

(2006) 08 CAL CK 0048
In the Calcutta High Court
Case No : F.M.A. No. 624 of 2006

Ramkrishna Pandia

APPELLANT

Vs

Jogesh Chandra Sarkar and Others

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Citation : (2007) 1 CHN 161 : 111 CWN 873

Hon'ble Judges : Prabuddha Sankar Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : L.C. Bihani, Lina Majumdar and Manju Sinha, for the Appellant; Malay Kumar Basu and Debabrata Saha Roy, Sumitra Dasgupta and Santi Das, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This mandamus appeal is at the instance of a third-party in a writ application and is directed against the order dated 29th March, 2006 passed by a learned Single Judge by which the learned Judge allowed a writ application filed by the private-respondent before us by directing the State-respondent not to give any appointment to the present appellant as modified-ration-distributor for the Dinhata Sub-division of the District-Cooch Behar and to initiate a fresh recruitment-process and select the fittest candidate for the distributorship following the existing provisions of law.

2. The present appellant was not a party to the said writ application and having been affected by the order of the learned Single Judge prayed for leave to file the present appeal and we granted such leave.

3. At the time of hearing of the appeal, we found that the learned Single Judge was not justified in passing the direction upon the State-respondent not to give appointment to the present appellant without giving an opportunity of hearing to him but as the dispute is pending for a long time, instead of remanding the matter back to the learned Single Judge, we decided to hear out the appeal on

merit by inviting the affidavit from the parties.

4. The facts giving rise to filing of the present appeal may be summed up thus:

(a) In the year 1985, a process of selection for the post of modified-ration-distributor in the Sub-division of Dinhata of the District-Cooch Behar was duly initiated in accordance with the then norms followed by the State Government and in that process, the present appellant as well as the private-respondent/writ petitioner participated.

(b) In the said process of selection, the present appellant was found to be most suitable candidate but due to various writ applications filed by different persons, there was stay of all further proceedings of the said process of selection and in course of next 22 years, the State Government took no initiative for filling up the said vacancy.

(c) Ultimately, in the year 2004, the present appellant filed a writ application before a learned Single Judge of this Court thereby praying for a direction upon the State-respondent to proceed with the said process of selection which was initiated in the year 1985. A learned Single Judge of this Court, however, instead of giving such relief to the appellant, directed the District Magistrate to consider the said writ application as a representation and to pass a reasoned order disposing of such representation.

(d) Pursuant to such direction given by a learned Single Judge, the District Magistrate heard the present appellant and called for a report from the District Controller (Food and Supplies), Cooch-Behar asking him to inform whether there is any necessity of appointment of an M.R. Distributor at Dinhata in accordance with the present norms followed by the State Government as mentioned in the notification dated 13th April, 1999 which has been translated into a statutory order, namely, the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2003. (Hereinafter referred to as the 2003 order).

(e) Pursuant to such direction given by the District Magistrate, the District Controller (Food and Supplies) informed the District Magistrate that according to the existing norms there is necessity of an M.R. Distributor, inasmuch as, the two existing M.R. Distributors of Dinhata are tagged with 70 and 60 dealers and 2,90,970 and 2,71,505 ration-cards respectively which exceed the existing limit prescribed by the Government.

(f) After getting such report from the District Controller of Food and Supplies, the District Magistrate was of the view that as the present appellant was earlier found to be the fittest candidate for being appointed as an M.R. Distributor in the year 1985, he should be appointed in the vacancy that is required to be officially declared by the Food and Supplies Department according to the present system. However, instead of declaring fresh vacancy, the District Controller (Food and Supplies) was directed to write a letter to the Director of Food and Supplies, Kolkata with the request to approve the appointment of appellant as M.R.

Distributor of Dinhata.

(g) The writ petitioner/respondent challenged the said order before the learned Single Judge without making the present appellant a party to the said writ application and as pointed out earlier, a learned Single Judge of this Court, by the order impugned herein, set aside the order of the District Magistrate holding that in order to fill up a present vacancy, appointment must be made in accordance with the provisions contained in the 2003 Order after declaring such vacancy and inviting applications from the public.

5. Being dissatisfied, the appellant has come up with the present mandamus appeal.

6. Mr Bihani, the learned senior Advocate appearing on behalf of the appellant, strenuously contended before us that his client having been selected in the process of selection of 1985 but due to various injunction orders granted by different Courts not having been formally appointed, the District Magistrate did not commit any illegality in giving effect to the previous selection, as even according to the existing norms, the said vacancy of the year 1985 is still existing. According to Mr Bihani, there is no necessity of declaring a fresh vacancy, inasmuch as the process of selection that was initiated in 1985 also fulfilled the present norms. In other words, Mr Bihani contends that even in the year 1985, the existing distributors had more than 50 dealers and 2,50,000 ration-cards tagged with them which necessitated appointment of a fresh distributor although according to the then law, even lesser number of dealers and ration-cards attached to an M. R. Distributor was sufficient for declaration of a fresh vacancy. He, thus, prays for setting aside the order passed by the learned Single Judge.

7. Mr. Basu, the learned senior Counsel appearing on behalf of the writ petitioner, has, however, opposed the aforesaid contention of Mr. Bihani and has contended that the selection which was initiated in the year 1985 but could not be finalised due to various litigations now cannot be given effect to, as in the meantime, the 2003 Order has come into force and thus, the District Magistrate had no authority to approve the appointment of the appellant unless the requirements of 2003 Order are complied with and on the basis of fresh selection the appellant is found to be fittest candidates among all. Mr. Basu contends that it appears from the order of the District Magistrate itself that he took the decision of approving the appointment of the appellant after ascertaining the position of vacancy in accordance with the 2003 Order but without following the rules for selection mentioned therein. He, therefore, prays for dismissal of the appeal on merit.

8. After hearing the learned Counsel for the parties and after going through the materials on record we are of the view that in order to appoint any new distributor after the coming into operation of 2003 Order, the same must conform to the said Order and should be preceded by a declaration of vacancy. It may be that in the year 1985 the present appellant was found to be most

suitable in accordance with the then law but when that selection was not given effect to and in the meantime, new statutory norms have come into force, there was no scope of giving effect of the earlier decision taken 21 years ago.

9. Therefore, after the coming into operation of 2003 Order mentioned above, if any new M. R. Distributor is to be appointed, the same must be done in accordance with the mandate of that order and should be preceded by a declaration of vacancy and followed by a fresh process of selection. Simply because 21 years ago, the appellant was found to be the most suitable candidate in accordance with the then norms, that does not mean that without declaring fresh vacancy, the vacancy occurred 21 years ago in accordance with the then norms should be given effect to by depriving others who have subsequently acquired right to apply under 2003 Order. In this connection, it will not be inappropriate to refer to the decision of the Supreme Court in the case of *State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others*, where the Apex Court held that even after acceptance of the provisional bid, the Government is entitled to change its policy and reject the highest bid and no vested right accrued in favour of the highest bidder to have the selection notwithstanding the change of policy.

10. At this stage, it will not be out of place to refer to a decision of the Supreme Court in the case of *P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others*, where a Bench consisting of three-Judges held that an applicant for license has no vested right or accrued right to have a license in accordance with the policy subsisting at the time of submission of the application and the Government has power to evolve its new policy in public interest, which includes its power to withdraw the old policy and the Court cannot bind the Government to its previous policy by invoking the doctrine of legitimate expectation of the applicant for license unless the change in policy is vitiated by mala fides or abuse of power, which the applicant must plead and prove to the satisfaction of the Court. The Supreme Court further held that the doctrine of promissory estoppel is equally inapplicable in such circumstances.

11. Therefore, the District Magistrate acted without jurisdiction in asking the District Controller of Food and Supplies to seek approval for appointment of the appellant when according to 2003 Order a fresh vacancy is required to be declared according to the existing position and then selection should follow.

12. We, thus, find that although the learned Trial Judge acted illegally in setting aside the order passed by the District Magistrate without hearing the present appellant, his ultimate conclusion was correct and after giving an opportunity of hearing to the appellant we propose to affirm the final order passed by the learned Single Judge that the District Magistrate should not have recommended the approval of the appointment of the appellant for the distributorship in question.

13. The appeal is, thus, devoid of any substance and is dismissed accordingly. In

the facts and circumstances, there will be however, no order as to costs.