

(2020) 01 CAL CK 0131

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 3604 (W) Of 2019

Nurul Huda & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2020) 01 CAL CK 0131

Hon'ble Judges : Shekhar B. Saraf, J

Bench : Single Bench

Advocate : Debabrata Saha Roy, Pingal Bhattacharyya, Subhankar Das, Neil Basu, Kalyan Kumar Bandyopadhyay, Ram Anand Agarwal, Nibedita Pal, R. Dhara, A. G. Mukherjee, Amitesh Banerjee, Tarak Karan

Judgement

Shekhar B. Saraf, J

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioners are aggrieved by the tagging and allotment orders passed by the Sub-Divisional Controller (F&S), Murshidabad, Government of West Bengal dated 8th February, 2019 and 12th February, 2019 respectively.

2. The chronological facts of the instant writ petition are as follows:

a. The writ petitioners are M.R. cum S.K. Oil Dealers under P.S.: Barwan, Sub-Division Kandi, District - Murshidabad. The writ petitioners along with 10(ten) other kerosene oil dealers of that district were tagged to Smt. Haridasi Saha, a S.K. Oil Dealer in bulk supply to take their allotted quota of kerosene oil from Smt. Haridasi Saha.

b. On 3rd November, 2014 the West Bengal Kerosene Control Order, 1968 was amended [hereinafter referred to as "amended Control Order"] and the new law stated that S.K. Oil Dealers would be required to collect their allotted quota of kerosene oil only from the S.K. Oil Agents.

c. In the meanwhile, the Association of S.K. Oil Dealers in Bulk Supply filed a writ petition challenging the said amendment to the West Bengal Kerosene Control Order, 1968, being W.P. No. 32250 (W) of 2014. A Co-ordinate Bench of the High Court passed an order dated 21st January, 2015 and directed as follows:

"In the event the licenses of the members of the association lapse and such members apply for renewal prior to the date of lapse, then the position as on date, so far as the subsisting licenses of the petitioners' members are concerned, shall remain undisturbed and no step shall be taken which is normally taken in the event of lapse of licenses for such members."

d. Furthermore, the above order was extended until further orders by an order dated 17th August, 2015. The above writ petition remains pending before the High Court.

e. The Food & Supplies Department, Government of West Bengal issued a memorandum on 2nd June, 2017, directing all the District Magistrates as follows:

"It has been further decided that the facility of renewal of license is extended to members of the association only. The concerned District Magistrate/SCF&S may take immediate steps to stop the allocation to non-members SK Oil dealer in bulk supply and allot the same with the nearest SK Oil Dealer in bulk supply, inasmuch as the order of the Hon'ble High Court extends only to the members of the Association."

f. Another memorandum dated 10th October, 2017, was issued by the Food & Supplies Department, Government of West Bengal to the District Controller of Food and Supplies directing as follows:

"As such, I am also directed to request you to keep the tiered tagging, i.e. tagging of ration card holders with the respective retail dealers, retail dealers with the dealers of bulk supply (where they exist) and tagging of the latter with the SK Oil Agents, as reported in July-August 2017, strictly unchanged so as to avoid any infirmity in the supply chain. In the event of any need for realignment of such tagging at any level, a proposal may be sent to this Directorate for concurrence of the Director of Consumer Goods, prior to giving effect to such realignment."

g. On 31st January, 2019, Smt. Haridasi Saha passed away. Thereafter, immediately after the death of Smt. Haridasi Saha, the writ petitioners along with 10(ten) other members of M.R. cum K. Oil Dealers made a representation to the District Controller F&S, Murshidabad dated 4th February, 2019, stating that they should be allowed to take their allotted quota of kerosene from the S. K. Oil Agent namely Khimraj Murati instead of a Big Dealer M/s Ghosh Brothers [hereinafter referred to as "private respondent no. 7"]. The said representation was then forwarded to the Sub-Divisional Controller (F&S), Kandi on 5th February, 2019, requesting to take necessary action on urgent basis.

h. The Sub-Divisional Controller (F&S), Kandi issued the tagging order dated 8th

February, 2019, to M/s Ghosh Brothers directing as follows:

"You are hereby ordered that, due to death of the S.K. Oil dealer (bulk supplier) Haridasi Saha at Andi under Burwan Block, as intimated by Area Inspector (F&S) on 31.01.2019, all DRCs presently tagged with s.k.oil dealer (bulk supplier) Late Haridasi Saha is hereby temporarily tagged with the s.k.oil dealer (bulk supplier) M/S Ghosh Brothers at Andi of Burwan Block until further order vide West Bengal Kerosene Control Order, 1968.

You are hereby directed to supply the S.K.Oil directly to the tagged retail s.k.oil dealers immediately for smooth running of PDS."

i. On 12th February, 2019, the Sub-Divisional Controller (F&S), Kandi issued the allotment order in favour of M/s Ghosh Brothers (Bulk Dealer) tagging DRC of Late Haridasi Saha.

j. Hence, this writ.

3. Mr. Debabrata Saha Roy, Counsel appearing on behalf of the petitioner submits before the court that according to the condition of license and provisions of the amended Control Order, the petitioners are entitled to lift their allotted quota of kerosene oil from S. K. Oil Agent and in no manner can they be forced to lift kerosene oil from any other dealer, holding a similar license as that of the writ petitioners. Mr. Roy further submits that after the amendment of the West Bengal Kerosene Control Order, 1968, there is no existence of so called "Big/Bulk" S.K. Oil Dealer anymore.

4. Mr. Roy also submits that according to the amended Control Order and the conditions of license, lifting of kerosene oil by a S.K. Oil Dealer from another S.K. Oil Dealer is an offence and actions can be taken against such activities. Furthermore, the counsel relies on clauses 5 (B) (ii), 6 (A) (ii), 6 (A) (iii), 6 (B) (i), 6 (C) (i), 6 (C) (ii), 6 (C) (iv) of the amended Control Order. Another argument made by Mr. Roy was that the private respondent no. 7 himself lifts the kerosene oil from the S.K. Oil Agent namely Khimraj Maroti and then supplies it to the petitioners which increases the cost of the kerosene oil. Hence, in order to avoid such increase in the cost of kerosene oil to consumers, the petitioners are praying to de-tag themselves and instead be tagged directly to the S.K. Oil Agent namely Khimraj Marotia.

5. Mr. Roy further submits that it is a well settled principle of law that a statutory authority cannot act beyond the scope of statute under which such powers are given to the authority. Mr. Roy relies on the case of Mehsana District Central Cooperative Bank Ltd. and Others -v- State of Gujarat and Others reported in (2004) 2 SCC 463 wherein the Supreme Court held that where there are allegations of violation of statutory rules which have been brought to the notice of the authorities and the authorities concerned failed to perform their statutory obligations, any aggrieved citizen can bring the inaction to the notice of the High Court which may pass appropriate orders.

6. Furthermore, Mr. Roy relied upon Union of India and Another -v-Arulmozhi Iniarasu and Others reported in (2011) 7 SCC 397 wherein the Apex Court held that a writ of mandamus can be issued by High Court only when there exists a legal right vested in writ petitioner and corresponding legal obligation on the State. Mr. Roy further relied on an unreported judgment of this Court M/s. Kundu Enterprises and Another -v- State of West Bengal and Others [W.P. No. 45 of 2012] wherein the court reiterated that a writ of mandamus can only be issued by the High Court if there exists a vested legal right and a corresponding legal obligation upon the State.

7. Learned Senior counsel on behalf of private respondent no. 7, Mr. Kalyan Kumar Bandyopadhyay submits that the writ petitioners cannot seek a Mandamus for tagging their dealerships with a particular agent, being the respondent no. 8 because Paragraph 6 (B)

(ix) of the amended Control Order, 1968 provides that no S.K. Oil Dealer shall be entitled to select a particular agent for tagging. Mr. Bandyopadhyay further submits that the writ petitioners cannot

challenge the order passed by Sub-Divisional Controller (F&S) on 8th February, 2019 because paragraph 6 (B) (vii) of West Bengal Kerosene Control Order, 1968 provides that every S.K. Oil Dealer shall abide by the instructions as may be issued from time to time by the concerned licensing authority not below the rank of Assistant Director of the State Government.

8. Furthermore, Mr. Bandyopadhyay submits that all the 13 dealers have accepted supply of S.K. Oil from the deceased dealer in bulk supply despite amendment of the Control Order on 3rd November, 2014 and now after 5 years, only 3 dealers therefrom have come before this court to seek a Mandamus commanding the respondents to tag their dealership with a particular S.K. Oil Agent. He submits that all the 13 dealers tagged with the deceased dealer in bulk supply have been tagged with the respondent no. 7 being the nearest S.K. Oil Dealer in bulk supply in that area.

9. Mr. Bandyopadhyay further relies on the case of Renu and Others -v-District and Sessions Judge, Tis Hazari and Another reported in (2014) 15 SCC 731 wherein the Apex Court held that the unless the aggrieved party has an enforceable right under statute or the Rules, mandamus cannot be issued. Furthermore, Mr. Bandyopadhyay relied on Eastern Coalfields Ltd. -v- Dugal Kumar reported in (2008) 14 SCC 295 wherein the court held that in case of infringement of fundamental rights a Writ Court may take into account the delay and laches on the part of the petitioner in approaching the court and if there is a gross and unexplained delay, the court may refuse to grant relief in favour of the petitioners. He further relied on Krishna Bahadur -v- Purna Theatre and Others reported in (2004) 8 SCC 229 wherein the Apex Court held that waiver is permissible subject to the condition that no public interest is involved therein and it is for the party pleading the same to show that some agreement waiving the

right in consideration of some compromise came into being, though a statutory right may also be waived by conduct.

10. Mr. Bandyopadhyay further submits before this Court that no allegation of violation of statutory rules have been brought to the notice of the authorities and in fact the writ petitioners have been propped up by the respondent no. 8.

11. Mr. Amitesh Banerjee, counsel for the State has reiterated the submission made by Mr. Bandyopadhyay and relied on the Memorandum dated 10th October, 2017 to submit that the State has acted in accordance with the said memorandum and tagged the petitioners with the nearest S.K.Oil Dealer of Bulk Supply as per the memorandum. He, accordingly submits that there is neither any illegality nor any arbitrariness in the tagging process undertaken by the State.

12. I have heard learned counsel for both the parties and perused the materials on record.

13. The issue before this court in the present writ petition is whether there is any violation of a statutory right by the order of tagging and allotment order passed by the Sub-Divisional Controller (F&S), Murshidabad, Government of West Bengal dated 8th February, 2019 and 12th February, 2019 respectively.

14. At this juncture, it shall be prudent to examine the judgments cited by both the parties. In *Mehsana District Central Cooperative Bank Ltd. and Others* (Supra), the Supreme Court held that where there are allegation of violation of statutory rules which have been brought to the notice of the authorities and the authorities concerned failed to perform their statutory obligations, any aggrieved citizen can bring the inaction to the notice of the High Court which may pass appropriate orders. The relevant portion of the judgment is delineated below:

"16. In the facts and circumstances stated above, the High Court by the impugned order issued a writ of mandamus, directing Respondents 4 and 5 to take appropriate action against the appellants in accordance with the provisions contained in the Gujarat Cooperative Societies Act and the Rules framed thereunder. We do not see any infirmity in the impugned order. The Acts and Rules are made to be followed and not to be violated. When the statute prescribes the norms to be followed, it has to be in that fashion. Converse would be contrary to law. If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if the authorities concerned do not perform their statutory obligation, as in the present case, any aggrieved citizen can always bring to the notice of the High Court the inaction of the statutory authorities and in such event it would always be open to the High Court to pass an appropriate order as deemed fit and proper in the facts and circumstances of the case. In the present case, the facts as alluded above, would clearly reveal that the High Court was clearly justified in issuing a writ of mandamus, which cannot be faulted."

15. In *Arulmozhi Iniarasu and Others* (Supra), the Apex Court reiterated that a writ of mandamus can only be issued by the High Court if there exists a vested legal right of the petitioner and a corresponding legal obligation upon the State. The Court further held that only because an illegality has been committed, the same cannot be directed to be perpetuated and it is trite law that there cannot be equality in illegality. The relevant portion of the judgment is delineated below:

"26. Lastly, as regards the submission that the action of the appellants is highly discriminatory inasmuch as some similarly situated persons have been appointed/absorbed as Sepoys, the argument is stated to be rejected. It is well settled that a writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and corresponding legal obligation on the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated. It is trite law that there cannot be equality in illegality. (Ref. *Sushanta Tagore v. Union of India* [(2005) 3 SCC 16] , *U.P. State Sugar Corpn. Ltd. v. Sant Raj Singh* [(2006) 9 SCC 82 : 2006 SCC (L&S)

1610] , *State v. Sashi Balasubramanian* [(2006) 13 SCC 252 : (2007) 3 SCC (Cri) 337] and *State of Orissa v. Prasana Kumar Sahoo* [(2007) 15 SCC 129 : (2010) 2 SCC (L&S) 765] .)"

16. In *Renu and Others* (Supra), the Apex Court held that unless the aggrieved party has an enforceable right under Statute or Rules, mandamus cannot be issued. The relevant portion of the judgment is delineated below:

"7. Tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 read with Article 16 of the Constitution, we have no hesitation in holding that the aforesaid selections/appointments cannot be sustained. Adherence to the rule of equality in public employment is a basic feature of our Constitution and we shall be failing in our duty, if we overlook admitted irregularities in the selections/appointments brought to our notice, merely on the ground that the selections in question are only for Group 'D' posts. We are unable to persuade ourselves to agree with the learned counsel for the petitioners that the petitioners may be permitted to join and work for at least 89 days, the period for which they were appointed. It is trite law that unless an aggrieved party has an enforceable legal right under a statute or rule, a mandamus cannot be issued to an authority to do something. It is hard to believe that the petitioners were not aware of the manner in which they were selected and appointed within a span of a few days (without any advertisement or interview). Their appointments being ex facie illegal, issuance of appointment letters did not confer any right on them. In our opinion therefore, the learned Single Judge was fully justified in dismissing the petitioners' writ petition."

17. In *Dugal Kumar* (Supra) the Supreme Court held after examining umpteen judgments in English and Indian law that in case of infringement of fundamental rights a Writ Court may take into account the delay and laches on the part of the petitioner in approaching the court and if there is a gross and unexplained delay,

the court may refuse to grant relief in favour of the petitioners. The relevant portion of the judgment is delineated below:

"24. As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant Company. It is well settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extraordinary remedy under Article 226 of the Constitution, that he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant.

25. Under the English law, an application for leave for judicial review should be made "promptly". If it is made tardily, it may be rejected. The fact that there is breach of public law duty does not necessarily make it irrelevant to consider delay or laches on the part of the applicant. Even if leave is granted, the question can be considered at the time of final hearing whether relief should be granted in favour of such applicant or not. (Vide *R. v. Essex County Council* [1993 COD 344].)

26. In *R. v. Dairy Produce Quota Tribunal, ex p Caswell* [(1990) 2 AC 738 : (1990) 2 WLR 1320 : (1990) 2 All ER 434 (HL)] , AC at p. 749, the House of Lords stated [Ed.: Quoting from *O'Reilly v. Mackman*, (1982) 3 All ER 1124 at p. 1131a-b.] : (All ER p. 441a-b)

"The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision."

27. The underlying object of refusing to issue a writ has been succinctly explained by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd* [1874 LR 5 PC 221 : 22 WR 492] , thus: (LR pp. 239-40)

"Now the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which

might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

(emphasis supplied)

28. This Court has accepted the above principles of English law. In *TilokchandMotichand v. H.B. Munshi* [(1969) 1 SCC 110 : (1969) 2 SCR 824] and *Rabindranath Bose v. Union of India* [(1970) 1 SCC 84 : (1970) 2 SCR 697] this Court ruled that even in cases of violation or infringement of fundamental rights, a writ court may take into account delay and laches on the part of the petitioner in approaching the court. And if there is gross or unexplained delay, the court may refuse to grant relief in favour of such petitioner."

18. In *Krishna Bahadur* (Supra) the Apex Court held that waiver is permissible subject to the condition that no public interest is involved therein and it is for the party pleading the same to show that some agreement waiving the right in consideration of some compromise came into being, though a statutory right may also be waived by conduct. The relevant portion of the judgment is delineated below:

"9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.

10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct."

19. It is now important to produce extracts of the amended provisions of West Bengal Kerosene Control Order, 1968.

"5(B). Duties and Responsibilities of an Agent:-

(ii) The S.K. Oil Agent will also have responsibility to make door step delivery to tagged S.K. Oil Dealers in keeping with such orders as made by the State Government.

6. Grant of License to S.K. Oil Dealer:-

(iv) In case of death of S.K. Oil Dealer, the concerned licensing authority will forthwith delink all ration cards from the deceased dealer and temporarily relink with other S.K. Oil Dealer/s as per convenience of the ration card holders upto the period of filing up the vacancy.

6 (A). Lifting and Distribution of S.K. Oil by Dealer:-

(ii) The S.K. Oil Dealer in the districts will be issued Allotment Order by the SCFS/ Inspector of Food and Supplies in the Sub Division or Block as authorised/ delegated by the District Magistrate to get supply from S.K. Oil Agent with whom he/she is tagged.

(iii) while making such an Allotment Order, the Area Inspector of Consumer Goods Directorate in case of Kolkata and Bidhan Nagar or the SCFS/Inspector of Food and Supplies in case of districts shall consider the weekly or fortnightly requirements of the concerned Dealer on the basis of ration card holders and permits and scales of distribution of S.K. Oil as may be fixed by the State Government from time to time and balance stock in hand.

6 (B). Duties and responsibilities of the Dealer:-

(i) Every S.K.Oil Dealer shall ensure that the quantity of S.K.Oil allocated to him/ her by the Licensing Authority concerned is actually received during the time of taking delivery of such S.K.Oil from the S.K.Oil Agents of the State Government, as supplied to them.

(vii) Every S.K. Oil Dealer shall abide by the instructions as may be issued from time to time by concerned Licensing Authority related to his/her area of operations not below the rank of Assistant Director of the State Government.

(ix) No S.K. Oil Dealer shall be entitled to select a particular SKO Agent for tagging.

6 (C). Compliance with conditions of licence and directions, general or special, by the S.K.Oil Dealer:

(i) Every S.K.Oil Dealer shall comply with such conditions as will be specified in the licence and also with such general or special directions as may from time to time be given by the DCG in Kolkata and Bidhan Nagar areas or the District Magistrate in other districts or the State Government for the purpose of giving effect to the provisions of this Order.

(ii) Without prejudice to the exercise of the power conferred by sub clause (i), such directions may, subject to the provisions of this Order, provide for by the State Government-

(a) the manner and form in which a S.K.Oil Dealer shall maintain the accounts and registers and shall submit the reports, returns and utilization certificate.

(b) the regulation of distribution of kerosene, as may be required in the exigencies of circumstances prevailing in a particular area at any time which may, inter alia, include:

(i) Fixation of a minimum quota of kerosene per head per month in any area or in a particular area depending on the availability of stock thereof,

(ii) Linking of individual ration card/digital ration card against Dealers under this Order,

(iii) Distribution of Kerosene on production of individual ration card/digital ration card,

(iv) Tagging of a Dealer with an S.K.Oil Agent."

20. Based on the given facts and circumstances before me, the scope of the present writ petition is limited to the extent as to whether the amendment to the Kerosene Control Order, 1968 is applicable to the case in hand. This amendment was challenged before this court by the Association of the Dealers in Bulk Supply by way of a writ petition, wherein the court directed that the licenses of the members of the association shall remain undisturbed if the members apply for renewal of their license prior to the date of lapse. Thereafter, this court has ordered to maintain the status quo with reference to the members of the Association of the Dealers in Bulk Supply (petitioners therein) until further orders and the matter is still pending for final adjudication.

21. One may first deal with the arguments in relation to delay or laches in filing of the writ petition and waiver as argued by Mr. Bandyopadhyay. With regard to delay and laches, I am of the view that there is no such delay in filing of the present writ petition. The cause of action in relation to retagging of the petitioners with regard to respondent no. 7 only arose after the death of the deceased Bulk S.K. Oil Dealer on 31st January, 2019. The arguments of Mr. Bandyopadhyay that the petitioners should have filed the writ petition immediately after coming into effect of the amendment in the Control Order in 2014 cannot be accepted by this Court. The petitioners were earlier tagged with the bulk dealer and since by order of this Court the bulk dealers were allowed to continue to function, no cause of action arose at that particular point of time. As indicated above, since no cause of action arose in the year 2014 with regard to the retagging of the petitioners, the question of waiver also does not arise. The judgments cited by the respondents are on the legal principles of delay/laches and waiver. However, I need not deal with the same as in the facts of the present case there is neither delay/laches nor waiver by the petitioners.

22. It could now be apposite to address the cardinal issue with regard to the tagging of the petitioner with a bulk dealer. The submissions of Mr. Debabrata Saha Roy that such tagging is required to be carried out in terms of the amended Control Order is required to be examined. Upon a careful perusal of the order dated 21st January, 2015 passed in connection with the amendment to the West Bengal Kerosene Control Order, 1968 in Writ Petition No. 32250(W) of 2014, one comes to the inexorable conclusion that the Court did not in any manner stay the operation of the amended Control Order. The limited interim order passed by the Court was with regard to continuation of the operation of the bulk dealers till the disposal of the writ petition. Furthermore, the memorandum issued by the Government of West Bengal on 2nd June, 2017 and 10th October, 2017 do not deal with a situation where one of the bulk dealers' licence expires due to the death of such bulk dealer.

23. According to Clause 6(A)(ii) of the amended Control Order, S.K. Oil Dealer is entitled to lift their allotted quota of Kerosene only from the tagged S.K. Oil Agent which makes the law very clear regarding the tagging and allotment of S.K. Oil Dealers. In the present case, I see that the order of tagging and allotment passed by the Sub-Divisional Controller (F&S), Murshidabad, Government of West Bengal dated 8th February, 2019 and 12th February, 2019 respectively is with a S.K. Oil Bulk Dealer and not with a S.K. Oil Agent and is therefore in clear violation of the amended Control Order.

24. The State is required to act wholly and solely as per the amended Control Order and any deviation therefrom amounts to an arbitrary exercise of power. The argument raised by the respondents that no arbitrary act was committed by the State as all the retail dealers of the deceased Bulk S.K. Oil Dealer were tagged to the respondent no. 7, without any pick or choose policy, cannot be sustained. One would be required to keep in mind the policy change that has been brought about by the amended Control Order. The concept of bulk dealers was completely removed and was replaced by a two tier system wherein the government would supply S. K. Oil to an Agent who in turn would supply the S. K. Oil to the retail dealer. This policy does not entertain the existence of a bulk dealer whatsoever. The reliance of the respondents on the earlier order of a Co-ordinate Bench on the continuation of the bulk dealers is misplaced and unfounded. The order only protects the existing bulk dealers on the date of coming into effect of the amendment to continue operation under the erstwhile three tier system. The order does not in any manner deal with a situation in relation to re-tagging where a bulk dealer goes out of existence because of the death of the person holding the bulk dealer licence. In fact, re-tagging retail dealers to an operational Bulk S.K. Oil Dealer would result in perpetuating and furthering a policy that has been intentionally obliterated and discarded by the State by way of an amendment. Consequently, the tagging of the retail dealers attached to the deceased bulk dealer has to be made in accordance with the amended Control Order, and not in a capricious manner. If a statute requires a particular act to be done in a particular manner, the State is bound to abide by the same. The situation may have been different if the High Court order had referred and/or alluded to the situation at hand. Since the High Court order does not deal with the same, the action of the State in the present case is without any basis in law, and therefore, cannot hold water.

25. It is therefore crystal clear that the order of tagging and allotment passed by the Sub-Divisional Controller (F&S), Murshidabad, Government of West Bengal dated 8th February, 2019 and 12th February, 2019, tagging the writ petitioners to the respondent no. 7 who is a S.K. Oil Dealer "Bulk Supply" is not permissible under the present amended West Bengal Kerosene Control Order, 1968. Therefore, in the present matter, I am of the view that after the death of the erstwhile S.K. Oil Dealer "Bulk Supply" all the dealers tagged with the deceased dealer along with the writ petitioners should have been tagged with a S.K. Oil Agent and not with any other "Bulk Supply" S.K. Oil Dealer.

26. With respect to prayer (c) of the writ petitioner which says that the writ petitioner should be tagged with respondent no. 8 instead of respondent no. 7, I find that this prayer of the writ petitioner cannot be granted because Paragraph 6(B)(ix) of the amended Control Order clearly states that no S.K. Oil Dealer shall be entitled to choose a particular S.K. Oil Agent for tagging. In this case the writ petitioners are specifically praying to tag themselves to respondent no. 8 instead of respondent no. 7 which is not permissible in the eyes of law.

27. In conclusion, both tagging and allotment orders dated 8th February, 2019 and 12th February, 2019 passed by the concerned authority are quashed and set aside, in so far as it relates to the petitioners herein. As the other dealers are not before this Court and have no grievance to the re-tagging process, I do not see any reason in passing an order affecting their rights. Consequently, I direct the authorities to pass a fresh order of tagging and allotment in light of the amended provisions of the West Bengal Kerosene Control Order, 1968 in respect of the petitioners herein within four weeks from date.

28. Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.