

ASR/np. 1-6.
Ct. no. 24.
07.04.2025

WPA 6533 of 2025

**Sudip Sarkar
Vs.
State of West Bengal & Ors.
With**

WPA 6617 of 2025

**Tapan Kumar Mondal
Vs.
State of West Bengal & Ors.
With
WPA 6691 of 2025**

**Gobinda Charan Bag
Vs.
State of West Bengal & Ors.
With**

WPA 6692 of 2025

**Sk. Nurul Hassan
Vs.
State of West Bengal & Ors.**

With

WPA 7121 of 2025

**Arun Kumar Maiti
Vs.
State of West Bengal & Ors.**

With

WPA 7261 of 2025

**Swadesh Mishra
Vs.
State of West Bengal & Ors.**

Mr. Debabrata Saha Ray, Sr. Ad.
Mr. Pingal Bhattacharyya
Mr. Subhankar Das
Mr. Neil Basu
Mr. Sankha Biswas

.....For the petitioners

Mr. Sirsanya Bandopadhyay
Mr. Ritesh Kumar Ganguly

....For the State
(WPA 6533 of 2025/WPA
6617 of 2025/WPA 6691 of
2025/WPA 6692 of 2025)

Ms.Sonal Sinha
Mr. Avishek Prasad

....For the State (WPA 6533 of 2025)

Mr. Biswabrata Basu Mallick
Ms. Parna Roy choudhury

....For the State (WPA 6692 of 2025)

Mr. Suman Sengupta
Ms. Amrita Panja Mullick

...for the State (WPA 7121 of 2025)

Mr. Sirsanya Bandopadhyay
Mr. Debopriyo Karan

....For the State (WPA 7261 of 2025)

Petitioners of the batch of writ petitions have challenged the vires of Clause 11(V) of West Bengal Targeted Public Distribution System (Maintenance & Control), Order, 2024.

It is the case of the petitioners that the concerned Sub-Divisional Controller, (Food & Supply) had issued vacancy notifications, wherein the eligible criteria has been incorporated in Part II. Including the eligible criteria the parameter of age limit of individual applicants or partners have been specified that their age must be above 21 years and below 45 years on the date of application.

The said eligible criteria followed Clause 11 (V) of the Control Order, 2024.

For the better appreciation of the discussion, let me set out the relevant clause of Control order, 2024.

“ 11. Eligibility criteria for application for grant of license for Fair Price Shop- An individual or a registered partnership firm or a registered Co-operative Society or a Self Help Group or a Sangha and Mahasangha of Self-Help Groups, who fulfills the following eligibility criteria may apply for grant of a license for fair price shop on payment of an application fee of Rs. 1,000/- namely:-

(i) The individual applicant of the registered partnership firm or members of the registered Co-operative Society or members of the Self-Help Groups or Sangha or Mahasangha of Self-Help Groups applying for a Dealer vacancy must be adult Indian Citizen(s).

(ii) If the applicant be Self-Help Groups or Sangha or Mahasangha of Self-Help Group or registered Co-operative Society, it shall have their registered address in the concerned district.

(iii) In case of individual applicant, he should be a bona-fide resident of concerned Gram Panchayat or the Ward or Sub-area, as the case may be, in which vacancy occurred. In case of registered partnership firm at least one partner shall be permanently residing in the concerned district.

(iv) The applicant must have basic knowledge of handing smart phones/e-POS devices.

(V) The Individual Applicant or partners in the partnership firm must be above 21 (Twenty-one) years of age and below 45 (forty Five) years of age on the date of application.

Proof showing date of birth should be furnished.

It is the case of the petitioner that they have just cross the age limit of 45 years. So, they are debarred to participate in the vacancy notice.

Mr. Debbbrata Saha Ray learned senior Advocate submits that the impugned notification following the Clause 11 (V) of West Bengal Targeted Public Distribution System (Maintenance & Control), Order, 2024 is violative to the fundamental rights of the petitioners.

It is the contention of Mr. Saha Ray that by virtue of Article 19 of the Constitution of India the present petitioner being a citizen of India shall have right to practice any profession or carry on any occupation, trade or business. By promulgation of the clause 11(V) of Control Order, 2015 the valuable right of the petitioner to conduct the business has been debarred by the State.

Mr. Saha Ray has argued that the Hon'ble Supreme Court has decided the issue in ***Brij Monhan Lal Vs. Union of India & Ors. reported in (2012) 6 SCC 502*** in paragraph 100 that, when High Court can interfere in the policy decision of the State.

Mr. Saha Ray further submits that there is no reasonableness of the State to promulgate such Clause, moreover in the earlier control order that is

Control Order, 2003 or Control order, 2013, there are no such provisions for limitation regarding filing application within a particular age.

He further argued that the Control Order, 2024 also did not make any provision for age limit for compassionate appointment, which prove arbitrary action of the State.

He further submits that the policy as laid down by the State is purely unjust and cannot be allowed to be continued.

Mr. Saha Ray also cited a decision of **Indian Bar Council of legal and legal aid and advise and others Vs. bar council of India reported in 1995 (1) SCC 732** and argued that the Bar council of India has restricted the law graduate to entry in the legal profession beyond 45 years. Such decision was under challenged of the Hon'ble Supreme Court. In deciding the issue the Hon'ble Supreme Court has held where there is no upper limit for practicing as an advocate there must not be any entry limit in the said profession. Thus, the decision of the Bar Council of India was strucked down by the Hon'ble Supreme Court.

Mr. Saha Ray further argued that the instant petitioners have demonstrated the fact before this court that if the impugned vacancy notification is allowed to be continued and if one selected and ultimately petitioner if got success in the writ petition, the entire

selection procedure would be vitiated, so he submits at this juncture, the selection procedure as adopted by the concerned SCFS through the vacancy notification is required to be stalled.

Mr. Sirsanya Bandopadhyay, learned senior standing counsel appearing on behalf of the State respondent submits that the petitioners has no locus standi to file the instant writ petition as the writ petition was filed after last date of application. He further submits that that there is presumption of correctness of every statute. Thus, at this juncture, the petitioner cannot have any interim order.

He further placed his reliance upon the same provisions of **State of Rajasthan, State of Jammu Kashmir and State of Telengana**, where in case of appointment of fair price shop dealer, there are age limit. It is the conscious submission of Mr. Bandopadhyay that the State of West Bengal following the other States of all over India has followed the same instances so that the similar statute may be follow all over the country.

He further argued that different authorities has decided the issues that the State has the authority to fixed the criteria for age limit for entry of a particular business, trade, profession.

In support of his contention, he cited a decision of Hon'ble Division of this Court passed in **MAT 1166**

of 2020. Mr. Bandopadhyay has placed some paragraph of the judgment of the Division Bench has pointed that the term “qualificastion” as appearing in article 19(6) of the constitution of India cannot be limited to education and technical qualification only and must necessarily included age, designation, experience amongst the others. Mr. Bandopadhyay has also placed his reliance upon the same decision of the Hon’ble Supreme Court in **Rachana & Ors. Vs. Union of India & Ors.** reported in **(2021) 5 SCC 638, Directorate of film Festivals & Ors. Vs. Gaurav Ashwin Jain & ors.** reported in **(2007) 4 SCC 737, Union of India Vs. Swapnaneel Deka & ors.** reported in **(2013) 6 Gauhati Law Reports 587.**

In **Rachana(Supra)**, the decision of the concerned authority is under challenge regarding Civil Service(Preliminary Examination) for administrative service. The Hon’ble Supreme Court has specifically dealt with the issue and is of opinion that paragraph 43 reads as follow:

“43. It is the settled principle of law that policy decisions are open for judicial review by this Court for a very limited purpose and this Court can interfere into the realm of public policy so framed if it is either absolutely capricious, totally arbitrary or not informed of reasons and has been considered by this Court in Union of India Vs. M. Selvakumar. The relevant portion is as under:

47. *There is one more reason due to which we are unable to subscribe to the view taken by the Madras High Court and the Delhi High Court. The horizontal reservation and relaxation for physically handicapped category candidates for Civil Services Examination, is a matter of governmental policy and the Government after considering the relevant materials has extended relaxation and concessions to the physically handicapped candidates belonging to the reserved category as well as general category. It is not in the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of Article 14 of the Constitution.”*

In **Directorate of Film Festivals & Ors(supra)** when a Director was debarred to entry in the International Film Festival without having a necessary certificate from the concerned authority he approached the Hon’ble Supreme Court, the Hon’ble Supreme Court after categorical discussion upon the matter has pointed out the power of judicial review of Court at paragraph 16 as follows:

“16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act

as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review(vide Asif Hameed v. State of J.& K, Sitaram Sugar Co. Lotd. V. Union of India, Khoday Distilleries Ltd. vs. State of Karnataka, BALCO Emplouyees' Union v. Union of India, State of Orissa vs. Gopinath Dash and Akhil Bharat Goseva Sangh(3) vs. State of A.P.”

In **Swapananeel Deka & Ors(Supra)**, the Hon'ble Division Bench of Gauhati High Court was held with the scope of State Police Service Officer to participate in India Police Service Examination after five years' experience. In dealing with the said issue, the Hon'ble Division Bench of the Gauhati High Court has also upheld the decision of the State.

Now, dealing with the entire issue herein in the preliminary stage, it appears to me that the petitioners,

who are aspirants to the vacancy notification issue by the concerned Sub-division Controller (F&S) are debarred due to their age i.e. to say they all have crossed the age of 45 years. Let me consider whether the said vires of the statute i.e. the sub-clause (V) of Clause 11 of West Bengal Targetted Public Distribution System Maintenance and Control Order, 2024, which restrict the petitioner to participate in the vacancy notification of the Sub-division Controller is prima facie violative of fundamental right of the petitioner or not.

This Court has to consider whether any fundamental right of the petitioners has been violated by promulgation of sub-clause (V) of Clause 11 of the Controller Order, 2024.

Admittedly, there are previous Control Orders, in the State of West Bengal, they are WBPDS (M & C), 2003 and WBTPDS Control Order, 2013. The instant Control Order has been published as a notification to the State as follows:

“WHEREAS the Government of India, Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution), in exercise of power conferred by section 3 of the Essential Commodities Act, 1955(Central Act 10 of 1955) has issued Targetted Public Distribution System (Control) Order, 2015, by GSR 213(E) dated 20th March, 2015 as subsequently amended.

AND WHEREAS, in pursuance of Clauses 4,9,10,11,12,13,14 and 15 of the Targeted Public Distribution System(Control Order, 2015, the State Government is empowered to issue order under section 3 of the Essential Commodities Act, 1955 for regulating the ration cards, licensing and regulation of fair price shops, operation of fair price shops, monitoring, ensuring transparency and accountability, penalty, powers of inspection, search and seizure and appeal, and the matter connected therewith an incidental thereto”

NOW, THEREFORE, the Governor is, in exercise of power conferred by Section 3 and Section 5 of the Essential Commodities Act, 1955(10 of 1955) read with Government of India, Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) Order No.GSR 213(E), dated 20th March 2015, pleased hereby to make the following Orders:-

The Control Order, 2013, which was earlier prevailing now has abolished by the promulgation of National Food Security Act, 2013 and Targetted Public Distribution(Control) Order, 2015. NFSA, 2013 or TPDS(Control) Order, 2015 admittedly does not provide any age restriction for the aspirant in the vacancy notification Control Order, 20245 is a delegated legislation. It is the fact that the State of West Bengal has introduced the age limit for the candidate, who can apply for FPS licence. Whether this restriction at all

violates the fundamental rights of the petitioners is the sole question before this Court. In dealing with the issue I take assistant the observations of Hon'ble Supreme Court in **Brij Mohan Lal(Supra)** on the paragraph 100 wherein it has been enumerated:

“100. Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as”

- (i) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.*
- (ii) The change in policy must be made fairly and should not give the impression that I was so done arbitrarily on any ulterior intention.*
- (iii) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc*
- (iv) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.*
- (v) It is de hors the provisions of Act or legislation.*
- (vi) If the delegate has acted beyond its power of delegation.*

In deciding the instant issue, under the right of Hon'ble Supreme Court in in **Brij Mohan Lal(Supra)** to be justified whether the sub-clause (V) clause 11 of Control Order, 2014 is at all reasonable. The policy for age limit had been introduced. The basic purpose of

the State to appoint a fair price shop dealer to distribute the ration articles to the PDS beneficiaries. It is the policy of the State that the PDS beneficiaries may appear before of the fair price shop to collect food grain dealer or the dealers may distribute the ration articles at their door step in the scheme of Duara Ration. The required purpose can be fulfilled by a person of more than 45 years. The responsibility of ration articles cannot so hazardous or troublesome, so that a person aged more than 45 years cannot perform the same. It further appears that till today there are number, of ration dealers in the state aged more than 50 years, who are performing the business of FPS in unblemished manner. Moreover, the State cannot introduce a policy, which can take award the right of an individual to take participate in a business to their wish. So, assessing the duty entrusted upon ration dealer and the restriction as imposed under sub-clause (V) of Clause 11 of the Control Order, 2024, prima facie, I find no reasonableness to introduce such restriction. Moreover, the Hon'ble Supreme Court in **Brij Mohan Lal (Supra)** also discussed to find out the philosophy behind this provision. Prima facie I find no philosophy at this juncture, however, these issue can be very well decided in affidavits. Moreover, the Control Order, 2024 has its source urgent under NAFA 2013 and TPDS (Control) Order, 2015, which does not restrict any

aspirant to participate in the selection process within a beyond age limit. Thus, this provision prima facie appears to me beyond its power of delegation. The State legislation shall not be act beyond its power of delegation.

Learned Standing counsel has relied upon the decision of Hon'ble Division Bench of this Court in MAT 1116 of 2023 and submits that the Division Bench has clarified the position that the State Government may fix the age limit regarding entry point in the business or trade or profession.

After careful considering of the decision of Hon'ble Division Bench it appears to me that the illegality of Rule 23(C) and 31(5) of the West Bengal Electrical License Rule 2017, which imposed an age restriction on the issuance of renewal of certificates for electrical supervisory under Electricity Act, 2013 is under challenge with a ground that the same is untra vires to the constitution and violative to the article 19(1)(g) of the constitution of India. Before the Hon'ble Division Bench, it is also the issue that the Central Electricity Regulation 2016 and Section 80 of the Electricity Act, 2003 does not empower the State to make regulation lying done the age bar for renewal of licenece. The Hon'ble Division Bench has discusses the entire issue and upheld the decision of the State on the ground the term "Qualification" in Article 19(6) of

Constitution includes not only educational but also includes age, designation experience etc. The Hon'ble Division Bench has also decided the issue of facts, which disclosed that the responsibility and the act to be done to a electrical supervisors. After through consideration, of the performance to be done by the electrical supervisors and their service hazardous/ responsibility to be performed, it appears to me that the electrical supervisors are entrusted to such serious job, which if done in less care or caution and a slight infraction thereof may cause serious injuries to public. The serious nature of performance of electrical supervisors as discussed by the Hon'ble Division Bench in its decision is not squarely similar to that of the work condition and responsibility required to be performed by a MR dealers. Thus, it appears that the decision of the Hon'ble Supreme Court in the **Eastern Regional Electrical Contractors(MAT 116 of 2022)** is factually different to that of the instant writ petition.

Considering the entire aspect and also in considering the argument advance on behalf of the parties, prima facie it appears to me that the petitioner have successfully demonstrates the fact that the provision enshrined in sub-clause (V) of clause 11 of Control Order, 2024, prima facie violative to the guarantee under article 19(g) of the constitution of India. In deciding the balance of convenience and

inconvenience of this case, it appears to me that the same is tilting in favour of the petitioner i.e. to say if any person was appointed by strength of the impugned vacancy notification and after final decision of this case, if writ petitioner succeeds the entire procedure of selection would be vitiated, 3rd party right but during that period may would be created therein, and multiplicity of proceedings would be cropped up. Thus, I think it necessary to pass an interim order in this matter.

Under the above observation, it is ordered that that the State authority concerned may proceed with the impugned vacancy notifications, but so far the grant of licence to any individual/applicant, is concerned, the same shall not be issued till the final decision of the instant matter.

The State authority is at leave to file affidavit-in-opposition within three weeks from date, reply if any, by the petitioner within two weeks thereafter.

Let the matter go out of list.

Parties are liberty to mention.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)

