
(2006) 05 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition No. 1867 (W) of 2005

Gopal Agarwal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Citation : (2007) 1 CALLT 701

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Judgement

Jayanta Kumar Biswas, J.—The petitioner is aggrieved by the order of the District Controller, Food & Supplies, Howrah dated August 18th, 2005 cancelling his previous order dated July 19th, 2005 directing the Sub Divisional Controller, Food & Supplies, Howrah Sadar to issue retail kerosene oil licence to the petitioner against the vacancy notified for Malipanchghara area of Howrah Sadar sub-division.

2. A vacancy was declared for appointing a dealer for the above-noted area. The dealer was to be appointed in terms of provisions of the West Bengal Kerosene Control Order, 1968. The vacancy was notified on November 10th, 2004. Along with others the petitioner and the eighth respondent (Pradip Kumar Modi) applied for the dealership. Since the selection process remained inconclusive, the petitioner moved this Court by filing Writ Petition No. 2254 of 2004. By order dated February 23rd, 2005 the eighth respondent was added as a respondent in that writ petition. By order dated June 15th, 2005 that writ petition was disposed of directing the district controller and the sub divisional controller to take necessary steps for granting the dealership within two months from the date of communication of that order. Those authorities were directed to grant the dealership after complying with the prescribed procedures.

3. Thereupon the district controller personally made enquiries about the suitability of the petitioner and the eighth respondent. The assistant director of the directorate of district distribution procurement and supply accompanied the

district controller at the time of spot enquiry. After making necessary enquiries, the district controller by order dated July 19th, 2005 ordered: "Sri Gopal Agarwal is the most suitable applicant against the vacancy declared at Maiipanchghara area [vide notification No. Memo. No. 738(8)SC/FS.H(S) dated 10.11.2004 and Memo 809(8)/ SC/F & S/HDSF 7.12.04 of the S.C.(F&S) Howrah (Sadar)] and I also direct you to issue a retail K.Oil licence to Sri Gopal Agarwal against the vacancy notification in Maiipanchghara area of Howrah Sadar Sub-Division." By that order the district controller directed the sub divisional controller to issue the licence appointing the petitioner as the dealer.

4. All of a sudden the district controller issued the order dated August 18th, 2005, which is: "Kindly refer to the valuable opinion given by the learned Government Pleader, Howrah in the matter of issuing a retail K-Oil licence at a place under Maiipanchghara P.S. of Howrah Dist. The opinion of the learned Government Pleader, Howrah may kindly be perused and issue the necessary instructions stating the further action which has to be taken by the undersigned in the above matter. The previous order of the Hon"ble Justice Pranab Kr. Chattopadhyaya, Calcutta High Court dated 15.6.2005 in connection with W.P. No. 2254 of 2004 may also kindly be considered. No specific action can be taken by the undersigned without the leave of the Hon"ble Court as well as before the disposal of the W.P. No. 2254 of 2004. Kindly issue valuable opinion before 21.8.2005 to avoid any legal complication in this regard. A copy of the order was forwarded to the petitioner informing him about the cancellation of the order of the district controller dated July 19th, 2005 directing the sub divisional controller to issue the dealership in favour of the petitioner. It was mentioned that the order dated July 19th, 2005 was cancelled in view of the observations of the Government pleader. Feeling aggrieved the petitioner took out the present writ petition.

5. I fully agree with counsel for the petitioner that on the basis of an opinion of the Government pleader the district controller was not empowered or authorised to cancel his previous order dated July 19th, 2005 directing the sub divisional controller to appoint the petitioner as the dealer. He is fully justified in his submission that the decision of the district controller is vitiated not only by extraneous considerations, but also by abdication of his statutory powers in that he acted blindly on the opinion of the Government pleader. It was stated in the impugned order that according to the Government pleader the district controller could not take any specific action regarding appointment of the dealer without obtaining leave from this Court and also before disposal of the petitioner's Writ Petition No. 2254 of 2004.

6. It is beyond comprehension how the Government pleader and the district controller could proceed on such basis. By order dated June 15th, 2005 the petitioner's Writ Petition No. 2254 of 2004 was disposed of. In terms of that order no leave was to be obtained by the authorities before taking any specific action for making the appointment. The authorities were rather under the

unqualified obligation to appoint the dealer within the time mentioned in that order. It is therefore evident that the district controller cancelled his previous order dated July 19th, 2005 wildly, blindly and without any application of mind at all. In any case, an opinion of a Government pleader could not be made the foundational reason for revoking an order issued by the district controller in the due discharge of his statutory powers conferred on him by the Control Order.

7. Counsel for the state submits that his clients, on the facts of the case, sought legal opinion, and that they acted on the basis of the legal opinion. Counsel for the eighth respondent questions the petitioner's locus standi. He says that the petitioner had not submitted the requisite application in prescribed form. He points out that the petitioner did not apply for the dealership. He says that the application was not submitted to the district controller. I do not see how all these things can be connected with the locus standi of the petitioner who is seriously affected by the impugned order issued by the district controller. The fact remains that the petitioner applied and that his case was considered. In any case, the district controller has not cancelled his order dated July 19th, 2005 on the ground that the petitioner had not submitted the application in accordance with law.

8. Counsel for the eighth respondent then argues that in terms of order of this Court dated June 15th, 2005 for appointing the dealer the authorities were required to follow the prescribed procedures, but they did not follow the procedures. I am unable to agree with him. The district controller did not cancel his order dated July 19th, 2005 on the ground that it had been issued without following the prescribed procedures. The order was cancelled on the ground that without obtaining leave of this Court and before disposal of Writ Petition No. 2254 of 2004, he was not empowered to take any specific action for appointment. I therefore do not find any merit in the contention of counsel for the eighth respondent.

9. For the foregoing reasons I hold that the order of the district controller dated August 18th, 2005 canceling his previous order dated July 19th, 2005 is liable to be set aside. I accordingly set it aside. I order that both the District Controller, Food & Supplies, Howrah and the Sub-Divisional Controller, Food & Supplies, Howrah Sadar shall take immediate steps for implementation of the order of the District Controller dated July 19th, 2005. That order shall be implemented within a fortnight from the date of receipt of a copy of this order by those authorities.

10. The writ petition is accordingly disposed of. In the facts and circumstances of the case, I am not inclined to make any order for costs. Hence there shall be no order for costs in the case.

All parties shall act on a signed xerox copy of this dictated order and also on an urgent certified xerox copy thereof, both to be supplied on the usual undertakings.