
(2004) 10 CAL CK 0024

In the Calcutta High Court

Case No : Writ Petition No's. 3462 (W) , 6148 (W) and 6149 (W) of 2004 and C.A.N. 5391, 5392 and 5393 of 2004

Ram Avtar Agarwal, Rohit Kumar Gupta and Brij Mohan Garg APPELLANT
Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2005 Cal 234 : (2005) 2 CALLT 207

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : Samaraditya Pal, Sukla Banerjee, Suparna Mukherjee and N.C. Saha, in W.P. No. 6149W of 2004, Saktinath Mukherjee, Saptangsu Basu, Pallav Banerjee and N.C. Manna, in W.P. No. 3462 W of 2004, Pradip Chatterjee, Jayanta Banerjee, Pallav Banerjee and N.C. Saha, in W.P. No. in 6148W of 2004, for the Appellant; Anindya Mitra Pradip Kr. Tarafdar, Indrajit Dasgupta and Ajit Kumar Panja for the Respondent No. 10, Rabi Lal Moitra, Government Pleader, Sajal Kumar Chakraborty and Syed Nazmul Hossain, for the Respondent

Final Decision : Allowed

Judgement

P.K. Chattopadhyay, J.—In these three writ petitions facts are similar and issues raised therein for consideration are also identical. Accordingly, these three writ petitions are decided and disposed of by this common judgment.

2. All the writ petitioners are the M.R. Distributors under the Public Distribution System and functioning in the hill areas of Darjeeling District.

3. The writ petitioners, namely, Shri Brij Mohan Garg, Shri Ram Avtar Agarwal and Shri Rohit Kumar Gupta were appointed M.R. Distributors in respect of the areas Ghoom, Darjeeling Sadar and Kalimpong respectively.

4. Subsequently, the respondent authorities decided to appoint Additional M.R. Distributors in the district of Darjeeling and by the written communication dated 27 February, 2004, Joint Secretary, Food & Supplies Department, Government of

West Bengal informed the Director, D.D.P.S., Food & Supplies Department, West Bengal about the decision of the government regarding appointment of Shri Bimal Dalmia as M.R. Distributor in respect of Darjeeling Sadar and Ghoom areas and Shri Sunil Bajla in respect of Kalimpong area.

5. Challenging the aforesaid decision of the Government of West Bengal regarding appointments of Shri Bimal Dalmia and Shri Sunil Bajla as Additional M.R. Distributors in respect of Darjeeling Sadar & Ghoom areas and for Kalimpong area respectively, pursuant to the aforesaid written communication dated 27 February, 2004 issued by the Joint Secretary, Food & Supplies Department, Government of West Bengal, these three Writ Petitions have been filed.

6. Therefore, the only, issue raised in these writ petitions is whether the appointments of Shri Bimal Dalmia and Shri Sunil Bajla as Additional M.R. Distributors pursuant to the impugned communication dated 27 February, 2004 are valid.

7. Undisputedly, all the writ petitioners herein were appointed M.R. Distributors for the hill sub-divisions of Darjeeling in terms of the Memo dated 18 June, 2003 issued by the District Magistrate, Darjeeling.

From the records it appears that the District Magistrate, Darjeeling, by the written communication dated 27 May, 2003 requested the Principal Secretary, Food & Supplies Department, Government of West Bengal, to take necessary action immediately for smooth running of Public Distribution System in three hill sub-divisions of Darjeeling district. The Joint Secretary, Food & Supplies Department, Government of West Bengal, thereafter, by a written instruction dated 30 May, 2003 asked the District Magistrate, Darjeeling to appoint M.R. Distributors for the areas under three hill sub-divisions of Darjeeling district through open gestures i.e. by issuing notifications on a very short notice and thereafter finalise the exercise.

8. In view of the aforesaid permission granted by the Joint Secretary, Food & Supplies Department, Government of West Bengal, District Magistrate, Darjeeling issued a notice on 2 June, 2003 and published advertisement in the local newspaper on 3 June, 2003 inviting applications from intending eligible candidates of the locality for appointment of M.R. Distributors for the three hill sub-divisions of the district of Darjeeling.

9. Subsequently, by the Memo dated 18 June, 2003, District Magistrate, Darjeeling forwarded the approved names of the distributors selected for the three hill sub-divisions of the district of Darjeeling to the concerned Sub-Divisional Controller of Food & Supplies Department for taking necessary action regarding issuance of appointment letters and execution of necessary agreements. In the said Memo dated 18th June, 2003 it has been specifically mentioned that Shri Brij Mohan Garg was selected for Ghoom area, Shri Ram Avtar Agarwal for Darjeeling area and Shri Rohit Kumar Gupta for Kalimpong

area in the Kalimpong sub-division alongwith other candidates for other respective areas in the hill sub-divisions of the district of Darjeeling.

10. After selection and appointments of the writ petitioners as M.R. Distributors, the respondent authorities decided to appoint Additional M.R. Distributors in respect of the same areas where the writ petitioners were appointed earlier and written instruction was issued by the Joint Secretary, Food & Supplies Department, Government of West Bengal to that effect.

11. It has been submitted on behalf of the writ petitioners that the names of Shri Bimal Dalmia and Shri Sunil Bajla were not recommended earlier by the concerned respondents for appointments as M.R. Distributors and the writ petitioners were appointed M.R. Distributors in the respective areas as the eligible candidates. The respondent authorities, however, decided to appoint Shri Bimal Dalmia as Additional M.R. Distributor in respect of the Darjeeling Sadar and Ghoom areas under the Darjeeling sub-division and Shri Sunil Bajla as the Additional M.R. Distributor for the Kalimpong area under the Kalimpong sub-division notwithstanding the fact that their names were not recommended by the concerned authority on the earlier occasion for appointment as M.R. Distributors and the aforesaid decision has been specifically mentioned by the Joint Secretary, Food & Supplies Department, Government of West Bengal, in his written communication dated 27 February, 2004.

12. Challenging the aforesaid decision regarding appointment of Additional M.R. Distributors, certain crucial questions have been raised on behalf of the petitioners which are summarised hereunder:

1) Was there any necessity for appointment of additional M.R. Distributors over the M.R. Distributors already appointed on 18th June, 2003 in terms of the notice dated 2 June, 2003 published in the newspaper on 3 June, 2003?

2) Was there any enquiry conducted to enable the competent authorities to decide whether any such additional appointment was necessary?

3) Whether any step was taken to ascertain the vacancies for appointment of such additional M.R. Distributors and whether any declaration had been made and applications invited for filling up the said vacancies in a transparent process?

4) Is there any material on record to sustain the decision regarding availability of 4 vacancies in the category of M.R. Distributors in the hill areas of Darjeeling district as mentioned in the written communication dated 27th February, 2004?

5) Was there really any short listing of eligible candidates for appointment of M.R. Distributors and whether Shri Bimal Dalmia and Shri Sunil Bajla are the short listed eligible candidates?

6) Whether Shri Bimal Dalmia and Shri Sunil Bajla were selected in the selection process initiated, by the notice dated 2 June, 2003?

7) When and how Shri Bimal Dalmia and Shri Sunil Bajla were found eligible for

appointment as M.R. Distributors as mentioned in the impugned communication dated 27th February, 2004?

13. While dealing with the aforesaid questions, Mr. Samaraditya Pal and Mr. Sakti Nath Mukherjee, learned senior counsel representing the writ petitioners referred to and relied upon various note-sheets and records produced before this Court on behalf of the Government of West Bengal and submitted that there was no necessity for appointment of additional M.R. Distributors over the M.R. Distributors already appointed in terms of the Memo dated 18th June, 2003. The learned counsel of the writ petitioners also submitted that no enquiry was conducted to ascertain the availability of the vacancies by the competent authority and as such there was no occasion to declare the vacancies and/or invite applications for filling up the said vacancies.

14. It has also been submitted on behalf of the writ petitioners that there was no short listing of eligible candidates and according to the learned counsel of the writ petitioners, short listing of Bimal Dalmia and Sunil Bajla could not and did not arise at all in the facts of the present case. The learned counsel of the writ petitioners specifically submitted before this Court that Bimal Dalmia and Sunil Bajla were never found eligible for appointment as M.R. Distributors which have been wrongfully mentioned in the written communication dated 27th May, 2004.

15. Mr. Anindya Mitra, learned senior counsel appearing on behalf of Bimal Dalmia, respondent No. 10 herein, submits that the prescribed procedures for appointment of M.R. Distributors were also not strictly observed at the time of appointment of three writ petitioners as M.R. Distributors on 18 June, 2003 in view of the following reasons:

- 1) There was no declaration of vacancy.
- 2) Government approval was not obtained.
- 3) Appointments were made in violation of the ratio norms of 50 M.R. Dealers per M.R. Distributor as fixed by the Office Memorandum dated 13 April, 1999.
- 4) Direction of the District Magistrate, Darjeeling to issue appointment letters in favour of the writ petitioners and necessary intimation by Sub-divisional Controller, Food & Supplies to the respective parties and execution of formal agreement in respect of the writ petitioners were all done on the same day, i.e. on 18 June, 2003 in an undue haste.

16. Mr. Mitra further submits that hearing of the objections in respect of the aforesaid appointments of the writ petitioners as M.R. Distributors have been carefully averted and at the same time appointments of additional M.R. Distributors have been thwarted by the writ petitioners. It has also been submitted on behalf of the respondent No. 10 that the whole object of these writ petitioners is to continue their unlawful monopoly as long as possible. According to the learned senior counsel of the respondent No. 10, these writ petitions are wholly mala fide and on this ground alone should be dismissed.

17. Mr. Mitra also submits that the writ petitioners do not have any legal right to challenge the appointment of additional M.R. Distributors and in the absence of any legal right, they cannot maintain the writ petitions. Mr. Mitra also submits that more than the prescribed number of M.R. Dealers have been tagged with the writ petitioners in violation of the prescribed government norms and policy. According to the learned counsel of the respondent No. 10, the writ petitioners herein are acting in a mala fide and illegal manner with an intention to continue their monopoly as distributors for an indefinite period and in violation of the Government policy.

18. The learned senior counsel of the respondent No. 10 further submits that the writ petitioners herein have filed separate writ petitions and obtained interim order in the said writ petitions in order to continue their monopoly as distributors and although the appointments of the writ petitioners as M.R. Distributors were subject to review after 6 months, which expired on 20 February, 2004, but nothing can be done as long as the interim order continues. The learned counsel of the respondent No. 10 urged before this Court that the writ petitioners have not come with clean hands.

19. Mr. Mitra specifically urged before this Court that the writ petitioners have no legal right to maintain their respective writ petitions as none of the writ petitioners have been appointed as sole or exclusive M.R. Distributor in the respective area. Mr. Mitra also submits that the writ petitioners herein have no legal right to raise any objection in the matter of appointment of additional M.R. Distributors as the said order of appointment of additional M.R. Distributors does not cancel the appointment of the writ petitioners as M.R. Distributors.

20. Referring to the decision of the Supreme Court in the case of Mani Subrat Jain and Others Vs. State of Haryana and Others, , Mr. Mitra submits that the writ petitioners must possess legal right before demanding mandamus. The learned counsel of the respondent No. 10 produced a model form of agreement before this Court and submits that there is no provision for tagging and/or attaching a list of M.R. Dealers to a particular M.R. Distributor in the agreement for appointment of M.R. Distributors.

21. It has been alleged on behalf of the said respondent No. 10 that the Sub-Divisional Controller, Darjeeling has been openly favouring and siding with the writ petitioners, Brij Mohan Garg and Ram Avtar Agarwal as would appear from the fact that the said Sub-Divisional Controller, Darjeeling inspected the godown arrangements of the respondent No. 10 on 9th June, 2004 whereas the concerned file was forwarded to him for investigation on 10th June, 2004. The learned counsel of the said respondent No. 10 further submits that the said Sub-Divisional Controller, Darjeeling went out of his way and mentioned in his report to the effect that the case of the respondent No. 10 should not be recommended for appointment although he had no power to recommend apart from the fact that there was no reason for making such observation.

22. According to the learned counsel of the respondent No. 10, the appointment of the writ petitioners as M.R. Distributors have not yet been approved by the Government although the same is required to be done under office Memo No. 1478-FS dated 13th April, 1999.

23. Mr. Mitra, learned senior counsel of the respondent No. 10 also urged before this Court that the question of validity of the appointments of the writ petitioners as M.R. Distributors should be decided in this proceeding and unless the writ petitioners are held to be validly appointed as M.R. Distributors, these writ petitions cannot be held to be maintainable in the eye of law.

24. Mr. Samaraditya Pal, learned senior counsel of the writ petitioners raised specific objections challenging the appointments of the respondent No. 10 as additional M.R. Distributors also on the ground that there has been no consultation with the statutory authorities at the district level and appointment was made at the instance of the then Minister-in-charge even without ascertaining the vacancies before appointment of the additional M.R. Distributors. Mr. Anindya Mitra, learned senior counsel of the respondent No. 10, however, submits that there is no statutory rule or provision of law which binds the Minister or the State Government to hold consultation with the district level statutory authorities before appointment of the M.R. Distributors.

25. According to Mr. Mitra, office Memorandum dated 13 April, 1999 contains specific direction in respect of the district level statutory authorities regarding submission of the proposals for declaration of vacancies although the said Memorandum is not a statutory one and does not create any legal right in favour of anybody. Furthermore, according to the learned senior counsel of the said respondent No. 10, the aforesaid office Memorandum also does not provide that the government cannot appoint M.R. Distributors without consulting the District level statutory authorities and as such according to the said learned counsel of the respondent No. 10, non-consultation of the District level statutory authorities cannot be a proper ground for challenging the validity of appointment of additional M.R. Distributors. In any event, the said learned counsel of the respondent No. 10 submits that district level statutory authorities have been consulted in the present case and their views have been obtained by the Government as would appear from various notes recorded in the file produced before this Court.

26. Referring to the notes of various authorities recorded in the file produced before this Court, Mr. Mitra, learned senior counsel of the respondent No. 10 submits that the views of the District Magistrate, Darjeeling and the Regional Deputy Director, (Food & Supplies), Siliguri have been obtained and as a matter of fact, District Magistrate, Darjeeling in his report dated 20th January, 2004 summarised the views of the district authorities and public representatives in this regard. The Regional Deputy Director, (Food & Supplies), Siliguri also specifically suggested for appointment of 4 additional M.R. Distributors amongst the eligible and suitable candidates who have applied earlier for the distributorship.

27. Mr. Mitra specifically referred to the note-sheet dated 19th February, 2004 of the Director General (Food), wherein it has been observed as hereunder:

"Among the applicants shortlisted, the following candidates (i) Dalmia and (ii) Bajla could not be accommodated during the material time."

28. Referring to the issue relating to determination of vacancy of the M.R. Distributors in the hill areas of Darjeeling, Mr. Mitra submits that the vacancies were determined before appointment of additional M.R. Distributors. The learned counsel of the respondent No. 10 referred to the report of the District Controller, (Food & Supplies), Darjeeling dated 11th November, 2003, wherein the facts and figures have been mentioned regarding tagging of M.R. Dealers with respective M.R. Distributor already appointed in the hill areas of Darjeeling in question. Mr. Mitra, learned senior counsel of the respondent No. 10 referred to the statistics mentioned in the said report of the District Controller, (Food & Supplies), Darjeeling and submits that even after appointment of the writ petitioners as M.R. Distributors, vacancies continued as per Government norms laid down in the Office Memorandum dated 13th April, 2004 and revised on 4th February, 2004. Mr. Mitra also relied upon the observation of the Director General, (Food), as mentioned in the note-sheet dated 19th February, 2004 wherein it has been clearly mentioned that the vacancies exist.

29. Although Mr. Pal, learned senior counsel of the writ petitioners criticised the role of the Food Minister in the matter of appointment of additional M.R. Distributors but Mr. Mitra, learned Senior Counsel of the respondent No. 10 defended the actions of the Hon"ble Minister and submits that the Minister as the executive head of the department is responsible for taking appropriate decision in order to run the department smoothly for the benefits of the public. Mr. Mitra also submits that the Minister has to implement the Government policies and maintain norms and ratio between the M.R. Dealers and M.R. Distributors as laid down. It has also been submitted on behalf of the respondent No. 10 that the concerned Minister has every right to guide the officers of the department and take decision in the matter concerning the department.

30. According to Mr. Mitra, the officers of the department must act as per the directions of the Minister and therefore, the Minister cannot be blamed and/or criticised for taking the decision for appointment of additional M.R. Distributors. Mr. Mitra further submits that in the present case, no allegation of mala fide has been leveled against the Minister and the said Minister has also not been made a party to the present writ petition. Therefore, according to Mr. Mitra, the said Minister should not be condemned unheard as the same will violate the basic principles of jurisprudence that nobody should be condemned unheard.

31. It has been submitted on behalf of the respondent No. 10 that the order passed by the competent authority regarding appointment of additional M.R. Distributors is the just and proper order in terms of the government policy and not in violation of any statutory rule and therefore, it does not matter even if the

officer acted at the behest of the Minister. It has been specifically urged on behalf of the respondent No. 10 that the selection process was not over by the appointment of the writ petitioners as M.R. Distributors and the said process continued till fulfillment of the requirement of adequate number of M.R. Distributors i.e. up to 27th February, 2004 when according to the learned senior counsel of the respondent No. 10, necessary appointments of additional M.R. Distributors were given.

32. Mr. Ajit Kumar Panja, learned senior counsel also appearing on behalf of the private respondent in one of the aforesaid writ petitions challenged the focus standi of the writ petitioners in the present case and submitted that the writ petitioners have no focus standi because they are the business rivals only. Mr. Panja further submits that these writ petitions have been filed only to protect the monopolies of the writ petitioners by preventing others from carrying on the same business so that the writ petitioners may not have to suffer any financial loss on account of the further appointments of the additional M.R. Distributors.

33. Referring to the various decisions of the Supreme Court, Mr. Panja submits that the writ petitioners herein cannot claim any right for carrying on trade or business without competition from other eligible persons. In support of his aforesaid arguments Mr. Panja cited the following decisions:

1) Hans Raj Kehar and Others Vs. State of Uttar Pradesh and Others, Paragraph 8.

2) The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, Paragraph 15.

3} Mithilesh Garg, Vs. Union of India and others etc. etc., Paragraph 7.

34. Mr. Sakti Nath Mukherjee, learned senior counsel appearing on behalf of one of the writ petitioners submits that the plea of lack of focus standi on the part of the writ petitioners cannot be justifiably raised in the facts and circumstances of the present case. Mr. Mukherjee further submits that the petitioners herein were not only appointed as M.R. Distributors but the number of M.R. Dealers tagged with the respective M.R. Distributor have been specified and the list of such M.R. Dealers has been specifically annexed with the respective letter of appointment of the respective writ petitioner. Mr. Mukherjee urged before this Court that the relevant question in the instant case is whether the appointment and assignment in favour of the respective writ petitioner can be subsequently subjected to a modification in the manner and on the grounds it has been sought to be done.

35. According to Mr. Mukherjee, the inevitable consequence of the subsequent appointments of additional M.R. Distributors is to reduce the number of dealers initially assigned to the respective writ petitioners under the terms of the appointment. Mr. Mukherjee specifically submits that in the instant case, the petitioners are not seeking to block or obstruct the entry of a competitor in the arena. Mr. Mukherjee further submits that the writ petitioners are raising

objections as they would be affected on account of curtailment of the number of M.R. Dealers assigned to them pursuant to the letter of appointment.

36. Mr. Mukherjee also submits that the aforesaid decisions of the respondent authorities regarding appointment of the additional M.R. Distributors are wholly unfair, arbitrary and mala fide. Mr. Mukherjee cited the following decisions of the Hon'ble Supreme Court where the concept of locus standi has been discussed:

1) M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, Paragraphs 12 and 13.

2) Ghulam Qadir Vs. Special Tribunal and Others, Paragraphs 37 and 38.

37. The learned senior counsel of the writ petitioners further submits that the petitioners herein are, claiming protection of their constitutional rights and not contractual rights even though according to the learned senior counsel of the writ petitioners, the action of the State even in relation to contractual matter has to be fair, reasonable and non-arbitrary. Mr. Mukherjee categorically submits that the petitioners herein are not complaining of any action which is under the contract or which is in accordance with the terms of the contract.

38. According to the learned senior counsel of the writ petitioners, it is not a case that any step is being taken against the petitioners for any breach of contract or for any other act of misconduct.

39. Mr. Samaraditya Pal, learned senior counsel representing one of the writ petitioners also submits that the question of locus standi is not to be equated with the question of maintainability and cited the following decisions in support of the aforesaid contention:

1) Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others Vs. Union of India (UOI) and Others, Paragraph 23.

2) S.P. Gupta Vs. President of India and Others, Paragraph 14.

40. Mr. Pal further submits that the legal right includes rights assigned under a contract and relied on a decision of the Supreme Court in the case of K.T. Chandy Vs. Mansa Ram Zade, at page 417. Mr. Pal urged before this Court that shrinkage of an area already allotted amounts to adverse affectation. The relevant portion of Paragraph 24 of the decision in the case of The The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, has been referred to and relied upon by Mr. Pal in this regard which is quoted hereunder:

"As soon as a portion of the area reserved for the appellant was ordered to be taken away and added to the reserved area of the 5th respondent, the appellant's interest was adversely affected and the appellant becomes an a party."

41. Mr. Pal also submits that a prejudicial affectation also includes a potential economic/financial loss and cited a decision reported in (1972) 2 All ER 589 [Re:

Liverpool Taxi Owners" Association] where Lord Denning held as hereunder:

"The taxi car owners" association come to this Court for relief and I think we should give it to them. The writs of prohibition and certiorari lie on behalf of any person who is a person aggrieved, and that includes any person whose interests may be prejudicially affected by what is taking place. It does not include a mere busybody who is interfering in things which do not concern him; but it includes any person who has a genuine grievance because something has been done or may be done which affects him [see: Attorney-General of the Gambia v. N'jie and Maurice v. London County Council]. The taxi car owners" association here have certainly a locus standi to apply for relief."

42. Referring to the American Jurisprudence Mr. Pal submits that economic injury has been considered sufficient for the purpose of conferring locus standi.

43. Although the learned senior counsel of the private respondent argued before this Court that the writ petitions are not maintainable since there is no breach of any statute but according to Mr. Pal, learned senior counsel of the writ petitioners, the breach of a constitutional provision e.g. Article 14 is far worse than breach of a statute. Referring to a celebrated decision of the Hon'ble Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Mr. Pal observed that the administrative law in India has freed itself from the earlier restricted approach.

44. Mr. Pal further submits that the cases cited by Mr. Panja are not applicable and distinguishable in view of the facts of the present case.

45. Mr. Rabi Lal Moitra, the learned Government Pleader appearing on behalf of the State respondents submits that four vacancies in the category of M.R. Distributors are available in the hill areas of Darjeeling District even after appointments of the writ petitioners as M.R. Distributors and appropriate authorities of the Government of West Bengal, therefore, have decided to fill up the said vacancies by appointing private respondents as they were found to be eligible. The learned Government Pleader further submits that the aforesaid appointments of additional M.R. Distributors have been made purely on temporary basis for a period of six months only from the date of appointment and the same are also subject to review.

46. Mr. Moitra, learned Government Pleader submits that due to certain local complaints in respect of the appointments of M.R. Distributors by the District Magistrate, Darjeeling, a committee was constituted consisting of Director General of Food, Joint Secretary, Food & Supplies Department and Director of D.D.P. & S., Government of West Bengal to examine the overall situation of Public Distribution System in the hill areas of Darjeeling. The said committee submitted its findings to the department on 23rd July, 2003.

47. Mr. Moitra also submits that the authority of appointment of M.R. Distributorship was transferred to the superior authority of the Food department

from the District Magistrate, Darjeeling on the ground of haphazard tagging of M.R. Dealership with the M.R. Distributorship without following the convenience of geographical location. According to Mr. Moitra, the aforesaid decision was taken to impose discipline, fairness and ensure timely delivery of food grains to the members of the public in the hill areas.

48. The learned Government Pleader submits that considering the recommendations of the aforesaid committee and also scrutinising the report of the Director of D.D.P. & S dated 11th November, 2003, it was decided by the competent authority of the Food department that some more M.R. Distributors should be appointed to cover the remote inaccessible hill areas of Darjeeling. The learned Government Pleader further submits that there was scope for appointment of at least 4 M.R. Distributors at Darjeeling district and accordingly, Bimal Dalmia and Sunil Bajla were provisionally appointed as additional M.R. Distributors by the Government Order dated 27th February, 2004 as the said Dalmia and Bajla applied against the vacancy notice earlier and were considered eligible.

49. Mr. Moitra also raised a preliminary objection regarding maintainability of the writ petition on the ground that the writ petitioners being the existing M.R. Distributors cannot have any say and cannot raise any objection against the selection of another person as M.R. Distributor by the competent authority of the Government particularly when the rights of the existing distributors have not been curtailed and/or interfered with.

50. Even though the learned counsel of the private respondents as well as the learned Government Pleader raised objections regarding maintainability of the writ petitions on the ground of locus standi of the writ petitioners but in the present case, I am of the view that the interests of the writ petitioners have been prejudicially affected in view of the aforesaid decision regarding appointment of additional M.R. Distributors pursuant to the written communication dated 27th February, 2004 issued by the Joint Secretary, Food & Supplies Department, Government of West Bengal.

51. As observed by the Hon^{ble} Supreme Court in the case of K.T. Chandy v. Mansa Ram Zade (supra); the rights of a party under a contract are his legal rights. Accordingly, shrinkage of an area already allotted under a contract amounts to adverse affectation.

52. Since the interests of the writ petitioners have been prejudicially affected by the impugned decision of the respondent authorities regarding appointment of additional M.R. Distributors, pursuant to the written communication dated 27th February, 2004 issued by the Joint Secretary, Food & Supplies Department, Government of West Bengal, I am of the view that the petitioners have sufficient reasons to be aggrieved.

53. For the aforementioned reasons, I hold that the petitioners herein have the focus standi to file the present writ petitions challenging the decision of the

respondent authorities regarding appointment of additional M.R. Distributors pursuant to the written communication dated 27th February, 2004 issued by the Joint Secretary, Food & Supplies Department, Government of West Bengal as the interests of the writ petitioners have been prejudicially affected by the said decision of the respondent authorities.

54. In the present case, at the very outset, learned Advocate General appeared before this Court and fairly submitted that the relevant office file is not traceable and as such the same could not be produced before this Court. However, some papers and note-sheets in relation to the appointments of M.R. Distributorship in the Darjeeling District have been produced before this Court. Subsequently, another file kept in the office of the District Magistrate, Darjeeling has been produced before this Court.

55. Although the entire records relating to the appointments of M.R. Distributors in Darjeeling district have not been produced before this Court on the ground that the relevant office file is not traceable but even from the available records I find that the authorities of the Food & Supplies Department at various levels have acted in a most illegal and irregular manner in the matter of appointing M.R. Distributors in the hilly areas of Darjeeling. The prescribed procedures for appointment of M.R. Distributors have been altogether ignored and the authorities of the Food & Supplies Department in Calcutta including the concerned Minister-in-charge took various irregular decisions for the purpose of appointing the private respondents as additional M.R. Distributors in the said district of Darjeeling.

56. As mentioned earlier, the petitioners herein were appointed as M.R. Distributors in the hill areas of Darjeeling in an emergent situation when the District Magistrate, Darjeeling was authorised to appoint M.R. Distributors by the Joint Secretary, Food & Supplies Department, Government of West Bengal, through open gestures i.e. by issuing notifications on a very short notice. After appointment of the petitioners as M.R. Distributors that emergent situation no longer continued and the respondent authorities therefore, got an opportunity to reassess the entire situation relating to the running of Public Distribution System in three hill sub-divisions of Darjeeling District.

57. It appears from the records that by the written communication dated 10th October, 2003, Director, District Distribution Procurement and Supplies directed the District Magistrate, Darjeeling to send all relevant papers and documents in original in respect of grant of 8 M.R. Distributorships in the hill sub-divisions of Darjeeling for enabling the Directorate to undertake the exercise for examining the feasibility for additional M.R. Distributors in the hill areas of Darjeeling district. However, it does not appear from the said communication why the exercise is required to be undertaken for examining the feasibility for appointment of additional M.R. Distributors in place of regular M.R. Distributors.

58. If the M.R. Distributor already appointed by the District Magistrate in the said

hill areas of Darjeeling were inadequate then the said authority could consider the appointment of further M.R. Distributors but surprisingly the concerned authority decided to undertake an exercise for examining the feasibility for appointment of additional M.R. Distributors.

59. From the records it appears that the District Magistrate by his letter dated 10th November, 2003 requested the District Controller, Food & Supplies Department, Darjeeling to submit a report including his opinion regarding the scope for grant of additional M.R. Distributors in the hill Sub-Divisions of Darjeeling. The District Controller, Food & Supplies, thereafter, by the Memo dated 11th November, 2003 requested the Sub-Divisional Controller, Food & Supplies, to submit a report regarding the aforesaid queries raised by the District Magistrate, Darjeeling.

60. From the available records it appears that the District Controller, Food & Supplies, Darjeeling in a plain paper furnished certain information to the Director General, Food & Supplies on 11th November, 2003 regarding total number of M.R. Dealers tagged with the respective M.R. Distributor and treating the said information supplied by the District Controller, Food & Supplies, Darjeeling as his report regarding grant of additional M.R. Distributors, the Director, D.D.P. & S. mentioned in his note dated 11th November, 2003 that there is scope for grant of additional M.R. Distributors in Kalimpong town and Darjeeling Sadar sub-division. The relevant extracts from the said note of the Director, D.D.P. & S. dated 11th November, 2003 are mentioned hereunder:

"Placed below is a copy of the report of D.C.F & S. Darjeeling regarding grant of additional M.R. Distributors in the hill Sub-Divisions of Darjeeling.

It appears from the said report that there is scope for grant of additional M.R. Distributors in the following Sub-divisions as per number noted against each:

1. Kalimpong Town 1 M.R. Distributor
2. Darjeeling Sadar Sub-Division 3 M.R. Distributors

There is scope for grant of additional M.R. Distributors in the Kurseong Sub-division in view of existing tagging position of M.R. Dealers with the M.R. Distributors."

61. The District Controller, Food & Supplies, Darjeeling on the other hand by the Memo dated 11th November, 2003, asked the concerned Sub-Divisional Controller of three sub-divisions in the hill areas of Darjeeling district to send their views regarding the scope for appointment of additional M.R. Distributors in the hill subdivisions of Darjeeling district. The Sub-Divisional Controller, Food & Supplies, by his Memo dated 1st November, 2003 in reply to the Memo dated 11th November, 2003 of the District Controller, Darjeeling reported after enquiry that grant of additional M.R. Distributors in the Darjeeling District was not necessary.

62. The District Controller, Food & Supplies, also by the Memo bearing No. 1227 dated 19th November, 2003 informed the District Magistrate, Darjeeling that after appointment of the M.R. Distributors in Darjeeling, Ghoom, and Sukhiapokree, Public Distribution System is functioning smoothly in the Sadar sub-division of Darjeeling. The said District Controller in the aforesaid Memo did not recommend for appointment of additional M.R. Distributors in the hill Sub-Divisions of Darjeeling.

63. The District Magistrate, Darjeeling in his Memo dated 22nd January, 2004 addressed to the Joint Secretary, Food & Supplies Department, Government of West Bengal informed the views of different officials as well as public representatives in the matter of functioning of newly appointed M.R. Distributors, namely, the writ petitioners herein, and also about the scope for appointment of additional M.R. Distributors. The District Magistrate, Darjeeling, however, did not express his own views in this regard and communicated the views of the different officials and public representatives in the matter for taking necessary actions regarding the appointment of additional M.R. Distributors.

64. Scrutinising the report of the District Magistrate, Darjeeling dated 22nd January, 2004, I find that divergent views have been expressed by the officials as well as public representatives in the matter of appointment of additional M.R. Distributors.

65. In the background of the aforesaid situation, various notes of the superior authorities of the Food & Supplies Department, Government of West Bengal, including the concerned Minister-in-charge should be carefully examined.

66. The Minister-in-charge in his written note dated 9th February, 2004 issued direction for taking immediate action in the matter of granting appointment of additional M.R. Distributorship in the three hill sub-divisions of Darjeeling. The said written note of the Minister-in-charge dated 9th February, 2004 is quoted hereunder:

"After careful scrutiny and verification of all related facts, views expressed and observations made, I have come to the conclusion that the Public Distribution Systems in the 3-Hill sub-divisions of Darjeeling needs to be strengthened and safe guarded.

Considering the note dated 11.11.03 given by the Directors, DDP & S (CP-72) and after examining the proposal made by DG (Food) at NSP-17 and the recommendations of the 3 members High Powered Committee which visited Darjeeling sometime in July 03 and the comprehensive report dated 22.01.04 submitted by the DM, Darjeeling, where he has specifically recommended the appointment of additional M.R. Distributors for smooth and effective functioning of the Public Distribution System, immediate action should be taken for granting additional M.R. Distributorship in the 3 Hill Sub-Divisions of Darjeeling.

Furthermore, from the observations made by the L.O., it appears that no order of

injunction, whatsoever, is in force in any of the pending cases so far as appointment of additional M.R. Distributors is concerned. If any legal complicity arises in future, that shall be duly dealt with accordingly by the Department.

Food Minister's genuine work should not unnecessarily be hampered or delayed without concrete proof or evidence.

Therefore, take immediate action and carry out my order as given in NSF 18 within 16.02.04 without any further delay in any manner whatsoever."

67. The concerned officer of the Food department prepared a note for the consideration of the Superior Officers on 17th February, 2004 for the purpose of proper execution of the aforesaid order passed by the Minister-in-charge of the Food & Supplies Department. The text of the said note is reproduced hereinbelow:

"In view of the position stated pre-page, the following procedures may be observed for proper execution of the Hon"ble M.I.C.'s orders:

- 1) Amendments in the appointment procedure be made. The drafts have already been put up in file No. FS/Seett/Food/ 6F-2/03 for approval.
- 2) No. of vacancies need be assessed in terms of G.O. No. 1246/FS dated 4.2.04 and Government may be moved accordingly by the District Authority.
- 3) Notifications be issued declaring the vacancies and inviting applications for the M.R. Distributor shop at the Government level.
- 4) Scrutiny of application and selection of M.R. Distributors be made at the Government level."

68. The aforesaid note prepared by the concerned officer of the Food & Supplies Department was placed before the Director General, Food and thereafter, the same was placed before the Commissioner, Food & Supplies. The Commissioner, Food & Supplies, although came to the conclusion that the course of action as suggested by the concerned officer was the administratively proper course of action but the appointments of Dalmia and Bajla should be done as the Hon"ble M.I.C. is anxious. The relevant portion from the said note of the Commissioner, Food & Supplies, is quoted hereunder:

"No doubt the course of action suggested at "A" is the administratively proper course of action. However, as M.I.C. is anxious to immediately appoint Messrs Dalmia and Bajla this may be done as long as there is no danger of contempt etc. This may be checked with Law Officer."

[The aforesaid Mark "A" mentioned in the note of the Commissioner, Food & Supplies, refers to the steps suggested by the concerned officer of the Food department in the note sheet dated 17th February, 2004 which have been quoted hereinbefore.]

69. Thereafter, the Director General, (Food), in his written note dated 19th

February, 2004 made certain observations for the first time regarding short listing of the eligible candidates which were however, not mentioned in the earlier note dated 17th February, 2004.

70. The earlier note dated 17 February, 2004 was prepared by Mr. Mollah, Joint Secretary, Food & Supplies Department, and was approved by the Director General, (Food), wherein it has been specifically mentioned that the procedures suggested by the concerned officer of the department on 17th February, 2004 regarding declaration of the vacancies, inviting applications for M.R. Distributorship, scrutiny of applications and selection of M.R. Distributors are long drawn process and will take considerable time. In the said note it has been specifically mentioned that the M.I.C. has directed for the appointments of Bimal Dalmia and Sunil Bajla.

71. While approving the said note of the Joint Secretary, the Director General, (Food), neither mentioned about the existence of the eligible short listed candidates nor even disclosed that Bimal Dalmia and Sunil Bajla were declared eligible amongst the so called short listed candidates who could not be accommodated during the material time for want of vacancies. Surprisingly within 48 hours thereafter, i.e. on 19th February, 2004, the said Director General, (Food), in his written note specifically mentioned that Dalmia and Bajla were short listed eligible candidates and could not be accommodated during the material time.

72. Scrutinising the aforesaid note-sheet I find that the then Minister-in-charge, Food & Supplies Department, specifically directed the appointment of M/s. Bimal Dalmia and Sunil Bajla as M.R. Distributors and in order to give effect to the "aforesaid direction of the Minister-in-charge, subsequent orders have been passed by the superior officers like the Director General, (Food), and the Commissioner, Food & Supplies Department, Government of West Bengal under compelling circumstances which resulted in the issuance of the impugned order regarding appointment of additional M.R. Distributors in Darjeeling Sadar and Kalimpong areas.

73. The direction of the then Minister-in-charge, Food & Supplies, regarding appointments of M/s. Bimal Dalmia and Sunil Bajla has been specifically mentioned in the note of Mr. N. Mollah, Joint Secretary, Food & Supplies Department, and approved by the Director General, (Food), on the same day. The relevant extract from the said note-sheet dated 17th February, 2004 is quoted hereunder:

"....The Hon"ble M.I.C. already directed to appoint M/s. Bimal Dalmia and M/s. Sunil Bajla (vide Orders at NSP-18)....."

74. Scrutinising the available records and observations of the various officials, I am of the view that the necessity for appointment of additional M.R. Distributors after the appointment of the writ petitioners as M.R. Distributors was never examined by the appropriate authority at the proper level. Furthermore, no step

was ever taken to ascertain the actual vacancies for appointment of such additional M.R. Distributors and therefore, no declaration to that effect had been made.

75. There are no materials on record in support of the decision regarding availability of 4 vacancies in the category of M.R. Distributors in the hill areas of Darjeeling district as mentioned in the written communication dated 27th February, 2004. Furthermore, there was no short listing of the eligible candidates for appointment of M.R. Distributors as the District Magistrate, Darjeeling in an emergent situation obtained a specific permission from the superior authority of the Food & Supplies Department to appoint M.R. Distributors for the purpose of smooth running of the Public Distribution System in the Darjeeling district and pursuant to the said/permission granted by the superior authority, the said District Magistrate appointed the writ petitioners as M.R. Distributors to meet the prevailing urgent situation.

76. Accordingly, there was no scope for short listing of the eligible candidates in this regard as the District Magistrate was specifically authorised by the superior authority to appoint M.R. Distributors on an urgent basis in order to overcome the emergent situation. Therefore, it was expected that after overcoming the emergent situation, Competent authority would reassess the situation regarding running of the Public Distribution System in Darjeeling hill areas and if necessary, would take appropriate steps for the appointment of the M.R. Distributors in a prescribed manner after due observance of the rules and procedures.

77. Unfortunately, in the present case, the respondent authorities decided to appoint the private respondents as additional M.R. Distributors without following the prescribed rules and procedures as are applicable in this regard and as a matter of fact, in order to fulfill the desire of the then Minister-in-charge of the Food & Supplies Department appointed the private respondents as additional M.R. Distributors disregarding the prescribed rules and procedures.

78. Scrutinising the entire records available before this Court, I find that the then Minister-in-charge was determined to appoint the private respondents herein as M.R. Distributors and accordingly, issued various directions in this regard ignoring the established rules and procedures for appointment of the M.R. Distributors. Unfortunately, the superior officers like the Director General, (Food), and the Commissioner, Food & Supplies Department, Government of West Bengal, instead of suggesting the correct procedures to the Minister-in-charge concerned decided to give effect to the direction of the Minister-in-charge without raising any objection and thus, had shown undue favour to the private respondents.

79. I am also unable to approve the conduct of the aforesaid bureaucrats apart from the concerned Minister-in-charge in this regard.

80. For the aforementioned reasons, the appointments of the additional M.R. Distributors in Darjeeling cannot be sustained as the entire procedures regarding

the appointments of the aforesaid additional M.R. Distributors in Darjeeling District have been vitiated by various illegalities and/or irregularities as discussed hereinbefore. Accordingly, the impugned order dated 27th February, 2004 issued by the respondent Joint Secretary, Food & Supplies Department, Government of West Bengal, regarding appointments of the private respondents as M.R. Distributors cannot be sustained in law and the same is therefore, quashed.

81. The learned advocate of the respondents although raised objections regarding validity of the appointments of the writ petitioners as M.R. Distributors but such objections cannot be decided in the present writ petitions apart from the fact that separate writ petitions in this regard have already been filed on behalf of the private respondents before this Court for deciding the aforesaid issue.

82. In the result, these writ petitions stand allowed and the vacating applications filed on behalf of the private respondents in connection with the aforesaid writ petitions being C.A.N. No. 5393 of 2004, C.A.N. No. 5391 of 2004 and C.A.N. No. 5392 of 2004 therefore, stand dismissed.

There will be, however, no order as to costs.

The original records/office file produced before this Court earlier on behalf of the State respondents be returned to the learned Advocate of the said respondents.

Urgent xerox certified copy of this judgment, if applied for, may be handed over to the learned Advocates of the parties upon compliance with usual undertaking.