
(2009) 07 CAL CK 0018
In the Calcutta High Court
Case No : Writ Petition No. 1250 (W) of 2009

Joydev Sen

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 162

Citation : (2009) 07 CAL CK 0018

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Sirsendu Sinha Roy, for the Appellant; Pratik Dhar and Ms. Jayeeta Chakraborty for the State, Mr. Arjun Kr. Samanta for the respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

Sanjib Banerjee, J.—The writ petitioner complains of an order passed by the Additional Collector, Hooghly on May 28, 2007 granting a stamp vendor's license in favour of the private respondent.

2. The private respondent is the sister of the petitioner. The warring parties' father was a licensed stamp vendor and had initially requested the authorities to transfer the licence in the name of the petitioner. Upon the petitioner being offered the licence, the petitioner refused to accept the same. The petitioner's father thereafter required the licence to be transferred in the name of the private respondent. The representation was considered by the Additional Collector, Hooghly and by an order of May 28, 2007 such official found that there was no provision under the guidelines of the Finance Department (Taxation), Government of West Bengal bearing No. 2894 (17) F.T. dated August 22, 1997 to transfer a licence in such manner.

3. The private respondent challenged such order of May 28, 2007 before this Court in W.P.19228 (W) of 2007. The petition was disposed of on September 19,

2007 by permitting the petitioner to apply before the same official for a review of the order. The order clarified that the merits of the matter had not been gone into.

4. Upon the private respondent applying for review, the Additional Collector considered the matter in the presence of the petitioner. The petitioner, in effect, seeks to have the licence in his favour.

5. The Additional Collector held in the order impugned in the present proceedings that in view of certain other instances where transfer of the licence had been permitted, it was not impermissible to transfer the licence in favour of the private respondent.

6. At the time that the review application had been filed and the impugned order was made, it is not in dispute that the father of the petitioner and of the private respondent was already dead.

7. The private respondent says that the guidelines of August 22, 1997 have neither any statutory nor binding effect and are mere executive instructions which the Additional Collector was not obliged to follow. The private respondent refers to a judgment reported at G.J. Fernandez Vs. State of Mysore and Others, and places paragraph 12 therefrom.

8. The matter before the Supreme Court pertained to a challenge following a tender process. An unsuccessful bidder challenged the award of the work to another on the ground that it was, inter alia, at variance with the written guidelines that had been issued by the relevant department. The argument before the Supreme Court was that the guidelines had been issued under Article 162 of the Constitution. The Supreme Court repelled the contention and held that the guidelines internally issued would not have any binding effect.

9. The next judgment that the private respondent relies on, is reported at Md. Alauddin and Others Vs. The Director of School Education (S.E.) and Others, . In this case, the issue before the Court was the validity of the State Government guidelines, issued without any statutory sanction, that a Madrasah could not be opened without the previous permission from the State Government. The Court held that such guidelines had no impact and a Madrasah could be opened and function without previous sanction of the government.

10. The principles laid down in either case do not come to the assistance of the petitioner herein. It cannot be urged that a licence of such nature can be passed on by way of inheritance. The Additional Collector had correctly interpreted the guidelines of August 22, 1997 in the order dated May 28, 2007.

11. The guidelines of August 22, 1997 have no statutory force. Yet the guidelines are relevant in ensuring that unbridled authority is not exercised by the officer in issuing the licence. Notwithstanding the guidelines not having statutory force, the same cannot be brushed aside altogether. But the guidelines are irrelevant in the present context since they neither recognise the transfer of a licence nor bar

such transfer.

12. It would appear from the order impugned in the present proceedings what weighed with the Additional Collector was that there were several instances of a licence being issued in similar circumstances. The Additional Collector failed to appreciate that Article 14 of the Constitution does not operate as a negative concept. Article 14 envisages the positive aspect of equality. Article 14 cannot be read to support a situation where a breach or illegality which has been previously committed is cited for a subsequent breach or illegality to be committed.

13. It is evident from the reference in the Collector's decision of May 28, 2007 that the guidelines are ordinarily required to be followed. In the event the guidelines are not followed, notwithstanding their not having any statutory sanction, cogent reasons must be given therefore. The Additional Collector only found instances of previous breach of the guidelines without indicating as to why it was necessary for such inglorious examples of breach to be followed in the instant case. The Additional Collector was misled in his understanding of the principle of equality recognized by Article 14 of the Constitution.

14. For the reasons aforesaid and since it is evident that a right under a licence of the present nature is not a property that can be inherited, the impugned order of the Additional Collector is set aside.

15. It is made clear that neither the petitioner nor the private respondent would be entitled to obtain a stamp vendor's licence merely on the strength of their father having held a licence. This order will, however, not preclude the private respondent from applying afresh for a stamp vendor's licence and for the Additional Collector to consider the matter without taking into account the fact that the private respondent's father was a stamp vendor or that such father had desired his licence to be transferred to the private respondent.

16. W.P. 1250 (W) of 2009 is allowed but without any order as to costs.

Urgent certified photostat copies of this order, if applied for, shall be given to the parties subject to compliance with all requisite formalities.