

4.2.2026
Ct no. 10
Sl. 17
AGM

WPA 29895 of 2025

Chhanda Das

-Versus-

State of West Bengal & Ors.

Mr. Debabrata Saha Roy,
Mr. Neil Basu,
Mr. Sankha Biswas,
Mr. Subhajit De.
Mr. A. Paul,
Ms. O. Sarkar

...for the Petitioner

Mr. Sambuddha Dutta,
Mr. Ritesh Kr. Ganguly

...for the State

1. Heard the parties through their respective counsels.
2. The State respondents takes a preliminary objection regarding the maintainability of the writ petition by submitting that they suffer from gross irregularity due to failure to make a demand for justice.
3. In this context, the State respondents submits that particularly seeking a writ of mandamus, generally requires a prior demand for justice. (A formal representation to the authority and their refusal to act).
4. Learned counsel appearing for the State respondents draws the attention of this Court to the paragraph 14 and 21 of the writ petition. The petitioner has sought an information under the Right to Information Act treating the request as a demand for justice which is distinct in nature and form by placing reliance upon rule 20 of the Writ Rules, which is reproduced below:

“All petitions in the nature of mandamus shall contain a statement as to whether a demand for justice has been made and specify the particulars of such demand, including the date and service thereof. A copy of such demand, where the demand is in writing shall be set out in the annexure to the writ petition.”

5. Learned counsel for the State respondents relies upon several judgments to demonstrate that a writ in the nature of mandamus can be issued to compel the authority concerned to do his legal duty. Before such a writ can be issued a demand for justice is a pre-condition.

6. By relying upon a judgment of this court in the case of **Nagendra Rai -vs- Municipal Commissioner, Calcutta Municipal Corporation & Ors reported in 2003 SCC Online Cal 12** it is held that :

Unless such a demand for justice is made it cannot be said that the authority concerned has failed to perform his duty legally enjoined upon him nor can a mandamus be issued in that case.

7. In the case of **Amrit Lal Berry -Vs- Collector of Central Excise, Central Revenue and Others reported in (1975) 4 SCC 714** wherein it has been categorically observed that “a demand for justice and its refusal must precede the filing of a petition asking for direction or writ of mandamus, would also operate against the petitioner”.

8. In the case of **Rajasthan State Industrial Development and Investment Corporation and Another -vs- Diamond & Gem Development Corporation Limited and Another** reported in **(2013) 5 Supreme Court Cases 470**, the State respondents relies upon paragraph 22, which is reproduced below:

“Additionally, the applicant must make a demand which is clear, plain and unambiguous.

It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case.”

9. In **Kuppanna Gounder & Ors -Vs- Peruma Gounder & Ors in W.C.P. No. 167 and 168 of 1959 and S.C.M.P. no. 134 of 1959** it is observed that a man shall not be permitted to blow hot and cold with reference to the same transaction or insist, at different times, on the truth of each of two conflicting allegations, according to the prompting of his private interest.
10. It is further elucidated that when no advantage accrues to a party by making or adopting a wrong statement, no question of approbate and reprobate or blowing hot and cold arises.
11. In the case of **Saraswati Industrial Syndicate Ltd. & Ors. -Vs- Union of India reported in (1974) 2 SCC 630** it is also observed in paragraph 24 which is enumerated below:
 “As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.”

(In Halsbury's Laws of England (3rd Edn.), Vol. 13, p. 106.)

12. Learned counsel appearing for the petitioner submits that the maintainability of a writ petition is an absolute bar and depends on definite facts and circumstances where such a demand would be futile or inappropriate. A demand would be a mere formality because the authority has already indicated the stance.
13. Learned counsel appearing for the petitioner also submits that the demand justice in the instant case is not required as the terms and conditions of the vacancy notice is the subject matter of challenge in this writ petition. The fair price shop dealership license has been granted by the authority concerned in an arbitrary, unreasonable manner without adhering to the terms and conditions of the State policy.
14. Learned counsel for the petitioner submits that judgments relied upon by the State respondents are distinguishable in facts since the decisions pertain to service matters and not relevant and applicable in the instant case.
15. The demand for justice is not mandatory if the act of the authority is patently illegal, violates the fundamental rights or causes breach of natural justice, making a request to the authority is a useless formality.
16. Due to paucity of time the hearing could not be completed.
17. Learned counsel appearing for the petitioner reserves to make his submission on the point of maintainability on the next returnable date.
18. For proper adjudication of the matter the State respondents is directed to produce the original order in a sealed cover pertaining to the selection of the candidates against the vacancy

notice date 28.5.2024 or the next returnable dates.

19. Let this matter appear on 25th February, 2026.

(Smita Das De, J.)