
(2009) 03 CAL CK 0090
In the Calcutta High Court
Case No : Writ Petition No. 4843 of 2005

Dinabandhu Adak

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 03 CAL CK 0090

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Sagar Bandopadhyay, Sanjoy Kr. Ghosh and Soma Kar Ghosh, for the Appellant; S.K. Chakraborty, for the Respondent

Judgement

Debasish Kar Gupta, J.—The subject matter of challenge in this writ application are the order of suspension of MR dealership of the petitioner passed by the respondent No. 7 under memo No. 1340/1(8)/SFS/2002 dated November 18, 2002 as also the order of termination of the above dealership passed by the same respondent under his memo No. 228/1(6)/SFS dated February 25, 2005.

2. The petitioner was appointed as a MR dealer and Kerosene Oil dealer in Kuliapara under Balagarh Police Station District Hooghly. The petitioner was running as MR Dealership on the basis of an agreement dated September 20, 1992 (hereinafter referred to as the said agreement) executed by and between the State of West Bengal and the writ petitioner. The petitioner was running his Kerosene Oil dealership dealer on the strength of a licence issued by the respondent authority under paragraph 6 of the West Bengal Kerosene Control Order 1968.

3. A show-cause notice was issued by the respondent No. 7 under his memo No. 1268/SFS dated October 31, 2002 in respect of the above MR dealership of the petitioner directing him to show-cause as to why disciplinary action would not be taken against him for the purported irregularities mentioned therein. By an order issued under memo No. 1340/SFS dated November 18, 2002 the respondent No.

7 informed the petitioner that the submissions of the petitioner dated November 15, 2002 on the above show-cause notice were found to be unsatisfactory. The MR dealership of the petitioner was suspended in exercise of powers conferred upon the respondent No. 7 under Clause 17 of the said agreement. The Kerosene Oil licence of the petitioner was also placed under suspension. The petitioner preferred an appeal dated December 16, 2002 before the respondent No. 5 against the above order. The respondent No. 5 by an order as communicated under memo No. 429/G/SFS dated April 30, 2002 affirmed the order of suspension which was passed by the respondent No. 7 in connection with the above MR dealership of the petitioner but set aside the order of suspension of kerosene oil retail licence of the petitioner.

4. Thereafter, the respondent No. 7 cancelled the MR dealership of the petitioner by an order as communicated under memo No. 426 dated May 4, 2004. The respondent No. 7 withdrew the order of suspension of Kerosene Oil retail licence of the petitioner by another order as communicated under memo No. 427 dated May 4, 2004.

5. The petitioner filed an application under Article 226 of the constitution of India being W.P. No. 10774(W) of 2004 challenging the order passed by the respondent No. 5 under his memo No. 429/G/SFS dated April 30, 2004 as also the order of the respondent No. 7 as communicated under memo No. 426 dated May 4, 2004. The above writ application was disposed of on July 6, 2004 by setting aside the above orders as also granting liberty to the appellate authority to hear the appeal afresh after serving prior notice and after giving opportunity of hearing to the petitioner for the purpose of passing a speaking order within the period stipulated therein.

6. Pursuant thereto the respondent No. 5, passed an order dated October 7, 2004, after giving an opportunity of hearing, upholding the earlier order of rejecting the appeal in connection with the above MR dealership of the petitioner. The petitioner filed an application under Article 226 of the constitution of India being W.P. No. 18446(W) of 2004 challenging the aforesaid order dated October 7, 2004 of the respondent No. 5. The above writ application was disposed of on November 18, 2004 with the observations that:

(i) The respondent No. 5 was in error in authorising the respondent No. 7 to cancel the MR dealership of the petitioner without observing the prescribed procedure.

(ii) And as such the order dated October 7, 2004 was confined only in respect of the order of suspension which had been issued earlier by the respondent No. 7 as the respondent No. 5 decided the appeal preferred by the petitioner against the aforesaid order of suspension.

7. Thereafter, the petitioner submitted a representation dated December 15, 2004 to the respondent No. 7 for withdrawal of the order of suspension dated November 18, 2002 which had been passed by the respondent No. 7 in

connection with his MR dealership under reference. Since the respondent authority sat tight over the matter, the petitioner filed another writ application being W.P. 685(W) 2005 which was disposed of on January 28, 2005 with the following directions upon the respondent authority. The relevant portions of the above order are quoted below:

Counsel for the petitioner submits that his client cannot be kept under indefinite suspension. I agree with him. The suspension made in the interest of public distribution system cannot be used as the final positive measure against the dealer. Counsel for the respondents informs me that the district magistrate has directed the controller to initiate apprehending in the matter. It is not known why the controller of hisnot feel safe in exercising the power given to him. It was his obligation to take further actions in the matter, if such actions were warranted. It seems that he decided to act according to the dictation of district magistrate. At this stage I would only say that the procedure followed by the controller is not proper. However, I am of the view that the controller cannot sit tight over the matter for indefinite period. Hence I dispose of this writ petition by the following order:

Within a month from the date of receipt of a copy of this order the controller shall conclude the proceeding that was initiated by issuing the suspension order dated November 2002. If he finds that there is no reason to initiate a proceeding for termination of the agreement, then he shall pass the necessary order and revoke the suspension order. If he decides to initiate a proceeding for termination of the agreement, then he shall conclude the proceeding by giving reasonable opportunity to the petitioner of defending himself. It is repeated that the proceeding either for revocation or for termination shall be concluded within a month from the date of receipt of a copy of this order by the sub-divisional controller food and supplies.

In the facts and circumstances of the case there will be no order or costs in the writ petition.

Xerox copy of this order duly countersigned by the Assistant Registrar(Court) shall be supplied to the parties, on usual undertakings.

Urgent certified Xerox copy of this order shall be supplied to the parties, if applied for.

(Jayanta Kumar Biswas, J.)

8. Thereafter, the respondent No. 7 issued a notice dated February 8, 2005 to the petitioner for appearing before him on February 15, 2005 for giving an opportunity of hearing in the matter, the petitioner apart from availing of the opportunity of hearing submitted a representation dated February 15, 2005 before the respondent No. 7. The respondent No. 7 after hearing the petitioner as aforesaid, passed an order as communicated under memo No. 228/1(6)/SFS dated February 25, 2005 cancelling the MR dealership of the petitioner upon due

termination of the agreement dated September 20, 1992 as also forfeiting the security deposit of Rs. 250/-.

9. It is submitted on behalf of the petitioner that no fresh show-cause notice was issued before passing the impugned order dated February 25, 2005. But some charges were taken into consideration at the time passing the impugned order which had not been mentioned in the show-cause notice dated October 31, 2002. The second limb of submissions of the petitioner is this in accordance with the provisions of Clause 17 of the agreement dated September 29, 1992, there was no scope to pass an order of termination of the MR dealership under reference.

10. Reliance is placed on the decision of State of Mysore Vs. S.S. Makapur, to submit that the order of termination was passed by the respondent No. 7 violating the principles of natural justice by taking into consideration the charges which were not levelled against the petitioner in the show-cause notice dated November 18, 2002.

11. The learned Counsel appearing on behalf of the state respondents submits that the power conferred under Clause 17 of the aforesaid agreement included the power to terminate the MR dealership under reference. According to the learned Counsel appearing for the state respondents the power to terminate the MR dealership was conferred upon the respondent No. 5 under Clause 18. But the provisions of Clause 17 was an independent provision with regard to the disciplinary actions. It is also submitted on behalf of the state respondents that the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 came into force with effect from February 1, 2004 but the MR dealership of the petitioner was not renewed after promulgation of the above control order. So, the claim of the petitioner for restoration of MR dealership was not based on any legal right.

12. The learned Counsel appearing for the state respondents relied upon the decision of Jugal Kanta Pramanik v. State of West Bengal and Ors. reported in 1990 Cri LJ 137 to submit that the provisions of Clause 17 of an agreement in between the State Government and one MR dealership was under scrutiny in the above case and it was held upon scrutiny of provisions of the above Act that the above clause conferred the power upon the authority to cancel the agreement of dealership.

13. I have heard learned Counsels appearing for the respective parties and I have considered the facts and circumstances of the case on the basis of the materials available on record. It is an admitted fact that the impugned order of termination of MR dealership of the petitioner issued under memo nol.228/1(6)/SFS dated February 25, 2005 was passed by the respondent No. 7 pursuant to and in compliance with the order dated January 28, 2005 passed in W.P. No. 685(W) of 2005. Therefore, the respondent No. 7 was under obligation to pass the impugned order in accordance with law taking into consideration the directions given in the above order dated January 28, 2005 passed in W.P. No.

685(W) of 2005.

14. I find that the rights and obligations of the respondent authority, namely, the State of West Bengal and the petitioner flowed from the agreement dated February 20, 1992(annexure p-1 at page 43 to this writ application). It is also an admitted fact that the impugned order of termination dated January 25, 2005 was passed against the petitioner in exercise of power conferred upon the respondent No. 7 by the provisions of the above Clause 17. Therefore, the first question which falls for consideration of this Court is the scope of passing the impugned order of termination dated February 25, 2005 by the respondent No. 7 invoking the provision of Clause 17 of the aforesaid agreement dated September 20, 1992.

15. Admittedly the provisions of Clause 17 of the agreement dated September 20, 1992 conferred a right upon the respondent No. 7 to suspend the supply of food stuff and other essential commodities temporarily, without prejudice to the rights and remedies available to the State Government against the petitioner and after giving the petitioner an opportunity to submit a written explanation in the event of failure on the part of the petitioner to implement and/or comply with any term and condition of the above agreement or any opportunity which had been given to the petitioner by the respondent authority under the above agreement. The above Clause 17 further provided that the order passed by the respondent No. 7, if any, would be appealable to the respondent No. 5. The Clause 17 further provided that the order passed by the respondent No. 5, if any, would be appealable to the State Government and in that event the decision of the State Government should be final. From a close scrutiny of the above provision, I do not find that Clause 17 conferred any right upon the respondent No. 7 to terminate the agreement of MR dealership executed by and between the State Government and the petitioner.

16. It is noteworthy here that the provisions of Clause 18(A) conferred the right to terminate the agreement upon the respondent No. 5, namely, the District Magistrate, after giving one month's prior notice to that effect. On further scrutiny, I find that the above provision had no nexus or connection with the provisions of Clause 17.

17. The observations made in the matter of *Skips A/S Nordheim and Ors. v. Syrian Petroleum Co. Ltd. and Anr.* reported in (1983)3 All ER 645 (at page 650) are as follows:

The meaning and effect of incorporated clause has to be determined as a matter of construction of the contract into which it is incorporated having regard to all the terms of that contract.

18. Therefore, I find force in the submissions made on behalf of the writ petitioner that in view of the provisions of the agreement under reference the M. R. Dealership of the petitioner could only be terminated by the respondent No. 5, namely, the District Magistrate, Hooghly invoking the provisions of Clause 18(A)

of the agreement under reference. Since the impugned order of termination dated February 25, 2005 was not passed by the respondent No. 5, the same is void ab initio.

19. After perusing the operative portions of the order dated January 28, 2005 passed in W.P. No. 685(W) of 2005, I find that the above issue had not been decided in the above writ application. Therefore, the above issue was open for judicial interpretation.

20. I do not find substance on the submissions made on behalf of the state respondents that after promulgation of the West Bengal Public Distribution System (Maintenance and Control) Order, 2003, the petitioner was not entitled to get any relief from a court of law since no licence was issued in his favour under the above control order. Admittedly, an agreement dated September 20, 1992 was executed by and between the State of West Bengal and the petitioner to run the business of MR dealership. Admittedly, both the aforesaid parties acted upon the above agreement. It is also not in dispute that the above dealership of the petitioner was suspended by an order dated November 18, 2002 invoking the provisions of Clause 17 of the agreement dated September 20, 1992. The above provision empowered the respondent No. 7 to suspend the MR dealership of the petitioner under reference. Such an order suspending the MR dealership of the petitioner was an interim measure pending final decision of the respondent authority. Therefore, such an interim measure could not be converted to a final order due to inaction on the part of the respondent authority.

21. I have already decided that the respondent No. 7 acted beyond the scope and ambit of the provisions of Clause 17 of the agreement under reference. As a result, the impugned order of termination of MR dealership of the petitioner could not be sustained in law.

22. The agreement dated September 20, 1992, was in existence on the date on which the West Bengal Public Distribution System (Maintenance and control) Order, 2003, came into force i.e. on February 1, 2004. The respondent authorities were under obligation to appoint dealer in Kuliapara, Police Station, Balagarh, District Hooghly under the above control order in the same manner and applying the same methodology as the authorities applied in other areas where similar type of agreements were in existence on February 2, 2004.

23. I do not find that the decision of Jugal Kanta Pramanik(supra) helps the respondents in any way on scrutiny of Clause 17 of the agreement, which was the subject matter of examination in the matter of Jugal Kanta Pramanik(supra), the court held that the above provision contended power to cancel the agreement of dealership. But after close scrutiny of Clause 17 of the instant case (annexure p-1 at page 43 to this writ application) I do not find similar provision in the agreement dated September 20, 1992.

24. In view of the above the impugned order of the respondent No. 7 passed under Memo. No. 1340/1(8)SFS/2002 dated November 18, 2002 is quashed and

set aside. The authorities under the West Bengal Public Distribution System (Maintenance and Control) Order, 2003, are directed to fill up the vacancy under reference in accordance with the provisions of the aforesaid control order within a period of 2 months from the date of communication of this matter taking into consideration the candidature of the petitioner in the same manner and adopting the same methodology as was followed in other areas where similar type of agreements were in existence on February 1, 2004, i.e. the date on which the new control order came into force.

25. This writ application is thus disposed of.

26. There will be, however, no order as to costs.

27. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.