

(2024) 04 CAL CK 0029
In the Calcutta High Court
Case No : MAT No. 1476 Of 2022

M/S. Sonai Food Marketing Private Limited APPELLANT
Vs
M/S. Bipatarini Agency & Ors. RESPONDENT

Date of Decision : 19-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2024) 04 CAL CK 0029

Hon'ble Judges : Chitta Ranjan Dash, J; Partha Sarathi Sen , J

Bench : Division Bench

Advocate : Kalyan Bandopadhyay, Ram Anand Agarwal, Nibedita Pal, Ramesh Dhara, A. G. Mukherjee, Sonam Ray, S. N. Mitra, Timir Baran Saha, Sirsanya Bandopadhyay, Arka K. Nag

Final Decision : Allowed

Judgement

Chitta Ranjan Dash, J

1. Judgement dated 06.09.2022 passed in WPA 17930 of 2021 is impugned in this appeal by the private respondent no.8 on the ground that the impugned judgement is perverse and otherwise not sustainable in the eye of law.

2. Stated succinctly, the dispute in the present appeal relate to creation of a MR distributorship in Purba Bardhaman District of West Bengal where the writ petitioner (respondent no.1) and the present appellant along with others were applicants for the aforesaid MR distributorship.

2. 1. The vacancy notification for the captioned MR distributorship at Surekalna in the District of Purba Bardhaman was published on 23.07.2018. Aforesaid notification was superseded by another notification dated 09.01.2019. The appropriate authority received 9 (nine) applications including the one from the appellant and other from the writ petitioner/respondent no.1.

The vacancy notification, however, was cancelled on 07.08.2019 by an order

issued by the appropriate authority of the State.

2. 2. Such cancellation was challenged by the present appellant in WPO 360 of 2020 which was allowed by the Hon'ble Single Judge by judgement dated

18. 12.2020. This Court in the aforesaid WPO set aside the cancellation order dated 07.08.2019 by which the second vacancy notification dated 09.01.2019 was cancelled and direction was issued to the appropriate authority of the respondent State to process the applications of the present appellant and others for engagement as MR distributor in accordance with law.

2. 3. The appropriate authority of the Food & Supply Department considered the applications received for MR distributorship pursuant to judgement dated 18.12.2020 passed in WPO 360 of 2020 and found the present appellant and writ petitioner/respondent no.1 to be ineligible along with others.

2.4. Being aggrieved, the writ petitioner/respondent no.1 filed a writ petition being WPA No. 5843 of 2021 praying for its engagement as MR distributor. By order dated 03.03.2021 this Court in the aforesaid writ petition (WPA 5843 of 2021) issued direction for affidavit and clarified that in the event the State respondents engaged distributor with reference to the subject matter of the writ petition, the said act will not create any equity in favour of the engaged distributor. 2.5. While matter stood thus, present appellant filed WPA 4928 of 2021 challenging the rejection of its application. The said writ petition was finally dismissed obliging the present appellant to prefer appeal vide MAT No. 562 of 2021. By order dated 26.08.2021, the order passed in the aforesaid writ petition i.e. WPA No. 4928 of 2021 was set aside holding that the petitioner being a company is eligible to apply for engagement as MR distributorship within certain group i.e. "Group of individuals as an entity".

2.6. The State respondents considered the application of respondent no.8 in terms of the order passed by the Division Bench in the aforesaid MAT and issued the license for MR dealership to the present appellant on 09.09.2021. The order passed by the Single Bench allowing the prayer of the writ petitioner/respondent no.1 is the subject matter of challenge in the present appeal.

3. Before the Hon'ble Single Judge the grievance of the writ petitioner/respondent no.1 was two fold as found from paragraph 7 of the impugned judgement viz. :

(i) The selection of the respondent no.8 (present appellant) as MR distributor for the particular block in Purba Bardhaman

and

(ii) the rejection of the petitioner's application for the said distributorship.

4. Upon hearing learned Counsel for the parties, Hon'ble Single Judge came to the following findings :

(I) The land at which the godown of the respondent no.8 (present appellant) is situated is agricultural land; the record of title of the said land as well as title deed of the respondent no.8 (present appellant) shows that the land is shali kism of land (agricultural land); the godown offered by respondent no.8 (present appellant) is not a pucca structure and is without a sanctioned plan.

(II) Award of distributorship to the respondent no.8 (present appellant) on 09.11.2021 does not refer to the grounds of earlier rejection or more significantly whether the respondent no.8 (present appellant) rectified the factors mentioned, in the intervening ten months. Though from the earlier rejection order, it is clear that the godown of respondent no.8 (present appellant) does not conform to the C.W.C. norms.

(III) The aforesaid points lead to the presumption of lack of transparency in awarding the distributorship in favour of respondent no.8 (present appellant).

(IV) The decision of granting license to respondent no.8 (present appellant) was taken on 09.11.2021 and the District Controller, Food & Supplies, Purba Bardhaman accorded sanction online for creation of a new MR distributorship in the name of respondent no.8 (present appellant) within two days thereafter i.e. 11.11.2021. Relying on the case of Bahadursinh Lakhnbhai Gohil Vs. Jagdishbhai M. Kamalia; (2024) 2 SCC 65, Hon'ble Single Judge held that a thing done in hot haste would lead to a presumption of mala fide.

(V) The reason of rejection having not been communicated to the writ petitioner/respondent no.1 and license having been issued in favour of respondent no.8 (present appellant) in the meantime the writ petitioner/respondent no.1 has fresh cause of action to file the present writ petition.

5. Mr. Agarwal, learned Counsel for the appellant submits that it is not the duty of the Court while exercising power of judicial review under Article 226 of the Constitution of India to find fault with the respondents with a magnifying glass and the court does not have expertise to examine the terms. To substantiate his contention, Mr. Agarwal, learned Counsel for the appellant relies in N.G. Projects Ltd. Vs. Vinod Kumar Jain & Ors.; (2022) 6 SCC 127.

5.1. It is further submitted by Mr. Agarwal, learned Counsel for the appellant that the land in question which was admittedly shali land had been converted to Vastu land by proper order of the competent authority and conversion certificate was issued on 21st October, 2018 and the last date of submission of application was 20th October, 2018. The godown was also made pucca in accordance with the guidelines of Warehousing Corporation and Warehousing Corporation had issued necessary certificate to that effect though belatedly. These factors were brought to the notice of Hon'ble Single Judge by craving leave to produce the said documents at the time of hearing. Said documents were produced at the time of hearing before the Hon'ble Single Judge which would be evident from written submission filed by the appellant in the instant writ petition. But Hon'ble Single Judge did not take into consideration the aforesaid development though the

documents were annexed at page 46 and 48 of the written note of submission before Hon'ble Single Judge.

5.2. It is further submitted by Mr. Agarwal that the writ petitioner/respondent no.1 having not prayed for quashing of the initial order of grant of license and having prayed for quashing of the license which is the consequence of the initial order, the writ petition as laid is defective. The writ petitioner having the knowledge regarding its ineligibility earlier to filing of the writ petition and it being not otherwise qualified to be considered for engagement as a MR distributor cannot call in question the selection of the present appellant. In this regard, Mr. Agarwal would place reliance in Mani Subrat Jain Vs. State of Haryana & Ors.; AIR 1977 SC 276 and a Single Judge Bench decision of this Court Prasun Sundar Tarafdar Vs. The State of West Bengal & Ors.; WPA No. 2209 of 2021 (disposed of on 21.12.2023), Edukanti Kistamma (dead) through LRS. & Ors. Vs. S. Venkatareddy (dead) through LRS. & Ors.; (2010) 1 SCC 756.

5.3. Mr. Agarwal, learned Counsel taking us through the impugned judgement between the lines submits that the authority having satisfied themselves about the eligibility criteria of the present appellant, no assumptions could have been raised on the ground that license had been issued in hot haste inasmuch as the engagement of the appellant was made on 01.11.2021 and other process on 8/9/11.11.2021 have been done by ministerial staff only. No mala fide therefore can be attributed to the State respondents on this ground.

6. Mr. Mitra, learned Counsel for the writ petitioner/respondent no.1 reiterates the submissions made before the Single Judge and submits that the grounds of rejection having not been communicated to the writ petitioner/respondent no.1, writ petitioner/respondent no.1 has a right cause of action to challenge the selection of the present appellant.

6. 1. It is further submitted by him that Hon'ble Single Judge in clear terms having held that the proposed land for godown being a species of Shali land and the godown offered by respondent no.8 being not pucca structure the license should not have been issued in favour of the appellant.

6. 2. The license issued to the appellant in hot haste shows mala fide on the part of the State respondents.

6.3. It is lastly submitted by Mr. Mitra that no doubt the Hon'ble Division Bench in the appeal directed for consideration of the application of the appellant for appointment as MR distributor but such direction cannot be read to be an affirmative direction to appoint the appellant as a MR distributor.

6.4. Mr. Mitra relies on the case of Yogesh Kumar & Ors. Vs. Government of NCT, Delhi & Ors.; (2003) 3 SCC 548 to substantiate his contention that any duty of public service should be done strictly in accordance with the norms of advertisement and the rules governing the field; any derogation from the same deprives others who could have competed for engagement/appointment in the

said post. He also relies on the case of Ritesh Tewari & Anr. Vs. State of Uttar Pradesh & Ors.; (2010) 10 SCC 677, to contend that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submission made in the petition and in case the pleadings are not complete the court is under no obligation to entertain the plea.

6.5. Relying on this decision (Ritesh Tewari) Mr. Mitra submits that if the appellant had made any development after the rejection of his application filed pursuant to the second notification, he should have brought those facts before Hon'ble Single Judge in the affidavit of opposition filed by him. Subsequently, craving leave of the court to file those documents and asking the court to consider the same is beyond the law of pleadings in a writ petition.

7. In more than one case relating to appointment of MR dealer or distributor, taking into consideration the urgency of appointment/engagement and the public service the dealers/distributors are required to discharge towards persons living below the poverty line, we have held that an applicant who is otherwise ineligible has no right to challenge selection of another on the ground that the person selected also had no eligibility criteria. Such a petitioner if he wants to succeed in a writ petition has to establish by pleadings and supporting document that he/she was also otherwise eligible but his/her case had not been considered favourably and provision of Article 14 was grossly violated.

7.1. Hon'ble Supreme Court in Mani Subrat Jain supra in paragraph 9 has held thus:

"The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something"

8. In the present case applications of all 9 (nine) applicants including the present appellant were rejected. In the earlier writ petition the respondent State had filed affidavit of opposition on 24.03.2021 revealing that the application of the writ petitioner/respondent no. 1 had been rejected along with application of other applicants on the ground of ineligibility. The writ petitioner in the instant writ petition also did not challenge the rejection of its application. No positive case has been made out by the writ petitioner to show that it is otherwise eligible for consideration of grant of license for MR distributorship. The entire case has been made out on the premises that ground of rejection of application was not communicated to the writ petitioner/respondent no. 1 and the appellant (respondent no.8) in the writ petition is not otherwise eligible.

8.1. Hon'ble Supreme Court in Ritesh Tewari & Anr. supra in paragraph 24 has held thus:

"It is a settled proposition of law that a party has to plead the case and produce/ adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. In *Bharat Singh & Ors. Vs. State of Haryana & Ors.*, AIR 1988 SC 2181, this Court has observed as under (SCC p. 543, para 13):-

'13.....In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a hearing under the Code of Civil Procedure and a writ petition or a counter- affidavit. While in a pleading, that is, a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.'"

Cursory reading of the aforesaid observation of the Hon'ble Supreme Court though cited by Mr. Mitra learned counsel appearing for the writ petitioner/ respondent no. 1 is supportive of our view.

8.2. Public Distribution System in West Bengal are covered under two control orders of 2013. It is the lifeline of supply chain so far as distribution of ration items to weaker sections of the society is concerned. In such a case, it is not advisable for the Court to prolong the matter sitting in litigation filed frivolously.

Taking into consideration such necessity, we held in more than one cases that if the petitioner is not otherwise eligible for engagement as an MR Distributor and if he/she has failed to plead grounds showing his/her eligibility with supporting documents, such writ petition should be nipped from the bud.

9. On the question of locus standi a Single Bench of this Court in *Prasun Sundar Tarafdar Vs. The State of West Bengal & Ors.* supra painstakingly discussed number of decisions of Hon'ble Supreme Court and Division Bench decision of this Court. In paragraph 37 of the said judgment Hon'ble Single Judge has held thus:

"A consideration of the above judgements indicates that a common, underlying refrain of the decisions of the Supreme Court is that the legal rights conferred by a statute or otherwise of a person has to be violated to confer locus standi on the said person to prefer an application under Article 226 of the Constitution of India. Unless there is an infringement of a legal right, locus standi does not accrue to a person to seek implementation of a statutory duty by a public authority."

(Emphasis supplied by us)

9.1. Further in paragraphs 48, 49, 50, 51, 52 and 53 Hon'ble Single Judge has

discussed elaborately the concept of locus standi in the judgment.

9.2. The discussion is so lucid and self-explanatory that it needs no further clarification by us but for the sake of more understanding we feel persuaded to say here that a petitioner in a particular case has to satisfy the court that he has a legal right to insist and corresponding performance of duty by the statutory authorities. And the injury or grievance offered by the petitioner must be affectation of right which should be direct and personal and not psychological and imaginary.

9.3. From the aforesaid discussion by this court in *Prasun Sundar Tarafdar supra* and other decisions relied on by us, we have to find out whether any legal right of the petitioner has been violated. Suffice it to say that a legal right of a particular petitioner shall be violated if he/she has that right conferred on him/her by a statute. So far as engagement of MR dealer and distributor is concerned an applicant has the right to be considered only provided he/she is otherwise qualified and eligible. If, however, he/she is not otherwise qualified, he/she has no right to be considered even. This being the position under the Public Distribution System a person has a right culminating into a legal injury only when he/she is otherwise eligible but not considered favourably. If he/she is not otherwise eligible for consideration and if he/she has not made out a case to show his/her eligibility by proper pleading and supporting evidence he/she shall have no right to contest selection of another for MR dealership or distributorship. Any imaginary or psychological trauma by such petitioner cannot be a consideration for grant of relief under writ jurisdiction.

10. In the present case, at the cost of repetition, we would say that in the writ petition the petitioner has not challenged the rejection of her application by the state respondents. As she had not challenged the rejection of her application, it was not the duty of the State to convey to her as to on what ground her application had been rejected. Now-a-days, after coming into force of Right to Information Act, when all information (saving the excepted) can be obtained, the petitioner after rejection of this application should not have waited for communication of the rejection of its application information to it by the State respondents. Such is also not the duty enjoined to State Authorities in the relevant Control Order of 2013. The writ petitioner/respondent no.1 had admittedly filed W.P.A. No. 5843 of 2021 praying for its engagement as M.R. distributor. Said writ petition is perhaps still pending. Thereafter, the writ petitioner/respondent no.1 filed the present writ petition. Therefore, the writ petitioner/respondent no.1 cannot feign ignorance as to on what consideration it was found ineligible. It was, therefore, the duty of the writ petitioner/respondent no.1 to plead and prove that it is otherwise eligible and overlooking its eligibility favour has been granted to the appellant in violation of Article 14 or in derogation of duty enjoined to respondents (State) in the relevant Control Order.

10.1. Taking into consideration the entire material on this point in its entirety, we are constrained to hold that the petitioner had neither any legal right to enforce

in absence of any pleading showing her eligibility and the State respondent had no corresponding duty to perform in respect of the writ petitioner/respondent no. 1.

11. Coming to the second most important question raised by Mr. Mitra Learned Counsel for the respondent is concerning non-communication of the ground of rejection or cancellation of the application to the petitioner. This is not such a lapse that give any legal right to the writ petitioner/respondent no. 1 to challenge selection of the present appellant especially in view of our discussion supra. If the writ petitioner/respondent no. 1 would have been able to plead and prove that it was also otherwise eligible for consideration this ground would have different effect on the entire issue.

12. Hon'ble Single Judge while dealing with the writ petition has far acceded the scope of judicial review and has almost acted as an appellate court. So far as eligibility criteria is concerned, the authorities of Food & Supply Department are the best judge to say conclusively about the eligibility criteria and the court even if it takes a different view cannot substitute its view in place of the view taken by the appropriate authority. In such finding we are supported by the decision of the Hon'ble Supreme Court in NG Project Limited Supra.

12. 1. Hon'ble Supreme Court in aforesaid N.G. Projects Limited supra has liberally quoted the famous case of Tata Cellular; (1994) 6 SCC 651 to delineate the judicial restraint so far as administrative action is concerned. In view of the guiding light focused by Hon'ble Supreme Court in Tata Cellular the courts should always be hesitant in substituting its own opinion, understanding in the place of opinion and judgement of the appropriate authority.

12.2. Coming to the last submission of Mr. Mitra, it is regarding the submission that it is trite law that recruitment to public service should be held strictly in accordance with the norms of advertisement and the recruitment rules, if any.

13. We do not disagree with the proposition as the authorities cannot perform any duty in derogation of the terms of advertisement and the eligibility criteria. In the instant case when the authority is satisfied about eligibility criteria the negligible flaw in the decision making process cannot be made a ground to unsettle an already settle position. Similarly, in view of the fact that the entire process has been done in hot haste and the approval has been accorded on a Sunday, which is a public holiday, two views are possible, one as the engagement of the captioned MR distributorship was delayed by legal process for about five years, the appropriate authorities might have thought it proper to do the same as expeditiously as possible or the appropriate authority completed the process in hot haste with a mala fide intention.

13. 1. If two views are possible why the court should not prefer a positive assumption instead of a negative assumption. If a work is done in hot haste the same cannot be doubted all the time in every case without affording the other side an opportunity to dispel such assumption in the mind of the court. When a

Judge is writing judgment and at that time he makes some assumption there is none to dispel that assumption. It is therefore advisable that if such an assumption arise in the mind of the court in course of hearing then the party against whom such assumption has arisen should be asked to clear the mind of the Judge. If such assumption arise at the time of writing of judgment, judicial propriety demands that the case should be listed under the heading of "to be mentioned" and the Judge should speak his mind to the parties to elicit or provoke explanation. In the present case that having not been done, we would prefer to take the positive assumption rather than the negative one.

17. Regard being had to all the aforesaid discussion we feel persuaded to set aside the impugned order and allow the appeal. The appellant is to continue with the MR distributorship.

18. There shall be, however, no order as to costs.

19. Pronounced in open Court on this day i.e. 19th day of April, 2024.

20. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.