
(2009) 11 GAU CK 0065
In the Gauhati High Court
Case No : Writ Petition (C) No. 194 of 2009

Moti Lal Saha

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 16-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 1 GLD 355 : (2009) 5 GLT 616

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.B. Saha, J.—The petitioner who was the dealer of Fair Price Shop No. 65 at Jail Road, Agartala filed the present writ petition for a direction, inter alia, to the State respondents, particularly the respondent No. 3, the Officer-in- Charge, Agartala Rationing Authority to re-issue the licence for the aforesaid Fair Price shop which was surrendered by the petitioner earlier.

2. I have heard Mr. P. Saha, learned Counsel appearing for the petitioner as well as Mr. J. Majumder, learned State counsel appearing for the respondent Nos. 1 to 3. None appears for the respondent Nos. 4 and 5 despite proper service of notice upon them.

3. The pleaded case of the petitioner to be narrated for disposal of the case is as follows:

The petitioner was appointed as a dealer of Fair Price Shop No. 65 vide order dated 30.6.1989 by the Officer-in-Charge, Agartala Rationing Authority, the respondent No. 3 and after appointment, the petitioner deposited an amount of Rs. 1,000/- as security money and thereafter he continued as dealer of the said Fair Price shop till 23.12.2002 i.e. the date of his surrender as dealer of Fair Price shop No. 65. It is also contended that the respondent No. 3 permitted the petitioner to go for his treatment outside the State and at that time considering

the interest of the card holders of the Fair Price shop No. 65 he tagged them with Fair Price Shop No. 54 temporarily vide order dated 9.10.2002. On 20.11.2002 (Annexure-E), the respondent No. 3 issued a show-cause notice to the petitioner and again on 13.12.2002, he also issued another show-cause notice to the petitioner to show-cause in writing as to why his dealership shall not be cancelled for violation of the terms and conditions to run the aforesaid Fair Price shop. The petitioner also replied to the said show-cause notice dated 20.11.2002 (Annexure-E), but surrendered the dealership of the Fair Price Shop No. 65 in response to the show- cause notice dated 13.12.2002 (Annexure-G) and thereafter, the authority did not appoint any body as dealer of the Fair Price shop No. 65 in his place. Rather, the dealership of the said fair price shop was continued in his name. It is further contended that the respondent-authority did not release the security money in favour of him even after surrender of his dealership and that the petitioner on 26.8.2006 submitted a prayer to the respondent No. 3 for getting back the dealership of the aforesaid Fair Price shop as all the official works of the said shop which was tagged with the fair price No. 54 are still continuing in his name. Thereafter, on 29.8.2006, the petitioner was threatened by one Sri Dilip Das, Superintendent of Food, Civil Supplies and Consumer Affairs, Agartala that he will give the fair price shop No. 65 to one Sri Ranjit Saha. The petitioner informed the said incident to the respondent No. 3 and getting no response, he sent a demand notice on 19.1.2009 to the respondent Nos. 2 and 3. Having received no response from the said respondents, the petitioner filed the instant writ petition.

4. The respondents by way of filing a counter-affidavit denied all the allegations made by the petitioner and in the counter-affidavit of the respondents, it is specifically contended that the petitioner left the station without making any alternative arrangement for supply of the ration to the card holders of Fair Price Shop No. 65 in compliance with the order dated 9.10.2002 (Annexure-C) i.e. the order by which the petitioner was asked to handover all the stock books, sale registers, card holders" register etc including ration commodities, if any, lying with him after cent per cent weighment in presence of Sri Abhijit Bhowmik, Inspector (Food) on cash payment. It is also contended that the petitioner was provided reasonable opportunity to state his case and he was also called for personal hearing vide registered letter No. F.13(8)-ARA/91/386-87 dated 20.1.2003 (Annexure R/I to the counter-affidavit). But the same was returned undelivered from the Post Office since the petitioner refused to receive the same. Considering the irregularities committed by the petitioner and also taking note of surrender of his dealership, his dealership licence was cancelled with forfeiture of his security deposit for Fair Price shop No. 65 vide order dated 28.2.2003 (Annexure R/3 to the counter-affidavit). The same was again communicated to the petitioner by registered post which he also did not receive. On 28.8.2006, the licence/dealership of the aforesaid Fair Price shop was awarded to another person, namely, Sri Ranjit Saha as per provisions of Tripura Food Grains (Distribution) Control Order, 1972 (hereinafter referred to as the "Control

Order") mainly to maintain uninterrupted operation of public distribution system in the greater interest of the card holders of the said fair price shop. It is also contended that though there is provision for appeal in the Tripura Food Grains (Distribution) Control Amendment Order, but the petitioner did not approach the appellate authority before approaching this Court and that the petitioner approached this Court for re-issuance of his dealership licence after six years. On that count also, the writ petition is liable to be dismissed.

5. Mr. P. Saha, learned Counsel appearing for the petitioner while supporting the case of the writ petitioner would contend that since the authority even after surrender of his dealership allowed to run the aforesaid fair price shop in the name of the petitioner, it can be easily inferred that the respondent- authority did not accept the surrender of the dealership of the petitioner and till today, the authority is running the said shop in his name. Mr. Saha also contended that the respondent No. 4 Sri Arun Kumar Bhowmik and the respondent No. 5 Sri Dilip Das forced him to surrender his dealership though he was willing to run the same. He finally contended that the said Fair Price shop was his only livelihood and he had been maintaining his family from the earning of the said shop. Finding no other alternative, he started one ice factory and by the earning of which he is presently maintaining his family. Per contra, Mr. J. Mujumder, learned State counsel relying the contention made in the counter-affidavit, urges that the writ petition is liable to be dismissed on the ground of delay itself. According to him, though for filing of a writ petition, the maximum period is not prescribed, but like a suit the writ petition has to be filed within a period of three years from the date of cause of action. In support of his aforesaid contention, he relied a decision of the Constitution Bench of the Apex Court in the case of State of Madhya Pradesh Vs. Bhailal Bhai and Others, wherein the Apex Court has observed as follows:

21....We argued that assuming that the remedy of recovery by action in a Civil Court stood barred on the date these applications were made that would be no reason to refuse relief under Article 226 of the Constitution. Learned Counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the Legislature as the time with which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable..." Mr. Majumder also contended that the writ Court has no jurisdiction to ask the statutory authority like the respondent No. 3 to re-issue the licence of the Fair Price Shop No. 65 in favour of the petitioner as a dealer particularly when the Government is doing the business through its own agency or by some others following the procedure prescribed in the Control Order. Therefore, according to this Court, the submission of Mr. J. Majumder,

particularly on the point of delay has some force.

6. Having heard the learned Counsel for the parties and on perusal of the records available, there is no doubt in the mind of the Court that the petitioner himself surrendered his dealership to the respondent No. 3 vide the letter dated 23.12.2002 (Annexure-H to the writ petition). For ready reference the same is reproduced herein-below:

To The Officer-in-Charge, Agartala Rationing Authority, Agartala, Tripura (W)
Subject : Surrender of the Dealership for E.P. Shop No. 65.

Reference : Your show-cause notice No. F. 13(8)/ARA/91/8107-08 dated 13.12.2002.

Sir,

With reference to the above, I beg to inform you that I have been suffering from various diseases and I am now under constant medical care and treatment. Due to my illness, it has become impossible for me to look after the affairs of my fair price shop. The irregularities detected by your "Inspecting staff might have occurred due to my inability to supervise/look after the said shop.

In view of the above, I have by surrender the dealership of F.R shop No. 65, and pray to you kindly to accept the same at an early date.

Yours faithfully, Sd/- (Motilal Saha) Dealer

F.P. Shop No. 65 College road, Agartala

Agartala,

The 23rd December, 2002

7. It is also an admitted position that after surrendering the dealership of the aforesaid Fair Price Shop, the petitioner approached the authority for the first time on 29.8.2006 wherein he made some allegation against the respondent No. 5, Office Superintendent, Food, Civil Supplies and Consumer Affairs and thereafter on 19.1.2009 by way of a demand notice he asked the respondent authority not to accept his letter dated 23.12.2002 whereby and whereunder he surrendered his dealership and also to return the security money. But prior to the said demand notice dated 19.1.2009, one Sri Ranjit Saha was awarded the dealership of the aforesaid Fair Price shop on 28.8.2006. Therefore, it is also an admitted position that at present the said Ranjit Saha is the dealer of the aforesaid Fair Price shop No. 65. But he has not been made a party in the instant writ petition and unless his dealership relating to the Fair Price shop No. 65 is cancelled by the authority, the petitioner cannot be allowed to run the said shop and also the authority cannot be directed to re-issue the dealership licence of the aforesaid Fair Price shop in favour of the petitioner as sought for. It is the settled position that the Constitution does not prescribe any limitation for filing of the writ petition. For the first time, in the case of Bhailal Bhai, (supra), the Apex

Court considered when the delay of filing of writ petition can be considered as unreasonable and the aforesaid judgment of the Apex Court was subsequently considered by a Division Bench of this Court in *Arabinda Chanda v. Regional Director, ONGC Ltd. and Ors.* reported in 2002 (2) GLT 211. The relevant portion of the observation made by the Division Bench is reproduced herein-below":

6. It has been held by the Apex Court that though there is no period of limitation provided for entertaining a writ petition under Article 226 of the Constitution of India but normally the Court should not entertain a writ petition after the period of limitation for filing a civil suit. Two judgments of the Constitutional Bench reported in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, and *M.K. Krishnaswamy, etc. Vs. The Union of India (UOI) and Another*, may be referred to.

8. After going through the aforesaid judgments, this Court is of the considered opinion that as the petitioner approached this Court almost after seven years from the date of his surrender of his dealership and after three years from the date of awarding the dealership to another person, namely, Sri Ranjit Saha who is not a party in this case, is a delay which can be considered as unreasonable. As the dealership of the said Fair Price shop has been awarded by a statutory authority under a statute this Court in exercise of its jurisdiction under Article 226 of the Constitution cannot direct the authority to re-issue dealership licence to the petitioner as sought for. Moreover, this Court cannot act as an appellate authority or the statutory authority under the Control Order as stated supra. The Court can only interfere in case of any arbitrary action of the statutory authority like without issuing any show-cause notice or without providing any opportunity of being heard, cancel the dealership of a person or awarding dealership to any person who is not at all eligible to be a dealer. But in the instant case, there is no such allegation made by the petitioner. In the case of *Bishnu Ram Borah and Another Vs. Parag Saikia and Others*, the Apex Court while considering a writ petition arising of grant of liquor licence by Board of Revenue noted as follows:

It was impermissible for the High Court to have embarked upon an inquiry into the facts to adjudge the suitability or otherwise of the rival pairs of claimants and upon a reappraisal of the evidence come to a find contrary to that reached by the Board of Revenue. There was nothing on record to show that the Board had acted in excess of jurisdiction or there was an error apparent on the face of the record which resulted in manifest injustice. That apart, it was not a proper exercise of jurisdiction under Article 226 of the Constitution for the High Court to have issued a writ of mandamus ordaining the Deputy Commissioner to grant the liquor licence to respondent Nos. 1 and 2 in preference to the appellants. Although a writ of mandamus may be a necessary adjunct to a writ of certiorari, if the High Court was satisfied that a writ of certiorari had to be issued to quash the impugned order of the Board of Revenue on the ground that its order was vitiated by an error apparent on the face of the record, the proper course for the High Court to adopt was to have issued a writ of mandamus to hear and redetermine the appeal according to law.

(emphasis supplied).

9. In view of the discussions made hereinabove, it would not be proper for this Court to give any direction to the respondents particularly the respondent No. 3 as sought for.

10. In the result, the writ petition is dismissed being devoid of any merit.