

Form J(2)

**IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
Appellate Side**

**Present :  
The Hon'ble Justice Bibek Chaudhuri**

**WPA 11117 of 2023**

**Modreka Mondal  
Vs.**

**The State of West Bengal & Ors.**

**For the petitioner : Md. Harun All Rashid**

**For the State : Mr. Sirsanya Bandopadhyay,  
Mr. Arka Kumar Nag**

**Judgement on : 26.09.2023.**

**Bibek Chaudhuri, J.**

The instant writ petition challenges selection and grant of licence for FPS dealership in favour of private respondent No.6 at village Eliaetnagar within Police Station Nowda in the district of Murshidabad in terms of a vacancy notification dated 6<sup>th</sup> May, 2022.

It is the case of the petitioner that the petitioner and the private respondent No.6 as also three other persons applied for grant of licence of FPS dealership as declared vide vacancy notification No.564/SCFS/BER/2022 dated 6<sup>th</sup> May, 2022. The petitioner made his application on 21<sup>st</sup> August, 2022 and an enquiry was held by the Rationing Inspectors of the jurisdictional Sub-Division on 31<sup>st</sup> August,

2022. During the said enquiry, photograph of the godown and shop room of all the candidates were taken. However, the petitioner came to learn that respondent No.6 has been selected and licence has been granted to him by the Sub-Divisional Controller, Food and Supplies Department, Berhampur Sub-Division. He filed an application under the Right to Information Act on 24<sup>th</sup> April, 2022. However, he did not receive any reply to his queries. Subsequently, he came to know about grant of licence in favour of respondent No.6 and made a representation before the respondent authority on 2<sup>nd</sup> May, 2022. However, his representation was not taken into consideration so is the instant writ petition.

The learned Advocate for the petitioner at the outset takes me to Part-2 of Vacancy Notification dated 6<sup>th</sup> May, 2022 delineating eligibility criteria. Paragraph 12(iv) of Part-2 of the vacancy notification states:-

“(iv) The applicant should possess a suitable godown (as per the notification issued by Deptt. of Food & Supplies vide No.1707-FS/Sectt/Food/4P-9/2012 (Pt-II) Dated 21.07.14 as amended vide Notification No.2749-FS dated 17.08.2021) within the vacancy location for storage of public distribution commodities and running the dealership. The area of the godown should be minimum 400 Sq. ft. (300 Sq. ft. in case of hill areas of Darjeeling and Kalimpong district)

along with covered space of 200 Sq. ft. (100 Sq. ft. in case of hill areas of Darjeeling and Kalimpong district) adjacent to godown to be used for office purpose and for FPS automation. There must be shade in front of the shop to accommodate at least 20 people (5 people in case of hill areas of Darjeeling and Kalimpong district) who may wait in the queue. The godown must be well ventilated pucca structure with a concrete floor.”

It is submitted by the learned Advocate for the petitioner that the petitioner is having a godown measuring about 400 Sq. ft. and a shop room measuring 200 Sq. ft. with a shed in front of the said shop room. He fulfilled all eligibility criteria but he was not granted licence due to the reason, best known to the State respondents.

It is also submitted by him, though not directly pleaded in the writ petition, that the husband of the respondent No.6 is an elected representative of local Gram Panchayat and due to such reason she was favoured with the licence by the State respondents.

The learned Advocate for the petitioner has also produced the photographs of the godown and shop room of the petitioner and the respondent No.6 to show that there is no shed in front of the godown of the respondent No.6.

It is also stated by the petitioner that the said godown and purported shop room of the respondent No.6 was constructed in one

portion of her residential house and it is constructed on an agricultural land which is not permissible under the WBPDS (Maintenance and Control) Order, 2012.

Learned Advocate for the State respondents, on the other hand, submits that the petitioner's case should be outright from the documents annexed by the petitioner with the writ petition. In order to substantiate his contention, he refers to Page 28 of the writ petition, which happens to be the plan of the petitioner's office-cum-shop room and the godown. From the plan itself it is found that the area of the office-cum-shop room is 135 Sq. ft. The Inspector also found the area of the shop room of the petitioner was 134.85 Sq. ft. According the requirement, the shop room-cum-office should be at least of 200 Sq. ft. On this score only the petitioner's application for licence is liable to be rejected.

It is also submitted by the learned Advocate for the State respondents that though in the plan the petitioner stated the measurement of the godown as 420 Sq. ft but during enquiry the Inspector found that the area of the godown is 353.85 Sq. ft. Therefore, the size and measurement of both the godown and office-cum-shop room of the petitioner does not match the minimum requirement as stated in the vacancy notification.

Learned Advocate for the petitioner has raised another objection stating, *inter alia*, that the godown and shop room of the respondent No.6 was constructed on agricultural land, which is not permissible under the Control Order. Therefore, his application should also be rejected and fresh enquiry ought to be made by the authority. So far as the size of the godown of the petitioner and the respondent No.6, these are all matters of record. The godown and shop room of the respondent No.6 is admittedly bigger than that of the petitioner. Paragraph 2(iv) of the vacancy notification speaks about minimum eligibility criteria of having godown measuring about 400 Sq. ft. and office-cum-shop room measuring about 200 Sq. ft. This minimum eligibility criteria does not mean that if the State respondents during enquiry finds bigger godown and shop room, he/she will not be preferred.

A question occasionally comes from the bar raising objection that the godown and shop room is situated on agricultural land. The learned Counsel for the petitioner is of the view that no construction of godown and shop room on agricultural land would be considered as eligibility criteria in granting licence for fair price shop.

This Court is of the view that the above argument suffers from misconception. The applicants are directed to file application in Form-C which is a notified Form under Notification no.2596-

FS/Sectt/Food/4P-09/2012 dated 9<sup>th</sup> August, 2021 (w.e.f. 9.8.2021) which was earlier amended by notifications no. 3395-FS/FS/Sectt/Food/4P-09 by 2012 dated 13<sup>th</sup> December, 2013 (w.e.f. 17.12.2003) and No.1284-FS/Sectt/Food/4P-09/12 dated 6<sup>th</sup> June, 2014 (w.e.f. 6.6.14).

In Part-IV of Form C the applicant requires to state the full address of the Shop-cum-Godown with Dag no., Khatian no., Village, Gram Panchayat, Block, Police Station and Pin Code (in case of rural area) or holding no., street name, ward no, municipality, Police Station and Pin Code (in case of municipal area) and dimension of the storage godown in terms of length x Breadth x height in feet. In point No.32, the applicant is required to state character on land of the premises (Bastu/commercial/agricultural etc.). When Form-C refers to an agricultural land, construction of godown or shop room on the agricultural land is not a bar for the applicant to file an application for fair price shop licence.

It is for the local Panchayat Authority or the Municipal Authority to see as to whether any construction has been made on agricultural land or not or in other words, if any conversion of agricultural land is made by making construction on the agricultural land. It is not the look out of the Food and Supplies Department to consider as to whether the godown and the shop room are constructed on

agricultural land and if such godown and shop room are constructed in agricultural land, to reject the application filed by an applicant.

In view of the above discussion and considering the enquiry reports annexed with the report in the form of affidavit, I find that the respondent No.6 is betterly placed in respect of size and dimension of godown and shop room. The petitioner could not satisfy the minimum requirement of the dimension of godown and shop room.

In view of such circumstances, I do not find any merit in the instant writ petition and the instant writ petition is dismissed on contest. However, there shall be no order as to costs.

**(Bibek Chaudhuri, J.)**

***Mithun.  
A.R. (Ct).  
SI No.9.***