
(2008) 12 CAL CK 0014
In the Calcutta High Court
Case No : Writ Petition No. 19590 (W) of 2008

Dinabandhu Mallick

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Citation : (2008) 12 CAL CK 0014

Hon'ble Judges : Aniruddha Bose, J

Bench : Single Bench

Advocate : D. Saha Roy and Mr. P. Bhattacharyya, for the Appellant; P.S. Bhattacharyya and Mr. Bhola Nath Ghosh for the Respondent No. 7, Mr. A. Chatterjee for the State, for the Respondent

Judgement

Aniruddha Bose, J.—This is an unusual writ petition in which the order in W.P. No.19618 (W) of 2004 passed by this Court on 18th June, 2008 has been challenged. I shall henceforth describe this writ petition as the earlier writ petition. In that order, I had directed the respondent No.6 to dispose of the application of the writ petitioner therein dated 13th April, 2004 in accordance with law by passing a reasoned order. The prayer in the writ petition was or consideration of the application of the petitioner therein for being appointed as a dealer under the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 and also as a dealer under the West Bengal Kerosene Control Order, 1968. The prayer was made for consideration of the writ petitioner's case therein in accordance with a circular issued by the food and supplies authorities dated 28th February, 2008. This circular provides for engagement of certain specified near relations of a deceased dealer or a dealer who is physically incapacitated, as dealers in the place of their predecessors.

2. In the present writ petition, the petitioner's case is that the writ petitioner in W.P. No. 19618 (W) of 2004 could not take benefit of the said circular as the deceased dealer had no relationship with the writ petitioner therein. The dealer whose death appears to have created the vacancy is the father of the writ

petitioner in the present writ petition. This fact is not in dispute. In the earlier writ petition, the claim was made by the writ petitioner on the strength of his predecessor being real owner of the business of the father of the writ petitioner in the present writ petition. It was the case of the writ petitioner in the earlier writ petition that the money for running the business of dealership was extended by the predecessor of the writ petitioner therein and an agreement for running the business of dealership was executed on a partnership basis.

3. Preliminary objection was raised about the maintainability of the present writ petition. It was submitted by Mr. Bhattacharyya, learned Advocate for respondent No.7, who was the writ petitioner in the earlier writ petition that an order of coordinate bench cannot be challenged in a subsequent writ petition.

4. In my opinion, however, this Court has inherent power to review its own order in whatever form an application is filed for reviewing such order. The order which has been assailed in the present writ petition was passed by this Court only and as such under normal circumstances this would be proper Court having jurisdiction to review such order. It is true that the petitioner herein has made an application not in the form of a review but as a fresh writ petition only. In the case of Shivdeo Singh and Others Vs. State of Punjab and Others, , such a course has also been held to be a permissible course for correcting a wrong order.

5. In the instant case, this Court had passed the order on 18th June, 2008 on the assumption that the father of the writ petitioner in W.P. No. 19618 (W) of 2004 was the dealer of the business which is subject of dispute in both these writ petitions. Admittedly, the dealership licence was in the name of the father of the writ petitioner in the present writ petition. Now whether the predecessor of the client of Mr. Bhattacharyya was the actual owner of the business or not are essentially factual issues which would have to be determined by the appropriate legal forum. It is however not disputed that the licence stood in the name of the father of Mr. Saha Roy's client. Since it was the father of Mr. Saha Roy's client in whose name the licence of dealership was issued, the respondent No.7 cannot claim any right on the basis of such circular. This circular recognizes Mr. Saha Roy's client only for being eligible to get the benefit of that circular along with his near relations. The order passed by this Court in W.P. No.19618 (W) of 2004 was passed on the basis of wrong assumption about the actual identity of the holder of the dealership licence, and such error requires correction. Otherwise, an injustice caused by an erroneous order of the Court would be allowed to continue.

6. Under these circumstances, in my opinion, the matter should be considered afresh by the District Controller, Food and Supplies, Hooghly in terms of the circular dated 28th February, 2006 or any other earlier circular which may be relevant for consideration of application for dealership of the specified kin of a deceased dealer for engagement in the vacancies created by the death of an existing dealer. The order passed by this Court in. W.P. No. 1961 (W) of 2004 dated 18th June, 2008 is accordingly set aside.

7. The decision may be taken by the authority referred to above within a period of eight weeks from the date of communication of this order upon giving the writ petitioner as well as the respondent No.7 an opportunity of hearing. Such decision shall be communicated within a further period of two weeks to the said parties. Till such decision is taken, the vacancy shall not be filled up. So far as the claims of the individual claimants from amongst the relations of the deceased dealer for this dealership are concerned, the District Controller shall take a decision in terms of the aforesaid circular independently.

8. The present writ petition is disposed of in the above terms.

9. Since this writ petition is being disposed of without filing of any affidavit, the allegations made in the writ petition shall be deemed to have been denied.