

(2023) 06 CAL CK 0024
In the Calcutta High Court
Case No : WPA No. 7178 Of 2022

M/S Jan Md. Mondal & Anr.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 23-06-2023

Acts Referred:

Citation : (2023) 06 CAL CK 0024

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Debabrata Saha Roy, Pingal Bhattacharyya, Subhankar Das, Neil Basu, Sankha Biswas, Manas Kumar Sadhu, Sagar Bandyopadhyay, Subrata Dasgupta

Final Decision : Dismissed

Judgement

Bibek Chaudhuri, J

1. The petitioners are the partners of a partnership business under the name and style of M/s Jan Md. Mondal. As partners, they are running a fair price shop at village Bamangola in the District of Malda.

2. It is the case of the petitioners that one Jan Md. Mondal was the original MR dealer in respect of a Fair Price Shop (FPS) at Bamangola. As MR dealer, the said Jan Md. Mondal was also the carrying contractor of the Mid Day Meal Rice since 1995. In the year 2003 the said Jan Md. Mondal went to Haj in Mecca and before his departure he authorized his son Abdul Kader Mandal to look after the said business of carrying contractor of Mid Day Meal Rice. Subsequently, after his return he withdrew the said letter of authorization issued in the name of his son Abdul Kader Mandal by a letter dated 2nd February, 2005 addressed to the BDO, Bamangola Block. After 2006 the BDO issued work order for carrying Mid Day Meal Rice in the name of Jan Md. Mondal and subsequently he stopped issuing carrying contract of Mid Day Meal Rice in the name of the said Jan Md. Mondal. Thereafter, he made several applications to the concerned authorities to permit

him to work as a carrying contractor of Mid Day Meal rice of Bamangola Block but the authorities remain silent. This prompted him to file WP No.6582(W) of 2018 before this Court. The said writ petition was disposed of on 18th June, 2018 directing respondent No.5 to consider the representation filed by the petitioner and to dispose of the same within six weeks from the date of communication of this order after affording an opportunity of hearing to the petitioner in accordance with law. In spite of the above order passed by this Court in the above mentioned writ petition, the BDO, Bamangola failed and neglected to take any decision in this regard and did not pass any order entrusting the said Jan Md. Mondal to act as a carrying contractor of mid day meal rice.

3. In the mean time, on the basis of a power of attorney executed by Jan Md. Mondal, MR dealership of village Bamangola was transferred to a partnership firm under the name and style of M/s Jan Md. Mondal of which the petitioners namely, Abdul Karim Mondal and his wife Shilpi Sarkar being the partners were granted licence to run the said FPS with effect from 15th March, 2022. In the year 2020, Jan Md. Mondal once again moved this court invoking its writ jurisdiction by filing WPA 9810 of 2020 which was disposed of by a Coordinate Bench vide order dated 25th November, 2021. In the said writ petition the petitioner prayed for issuance of a writ in the nature of mandamus directing the respondent authority to give effect to the order dated 18th June, 2018 passed in WP No.6582(W) of 2018.

4. In the said writ petition the District Controller, Food and Supplies, Malda filed a report in the form of affidavit disclosing the fact that the petitioner had no valid FPS licence as on date and MR dealership was run by a partnership firm under the name and style of M/s Jan Md. Mondal. WPA No.9810 of 2020 was dismissed by a Coordinate Bench on the ground that the petitioner himself approached the authority with a prayer for inducting his son and daughter-in-law as partners in the partnership firm as M.R dealers of Bamongola. Accedingly, the prayer for inducting his son and daughter-in-law as partners in respect of the FPS was allowed and the licence is presently standing in the name of the partnership firm. The petitioner as an individual does not have a valid licence in his name as on date.

5. Accordingly the prayer of the petitioner for permitting him to continue as a carrying contractor under Mid Day Meal Scheme was considered and rejected by the court.

6. For smooth operation of public distribution system of Mid Day Meal Rice, the Block Development Officer appointed FPS licensee of Gazole Block as a carrying contractor of Mid Day Meal Rice of Bamangola Block.

7. The present petitioners being the partners of M/s Jan Md. Mondal made a demand justice dated 5th April, 2022 praying for granting the licence of carrying contractor in the name of their partnership firm on the ground that the said partnership firm is the MR dealer of Bamangola and for Bamangola Block they

should be granted carrying contract of Mid Day Meal Rice. As the respondent authority failed to provide any relief to the petitioners they have filed the instant writ petition.

8. Mr. Debabrata Saha Roy, learned Advocate for the petitioners at the outset takes me to the National Programme of Mid Day Meal in Schools for the year 2020-2021 and draws my attention to clause 2.5.4 of the said National Programme which deals with "The System for Transportation and Distribution of Food Grains". The provisions runs thus:-

"MR/SR distributors/dealers appointed by Food and Supplies Department are authorized to lift and arrange supply of such lifted Stock to the school points as per advice list, chalked out by concerned BDO."

9. Insisting on the above provision, it is submitted on behalf of the petitioners that a Block Development Officer of a Block cannot entrust and give carrying contract in favour of another MR dealer of another block. In the instant case the BDO, Bamangola Block issued carrying contract in favour of respondent No.7 who is a MR dealer of Gazole Block.

This is not permissible under the law.

10. Mr. Saha Roy further takes me to a letter dated 21st March, 2017 issued by the Block Development Officer of Bamangola Block permitting the respondent NO.7 to collect 1000 quintal of rice under CMDMP, Bamangola Block for supply at school points in connection with Mid Day Meal for primary and upper-primary sections. It is submitted by Mr. Saha Roy that the said letter dated 21st March, 2017 is not a formal appointment in favour of respondent No.7. It is an order permitting respondent No.7 to collect hundred quintals of rice for supply at school point within Bamangola Block. Similarly, the order dated 7th March, 2022 issued by the BDO Bamangola Block is not an appointment order in favour of respondent No.7. So, it is contended by the learned Advocate for the petitioner that without any valid order of appointment, respondent No.7 was favoured with orders to act as carrying agent of Mid Day Meal rice of Bamangola Block though he is a MR dealer of Gazole Block. According to the learned Advocate for the petitioners, said administrative orders issued by the BDO, Bamangola Block being palpably illegal is liable to be set aside.

11. Mr. Sagar Bandyopadhyay, learned Advocate for the respondent No.7, on the other hand submits that initially Jan Md. Mondal was the MR dealer of Bamangola Block. He was also granted carrying contract agency of Mid Day Meal Rice for the distribution of the same to the schools within Bamangola Block. Subsequently, he entrusted his elder son Abdul Kader Mandal who was acting as Mid Day Meal storing agent since 2003 after Jan Md. Mondal stopped continuing the work as storing agent. Subsequently, in the year 2018 Jan Md. Mondal approached this Court for his re-engagement as storing agency without disclosing the fact that he was no longer a MR dealer after 2015. The petitioners also suppressed that Abdul Kader Mandal misappropriated 1855.69 quintals of CMDMP Rice and a criminal

case was instituted against him. The Block Development Officer, Bamangola Block cancelled the agency of collecting and storing Mid Day Meal Rice by Adbul Kader Mandal. The said Jan Md. Mondal again filed a writ petition praying for grant of storing agency in favour of him after cancellation of engagement of the said Abdul Kader Mandal. The said writ petition being WPA No.9810 of 2020 was dismissed on 25th November, 2021. Since respondent No.7 was a fair price shop owner, the BDO Bamangola Block issued orders in favour of him to lift Mid Day Meal Rice and supply them at the school points within Bamangola Block. There is no illegality in the said order. On the other hand Jan Md. Mondal was the father and father-in-law respectively of the present petitioners. He transferred MR Dealership in favour of the petitioners who formed a partnership firm and have been dealing with the said fair price shop. Jan Md. Mondal tried to obtain the order of carrying contractor of Mid Day Meal Rice by filing writ petition being WPA No.9810 of 2020 without impleading respondent No.7 as a private respondent.

12. It is further submitted by Mr. Bandyopadhyay, learned Counsel on behalf of the respondent No.7 that the petitioners want to grab the carrying contract order of Mid Day Meal Rice because of the fact that both the fair price shop and carrying contract of Mid Day Meal Rice would be operated by the same family. When there was previous allegation of misappropriation of huge quantity of Mid Day Meal Rice of the elder brother of the petitioners no such permission should be granted in favour of the petitioners.

13. It is also submitted by Mr. Bandyopadhyay that clause 2.5.4 of the National Programme of the system for transportation and distribution of food grains is not a statutory order. Referring to a judgment of Hon'ble Supreme Court in Tirumala Tirupati Devasthanams vs. K. Jotheeswara Pillai (Dead) by LRS. & Ors reported in (2007) 9 SCC 461, it is submitted by the learned Advocate for the respondent No.7 that a Writ of Mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

14. A scheme for distribution of Mid Day Meal Rice does not have any statutory force and therefore the impugned order passed by the Block Development Officer authorizing respondent No.7 to carry and distribute Mid Day Meal Rice to the school points at Bamangola is not an order amenable to writ review.

15. Having heard the leaned Counsels for the parties and on careful perusal of the clause 2.5.4 of the National Programme of Mid Day Meal in Schools – Annual Work Plan and Budget for the Year 2020-21, this Court is of the view that it is nowhere stated in clause 2.5.4 that a Block Development Officer while chalking out

the advice list is under obligation to select MR/SR distributors/dealers appointed by Food and Supplies Department under his block authorizing him to lift the stock for Mid Day Meal Rice for distribution at school points. Since the original MR dealer Jan Md. Mondal entrusted his elder son Abdul Kader Mandal to lift Mid Day Meal Rice for distribution to different school points within Bamangola Block and he misappropriated approximately 1855.69 quintals of rice, his contract was terminated and respondent No.7 was entrusted to perform such duty. The petitioners failed to demonstrate any illegality or irregularity committed by the respondent No.7, the MR dealer of Gazole Block in distributing Mid Day Meal Rice to different school points at Bamangola Block.

16. Therefore, according to National Programme of Mid Day Meal in Schools it is the prerogative of the BDO to appoint a carrying contractor of Mid Day Meal Rice. Only because the petitioners are MR dealers of Bamangola under a partnership deed, there is no statutory dictum that they will have to be given contract of carrying agent of Mid Day Meal Rice. When no inconvenience is pleaded in the writ petition suffered by the school authorities or the students of Bamangola Block, a discretionary order of the Block Development Officer, Bamangola Block authorizing respondent No.7 to collect and distribute Mid Day Meal Rice to the schools of Bamangola cannot be set aside.

17. For the reasons stated above, I do not find any reason to interfere with the impugned order passed by the Block Development Officer. Accordingly the instant writ petition is dismissed on contest. There shall however no order as to cost.