
(2016) 01 CAL CK 0037

In the Calcutta High Court

Case No : W.P. 28306(W) and 28307(W) of 2014

Gopal Goel and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 217

Citation : (2016) 01 CAL CK 0037

Hon'ble Judges : Subrata Talukdar, J.

Bench : Single Bench

**Advocate : Biswanath Chakraborti and Krishnendu Bera, for the Appellant;
Sushovan Sengupta and Subir Pal, for the Respondent**

Final Decision : Disposed Off

Judgement

Subrata Talukdar, J.—1. Both the writ petitions are heard analogously since common points are involved and stand disposed of by this common judgment and order.

2. Sri Biswanath Chakraborti, Ld. Counsel appears with Sri Krishnendu Bera, Ld. Counsel for the petitioner in both the writ petitions.

3. In WP 28306(W) of 2014 the State-respondents are represented by Sri Sushovan Sengupta, Ld. Senior Government Advocate with Sri Subir Pal, Ld. Counsel. In WP 28307(W) of 2014 the State-respondents are represented by Sri Amitesh Benerjee, Ld. Senior Government Advocate.

4. Arguing WP 28306(W) of 2014 first Sri Chakraborti submits that the short point involved is whether the appointment of the petitioner as a fair price shop dealer (for short FPS) in the Santragachhi-Jagachha area of Howrah under the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2003 (for short the 2003 Urban Control Order) could be rejected on the ground that the Department of Food & Supplies, Government of West Bengal has now decided to process the vacancies under the provisions of the West Bengal Urban

Public Distribution System (Maintenance and Control) Order, 2013 (for short the 2013 Urban Control Order).

5. Sri Chakraborti submits that the said FPS dealership was notified in September, 2010 and after the usual meandering process of bureaucratic procedures, the enquiry report of the Rationing Officer, Santragachhi-Jagachha was examined by the Shop Selection Committee (for short SSC) on 4th January, 2013. The SSC thereafter recommended the application of the petitioner to be the most suitable candidate amongst all the applicants. Sri Chakraborti claims that the information pertaining to the recommendation reached the petitioner through the Right to Information Act, 2005 (for short RTI) channel.

6. The centerpiece of the case made out by Sri Chakraborti is that since the candidature of the writ petitioner stood finally recommended under the 2003 Urban Control Order, the petitioner ought to have been bestowed with the benefit of such recommendation by way of appointment to the FPS dealership. Under the law the right of appointment of the writ petitioner has crystallised under the 2003 Urban Control Order since all formalities culminated in the final recommendation of the SSC (supra).

7. Therefore, Sri Chakraborti argues that the Director of Rationing (for short DOR), West Bengal fell into patent error by issuing the Notification dated 11th July, 2014 cancelling the earlier Notification of September, 2010 and deciding to process vacancies under the 2013 Urban Control Order. Sri Chakraborti points out that the recommendation of the SSC is dated 4th January, 2013 which is much prior to coming into force of the 2013 Urban Control Order on the 12th of August, 2013.

8. In support of his arguments Sri Chakraborti relies upon a decision of an Hon"ble Single Bench in batch of writ petitions titled SK. Nazim Uddin v. State of West Bengal & Ors. being W.P. No. 9272(W) of 2013 with W.P. No. 15323(W) of 2014 with W.P. No. 15324(W) of 2014 with CAN No. 8694 of 2014 with W.P. No. 15326(W) of 2014 with CAN No. 8693 of 2014 and W.P. No. 25338(W) of 2014. Delivering the judgment on the 27th of July, 2015 the Hon"ble Single Bench was pleased to take notice of similar issues of appointment under the 2003 Urban Control Order which were cancelled and sought to be re-notified by the 2013 Urban Control Order. Sri Chakraborti argues that In Re: SK. Nazim Uddin (supra) the Hon"ble Single Bench was pleased to notice the effect of the savings clause in the 2013 Urban Control Order while repealing the provisions of the 2003 Urban Control Order and further noticed that the savings clause in the 2013 Control Order replacing the 2003 Control Order are distinct. The savings clause in the 2013 Urban Control Order runs as follows:--

"39. Repeal and savings:-- The West Bengal Urban Public Distribution system (Maintenance and Control) Order, 2003 is hereby repealed but such repeal shall not affect:--

(a) The previous operation of any of the Orders so repealed; or

(b) anything duly done or suffered thereunder; or

(c) any right, privilege, obligation or liability acquired or accrued or incurred under any of the said order; or

(d) any penalty, forfeiture or punishment incurred under any of the said orders; or

(e) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty or forfeiture or punishment may be imposed as if the said orders have not been repealed."

9. Therefore, at Paragraph 11 of In Re: SK. Nazim Uddin the Hon"ble Single Bench was pleased to conclude as follows:--

"11. His argument is that even if anything is done under the 2003 Control Order, unless the replacing Control Order specifically saves the consequences of that particular act already done, the effect of such act done shall stand extinguished along with the repeal of the earlier Control Order. His case is that after 2013 Control Order became operational, the earlier vacancies stood extinguished and the said vacancies would have to be revived before filling them up in accordance with the selection process under the 2013 Control Order. I am unable to accept this view. In this case the process of declaration and filling up of vacancies were set in motion under the previous, i.e. 2003 Control Order. The saving clause protects the aftereffect of the 2003 Control Order under sub-clauses (a), (b) and (c), and the petitioners selection process was set in motion under the 2003 Control Order. The saving clause in the Control Order which is the subject of these proceedings is different from the saving clause in the West Bengal Public Distribution System (Maintenance and Control) Order, 2013, dealing with which judgment was delivered by this Court in W.P. 671 of 2012. The ratio of that judgment cannot apply to these writ petitions, in which a different Control Order is involved. In the case of Gajraj Singh (supra), the saving clause in Section 217 of the Motor Vehicles Act, 1988 was construed. The saving clause under that statute is differently worded, and the ratio of that decision also cannot be applied in these five cases. The expression "anything duly done" in my opinion would involve vacancies declared and the progress in the selection process made thereunder. If these acts done are preserved by the 2013 Control Order, under the provisions of Clause 39(b) thereof, then the consequences of such acts done would also be deemed to have been saved, and not extinguished by the repeal clause. Selection process undertaken under the 2003 Control Order would come within the ambit of the expression "anything duly done". Since the repeal clause does not specifically extinguish the selection process already undertaken, logical inference would be that such selection process also would have to be concluded. The decisions cited on behalf of the respondents do not deal with a statutory instrument in which the repeal clause specifically saves and preserves anything

duly done, and significant advancement is there in terms of the repealed Control Order. The ratio of these authorities thus do not apply in the facts of this case. The right to be considered in accordance with the aforesaid Control Order is contemplated on combined reading of clauses (a), (b) and (c) of paragraph 39 of the 2013 Control Order, arising out of declaration of vacancy under the 2003 Control Order."

10. Sri Chakraborti also relies upon the decisions of the Hon'ble Apex Court reported in , AIR 1969 SC 1225, , 2006 (3) SCC 354 and , 2007 (10) SCC 306 on the effect of repeal of a statute by another statute. Sri Chakraborti argues that the common strand in the three decisions (supra) is the intention in the repealing statutes, whether manifestly or, by necessary implication, to either preserve or wipe out the provisions of the earlier enactment.

11. In the facts of the present case Sri Chakraborti argues that the ratio of In Re: SK. Nazim Uddin will squarely apply since the savings clause in the 2013 Urban Control Order makes use of the expression "anything duly done" thereby preserving the acts such as the selection process of the writ petitioner which ripened under the 2003 Urban Control Order.

12. At Paragraph 12 of In Re: SK. Nazim Uddin the Hon'ble Single Bench concluded as follows:--

"12. I accordingly direct the authorities to complete the selection process in accordance with the provisions of 2003 Control Order so far as these five writ petitioners are concerned within a period of eight weeks from the date of communication of this order. In the event the vacancies have been cancelled, the said order of cancellation shall stand invalidated. The two applications taken out in W.P. 15324(W) of 2014 and W.P. 15326(W) of 2014 being CAN No. 8694 of 2014 and CAN No. 8693 of 2014 shall also stand disposed of in the same term. I am not making any comment as regards the disputes involved in the two writ petitions to which I have referred to earlier in this judgment. It would be for the authorities to resolve such dispute in accordance with the provisions of the 2003 Control Order."

13. Sri Sushovan Sengupta, Ld. Senior Government Advocate strenuously argues that a mere recommendation without final approval of the department cannot be brought within the meaning of "anything duly done" under the savings clause of the 2013 Urban Control Order. Sri Sengupta argues that the petitioner has not been able to demonstrate at any stage that the Government had approved the recommendation of the SSC. Under the circumstances the petitioner at best harboured a mere expectation of his right to be appointed.

14. Therefore, Sri Sengupta argues that the authority was within its eminent domain to cancel the mere recommendation under the 2003 Urban Control Order once the 2013 Urban Control Order was notified and rightly decided to process the vacancies under the new law.

15. In support of his submissions Sri Sengupta relies upon the following decisions:--

", 2009 (1) SCC 180, , AIR 1996 SC 3464, , 1993 (1) SCC 154 and , AIR 1963 SC 354."

16. Concluding his submissions Sri Sengupta points out that there is a clear distinction in law between rights accrued as compared to inchoate acts not preserved by repealing statutes.

17. Having heard the parties and considering the law on the point this Court is respectfully and squarely satisfied that the law on the point has been correctly summarised by the Hon''ble Single Bench In Re: SK. Nazim Uddin. In the further considered view of this Court the final recommendation of the SSC in January, 2013 stood preserved within the expression "anything duly done" as elucidated by the Hon''ble Single Bench at Paragraph 11 of In Re: SK. Nazim Uddin (supra).

18. In the light of the above discussion the impugned notification dated 11th July, 2014 stands set aside. The DOR (West Bengal), being the respondent No. 2 is directed to revisit the candidature of the writ petitioner within a period of eight weeks from the date of communication of this order under the 2003 Urban Control Order in the light of the observations made above.

19. WP 28306(W) of 2014 stands accordingly allowed.

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

21. Urgent certified photocopies of this judgement, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

WP 28307(W) of 2014

22. On a parity of reasoning with WP 28306(W) of 2014, this writ petition being WP 28307(W) of 2014 also stands disposed of.

23. The impugned notification dated 15th of July, 2014 stands set aside.

24. The DOR, West Bengal is directed to revisit the candidature of the writ petitioner for appointment as FPS dealer at Pathak Para Road, Behala (West), Sub area of Kolkata (South) in the light of the observations made in this common judgment and order within a period of eight weeks from the date of communication of this order.

25. WP 28307(W) of 2014 also stands accordingly allowed.

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

27. Urgent certified photocopies of this judgement, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.