
(1998) 07 GAU CK 0025
In the Gauhati High Court
Case No : Civil Rule No. 524 of 1997

Monoranjan Kar	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 23-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1999 Guw 24 : (1998) 4 GLT 383

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : D.B. Sengupta, for the Appellant; U.B. Saha, Government Advocate, B.B. Deb and A.K. Deb, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Sema, J.—I have heard Mr. D.B. Sengupta, learned counsel for the petitioner and Mr. U.B. Saha, learned Govt. Advocate for the Respondents I and 2 and Mr. B.B. Deb, learned senior counsel for the Respondent No. 3.

2. The petitioner is stated to be unemployed youth. He was appointed temporarily and until further orders as a dealer of Town Ward No. 4F. P. Shop under the terms and conditions by an order dated 14-7-95, preceded by an application submitted by the petitioner on 21-1-1995. However, by an impugned order dated 1-9-97 the temporary allotment of the Ward No. 4 F. P. shop allotted to the petitioner by an order dated 14-7-95 came to be cancelled. This order dated 1-9-97 has been assailed amongst other grounds that no opportunity of hearing has been afforded to the petitioner before the allotment order dated 14-7-95 has been cancelled.

3. The sole contention of Mr. Sengupta, learned Counsel for the petitioner is that the impugned order of cancellation has been passed without affording any opportunity of hearing to the petitioner and, therefore, the same is violative of principle of natural justice and not sustainable in law.

4. Before I advert further or other points urged by the petitioner, at this stage, I may point out that the allotment order dated 14-7-95 itself stipulates that the appointment is purely temporary and until further orders and that the allotting authority reserves the right to terminate the appointment at any time without assigning any reason. This specific condition has been stipulated in Clause 10 of the allotment. The impugned order of cancellation dated 1-9-97 (Annexure 4) has an important bearing for proper disposal of this writ petition and it is extracted :--

Government of Tripura Office of the Sub-Divisional Officer (Food Section):
Dharmanagar No. 5008-14/F.7(12)/SDO/DMN/FP/95 dated. Dharmanagar, the
1st Sept. 1997

MEMORANDUM

Shri Monoranjan Kar S/o. Late Sachindra Kr. Kar of South Nayapara, Dharmanagar, North Tripura was appointed as dealer of Town Ward No. 4 F. P. Shop temporarily vide Order No. 3917-23/F.3(2)/SDO/DMN/FP/94 dt. 14-7-95 in place of M/s. Ex-Servicemen Multipurpose Cooperative Society Dharmanagar whose dealership was cancelled due to improper functioning of F.P. Shop.

M/s. Ex-Servicemen Multipurpose Co-operative Society look the shelter of the Hon''ble Court and the Hon''ble District Judge, Dharmanagar has passed an order to restore dealership of Town Ward No. 4 F. P. Shop to the said society.

As such your dealership awarded temporarily vide order No. 3917-23 dt. 14-7-95 is hereby cancelled and the dealership of Town Ward No.4 F. P. Shop is restored in favour of M/s. Ex-Servicemen Multipurpose Co-operative Society, Dharmanagar.

Transfer of charge of F. P. Shop No. 4 should be completed immediately in presence of area Inspector (Food) Shri Birendra Kr. Deb Barma on obtaining of required licences by M/s. Ex-Servicemen Society from this office immediately.

A copy of the charge list duly signed by Sri Monoranjan Kar and the Secretary Ex-Servicemen Multipurpose Cooperative Society should be furnished by Shri B. Deb Barma, Inspector (Food) to this office with his counter-signature for taking further action.

Sd/- Sub-Divisional Officer Dharmanagar.

5. From the impugned order as quoted above itself would clearly appear that the impugned order has been passed pursuant to a decree passed by the Civil Court of competent jurisdiction. From the documents as annexed in the writ petition as well as counter of the respondents it clearly appears that the Title Suit 1 of 1995 was filed by the respondent No. 3 on 2-1-1995. As already stated that the petitioner was allotted F. P. Shop temporarily by an order dated 14-7-95. This would show that when the temporary allotment was made to the petitioner by an order dated 14-7-95, the Title Suit namely T. S. 1 of 1995 was pending before the Court of competent jurisdiction.

6. Petitioner has also filed copy of the judgment and decree dated 13-5-96 passed by the learned Civil Judge (Junior Division) in T. S. No. 1 of 1995 dismissing the plaint (Annexure 6) and the judgment and decree dated 27-2-97 passed by the learned Additional District Judge, Dharmanagar in Case No. TA 4 of 1996 allowing the appeal (Annexure 8). The judgment and decree dated 27-2-97 passed by the learned Additional District Judge, Dharmanagar in Case No. TA 4 of 1996 has not been assailed in this writ petition or in any other forum. Therefore, the judgment and decree dated 27-2-97 has attained its finality. It will be pertinent to point out that in the judgment and decree dated 27-2-97, the learned appellate Court below has directed in paragraph 20 of his judgment as under :

"The defendant No. 3 (S. D. O. Dharmanagar Licensing Authority) should restore the Ration Shop to the plaintiff."

7. It is on the basis of the aforesaid specific direction, the impugned order dated 1-9-97 has been passed. It will, therefore, show that the impugned order flows from the judgment and decree dated 27-2-97, which has not been assailed in any forum. When any order has been passed in pursuance to the direction of the Court of the competent jurisdiction, there is no question of giving any opportunity even though such opportunity has been provided in statutory rule. In such a situation, the only way open to the aggrieved party is to file appeal before the higher Court for setting aside the order. Admittedly, the petitioner has not taken any step to prefer an appeal against the judgment and decree dated 27-2-97. In the instant, case, the root cause of the impugned order dated 1-9-97 challenged in this writ petition being flow, from the judgment and decree dated 27-2-97 passed by the learned Additional District Judge, Dharmanagar in case No. TA 4 of 1996 which has not been assailed in any forum, the present writ petition under Article 226 of the Constitution is not maintainable because in exercise of the power of extraordinary jurisdiction under Article 226 of the Constitution, this Court cannot set aside the decree passed by the learned Court of competent jurisdiction.

In the result, this writ petition is not maintainable and is accordingly dismissed. In the facts and circumstances of the this case, the parties are to bear their own costs.