

(1990) 02 CAL CK 0013
In the Calcutta High Court
In Re: Arabinda Ghosh

Date of Decision : 19-02-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : 94 CWN 934

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Advocate : Samsundar Dutta for State, for the Appellant; S.C. Ukil for Government Pleader, Chhabi Das, for the Respondent

Final Decision : Allowed

Judgement

Kalyanmoy Ganguli, J.—In this application under Article 226 of the Constitution of India, the petitioner prays, inter alia for a writ in the nature of mandamus restraining the respondents from appointing the respondent no. 12 as a modified ration dealer in Mouza Gachha within P.S. Basirhat, District North 24-Parganas. The short case of the petitioner is that pursuant to certain advertisement inviting applications from intending candidates for appointment as a modified ration dealer, the petitioner applied for the same and submitted his application on or about December 26, 1986. It is the case of the petitioner that there were other candidates including the respondent No. 12. The petitioner contends that an enquiry was held by the authority concerned and the report of the enquiry was placed before the Sub-divisional Controller (Food and Supplies). It is stated in the petition that the respondent no. 12 who has been sought to be given appointment is a member of the Gram Panchayat of the locality and as such is not entitled to get the said dealership agreement. In the report submitted by the Sub-divisional Controller, the name of the petitioner appears in the first position in order of merit but the respondent no. 7 has selected the respondent no. 12 by a unanimous resolution dated April 27, 1989. The respondent no. 7 was directed to produce its minute book for the purpose of ascertaining the method and/or the procedure according to which the selection was made. The record of the Food Department as also the minute book of the respondent No. 7 were produced before this Court. The Government file seems to be all right. But from the

resolution Hated April 27, 1989 it merely appears that the Khadya-O-Sardaraha Sthayee Samiti unanimously selected the respondent no. 12 to be fit and proper

2. It is said that justice should not only be done but it must also appear to be done. The same principle applied to administrative acts specially when the question of selection arises. It may be said that the respondent no. 7 very rightly selected the respondent no. 12 but nothing appears from its minute book as to how and on that basis the respondent no. 12 was selected to the exclusion of the other candidates. This smells of arbitrariness as it is very correctly said that arbitrariness is antithetic to Article 14 of the Constitution of India. Although the respondent no. 7 has tried to justify its stand in the affidavit in-opposition filed by it, yet if the parent document namely, the minute book is silent as to the procedure or the methodology according to which the selection was made, the selection cannot be sustained. It is required that the selection authorities should objectively assess the comparative merits and demerits of the candidates and come to a rational conclusion. I do not want to say that the selection was wrong, but I want to say that the selection was not in accordance with the accepted norms required of such a body. It has been stated in the affidavit-in-opposition filed by the respondent no. 7 in paragraph 10, inter alia, that in the absence of any law or any order having the force" of law to that effect, the respondent no. 7 is not required to give any reason. I am afraid, that is not so. Article 14 of the Constitution of India permeates the entire spectrum of public acts and any lapse or arbitrariness in any action of a public body will make it void. Unless reasons are given, it is not possible for the judicial authority to review the administrative act. In the absence of a speaking order, it will not be possible for the judicial authority to find out how the mind of the administrative body worked.

3. In the circumstances, this application succeeds and the selection of respondent no. 12, if already made, is hereby set aside. The matter is sent back to the respondent no. 7 for the deliberation on the merits and demerits of each individual applicant. The respondent no. 7 is directed to consider the case of each applicant independently and separately and come to its own conclusion. As regards the other point, namely, as to whether a member of a Gram Panchayat can be appointed a modified ration dealer, the question is left open to be decided in a proper case. The respondent no. 7 is directed to reconsider the matter in the light of the observations made hereinbefore within two weeks from the date of communication of this order.

There will however, be no order as to costs.