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**(2012) 07 CAL CK 0135**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 16961 (W) of 2011**

Pankaj Gatait

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision : 23-07-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Essential Commodities Act, 1955 — Section 3

**Citation : (2012) 07 CAL CK 0135**

**Hon'ble Judges : Jayanta Kumar Biswas, J**

**Bench : Single Bench**

**Advocate : K.D. Mukherjee, Mr. Krishnendu Banerjee and Mr. Prithu Ghosh, for the Appellant;Debjani Ray for the State, Mr. Malay Kumar Basu and Mr. Timir Baran Saha for the eleventh respondent, for the Respondent**

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## Judgement

Hon"ble Mr. Justice Jayanta Kumar Biswas

1. The petitioner in this WP under art. 226 dated September 28, 2011 is questioning a decision of the Principal Secretary to the Government of West Bengal & Ex-officio Commissioner, Food, Food & Supplies Department, Government of West Bengal and the Director, Directorate of District Distribution, Procurement and Supply, Food & Supplies Department, Government of West Bengal dated September 8, 2011 (WP p.148). By a notification dated July 2, 2010 (WP p.34) the District Controller, Food & Supplies, Burdwan declared a vacancy for an MR Distributor at Rupnarayanpur within Salanpur block of the district Burdwan. The distributor was to be selected and appointed according to the provisions of para.23 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 that was made by the State Government in exercise of power conferred on it by s. 3 of the Essential Commodities Act, 1955.

2. Fourteen applications including the application of the petitioner were received by the office of the District Controller of Food & Supplies (in short DCFS).

According to the procedure mentioned in para.23 of the Order, the Sub-divisional Controller of Food & Supplies (in short SCFS) made the inquiry, prepared the report and sent the report with his comments to the DCFS. The SCFS did not give any favourable comments for the petitioner.

3. The DCFS forwarded the report of the SCFS with his recommendations to the Director, Directorate of District Distribution, Procurement and Supply (in short Director-DDPS); this step was taken by the DCFS also in compliance with the procedure mentioned in para.23 of the Order. The DCFS did not recommend the case of the petitioner as well.

4. The Director-DDPS agreed with the inquiry report of the SCFS and the recommendations of the DCFS. In compliance with the procedure, also stated in para.23 of the Order, the Director-DDPS sent the matter for approval of the Government. The selection process was questioned before this Court under art. 226.

5. In three appeals a Division Bench passed an order dated July 20, 2011 directing the respondents therein to hear all the applicants and give a reasoned decision. The impugned decision was given in compliance with such direction. The impugned decision reveals that the petitioner submitted before the authorities that the SCFS did not make a proper inquiry, and that he demanded a fresh inquiry.

6. Dealing with his case the two authorities gave the following decision:-

(D) So far Pankaj Gutait is concerned, we find from records that the godown of the applicant is not vacant. The godown of the applicants was fully covered by hardware materials. It is also reported that a big tree is situated in front of the godown and is not properly accessible. Moreover, character of the land of the proposed godown is baid and no conversion certificate has been furnished. Neither the Sub-divisional Controller, F&S, Asansol, nor District Controller, Food & Supplies, Burdwan, has made any favourable comments about the applicant. Considering all these aspects we hold that the applicant is not eligible for such appointment.

7. Mr. Mukherjee appearing for the petitioner has argued as follows. The petitioner offered two godowns. The own godown on plot 338 was on a Bastu land. The rented godown on plots 343 and 344 was on a Baid land. The godown on plot 338 was perfectly suitable; for the hardware found stored therein were to be removed only after appointment, and the tree 25(twenty-five) feet away from the godown, could not obstruct the godown gate.

8. The own godown was being used for storing hardware. Existence of the tree was not disputed. The SCFS, DCFS, Director-DDPS and the Government recorded concurrent finding that the tree was obstructing the godown gate. The Writ Court is not to assess the suitability of the godown and substitute its finding for that of the authority. The godown on plots 343 and 344 was on agricultural land that

could not be used for erecting any godown. For these reasons, the WP is dismissed. No costs. Certified xerox.