

---

**(2006) 05 CAL CK 0032**  
**In the Calcutta High Court**  
**Case No : Writ Petition 1792 of 2005**

Biswajit Adak

APPELLANT

Vs

State of West Bengal

RESPONDENT

---

**Date of Decision :** 18-05-2006

**Acts Referred:**

**Citation :** (2007) 1 ILR (Cal) 109

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

**Bench :** Single Bench

**Advocate :** Anindya Kumar Mitra, Jaydip Kar and Sabyasachi Sen, for first Petitioners, for the Appellant; Sajal Chakraborty, Syed Nazrul Hossain, for State, Ashok Banerjee, K.K. Bandopadhyay, S. Sarkar, Ram Agarwal and Kumar Gupta for seventh Respondents, Alok Ghosh and Haridas Das, Indrajit Sarkar and Alok Ghosh for State, Haridas Das, for sixth Respondents, for the Respondent

---

## Judgement

Jayanta Kumar Biswas, J.—These two writ petitions have arisen out of one selection process initiated by the District Controller, Food & Supplies, Purba Midnapur at Tamluk by his notice dated April 25th, 2006. By that applications from eligible candidates were invited for appointing a modified ration distributor at Chatra in the district of Purba Midnapur.

2. In response to the notice fifteen applications were received by the authority. The sub-divisional controller of food and supplies constituted an inquiry team in which a circle ihspector, an inspector, and a sub-inspector were members. The team made the inquiry on June 14th and 15th, 2005; and oh June 16th, 2005 it submitted the inquiry report to the sub-divisional controller. On June 20th, 2005 the sub-divisional controller accepted the report and recorded his recommendations.

3. The sub-divisional controller recommended that Biswajit Adak, the Petitioner in Writ Petition No. 1792 of 2005, should be considered the candidate of the first choice; and that K. K. Enterprise, the seventh Respondent in the writ petition filed by Biswajit, should be considered the candidate of the second choice. The

sixth Respondent (one Rakesh Pattanayak) in the writ petition filed by Biswajit was found unsuitable for recommendation by the sub-divisional controller.

4. On receipt of the inquiry report, the district controller of food and supplies reversed the recommendations of the sub-divisional controller regarding Biswajit and K. K. Enterprise. The district controller recommended K. K. Enterprise as the candidate of the first choice, and rated Biswajit as the candidate deserving the second position. With his recommendations the district controller forwarded the papers to the director of district distribution, procurement and supply.

5. when the matter was pending consideration before the director, these two writ petitions came to be filed. Writ Petition No. 1450 of 2005 was filed on July 6th, 2005 by Rakesh. His principal contention is that K. K. Enterprise could not have been considered for appointment at all, since at the inquiry stage it offered to change its location of godown. Biswajit filed Writ Petition No. 1792 of 2005 dated September 7th, 2005 raising the contentions: (a) that the district controller was not empowered to reserve the recommendations of the sub-divisional controller, and (b) that if the district controller had reasons to disagree with the inquiry report of the sub-divisional controller, he could have directed a re-inquiry.

6. The state Respondents are contesting the writ petitions. They have filed oppositions. In the opposition to Writ Petition No. 1792 of 2005, the director stated that since the inquiry team acted without jurisdiction or authority, the selection process was kept pending. In para. 16 of that opposition the director stated that the appointing authority should obtain liberty from this Court for taking a decision in the selection process in terms of provisions of the control order. He stated that the liberty was also needed for taking a decision, if required, for ordering a re-inquiry into the matter.

7. The selection process was, admittedly, governed by provisions in para. 23 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2003. Original para. 23 was amended by notification No. 7044-FS dated November 18th, 2004. Counsel for Biswajit has said that he has doubt whether the amended provisions were duly notified. Counsel for the Respondents have said that they have no doubt about notification of the amended provisions. Since the question has not been very seriously pressed, I proceed on the basis that the amended provisions were duly notified.

8. In terms of provisions in para. 23, on receipt of the applications the sub-divisional controller was to enquire and prepare a report. He was then to send the report with his comments to the district controller. The district controller was to forward the report with his recommendations to the director. The director, after obtaining necessary approval from the government, was to arrange or empower any officer for issuing the appointment letter together with licence. The director, however, was empowered to arrange a re-inquiry into the matter by any competent officer or by a team, if he had reasons to disagree with the inquiry report of the sub-divisional controller. In such a case, after getting the fresh

inquiry report he was to forward the case with his comments to the government for necessary approval.

9. In the present case, counsel for Rakesh has argued that the selection process from the stage of making inquiry is incurably vitiated, since the sub-divisional controller instead of making inquiry himself, constituted an inquiry team for the purpose, though he was not empowered to arrange an inquiry. By referring to provisions in para. 19 he has contended that it is only in the case of selection of a dealer that the sub divisional controller is empowered to arrange an inquiry by a team. His contention is that in this case the sub-divisional controller was under the mandatory statutory obligation to make the inquiry himself.

10. As to the question of validity of the inquiry report, counsel for E Hswajit has said that Rakesh cannot be permitted to take the point now, because his plea is his by the doctrine of taking chances in that at the time of inquiry he did not raise any objection to the making of the inquiry by the team constituted by the sub-divisional controller. His further argument is that the provision has to be interpreted by giving a pragmatic approach that the sub-divisional controller is not expected to make the inquiry on his own, when for the purpose one would be required to visit several destinations. His contention is that in any case the inquiry report (not challenged by anyone) was approved and accepted by the sub-divisional controller who took the responsibility.

11. Regarding the issue, counsel for the state appearing in the writ petition filed by Rakesh submits that since both the writ petitions are premature, in view of the Apex Court decision in Mrs. Kunda S. Kadam Vs. Dr. K.K. Soman and Others, the writ court should not enter into any question whatsoever. His contention is that if any appointment is made only then an agrieved party can be permitted to question the process. He says that at the present moment the entire" matter should be left to the authorities, and that much importance should not be given to the statement made by the director in his affidavit filed in the case of Biswajit, since it is not the director, but the government, which is the ultimate authority in the matter.

12. Counsel for the state appearing in the case filed by Biswajit argues that since the word "himself" was not mentiond in para.23 (ii), the sub-divisional controller was empowered to constitute a team for making the inquiry. He, however, says that the sub-divisional controller was not empowered to make the recommendations. According to him, only the district controller was to make the recommendations. Counsel for K. K. Enterprise also submits that the sub-divisional controller was empowered to get the matter enquired by a team. He says that inquiry made by the team did not make any difference, since the sub-divisional controller ultimately accepted the inquiry report.

13. From the cases made out by the parties and the arguments advanced, by their counsel, I find that there are two questions which need decision in the case: (i) whether the sub-divisional controller was. empowered to make any

recommendation; (ii) whether he was empowered to get the matter enquired into by some other person or body or team, or whether he was under an unqualified obligation to make the inquiry himself. The consequent question is whether at the above-noted stage of the selection process the writ Court should interfere in the matter.

14. I think the question whether the writ Court should interfere at this stage should be dealt with first. In my view, on the basis of the Apex Court decision cited to me it cannot be said as a matter of absolute proposition that under no circumstances the writ Court can or should interfere in a selection process until the appointment is made. I venture to say that such an absolute proposition is bound to result in grave injustice; for even when a party approaches the Court alleging violation of statutory rules, and even if such violation is apparent, the writ Court will not be in a position to interfere, because appointment is yet to be made.

15. In my opinion, such a course, if adopted, cannot serve the purpose of justice. If the violation of statutory provisions is apparent, and if for such violation the selection process stands incurably vitiated, to my mind, it will be a failure of duty, if the Court does not set the wrong right. I am therefore unable to agree with counsel for the state appearing in the case filed by Rakesh that since no decision has yet been taken to appoint any one, the writ Court should not exercise its powers and it should leave everything for the authorities.

16. With respect to the question of power of the sub-divisional controller to make recommendations, I find that the provisions in para. 23 are absolutely clear that he did not possess such power. He possessed the power to recommend only in the case of appointment of a dealer, and not a distributor. In the present case his powers were limited to making only comments regarding the inquiry. The authority to recommend was the district controller. Hence there can be no doubt that the sub-divisional controller exceeded the limits of this statutory powers by making recommendations in favour of the candidates. The recommendations were rightly ignored by the district controller.

17. As will appear from the opposition filed by the director (in the case of Biswajit), he decided not to take further steps in the matter, since after examining the papers he found that the inquiry team appointed by the sub-divisional controller had acted without authority and jurisdiction. He has, however, stated in his affidavit that he needs leave of this Court to take the appropriate decision either to appoint or to make a fresh inquiry.

18. True it is that Rakesh, one of the candidates, did not raise any objection at the time of inquiry made by the team. The fact that the sub-divisional controller did not enquire himself is apparent and admitted. The question is whether he was under an obligation to enquire himself, or whether, as contended by counsel for the state in both the cases, and for K. K. Enterprise and Biswajit, he was empowered to arrange an inquiry by a team constituted by him. Counsel who

defended action of the sub-divisional controller has put forward the logic that the expression "himself" was not mentioned in the provisions, and that in any case it would not have been possible for the sub-divisional controller to make the inquiry on his own by reaching several destinations within a period of two weeks.

19. The provisions in para. 23 (ii) are unambiguous, and they do not admit of any two interpretations. The scheme of the thing is that the sub-divisional controller is to enquire himself, and the provision is mandatory. He can arrange an inquiry only in the case of appointment of a dealer; in the case of appointment of a distributor, it is only the district controller who is empowered to arrange an inquiry, when he finds reasons to disagree with the inquiry report of the sub divisional controller.

20. I therefore find that this is a clear case where the sub-divisional controller acted in gross violation of the statutory provisions. The question is having found so whether I should say that since the appointment has not yet been made, or the report has not been challenged in the writ petitions, the matter should be left for consideration of the authority. In my view, if such a course is adopted, then there will be a failure in the discharge of duty by the Court. Once the gross violation of the statutory provisions has emerged, in my view, the Court is not expected to say that the matter should be dealt with only by the authority concerned.

21. The director having already noticed the gross violation of the statutory provisions by the sub-divisional controller, in my view, ought not to have hesitated in making his position clear. He sought to keep his right to deal with the matter reserved. In my view, on the facts of the case there is no reason to leave the matter for the authority. The process will only delay the conclusion of the selection process. I therefore hold that the inquiry report submitted by the sub divisional controller should be set aside.

22. For these reasons I set aside the inquiry report submitted by the sub-divisional controller. I order that the sub-divisional controller shall enquire the applications himself and submit the inquiry report with his comments to the district controller within two weeks from the date of receipt of a copy of this order by Vim. On receipt of the report from the sub-divisional controller with his comments, the district controller shall proceed with the matter in accordance with the provisions in para 23 of the control order. It is made clear that the sub-divisional controller shall make necessary inquiry on the basis of the applications submitted by the candidates within the time mentioned in the notice inviting applications, and according to the terms and conditions of the notice.

23. Both the writ petitions are accordingly be disposed of. There shall be no order for costs in them.

24. Counsel for Biswajit prays for stay of the order. I do not find any reason to stay the operation of the order. It is noted that counsel for Rakesh has opposed the prayer for stay. Hence the prayer for stay is rejected.

25. All parties shall act on signed and certified xerox copies of this dictated order, both to be supplied on the usual undertaking.