act, 2005. Nonetheless, the authority had refused to hand over the report.

3. The petitioner contends that before the amendment of the 2013 Order, the applicants submitted their application in the office of the concerned District Controller, but after the amendment, the respondent authority introduced the submission of application on the official website of the respondent authority for the transparent selection of the applicants, but in this case, the respondent authority, themselves have failed to adhere to the rules made by them. She argues that according to Paragraph 26 of the 2013 Order, the procedure for the engagement of a distributor is supposed to be concluded within a stipulated time. As a result, she expected that the entire process of selection would be concluded within a stipulated time after the last date of submission of the application, but despite the expiry of more than four months from the enquiry by the inspection team, the selection process has been kept pending.

4. It is the case of the petitioner that, the authorities were under the obligation to complete the selection process within the stipulated time, which they failed to do. In spite of making multiple representations to the respondent authorities, seeking information about the status of her candidature, they failed to provide any information regarding the same. As a result, this instant writ petition was filed praying that a writ of mandamus be issued commanding the respondent authority to rescind, recall and/or withdraw the decision of refusing to give an appointment letter and license to the petitioner against the vacancy notification, and; issue a writ of mandamus commanding the respondent authority to give appointment letter and license to the petitioner in respect of the vacancy in the concerned distributorship.

5. This petition was filed before this Hon'ble Court on 1st May, 2023. As 1st May was a holiday, this writ petition was served to the respondents on 2nd May by a letter, informing them, that the writ petition would be moved on 3rd May, 2023 before the Hon'ble Court. On 4th May, after hearing the Learned Counsel of the parties, by an order, the Hon'ble Court directed the State to file a report in the form of an affidavit on 12th May, 2023, which the respondents filed. On 15th May, when the writ petition was again taken up for hearing, the Learned Counsel for respondent no.5 informed the Court that on 3th May, 2023, during the pendency of the trial, a license was issued to respondent no.5 for filling up the vacancy and dealers were also tagged. Therefore, the petitioner is contending that this action of the respondent authorities of selecting respondent No. 5, for filling up the vacancy, just after the writ petition was served to them, during the pendency of the trial, shows malafide intention and is arbitrary and unjust.

6. The petitioner states that one of the essential conditions of the notification was that in case the godown is hired/rented, then the intending applicant must have a registered lease deed or tenancy agreement for at least a period of 10 years. Upon inquiry, the petitioner came to know that the godown mentioned in

the application form by respondent No.5 was not his own and the said godown was taken by a lease agreement and did not fulfill the above-mentioned criteria. Therefore, the petitioner argues that while granting the license to respondent No.5, the respondent authorities relaxed an essential condition, while granting the same in haste. Moreover, the petitioner alleges that the land on which this godown of respondent No.5 is situated is classified as a brickfield.

7. Therefore, while arguing that the respondent authorities have acted in an arbitrary and illegal manner, the petitioner, in this second writ petition has prayed for issuing a writ of mandamus commanding the respondents to rescind, recall and/or withdraw the decision of issuing license to the respondent no.5 against the vacancy; and, issue a writ of mandamus commanding the respondents to cancel the license of respondent no.5, issued on 03.05.2023, in respect of the vacancy of the distributorship in question.

8. In the affidavit filed by the Sub-Divisional Controller, Food & Supplies, Barasat, North 24 Parganas, it is stated that during the inquiry, it was found that the proposed office-cum-godown of the petitioner was not in accordance with the criteria prescribed in the notification concerned itself. There was no approach road, an obstruction was detected in front of the entrance (an electric pole and a tree), stairs and ramps were absent, no space for loading and unloading was there and no toilet facility was available. Moreover, the loading and unloading space in the layout map should be a space of 1250 sq.ft., but in reality, excluding the proposed area for the construction of ramps, the space was 984 sq.ft. only. Also, the owner of the land was one Shankar Bag, but there were no supporting documents which proved that he was the Director of the Company, which had rented out the godown to the petitioner. All of these findings were recorded before the presence of the petitioner, but no dispute or objection was raised by them. It was concluded in the inquiry report that apart from the objections mentioned above, the petitioner fulfilled other conditions and that barring these issues, the dealership may be awarded to her.

9. They further state that an applicant has to pass through many levels of scrutiny before being granted the dealership. The time period exhausted here was required to scrutinize the applications by the selection committee. The inquiry report was completely prepared and submitted on 04.01.2023 from the end of the inquiry team. No line of assurance was written in the original vacancy notification about completing the entire procedure within any stipulated period of time. Therefore, the entire process was completed on 03.05.2023 with the appointment of respondent No.5 as the most suitable candidate for the vacancy.

10. The petitioner, as a reply to the counter-affidavit filed by the respondent authority, reiterates her submissions and argues that respondent No.5 did not fulfill the essential condition being Part-4, Serial No. 10(p)(B) of the vacancy notice dated September 1, 2022. The petitioner states that she couldn't communicate her reservations to the observations made during the inquiry as, she was never handed the inquiry report, for which she had to submit an

application under the Right to Information Act, 2005. With regards to the observations made in the inquiry report, the petitioner argues that she has a permanent electricity connection in the godown and that there is sufficient space for the loading and unloading of goods, as it is easily motorable by two trucks simultaneously. Moreover, the petitioner's godown is hired/rented by way of lease for 11 years and taken from one company, of which Mr. Shankar Bag is the director.

11. In the affidavit-in-opposition filed by respondent No.5, Anil Singhania, while denying all the allegations made by the petitioner, argues that the stipulated time frame as argued by the petitioner is not mandatory, but directory. In the affidavit-in-opposition filed by him, to WPA 12346 of 2023, i.e, the subsequent writ petition filed, he argues at the outset that, the writ petition is not maintainable in the eyes of law as the petitioner has not been denied any legal right by someone who has a legal duty to do something. It is well-settled law that there must be a judicially enforceable right before one asks for Mandamus. The application of the petitioner has been rejected as she did not fulfil the eligibility criteria for being appointed as a distributor as such, the petitioner has no right to challenge the appointment of respondent no.5.

12. Next, respondent no.5 denies that the lease agreement of his godown does not fulfill one of the essential conditions mentioned in the vacancy notice or the respondent authority relaxed the said condition to issue the license in his favour in haste, as alleged. It is also denied that the land where the godown is situated has been classified as a brickfield. He also argues that the offer letter for the dealership was issued to her on 28th April, 2023, whereas the earlier writ petition, being W.P.A. No. 10767 of 2023, was affirmed on 1st May, 2023 was merely a ministerial work pursuant to the offer letter. Moreover, he argues that the petitioner had knowledge about the rejection of her application at the time of filing the instant writ petition because the said fact of rejection was stated in the report of the State filed in the earlier writ petition and the said rejection has been accepted by her. Therefore, he denies that the respondent authority issued the license to him in excess of jurisdiction or in abuse of power vested by law or that it suffers from Wednesbury unreasonableness or procedural impropriety, and therefore liable to be set aside.

13. In the affidavit-in-reply filed by the petitioner against the affidavit-in-opposition to respondent no.5, she argues that upon the filing of an application against the vacancy notification, a legal right accrued for being consideration of the said application but the respondent authority by not communicating the fate of the petitioner's application infringes the legal right under Article 14 of the Constitution of India. It is well settled law that every authority is bound to communicate the fate of the application of the intending candidate who submitted the application against any vacancy declared by the said authority. Therefore, the petitioner's right is judicially enforceable and on that ground, the petitioner is entitled to ask for a mandamus before this Hon'ble Court. Moreover,

it is settled law that even a stranger who did not even file the application against the vacancy notice can seek a mandamus if any appointment is made by the authority relaxing the condition of the vacancy notification. In the instant case, against the vacancy notification, the petitioner who has submitted her application for being appointed as an M.R. Distributor has every right to challenge the appointment of respondent no.5, made by the authority. Next, she also argues that respondent No. 5, has not disclosed his source on how he had the knowledge that the petitioner's application had been rejected, before the filing of the writ petitions, whereas, the petitioner herself had no idea about the status of her application.

14. In support of their arguments, the learned Counsels for both the petitioner and the private respondent No.5 have cited a number of judgements. The learned Counsel for the petitioner has cited *State of Uttar Pradesh vs. Vijay Kumar Misra* reported in (2017) 11 SCC 521, where the Supreme Court dealt with the appointment of the respondent to a vacant post of Sub-Deputy Inspector, where the Court in paragraph 6, opined that:

" The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut-off date, if any, prescribed under the rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possessed the prescribed qualifications and was considered and appointed to the post...."

15. The learned Advocate for respondent no. 5, in support of his contention that no legal right of the plaintiff was violated and therefore, this writ petition is not maintainable in the first place cites judgements like *State of Orissa vs. Ram Chandra Dev* reported in AIR SCC 685; *M.S. Jain vs. State of Haryana* reported in AIR 1977 Supreme Court 276 and *Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra* reported in (2013) 4 SCC 465. Paragraph 9 of *Ayaaubkhan* (supra) is quoted below:

"It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its

writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same."

The respondents also cited a judgement passed by this Court, *Tarani Rajwar vs. State of West Bengal* (W.P.A. No. 4275 of 2023).

16. Having heard the parties at length and a perusal of all the materials on record, this Court proceeds to deliver the following composite judgement.

17. At the risk of repetition, it is profitable for the purpose of discussion to state that the petitioner filed an application in respect of a distributorship. The fate of her application was not intimidated to her and this promoted her to file a writ petition being WPA No. 10767 of 2023. On 4th May, 2023 when the matter was taken up for hearing no one represented the State respondents. Therefore the Court directed the petitioner to serve notice upon the respondents. Such notice was served on 2nd May, 2023. Immediately thereafter, an appointment was made in respect of the distributorship in question in favour of the private respondent on 3rd May, 2023. The petitioner has challenged the appointment of the private respondent as distributors in the subsequent writ petition.

18. Indisputably the vacancy notification of distributor at Barasat II Block was declared on 1st September, 2022. As per the notification, the application should possess godown with the specification as mentioned in paragraph 6(E) of Part II of the notification.

19. As per the Part 4 (P)(B) it is stated that as a proof of godown in case of hired/ rental godown the following documents must be provided for proof of the same:

- i. Land conversion certificate,
- ii. Registered lease deed or tenancy agreement for atleast for a period of 10 years,
- iii. Up to date rent receipt,
- iv. Prove of ownership of land of lessor are required to be filed.

In the lease agreement between one Md. Nausad Alam and the private respondent there is a specific Clause to the effect that both the parties have agreed that the lock in period of the lease agreement will be determined for a period of two years on and from 1st August, 2022. In view of the said Clause either of the parties are at liberty to cancel lease deed within the lock in period. In view of such circumstances it is contended by the learned Senior Counsel on

behalf of the petitioner that the lease period is not for 10 years as alleged by the private respondent.

20. The petitioner further contends that the land over which the godown of the private respondent was erected and lease was taken is not classified as Bastu or commercial land. The different portion of the said land are recorded as Bagan (Garden), Danga and Itkhola (Brick field). It is also contended on behalf of the petitioner that the nature of land was not converted on the date of the filing of the application, i.e on 5th September, 2022. On the date of application, the nature of land was not suitable for the purpose of construction of godown for distributorship.

21. The learned Counsel for the private respondent submits that no one can ask for mandamus without a legal right. There must be a judicially enforceable right as well as the legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has legal duty to do something.

22. In the instant case it is submitted by the learned Advocate for the respondent that in WP No. 12346 of 2023, the petitioner is not an aggrieved party. It is further contended that the private respondent made an application for conversion of land upon which his godown was erected on 5th September, 2022 and the land was converted with effect from 20th December, 2022. He was granted license vide memo dated 11th May, 2023. Therefore, before granting license he subject land was converted as godown.

23. Indisputably, the petitioner had the knowledge about rejection of her application at the time of filing the instant writ petition because the said fact of rejection was stated in the record filed on behalf of the state respondents in the earlier writ petition bearing No. WPA 10767 of 2023. The said order of rejection was accepted by her. Subsequently the private respondent was granted license.

24. In view of such factual possession this Court is of the considered view that the petitioner has no locus standi to challenge the appointment of the private respondent as a distributorship in Barasat II Block.

25. For the reasons stated above, both the writ petitions being devoid of any merit are dismissed on contest.

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