

(2011) 08 CAL CK 0065
In the Calcutta High Court

Case No : A.P.O. No. 262 of 2009, G.A. No. 179 of 2010 and W.P. No. 1095 of 2007

Annadata Distributor and Another

APPELLANT

Vs

Ranjit Kumar Maity and Others

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Citation : (2011) 08 CAL CK 0065

Hon'ble Judges : Soumen Sen, J; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Milan Kumar Bhattacharya and Daisy Basu, for the Appellant; Malay Basu, Nibedita Pal and Ramesh Dhara, Pradip Kumar Datta and Paritosh Sinha, Shyam Sundar Manna and Subasish Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Pinaki Chandra Ghose, J.—The instant appeal is arising out of an order passed on 15th June, 2009 directing the Principal Secretary or the Joint Secretary, Food to take decision in the matter afresh by considering the merits of the applicants whoever have filed their respective applications for M.R. Distributorship at Bhupatinagar on or before 1st June, 2005 within six weeks from the date of communication of the order.

2. The learned Trial Judge also directed the authorities concerned to consider the documents of all the applicants whether enclosed with the application form or submitted thereafter including the bank certificates of the writ Petitioners, namely, Ranjit Kumar Maity and Others already submitted in terms of the particulars mentioned in the application submitted on 1st June, 2005.

3. The order dated 15th June, 2009 was corrected by an order dated 25th June, 2009. The said correction was informal.

4. Being aggrieved by the said order, the appeal was preferred by M/s. Annadata Distributor and another.

5. The application of the Appellant for leave to intervene was allowed on 16th September, 2009 after condoning delay and granting leave to the Appellant to prefer the appeal.

6. The principal grievance of the Appellant in this writ petition may be summarized in the manner following.

Initially several writ petitions were filed namely, WP No. 1712 of 2006, WP No. 15788 (W) of 2008, WP No. 18154 (W) of 2005 and WP No. 20695 (W) of 2005 challenging the recruitment process initiated by the District Controller, Food & Supplies, Purba Midnapore by issuing a notice dated 25th April, 2005 inviting applications for appointment of a M.R. Distributor in Bhupatinagar of the District Purba Midnapore.

7. The WP No. 15788 (W) of 2005 was moved by the present Appellant namely, Annadata directing the authorities to appoint it as a distributor. In the said writ petition, an order was passed on 17th August, 2005 and directing the parties therein to maintain the position that was existing. The WP No. 18154 (W) of 2005 and W.P. No. 1712 of 2006 were taken out by Durga Enterprise. The WP No. 20695 (W) of 2005 was taken out by one Sachidananda Dey. While Annadata alleged unauthorized act of the Minister-in-charge in reversing the recommendation of the authorities to recommend Annadata's appointment, Sri Durga Enterprise took out the writ petition contending that in view of the final decision taken on the basis of the Enquiry Report it was entitled to be appointed as the distributor. Sachidananda Dey took out the writ petition contending that it was he who ought not to have been selected for the distributorship. During the pendency of the said WP No. 15788(W) of 2005, Sri Durga Enterprise took out the WP No. 1712 of 2006 for an order directing the authorities of the Food & Supplies Department to prepare a fresh enquiry report following the decision dated 18th May, 2006 passed by a learned single Judge of this Hon'ble Court in WP No. 1792 of 2005 and the decision of the Division Bench in APO No. 317 of 2006 preferred against the order dated 18th May, 2006. All the said four writ applications were disposed of by an order dated 14th June, 2007 directing the authorities of the Food & Supplies Department including the Sub-Divisional Controller, District Controller and the Director of the State Government to take final decision regarding selection and appointment of the distributorship within four weeks from the date of communication of the said order. All the authorities and the Government were directed to consider the cases of the candidates for the distributorship on the basis of the particulars, materials and information etc., mentioned by them in their applications submitted on or before 1st June, 2005. The learned Judge in deciding what should be the relevant date for considering the applications submitted by the candidates had made the following observation:

It is not in dispute that the last date for submitting applications for the Distributorship was fixed for 1st June, 2005.....all the authorities and the Government shall consider the cases of the candidates for the Distributorship on the basis of the particulars, materials, information etc., mentioned by them in

their applications submitted on or before 1st June, 2005.

Ranjit Kumar Maity and three others filed a writ application being WP No. 1095 of 2007 challenging the notice issued on 6th September, 2007 by the District Controller, Food & Supplies, Purba Midnapore inviting applications for filling up a resultant/new vacancy of a M.R. Distributor on Bhupatinagar under Kontai Sub-Division in the District of Purba Midnapore.

8. The said notice was preceded by an order dated 31st August, 2007 passed by the Directorate of District Distribution, Procurement and Supply in terms of the order dated 14th June, 2007. The said order reveals that enquiries were made in respect of several applicants including the present Appellant. It had also taken note of an order dated 10th July, 2007 passed in WP No. 860 of 2007 which is a writ petition filed by the Ranjit Kumar Maity, and it appears that the financial solvency of Ranjit Kumar Maity was not accepted by the said directorate. The said order dated 31st August, 2007 has been the subject-matter of challenge in several writ petitions including WP No. 1095 of 2007 in which the order under appeal was passed.

9. The Appellant on the basis of the aforesaid facts argued that the order passed on 15th June, 2009 was contrary to the earlier order passed on 14th June, 2007 by a Coordinate Bench and the learned single Judge following the principle of binding precedent ought not to have interfered with the order dated 31st August, 2007 and the said order is liable to be set aside.

10. It was further argued that the learned single Judge did not assign any reason while setting aside the order dated 31st August, 2007 and the fresh vacancy notice dated 6th September, 2007. Moreover, the Principal Secretary and Joint Secretary cannot be directed to decide the matter on the basis of the documents and the Court cannot direct the authorities to consider the documents submitted after 1st June, 2005.

The learned senior Counsel appearing on behalf of the Appellant on the question of binding precedent relied upon the following decisions:

- i) Jagadish Lal Gupta Vs. The Director of Rationing and Others,
- ii) Mahadeolal Kanodia Vs. The Administrator-general of West Bengal,
- iii) Jaisri Sahu Vs. Rajdewan Dubey and Others,
- iv) Smt. Somavanti and Others Vs. The State of Punjab and Others,
- v) Shri Bhagwan and Another Vs. Ram Chand and Another,
- vi) Indian Airlines Corporation Vs. Sukhdeo Rai,

It has been argued that the Letters Patent is a Charter and gives the right to prefer an appeal against the said judgment and reliance was placed on Union of India (UOI) and Others Vs. Narender Singh, , Anil Kumar Shaw Vs. State of West Bengal and Others, , Sharda Devi Vs. State of Bihar, and Indofer Society and

Others Vs. Director General of Foreign Trade and Additional Secretary to the Government of India and Others, .

11. It was on the basis of the aforesaid decisions it was argued that it was not open for another Coordinate Bench to pass any order which is contrary to an earlier order dated 14th June, 2007. It was argued that the date fixed on 1st June, 2005 for submission of documents had been enlarged by the impugned judgment which is contrary to the order passed on 14th June, 2007. A Coordinate Bench is bound to follow the another Coordinate Bench and accordingly, the said direction passed in the impugned order, is contrary to a well-settled law laid down in this regard.

12. The judgement reported in Anil Kumar Shaw Vs. State of West Bengal and Others, and Union of India (UOI) and Others Vs. Narender Singh, were referred to in the context of a letter issued by the present Appellant on 4th September, 2009. The learned Counsel appearing on behalf of the Respondents submitted that at the time when the application was moved for leave to appeal, the Appellants have deliberately suppressed the fact that by a letter dated 4th September, 2009, the Appellants themselves have requested the authorities to comply with the order dated 15th June, 2009. It was argued that a party who had accepted the order and sought for compliance thereof could not challenge the order. The order under appeal had attained its finality and hence No. appeal should be entertained. The Respondents placed reliance on the judgement reported in Steel Authority of India Ltd. Vs. S.U.T.N.I Sangam and Others, On the question of suppression it was argued that since leave to appeal was obtained by suppressing the material facts, the Hon''ble Court could dismiss the appeal and vacate the interim order dated 16th September, 2009. The learned Counsel placed reliance on the judgment reported in AIR 1981 707 (SC)

13. For better appreciation of the said judgment and the argument made on behalf of the Appellant, it is useful to reproduce some of the paragraphs mentioned in the said letter dated 4th September, 2009.

3. It is pertinent to mention herein that on June 15, 2009, the W.P. No. 1095 of 2009 has been disposed of by directing the Principal Secretary or Joint Secretary, Food to take a decision in the matter afresh by considering the merits of the applications whoever have filed their respective application for M.R. distributorship at Bhupatinagar on or before 1st June, 2005 within six weeks from the date of communication of order. A Xeroxed copy of the said order dated June 15, 2009 in W.P. No. 1095 of 2007 is annexed hereto for your kind perusal and necessary consideration.

5. It is further pertinent mention herein in W.P. No. 21220 (W) of 2007, my clients not only challenged the impugned order dated 31st August, 2007 passed by D.D.P.Q.S but also prayed for his appointment as M.R. Distributorship concerned. On 4th October, 2007, this Hon''ble Court granted an interim order in presence of the writ Petitioners in W.P. No. 1095 of 2007 which is still valid and

subjudice. A Xeroxed copy of the said order dated 4th October, 2007 in W.P. No. 21220 (W) of 2007 is annexed hereto for your kind perusal and consideration.

6. It is apparent on the face of record and judgement and order dated 15th June, 2009, my client M/s. Annadata Distributor is legally entitled to appointment as his candidature is better amongst the applicants as on 1st June, 2005 and far better than M/s. Sri Durga Enterprise, Ranjit Kumar Maity is one of the partners who does not qualify as the conversion of the lands and godowns were made on 21st June, 2005.

In the aforesaid circumstances, I on behalf of my clients M/s. Annadata Distributor requested your goodselfs to consider the case of appointment of M.R. Distributor concerned in strict compliance with the judgment and Order dated 15th June, 2009 and oblige.

14. In the said letter the order dated 4th October, 2007 was referred to which was passed in a writ application filed by the present Appellant questioning the very same order passed by the D.D.P.Q.S on 31st August, 2007. In the said writ application being WP No. 21220 (W) of 2007, an order of status quo was passed on 4th October, 2007 with regard to the notice dated 6th September, 2007 which is a purported declaration of vacancy for appointment of M.R. Distributorship at Bhupatinagar. The said order reveals that the learned advocate appearing on behalf of the Sri Durga Enterprise, submitted that the said order dated 31st August, 2007 was under challenge in another W.P. No. 1095 of 2007 filed by his client and in which an interim order of status quo with regard to the notice dated 6th September, 2007 issued by District Controller, Purba Midnapore was passed.

15. In the backdrop of the letter dated 4th September, 2009, the Court would now consider the question of maintainability of appeal against the said judgment and order. It is a fact when leave to appeal was obtained, it was not brought to our notice that, in fact, the Appellants had sought for compliance of the impugned order by the letter dated 4th September, 2009. If that would have been the case then we would not have granted such leave at all.

16. A litigant who comes to Court and invokes its jurisdiction with clean hands. It is a fundamental requirement of law that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A litigant is required to make frank disclosure of all facts so as to enable the Court to decide on the basis of the entire material disclosed and not to secrete any information. A proceeding initiated without full disclosure of facts is liable to be dismissed. In this case, we are of the view that the Appellant did not make a full disclosure of all the material facts and as observed by us, it was incumbent for the Appellant to refer to the said letter dated 4th September, 2009.

17. As early as in 1917, the Court of appeal in R.V. Kensington Income Tax Commr., ex p Princess de Polignac K.B. Scrutton, L.J. commonly known as Russian Princes case (reported in 1917 (1) KB 486 (CA) uphold the said principle.

In that celebrated case K.B. Scrutton, L.J. formulated the said principle as under:

....and it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it - the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.

The aforesaid decision has been considered and followed in several decisions including in a fairly recent decision reported in Amar Singh Vs. Union of India (UOI) and Others, It appears that the learned single Judge had come to a clear finding, that the finding of the directorate in the order dated 31st August, 2007 that the writ Petitioner, namely, Ranjit Kumar Maity could not submit any document pertaining to his solvency for conducting the business as on 1st June, 2005, was perverse and contrary to record. The learned single Judge after taking into consideration Paragraph 23 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 held that the Director had No. authority to take final decision and/or to direct District Controller, Food & Supplies, Purba Midnapore to issue notice afresh under Paragraph 23 of the said Control Order, 2003 and hence the said order was held to be without jurisdiction.

18. It further appears from the said order that the learned single Judge did not accept the approval of the State Government which was granted not in accordance with the spirit of the provisions of the Control Order, 2003. The Director was obliged to send the entire Enquiry Report/Record to the State Government and not his decision for approval and as such the impugned memo and also the consequential notice dated 6th September, 2007 were held to be not sustainable and accordingly quashed. The said authority was directed to apply its mind to the materials on record and then only decide as to whether such approval should be granted or not. Since the State has to take a conscious decision and that has to be done subjectively as well as objectively, the same would not be possible unless the entire record is available with the authority considering such report. In absence of the entire enquiry report or the record being made available to the State Government, the said authority would not be in a position to consider the report which is based on the enquiry report and other materials and accordingly we feel that the learned single Judge was justified in quashing the notice dated 6th September, 2007. Since the entire record was not available, we think that the learned single Judge was absolutely correct in holding that such approval was done mechanically.

19. The learned single Judge did take into consideration the earlier order dated 14th June, 2007 as would be reflected in the order itself. The subject-matter of challenge in the writ petition was the order dated 31st August, 2007 and the

impugned notice dated 6th September, 2007 issued as a consequence to such order. The same is a subsequent fact and we are unable to appreciate as to how the learned Judge has acted contrary to any direction passed on 14th June, 2007. In fact, the order dated 14th June, 2007 could not and by No. stretch of imagination could contemplate an order being passed on 31st August, 2007. The order of 31st August, 2007 gives a separate cause of action.

20. Apart from the aforesaid having regard to the letter dated 4th September, 2009, the present Appellant could not have challenged the said order as it is well-settled that a person having accepted the order and required the authority to implement the said order, could not challenge the same. A party cannot approbate and reprobate. No. party can accept and reject the same instrument (Steel Authority of India Ltd. Vs. S.U.T.N.I Sangam and Others, paragraph 93 and AIR 2010 SC 2077 Paragraph 61 to 68). There cannot be confession and avoidance at the same time.

We have been informed that the State Respondents and the concerned authorities are in the process of implementing the said order.

In the judgment reported in Anil Kumar Shaw Vs. State of West Bengal and Others, , it appears that the order was complied with in view of the Rule of Contempt already issued and in that context the maintainability of the appeal was considered. In this case the State authorities did not challenge the said order nor it is being urged that the said order was sought to be complied with in view of any impending contempt proceedings.

21. The present appeal stands on a different footing altogether. The present Appellant also filed a writ application challenging the very same order dated 31st August, 2007 and the said Appellant obtained an order as mentioned hereinabove. By the letter dated 4th September, 2009, the present Appellant unequivocally and clearly required the Principal Secretary and the authorities to decide the matter in accordance with the order passed on 15th June, 2009. In the last paragraph of the said letter, the Petitioner requested the said authorities to strictly comply with the judgment and order dated 15th June, 2009.

In view of the aforesaid, the Appellant is clearly estopped from challenging the said order. In our view, the party who had accepted the order and required the authority to decide the matter in terms of the order cannot turn around and challenge the said order.

22. We, however, make it clear that in so far as the eligibility of the dealers are concerned, the direction of the learned single Judge dated 14th September, 2006 is quite clear and specific since His Lordship has directed the authorities concerned to consider the cases of all the applicants on the basis of the particulars, materials, information etc., mentioned in their respective application submitted on or before 1st June, 2005. The learned single Judge has also said that nothing subsequent to the date if produced or submitted by any candidate would be considered in favour of the candidate concerned while taking the final

decision in the matter meaning thereby the documents that are required to be submitted should be as of 1st June, 2005.

In view of the aforesaid we do not find any infirmity in the order dated 15th June, 2009 as corrected by an order dated 25th June, 2009.

The appeal is dismissed, however, there shall be No. order as to costs.

Soumen Sen, J.-

I agree