
(2013) 06 CAL CK 0073
In the Calcutta High Court
Case No : Writ Petition No. 20799 (W) of 2011

Prabhas Chandra Mondal and Others	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Citation : (2013) 06 CAL CK 0073

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Debabrata Saha Ray and Mr. Pingal Bhattacharyya, for the Appellant; Joyotosh Majumder, Advocate and Mr. Pinaki Dhole, Advocate for the State, for the Respondent

Final Decision : Allowed

Judgement

Sambuddha Chakrabarti, J.—By this writ petition the petitioners inter alia have prayed for a writ in the nature of Mandamus commanding the respondents to rescind and cancel the order, dated September 26, 2011, issued by the Sub-Divisional Controller (Food & Supplies), Berhampore and to incorporate the names of the petitioners nos. 2 and 3 in kerosene oil dealership license of the petitioner no. 1 and for other reliefs. The case of the petitioners inter alia is this that the petitioner no. 1 has been granted kerosene oil dealership and storage license which he has been running since then.

2. The petitioner no. 2 is the wife and the petitioner no. 3 is the son of the petitioner no. 1. Due to heavy workload the petitioner no. 1 wanted to bring the petitioner no. 2 and the petitioner no. 3 in the said business and accordingly a partnership deed was executed in this regard on February 21, 2011. The petitioner no. 1 requested the Sub-Divisional Controller (Food & Supplies), Berhampore, i.e., the respondent no. 6 herein, to incorporate the names of the petitioners. nos. 2 and 3 in the said license of the petitioner no. 1. The other two petitioners also made separate applications to the same effect.

3. On being instructed by the respondent no. 6 the Chief Inspector of Food and Supplies submitted a detailed report recommending the case of the petitioners. But as no step was taken the petitioner no. 1 sent reminders to the respondent no. 6 and ultimately the petitioners filed a writ petition in the year 2011. The said writ petition was disposed by a learned single judge of this court by an order dated July 21, 2011 inter alia directing the competent authority to dispose of the applications made by the petitioners by passing a reasoned order in accordance with law within a period of four weeks from the date of the communication of the said order after giving an opportunity of hearing to the petitioner no. 1.

4. This order was communicated to the respondent no. 6 who upon notice to the petitioner no. 1 had given a hearing to the petitioner on August 25, 2011. By an order dated September 26, 2011 the respondent no. 6 had rejected the prayer of the petitioner.

5. The grievance of the petitioners is that the respondent no. 6 without considering their submissions had rejected the prayer relying on two Government Circulars which were in no way connected with the case of the petitioners.

6. The State-respondents have contested this writ petition by filing an affidavit-in-opposition denying the allegations made by the petitioners. The respondent no. 6 has affirmed the affidavit-in-opposition. According to the State-respondents the petitioner no. 1 was carrying on business on the strength of a Kerosene Oil Dealership License (Bulk) under paragraph 6 of Head B of the West Bengal Kerosene Control Order 1968. He has entered into a partnership with his wife and son who are petitioners nos. 2 and 3 respectively. The application of the petitioners had been rejected relying on two Government Orders dated May 9, 1996 and December 9, 2002 respectively. According to the respondents the petitioners have not challenged the said Government Orders and as such any decision taken by the authority in compliance of the said Government Order cannot be questioned in this proceeding.

7. The respondents have further submitted that the petitioners have not exhausted the alternative remedy by preferring an appeal against the said order passed by the respondent no. 6 as provided in paragraphs 9, 10 and 12 of the said Kerosene Control Order and as such the petitioners cannot straight away come to the High Court.

8. The more specific case of the respondents is that the respondent no. 6 had considered the written notes of submissions made by the petitioners in support of their application and passed his order in accordance with law. Since the license stands in the name of the petitioner no. 1 his submissions were most important and relevant which were to be considered for taking a decision. The respondents have further maintained that the Government Orders referred to in the order impugned in the writ petition forbids grant of license in favour of a Big Dealer and as such for the respondent no. 6 no other reason was necessary for rejecting the application of the petitioners. The Government Orders are squarely applicable

to the petitioner as he has obtained the Dealership License (Bulk) and the circular refers to a Big Dealer. Since the license for the petitioner was admittedly for Bulk Dealers it justifies him to be classed as a Big Dealer.

9. The writ petitioners have filed an affidavit-in-reply largely reiterating the allegations made by them in the writ petition. According to the petitioners under the provisions of the relevant Control Order there is no scope to appoint a Big Dealer. Since the Government Orders relied on in the impugned order do not deal with the kerosene oil dealers the petitioners are under no obligation to challenge the same.

10. According to the petitioners under the West Bengal Kerosene Control Order 1968 (the said "Control Order", for short) the distribution of kerosene oil is done by a two-tier system: through the kerosene oil agents and the kerosene oil dealers. Licenses for the agents are issued under paragraph 5 of the Control Order whereas the dealers' licenses are issued under paragraph 6 thereof. A dealer may deliver oil to other dealers holding the same license. The petitioner no. 1 has been dealing with bulk quantity of kerosene by way of distributing the same to other kerosene oil dealers tagged with him. By a circular dated October 1, 1996 the Director of Consumer Goods empowered the dealers to convert his proprietorship license to partnership on the ground of health and the petitioner applied for conversion in terms of the Government policy enunciated through the said Regulation of 1996.

11. The petitioners have assailed the order impugned in the writ petition on the ground that the same has been unreasoned and non-speaking although the High Court had directed the respondent no. 6 to pass a reasoned order. The order has not taken note of the submissions made by the petitioners including the judgments cited by them. The Government Order dated May 9, 1996 has no application since the petitioner is not a Big Dealer and the Control Order makes no reference to appointment of a Big Dealer and there is no scope for issuing any license in favour of a Big Dealer.

12. In respect of their submissions the petitioners have relied on several unreported judgments copies of which have been annexed to the writ petition.

13. The State-respondents have argued that in the judgments relied on by the petitioners this court had occasion to deal with the Dealership License and not Dealership License (Bulk). The petitioner no. 1 himself had admitted that he was granted the Dealership License (Bulk). From the questions and answers recorded during the hearing on August 25, 2011 it appears that being a Bulk Dealer the petitioner no. 1 has 22 MR. Dealers under him and he deals with 16,000 - 17,000 liters of kerosene oil per week which certainly distinguished him from ordinary dealers and he could definitely be termed as a Big Dealer. In other words, the respondents have argued, Big Dealers in the context of kerosene oil dealership refer to dealers who have dealing capacity in the bulk. This point was neither specifically taken nor decided in the earlier decisions referred to and relied on by

the petitioners. At times executive instruction or orders are issued to fill up the gap or for appropriate implementation of the statute which can be termed as a supplement to the main rules or orders.

14. Mr. Majumder, the learned advocate for the State-respondents had submitted that the petitioners not having challenged the concerned Government Orders the decision taken by the authority in compliance with the said Government Orders cannot be challenged. The respondents have relied on the case of Vineet Narain and Others Vs. Union of India (UOI) and Another, U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, for a proposition that the period relating to alternative remedy has been considered to be a rule and self-imposed limitation and is essentially a rule of policy of convenience and discretion and not a rule of law. The remedy of the writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate and suitable relief elsewhere. The respondents have also relied on the case of State of Haryana and Others Vs. Vijay Singh and Others, for a proposition that the general proposition laid down in any judgment cannot be applied de hors the relevant statutory provisions.

15. It appears from the order impugned that the respondent no. 6 had recorded what he had requested the petitioner no. 1 to inform him and what he had informed. But the order impugned is only a short and cryptic one. It merely says that the respondent no. 6 had examined the records and the Government Orders which reveal that there is no provision for allowing the partner of any Big Dealer in the existing Government Orders as referred to earlier and thus the respondent no. 6 held that the applications of the petitioner no. 1 had been considered and rejected for the present.

16. I have heard Mr. Debabrata Saha Roy, learned advocate for the petitioners and Mr. Majumder for the State-respondents at length. I do not find any reason in the order impugned. If the petitioner's application is not to be entertained then there was no need for him to record that the same was being rejected "for the present". That apart if the Government Orders were staring at his face as a result of which the application had to be rejected there was no reason for him to record what he had directed the petitioner to let him know and which answer was given by him. It appears that the respondent no. 6 had also asked him why the petitioners had filed the writ petition before the High Court. This was not at all a proper query which ought to have been put in by the respondents when being directed by an order of this High Court he was giving the petitioners a hearing in the matter.

17. The respondent no. 6 has not dealt with the contents of the relevant Government Orders but merely speaks of the lack of any provision for allowing "partner to any Big Dealer" in the Government Orders of 1996 and of 2002. The purpose of passing a reasoned order is to make the parties aware of the reasons behind the order. It does not appear anywhere from the order that the respondent no. 6 had applied his minds to the submission made by the writ

petitioners and the judgments and orders of the High Court. The respondents in their affidavit have tried to justify the act of the respondent no. 6 by submitting that he had considered the submissions on behalf of the petitioners and, thereafter in consultation with the relevant Government Orders had passed the order impugned in accordance with law. This affidavit was affirmed by the respondent no. 6 himself. But he had forgotten to mention why such alleged consideration of the written submissions of the petitioners was not reflected in the order impugned. The order impugned is thus in violation of the order passed by this court in the earlier writ petition inasmuch as no reasoned order has been passed.

18. That apart it was incumbent upon the respondent no. 6 to deal with several orders of the High Court and it was improper on his part to dispose of the same without making even any reference to either.

19. The writ petitioner annexed several orders of this court to his written notes of submission. In the written notes the petitioner never had any occasion to deal with two Government Orders on which the respondent no. 6 had relied while passing the impugned order. In the case of Kalyan Kumar Saha & Others -Vs.- State of West Bengal & Others (WP No. 28488(W) of 2008) a learned single judge of this court by a judgment and order dated December 17, 2008 had held that in the said Control Order 1968 there is no provision for engaging any individual or firm as a Big Dealer. The Control Order speaks of two kinds of licenses being license for an agent or for a dealer. The learned advocate appearing for the State in that case could not appraise the court as to whether there existed any circular or guideline for appointment of a Big Dealer. This court had held that the petitioners' dealership in that case ought to be guided by the provisions relating to regular dealer and the description of the petitioner as no. 1 of that case as a Big Dealer by himself would not alter the character of his dealership.

20. Again in the case of Smt. Kalyani Dutta -Vs.- State of West Bengal & Others (WP No. 14739(W) of 2004) a learned single judge of this court had disposed of the writ petition by a judgment and order dated February 1, 2010 wherein it was specifically held that admittedly the application of the petitioner in that case was rejected on the ground that no Big Dealer license could be issued in favour of the petitioner in that case in terms of certain departmental circulars. This court had held that the license which was issued to the petitioner's deceased husband was a license under paragraph 6 of the said Control Order and there was no scope for appointment of a Big Dealer under the above Control Order.

21. In the case of Narayan Chandra Halder & Another -Vs.-State of West Bengal & Others (WP No. 3309(W) of 2003) a learned single judge by a judgment and order dated April 3, 2003 had again held that the license of the petitioner no. 1 in that case was a dealership license and the words "Big Dealer" not having been mentioned anywhere the said license merely enable the petitioner to carry on business as dealer of kerosene.

22. From a plain reading of the judgments referred to above as well as from the Control Order 1968 it appears that the grievances made by the petitioner against the impugned order have sufficient substance. While paragraph 5 of the said Control Order deals with issuing license to the kerosene oil agent paragraph 6 deals with the grant of license to dealers. It merely says that the Director of Consumer Goods, Department of Food & Supplies or the District Magistrate may grant a license to any person authorising him to carry on trade of kerosene as a Dealer. A license so granted shall be in Form B and could be subject to such conditions as might be specified therein. The Form B appended to the said Control Orders also does not anywhere mention of any Big Dealer.

23. The respondents have tried to justify their case with reference to the petitioners' business as that of a Bulk Dealer. But the respondent no. 6 has relied on the order dated May 9, 1996. While recognizing that there is no provision for Big Dealers he says that there are certain Big Dealers in some districts handling kerosene oil which was creating a lot of difficulties for implementation of the existing Kerosene Control Order and, therefore, it was ordered that no appointment of Big Dealers might be made violating the West Bengal Kerosene Control Order. The subsequent Government Order relied on by the respondents also echoes the earlier one that no Big Dealer may be appointed and no partner might be allowed to any Big Dealer.

24. Thus the second Government Order did not speak anything new than the first one. In the first one the bar was in appointment of any Big Dealer violating the Control Order and the direction was for appointment as only Dealers as and when necessary. If there was no provision for appointment of any Big Dealer in the Control Order there was no question of issuing such appointments as Big Dealers and the petitioner in the present case was also appointed as a Dealer and as such the said Government Order had plainly no application to the case of the petitioner.

25. The respondents had sought to justify their actions with reference to the fact that the petitioner was a Dealer of Kerosene Oil in Bulk. For them the word "Bulk" meant "Big". This is an interpretation which is not sanctioned by the relevant Control Order and the statute. Even the Government Orders do not define Big Dealer. The petitioners have submitted that the petitioner no. 1 had been getting bulk quantity of kerosene oil on the basis of the allotment orders and he was distributing the same to other kerosene oil dealers who were tagged with him.

26. I can agree with the submissions of the petitioners that the word "Big Dealer" is a creation of the officials who had issued the circulars. But I cannot agree with the submissions of the State-respondents that in the name of filling up the lacunae the authorities can always issue circulars. In this case there was no lacunae to fill up. The Control Order was very specific. The line of distinction sought to be drawn by the respondents with regard to the judgments relied on by the petitioners is not of substantial nature. According to the respondents the

judgments do not deal with any Kerosene Oil Dealership License (Bulk) and since the petitioner deals with 16,000 to 17,000 liters of kerosene oil per week it distinguishes him from ordinary dealers and in the context of the concerned dealership license Big Dealer means those who have bulk dealing capacity.

27. This interpretation put in by the respondents ignores a very basic thing that by way of subsequent effort to justify the acts of the respondent no. 6 the impugned order cannot be validated. Since there is no classification made in the Control Order itself and since it deals only with dealers an artificial distinction with regard to the quantity of kerosene oil dealt with by a dealer is immaterial for classifying him as a "Big Dealer". The relevant Control Order having at no place defined a Big Dealer it cannot be left to be decided by the concerned officials.

28. The order impugned thus cannot clearly stand and should be quashed. The point of alternative remedy taken by the respondents may not be gone into at this stage. After all the writ petition is being heard finally after exchange of affidavits and at this stage it will not be just and proper to dismiss the petition on the ground of existence of alternative remedy.

29. The writ petition is thus allowed.

30. The order impugned in the writ petition is set aside and the respondents are directed to incorporate the names of the petitioners nos. 2 and 3 in the kerosene oil dealership as has been done in the case of Narayan Chandra Halder (Supra).

31. There shall be, however, no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.