
(1991) 12 CAL CK 0021
In the Calcutta High Court
Case No : C.O. No. 9606 (W) of 1991

Madan Mohan Halder

APPELLANT

Vs

Director of Rationing (F and S) and Others

RESPONDENT

Date of Decision : 04-12-1991

Acts Referred:

Citation : (1992) 2 CALLT 162

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Partha Datta, Ram Anand Agarwalla, Prabir Kumar Misra and Sujata Adhikary, for the Appellant; Nishit Nandan Adhikari and Kanika Gupta, for the Respondent

Final Decision : Allowed

Judgement

Paritosh Kumar Mukherjee, J.—In the instant writ petition, the point that comes up for determination is that whether "concentration of business" in a family is a ground for disqualifying a candidate who is otherwise qualified to be selected as A.R. Dealer.

2. In the facts of the present case, the petitioner Madan Mohan Haider, a resident of 62, Nalini Bose Road, P.S. Bijpur, P.O. Kanchrapara, District 24-Parganas (North), was an applicant for appointment of a Dealer near Rajani Babu Road in between the junction of Rajani Babu Road and Mandhari Bazar Road and Spalding Road, Kanchrapara, in Halisahar subarea under the Deputy Controller of Rationing, Barrackpore.

3. In response to the notification, five applications were altogether received by the respondents and the same were forwarded to the Rationing Officer, Halisahar, for enquiry and report. The Shop Selection Advisory Board (though not statutory), being respondent No. 3, had been formed to help the Director of Rationing, in the matter of selecting the candidates. The function of the Board, inter alia, was to receive applications scrutinise them and send them for enquiry

to the respective Rationing Officer. On receipt of the reports from the concerned Rationing Officer, the Board considered the report and recommended a suitable candidate for appointment to the appointing authority, viz. the Director of Rationing. After the decision of the Board, the entire case records were placed before the Director of Rationing, being the appointing authority, for his perusal. The Director of Rationing after careful consideration and perusal of the recommendation of the Board along with the records, may or may not accept the recommendation of the Board.

4. It appears that the recommendation of the Selection Advisory Board is recommendatory but not mandatory. According to the respondents, in each case the Director of Rationing is to forward the same to the Departmental Secretary and ultimately to the Minister-in-charge of the Department, being the highest authority of the Department with his observations/ comments for perusal.

5. In the instant case, on receipt of the enquiry report of the above applications, the same were placed before the Shop Selection Advisory Board in their 80th Meeting. The Board received the five applications against the Notification, referred to above, and the names of the applicants are (1) Sm. Krishna Biswas, (2) Sri Shankar Goswami, (3) Sri Dilip Kumar Das, (4) Sri Madan Mohan Haider (the writ petitioner herein) and (5) Sri Supriya Sinha.

6. After a careful consideration of the records, the Board rejected the four applications on different grounds and found the remaining applicant (Madan Mohan Haider), the petitioner herein, as a fit candidate and the Board resolved in its 80th Meeting held on January 19, 1991 that Sri Haider, being a handicapped person, might be appointed as an A.R. against the vacancy.

7. The writ petitioner in paragraph 11 of the writ petition has specifically alleged that on the basis of some complaint made by a third party, a person from the office of the respondent No. 4 visited the place of the petitioner to make an enquiry as to whether the petitioner was actually in possession of the shop room, but the said officer, on being satisfied that the petitioner was in possession of the shop room, submitted his report in favour of the petitioner.

8. Dealing with the statements made in paragraphs 4(g) of the affidavit in opposition the respondents in their affidavit stated, as follows :-

"That the Director of Rationing after going through the records/ papers placed before him observed on February 2, 1991 that since an allegation against Sri Haider has been received alleging that (1) Sri Madan Mohan Haider is living with his father at 62, Rajani Babu Road, (2) the uncle of Sri Haider also has a Ration shop being No. AR 548, (3) the shop offered by Sri Haider is situated at 62, Rajani Babu Road which is also the address of his father's shop, (4) 62, Rajani Babu Road is also the address of Barrackpore Sub-Control Ration Shop Owner's Association.

The Director of Rationing further observed that much demarcation between the

father's business vis-a-vis uncle's business vis-a-vis the applicant's proposed business not found. Director of Rationing lastly observed that without making another probe into the allegations referred to above the recommendation of the Board cannot be accepted. Sri S. C. Chaki, Special Officer, Barrackpore, was directed to enquire into the allegations and to complete the report within 3 weeks from the receipt of the file.

The said Sri Chaki, Special Officer, enquired into the allegations and submitted his report on March 15, 1991. It revealed from the enquiry report that the allegations were not proved but however Sri Chaki in his report mentioned that on the date of enquiry, the room (proposed shop room) was found to have been used as bed room.

On June 5, 1991 the Director of Rationing after perusal of the records observed that the main reason for recommending Sri Madan Mohan Haider is physically handicapped. But the father of Sri Haider since owned a ration shop in Halisahar sub-area and Sri Madan Mohan Haider (writ petitioner), the applicant, reported to have been living with his uncle, is not entitled to get appointment on the ground of "concentration of business".

This fact had been admitted in sub-paragraph g(j) of paragraph 4 of the affidavit-in-opposition.

9. Indeed, in the matter of granting A.R. shop, the respondent authorities are to be guided by the statutory provisions, namely, the West Bengal Rationing Order, 1964 and they are not to be guided by any noting of the Minister given, in a particular file as, it appears in the facts of the present case.

10. As far back as in the year 1974, that is, before the Emergency, the then a Minister of the Food Department of the Government of West Bengal had the occasion to put a note in a departmental file relating to grant of licence to a kerosene dealer at Purulia and the said Minister had the occasion to observe that in the matter of granting new licence the authorities should consider the relevant fact as to whether there is "concentration of business" in; the same family.

11. The said noting of the Minister came up for consideration before a learned Judge of this Court and Amiya Kumar Mookerjee, J. (as His Lordship then was) had the occasion to allow a writ petition filed on behalf of one Sobhan Kumar Das, being the son of an existing cement dealer dealing with Hira Cement.

12. His Lordship in the said case observed that "concentration of business" in any event cannot be a relevant consideration in the matter of either allowing or refusing to grant the appointment of a dealer either under the West Bengal Cement (Licensing and Control) Order, 1979, or as in the instant case, the West Bengal Rationing Order, 1964.

13. The reason is obvious that the statutory provisions can be supplemented but cannot be supplanted as "concentration of business" is not a ground for refusing or granting of licence, as there is no provision like the provision of M.R.T.P. Act to

restrict the monopoly of business in a particular group of industry or industries.

14. In the instant writ petition, the petitioner has challenged a fresh notification for inviting applications from new candidates by a Notice dated July 8, 1991 and this writ petition was moved before Susanta Chatterji, J, on July 29, 1991 and it has come up for final hearing before this Court in the presence of Mr. Nishit Nandan Adhikari, learned Advocate appearing, with Mrs. Kanika Gupta, learned Advocate for the State respondents.

15. The only point raised on behalf of the writ petitioner by Mr. Partha Datta, learned Advocate, is that the respondents having selected the writ petitioner Madan Mohan Haider on the basis of the recommendation of the Special/Sub-Committee viz. the Shop Selection Advisory Board and having decided to give appointment, the respondents are not entitled to take into consideration an altogether irrelevant fact viz. "concentration of business" which is not warranted by the statutory provisions of the West Bengal Rationing Order, 1964.

16. Mr. Datta further submits that noting, if any, given by a particular Minister in a departmental file may be a guideline but once the appointment having been decided to be made after considering the pros and cons of the entire matter and after making two enquiries and accepting two reports and as nothing is available against the writ petitioner except that the bed room was converted into a shop room, the respondents and each one of them are not entitled to shift their stand and call for fresh advertisement.

17. Mr. Nishit Nandan Adhikari, learned Advocate for the State respondents, very fairly placed the affidavit-in-opposition with reference to paragraph 4 and its sub-paragraphs and submitted that a second enquiry had to be caused on the basis of some complaint received by the Director of Rationing.

18. Having heard the submissions of the respective parties at length and having considered the relevant branch of law including the law laid down by Amiya Kumar Mookerjee, J. in the unreported case of Sobhan Das v. The State of West Bengal and Ors, decided as far back as in the 1974 relating to grant of licence under the provisions of West Bengal Cement (Licensing and Control) Order, 1979, this Court is of the view that "concentration" cannot be a relevant ground for refusal of grant of licence to an applicant who is otherwise found suitable, and as such, the impugned notification dated July 8, 1991 calling for fresh application is liable to be set aside.

19. The Director of Rationing is directed to issue licence in favour of the writ petitioner on the basis of the selection and recommendation made by the Shop Selection Advisory Board, respondent No. 3, within a period of a fortnight from the communication of this judgment and order.

20. The writ application is allowed, as above.

There will be no order as to costs.

Let a plain copy of this judgment and order countersigned by the Deputy Registrar (Administration) be handed over to the learned Advocate for the petitioner on his undertaking to apply for and obtain an urgent certified copy of the same and upon compliance with necessary formalities.