
(2012) 05 CAL CK 0017
In the Calcutta High Court

Case No : M.A.T. No. 598 of 2012 with C.A.N. No. 3440 of 2012

Rajesh Dhanuka

APPELLANT

Vs

Sunil Kumar Saha

RESPONDENT

Date of Decision : 16-05-2012

Acts Referred:

Citation : (2012) 4 CALLT 179

Hon'ble Judges : Pinaki Chandra Ghose, J;Mrinal Kanti Chaudhuri, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharyya, Mr. K. Gupta, Ms. Nibedita Pal and Mr. R. Dhara, for the Appellant; Kalyan Bandyopadhyay and Mr. Debabrata Saha Roy and Mr. Kamalesh Bhattacharyya for the State, for the Respondent

Final Decision : Allowed

Judgement

Pinaki Chandra Ghose, J.—This appeal is directed against a judgment and/or order dated 22nd February, 2012 passed by the Hon"ble Single Judge. The Hon"ble Single Judge after hearing the parties was pleased to allow the writ petition with a direction that :--

Since the petitioner"s name still continues to remain in first place of the panel of the recommended candidates, which has not been quashed by any authority or this Court as yet. I am of the view that unless the petitioner suffers from some fundamental disqualification, such recommendation ought to be given effect to. As regards doubt expressed by the Director (DDPS) on the loading and unloading capacity as well as access road of the godown of the petitioner, I am of opinion that the Sub-Divisional Controller may enquire into these two aspects in respect of the petitioner. If he finds that the petitioner has sufficient loading and unloading capacity and adequate access space to his godown, then effect shall be given to the recommendation made by the District Controller. This exercise shall be completed within a period of ten weeks from the date of communication of this order.

The writ petition stands allowed with the above direction.

The facts of the case briefly are as follows:--

The grievances of the writ petitioner in the writ petition is in respect of an appointment of a distributor under the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 at Assam More in the district of Jalpaiguri. The writ petitioner was one of the contenders for being engaged as a distributor in respect of the said vacancy. It appears that the Sub-divisional Controller and the Controller had found him eligible for such appointment among the contending candidates. Report was filed on 10th October, 2006 by the Sub-Divisional Controller. Food and Supplies, Jalpaiguri after preparing a panel in order of merit and the name of the writ petitioner was in the first position in that panel. The said recommendation was concurred with by the District Controller, and thereafter the matter was re-examined and the Deputy Director (Supply) wanted to reassess the status of the respective parties. It was observed that a note was prepared by the Director. DDP & S wherefrom it appears that no specific recommendation in respect of a particular candidate was made and re-enquiry in the matter to be conducted by a Senior Deputy Director, Habibul Ahsan. The said report was prepared by him along with the assistance of another officer, one Asim Bose.

2. The said report was challenged by the writ petitioner before the Court (W.P. No. 45 of 2007) when the Hon'ble Single Judge was pleased to set aside the said report on the ground that although direction was on a particular officer to make the enquiry, the enquiry had in effect being made by a team. The said order of the Hon'ble Single Judge was sustained by the Division Bench in A.P.O. No. 54 of 2011 by a judgment and/or order dated 19th May, 2011. In these circumstances, a memorandum was issued bearing No. 4181/FMR/13L-16/05 dated 27th October, 2011. The said memorandum was challenged before the Hon'ble Single Judge. According to the writ petitioner there was no occasion to cause fresh verification made by the Sub-divisional Controller as his recommendation was confirmed by the District Controller. According to the writ petitioner in absence of any disagreement between these two functionaries a fresh verification by the Sub-divisional Controller was unwarranted.

3. It is further case of the writ petitioner that the report of the Deputy Director having been quashed by the Hon'ble Single Judge in the earlier proceeding, the recommendation in favour of the petitioner subsists and there was no occasion to direct fresh verification to be conducted by the Sub-divisional Controller.

4. As it appears from the submission made on behalf of the respondent No. 2 before the Trial Court is that to conduct enquiry was not illegal or quashed by the Court but it was only the report of the enquiring authority which was quashed on the ground that the same was not prepared in the manner ordered by the Director (DDPS). By issuing the impugned memorandum, the Joint Director has prescribed a fresh enquiry by the Sub-divisional Controller.

5. The submission has been made on behalf of the writ petitioner is that verification cannot be termed as an enquiry in the manner mandated by the Director but this would constitute embarking upon a *de novo* enquiry". Hence, It was submitted that recommendations already made by the Sub-divisional Controller and the recommendations made by him is still subsisting. The respondent No. 2 doubted the selection process on specific issues and directed re-enquiry. It is submitted that such re-enquiry was not conducted in accordance with the mandate of the respondent No. 2 and for this reason the enquiry report was quashed. K is further submitted that since the finding of the Sub-divisional Controller is subsisting there cannot be any reason for making fresh verification process.

6. In these circumstances, it is submitted that the memorandum issued by the Joint Director in the facts and circumstances of the case cannot be sustained.

7. Mr. Bikash Ranjan Bhattacharyya, learned Senior Advocate appearing on behalf of the appellant has challenged the said order of allowing the writ petition on the ground that the learned Judge has failed to consider that under Clause 23(iii) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 if the Director. District Distribution. Procurement and Supply, disagrees with the enquiry report of the Sub-divisional Controller, Food and Supplies (in short "SCFS"). or the recommendation by the District Controller. Food and Supply (in short "DCFS") shall arrange for enquiry into the matter by any competent officer or by a team. The Director under the said control order has the authority to do so which cannot not be questioned by the writ petitioner.

8. Mr. Bhattacharyya further submitted that the Hon"ble Single Judge has wrongfully held that the earlier findings of the Sub-divisional Controller still stand since the panel of the recommended candidate has not been quashed by any authority or by this Court. It is further submitted that the Hon"ble Single Judge erred in holding that the earlier finding of the Sub-divisional Controller still stands whereas under the Control Order when the Director directs for re-enquiry because of disagreement of the enquiry report of SCFS or the recommendation of the DCFS, the earlier finding stands null and void.

9. It is also submitted that by the order dated 16th October, 2006 there was no recommendation by the DCFS. The enquiry which was ordered and or directed by the Director on 19th October, 2006 because of disagreement with the enquiry report of the SCFS or recommendation by the DCFS, the earlier report and/or recommendation becomes nonexistent.

10. He further submitted that the Hon"ble Single Judge has erred in holding that the recommendation by the Sub-divisional Controller was confirmed by the District Controller whereas the status provides otherwise. He also drew our attention to the paragraph 23(ii) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 and submitted that the Sub-divisional Controller, Food and Supplies, shall enquire and the report so prepared shall be

sent with his comments to the concerned District Controller. Food and Supplies and the said District Controller will forward the same with his recommendation to the Director, DDP & S. Therefore, the Hon'ble Single Judge has also wrong in holding that the recommendation ought to be given effect to and it is submitted that by the order dated 19th October, 2006 the Director, DDP & S specifically directed for re-enquiry in all the applications since there was no categorical recommendation by the DCFS in favour of a particular candidate, which is mandatory under the Control Order.

11. It is further pointed out that the Hon'ble Single Judge is wrong in directing the SCFS to enquire into the doubt of the Director, DDP & S because the order dated 19th October, 2006 is still subsisting and the Director directed the Deputy Director to conduct the enquiry.

12. According to Mr. Bhattacharyya, the Learned Single Judge failed to consider that when an order of re-enquiry was directed by the Director and since such order has not yet been given effect to. Therefore, the earlier enquiry report of the SCFS and DCFS, have no power or jurisdiction to re-enquire into the same.

13. It is further submitted that the Division Bench quashed the 3rd enquiry report and thereby it is only urged that enquiry should be done from that stage. Therefore, it is submitted that since the 3rd enquiry report has not been accepted by the Court and when the Court has already held in the earlier proceeding dismissing the appeal then the matter stands from that end that the enquiry has to be made in the matter. Accordingly, he submitted that since the enquiry was directed there cannot be stated to be any flaw or bar of the authority on considering such enquiry. On the other hand, the Hon'ble Single Judge has failed to appreciate the said fact and passed an order in favour of the writ petitioner.

14. We have considered the facts of the case and it appears to us that the Sub-divisional Controller and the Controller found that the writ petitioner had eligibility for appointment as a distributor under the West Bengal Public Distribution System (Maintenance & Control) Order, 2003. The report which was filed on 10th October, 2006 by the said Sub-divisional Controller. Food & Supplies, Jalpaiguri was duly concurred with by the District Controller and the matter was re-examined and the Deputy Director (Supply) wanted to reassess the status of the respective parties. Therefore, it has to be noted that the recommendation, which was forwarded in respect of the panel, was re-examined and in terms of the direction given by the Director, DDP & S no specific recommendation in respect of a particular candidate was made. The re-enquiry was conducted at the direction of the Director, DDP & S by a Senior Deputy Director, Habibul Ahsan. Since, the said report was prepared with the assistance of another officer the same was challenged before the Court and the said report was set aside on the ground that the enquiry had in effect being made by a team. The said order was upheld by the Division Bench by a judgment and/or order dated 19th May, 2011

15. It appears to us that after such report was cancelled the clock was put into the same position where it stood earlier. Therefore, as contended by the writ petitioner that the report of the Deputy Director having been quashed the recommendation in favour of the petitioner subsists and no further direction can be given for fresh verification by the Sub-divisional controller cannot be accepted by us since the Court held that the report of the enquiry authority was quashed since it was not prepared in the manner directed by the DDP & S.

16. Therefore, after quashing the said report, it appears to us that fresh verification should be done in the matter in terms of the control order under Clause 23(iii) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2003 and should start from that level from which the Division Bench upheld the decision of the Single Bench and quashed the 3rd enquiry report. Accordingly, we hold that the enquiry should be made from that stage and enquiry report should be placed before the authority to give effect to the said recommendation of panel which was placed before the authority.

17. Accordingly, in our opinion, the order so passed by the Hon''ble Single Judge cannot sustain in the eye of law and has to be set aside on the ground that enquiry should have been done by the authorities for such appointment from the stage where the Court set aside the 3rd enquiry report and thereby the said list cannot be said to be reached its finality in respect of choosing the person in question. Such facts, in our opinion, escaped from the mind of the Hon''ble Single Judge.

18. Hence, we allow this appeal and direct the said authority to complete the enquiry for a period of six months from the date of the communication of the order to give effect thereto in accordance with the provisions of law.

19. Accordingly, the order is set aside and appeal is allowed.

Since the appeal is allowed, the connected application being C.A.N. No. 3440 of 2012 has become infructuous and the same is disposed of.

Photostat certified copy of this judgment, if applied for, be supplied to the parties.

Dr. Mrinal Kanti Chaudhuri, J.

I agree.