

(2009) 03 CAL CK 0023
In the Calcutta High Court
Case No : Writ Petition No. 4111 (W) of 2009

Rabindra Nath Samanta

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Citation : (2009) 2 CALLT 465

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : D.N. Chatterjee and Mr. Ramkrishna Biswas, for the Appellant; Syed Nazmul Hossain for State, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this writ petition dated February 5, 2009 is seeking the following reliefs:

"a) A writ in the nature of Mandamus commanding the respondents to show-cause as to why the petitioner shall not be re-appointed as a dealership at Sargram which dealership was surrendered by the illegal pressure of the hooligans of the locality.

b) A writ in the nature of Mandamus commanding the respondents to cancel the order dated 17.12.07 vide Memo No. 2272/1(8) SCK/MR/2007 issued by the Sub-Divisional Controller, Food & Supplies, Katwa whereby tagged all the IRC Registration of M.R. Shop of the petitioner with the nearest M.R. Shop of Bidhu Bhusan Dey of village Chandrapur with effect from 17.12.2007."

2. The Food & Supplies Department of the Government of West Bengal appointed the petitioner as an MR dealer for Sargram in the district Burdwan. It has not been stated when the appointment was given. He surrendered his dealership on November 5, 2007. By a notice dated November 20, 2007 the Sub-Divisional Controller, Food & Supplies, Katwa called upon him to show cause why appropriate action against him should not be taken under provisions of the West

Bengal Public Distribution System (Maintenance and Control) Order, 2003 for his failure to lift the allotted MR commodities for the week commencing November 5, 2007.

3. By a letter dated December 3, 2007 he informed the sub-divisional controller that since he had surrendered his dealership on November 15, 2007, there was no question of non-lifting of stocks and distribution to the consumer; that the provisions of the Control Order were not applicable to the case; that the show cause notice was issued illegally and mala fide; and that the controller should drop the proceedings at once. Under the circumstances, the sub-divisional controller issued the order dated December 17, 2007 allotting all his cards to another dealer.

4. Then after more than one year he submitted an application dated December 24, 2008 requesting the sub-divisional controller to restore his dealership. Since nothing was done, he has taken out this writ petition seeking the reliefs.

5. Counsel for the petitioner submits that since the petitioner had to surrender his dealership under pressure created by the local hooligans, the sub-divisional controller was under an obligation to re-appoint the petitioner. He says that the sub-divisional controller was under an obligation to give an appropriate decision in the petitioner's application dated December 24, 2008.

6. I have absolutely no doubt that this is an utterly frivolous writ petition. The admitted position is that the petitioner surrendered his dealership. Whether he decided to surrender the dealership because of pressure created by any hooligan of the locality, is a question that cannot be decided by me sitting in the writ Court or by the sub-divisional controller.

7. The sub-divisional controller asked him to show cause why he was not lifting the MR commodities for distribution. He gave reply dated December 3, 2007 categorically asserting that in view of his surrendering the dealership, there was no question of lifting the MR commodities or application of the provisions of the Control Order. He alleged that the sub-divisional controller was acting maliciously, unlawfully and mala fide. He called upon the sub-divisional controller to drop the show cause notice at once. The order dated December 17, 2007 was issued thereafter.

8. On these facts, I am unable to see how he can say that the order of the sub-divisional controller dated December 17, 2007 allotting the cards concerned to another MR dealer is bad in law.

9. The petitioner had no right to seek, restoration of the dealership. Once the surrender of the dealership took effect, as the position was accepted by the authority, there was no obligation cast on the sub-divisional controller to consider the question of re-appointing the petitioner. Hence the petitioner never had any right to get his application dated December 24, 2008 considered by the sub-divisional controller.

10. Nor was the sub-divisional controller under any obligation, statutory or otherwise, to consider the application for any purpose whatsoever. I, therefore, do not see how alleging inaction with respect to consideration of his application the petitioner can approach the writ Court. He cannot seek a mandamus for enforcing a non-existent right or obligation.

11. For these reasons, the writ petition is dismissed. There shall be no order for costs.

Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.