
(1990) 07 CAL CK 0002
In the Calcutta High Court

Sagarmal Gupta

APPELLANT

Vs

Director of Rationing, West Bengal and Others

RESPONDENT

Date of Decision : 16-07-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : 95 CWN 438

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Advocate : R.N. Dutta, Partha Dutta and Rituparna Maitra, for the Appellant;
N.N. Adhikary for the State, R.N. Mitra and Idris Ali, for the Respondent

Judgement

Kalyanmoy Ganguli, J.—The twin grieves of the petitioner in the instant, application under Article 226 of the Constitution of India, are the proposed appointment of the respondent no. 6 as an appointed whole seller for non rationed articles in respect of Chitpur, Cossipore and Jorabagan sub-areas and the non appointment of the petitioner as such. All the parties Piled affidavits and the matter was heard at quite some length.

2. The short case of the petitioner is that on or about September 20, 1999 the respondent no. 1 who is the sole authority for appointment of dealers under the West Bengal Rationing Order, 1964 issued a notice inviting applications from persons desirous of being appointed as appointed Whole seller for non rationed articles. A copy of the said notice has been annexed to the petition marked with the letter "A".

3. There are three clauses which need special mentioning at this initial stage namely:

(i) that the candidate concerned must have a suitable godown space comprising a covered effective floor space of at least 1000 sq. ft. of his own or rented by him at the location mentioned in paragraph 1 of the said notice;

(ii) that he should possess at least Rs. 5,00,000/-either in cash or to bank

deposit or in both. "In case of bank deposit the amount must be liquid enough in state to be withdrawn at short notice"; and

(iii) "any form of canvassing will automatically disqualify a candidate for appointment.

Pursuant to the aforesaid advertisement the petitioner along with diverse other persons made applications for being appointed whole seller for non rationed articles.

4. It is admitted by the petitioner in paragraph 10 of the petition that clause 9 of the application contained a wrong statement which was subsequently corrected by the petitioner and such correction has been accepted and acceded to by the appropriate authority. In the affidavit-in-opposition filed by the State respondents there is no denial of the statement that such correction asked for by the petitioner was allowed by the State respondent.

5. Although about 22 persons applied for the aforesaid appointment, we, in the instant petition are concerned only with the petitioner and the respondent no. 6. So far as the petitioner is concerned it is an admitted position, which is admitted in paragraph 10 of the affidavit-in-opposition filed by the State that on the date of the application the petitioner offered floor space for godown of 600 sq. ft. and shown bank balance on the date of the application of Rs. 5,12,768.50 paise but on enquiry the bank balance of the petitioner was found to be Rs. 5,02,000/-. It may be stated here that in terms of the advertisement the petitioners eligibility on these two scores cannot be challenged or denied. So far as the godown space is concerned the State respondent show that they were not satisfied with the documents produced by the petitioner regarding the tenancy right of the petitioner and the respondents seek to contend that the petitioner was a sub-tenant and not a direct tenant under the landlord and as such he was not considered suitable. So far as the respondent no. 6 is concerned it is an admitted position that there was initially some trouble with the floor space offered by the respondent no. 6 but what is more important is that "respondent no. 6 showed more than rupees three lakhs in his current bank account as on 29-11-88 and fixed deposit of Rs. 3,05,200/-and a bank guarantee of Rs. 5,00,000/-.

6. In paragraph 15 of the petition it has been categorically stated that the respondent no. 6 went to the office of the respondent no. 7 who is none other than the Hon''ble Minister-in-Charge, Food & Supplies Department, State of West Bengal. It is also the categorical case of the petitioner that the respondent no. 6 approached the said Hon''ble Minister-in-Charge on more than one occasion and at his instance and insistence the respondent no. 6 was proposed to be appointed in preference to the petitioner after the respondent no. 6 offered an alternative godown space. The statements to the effect that the Hon''ble Minister-in-Charge of the department was approached and that actions were taken at his instance and insistence have not been denied by the deponent of the affidavit-in-opposition on behalf of the State respondents. The deponent of the affidavit-in-

opposition is the Administrative Officer (Head Quarters), Director of Rationing and the Member, Shop Selection Advisory Board.

7. It is not necessary to refer to the detailed arguments made by the parties in the proceeding. Two points stand out bold and clear from the admitted facts. The first is that the Hon"ble Minister-in-Charge was approached and the second is that the respondent no. 6 could not show a sum of Rs. 5,00,000/- either in cash or in bank deposit in a liquid enough state.

8. It is needless to remind ourselves of the celebrated observation made by the Hon"ble Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, In Paragraph 10 at page 1635, Their Lordships, inter alia, observed that "It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them..... It may be noted that this rule, though supportable also and emanating from Article 14 does not rest merely on that Article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority."

9. In paragraph 11 of the said judgment Their Lordships at page 1936 have, inter alia, held that today the Government, in a Welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefit services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth..... A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom it will deal.

10. Judged on this anvil it may be said that the respondent no. 6 admittedly did not have Rs. 5,00,000/-in bank deposit and on that score alone the candidature of the respondent no. 6 should have been struck off.

11. The other points is the allegations made against the Hon"ble Minister-in-Charge of the Government. There has been categorical assertion in the petition that under the influence of the Hon"ble Minister concerned certain actions were taken or that the respondent no. 6 was proposed to be appointed because of certain interests shown by the Hon"ble Minister, it is not necessary to go into the truth or otherwise of the said allegation. We may remind ourselves that Clause 6 of the notice inviting applications categorically lays down that any form of canvassing should automatically disqualify an applicant. Furthermore, when personal allegations are made against an Hon"ble Minister and he does not come forward to deny such allegations, the allegations are deemed to be admitted by the person against whom such allegations are made. In the instant case the affidavit-in-opposition on behalf of the State respondent was affirmed, as already

stated, by the Administrative Officer who is not supposed to know whether the Hon'ble Minister has actually favoured the respondent no. 6 or not. Moreover, the deponent of the said affidavit does not reply to the charges made categorically by the petitioner against such allegations. Incidentally, references may be made to the case of S. Pratap Singh Vs. The State of Punjab, In the aforesaid case it was, inter alia, held that if allegations of malafides are made against a Minister and the Minister does not come forward with any denial thereof, the malafides should be deemed to have been proved and an affidavit by his Secretary is not sufficient to repeal such allegation. The same analogy holds good in the instant case.

12. In the unreported decision in C.O. No. 8760 (W) (Sri Biswambhar Basu Vs. state of west Bengal & Ors.) decided on November 2, 1989, I have, inter alia, held that in the scheme of things, as in the instant case where the respondent no. 1 is the sole authority to make such appointment, the Hon'ble Minister has no part to play and/or his orders, decisions or directions cannot be taken into account in judging the candidature of the petitioner and the authorities concerned are entitled to proceed in accordance with the rules laid down in the West Bengal Rationing Control Order, 1964 as amended from time to time and any notifications relating thereto.

13. In considering the facts as to whether the petitioner had in his legal and physical control the floor space as required under the notification, the respondents wanted to go into the question of determination of the title of the petitioner to the disputed property. I am afraid that the executive authorities should prima facie be satisfied as to whether the candidate has been able to offer the required godown space and such executive authority is not required to go into an intricate question of title. In this connection reference may also be made to the unreported decisions of the Hon'ble Mr. Justice Ajit Kumar Sengupta passed on April 22, 1988 in the case of Krishnada Paul Vs. State of West Bengal & Ors. In that case it was, inter alia, held that "so long as the petitioner having a place of business to carry on the business and where the landlady has given the permission to use the premises in question for the purpose of carrying on the business it is not for the authority concerned to decide whether the licence or the petitioner has a sub-tenant or a tenant."

14. On the grounds mentioned above the appointment of the respondent no. 6 in the instant case cannot be sustained and is hereby set aside if such an appointment has been made already.

15. It appears from the pleadings that out of 22 candidates 20 were already eliminated at the first round on one plea or another and none of such applicants has approached this Court. If the petitioner otherwise fulfils the conditions as laid down in the notice which is annexure "A" to the writ petition and is otherwise found suitable judged on anvil of the criteria laid down in the aforesaid notice, the candidature of the petitioner is to be reconsidered by the authorities in the light of the observations made hereinabove. The application succeeds to the

extent indicated above and is allowed also to the extent indicated above.

There will be no order as to costs.

Application allowed in part.