
(2014) 12 MEG CK 0023
In the Meghalaya High Court
Case No : WP(C) No. 289/2014

Shibun Lyngdoh

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : (2014) 12 MEG CK 0023

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Judgement

T. Nandakumar Singh, J.—Heard Mr. H.S. Thangkhiew, learned senior counsel assisted by Mr. N. Mozika, learned counsel appearing for the petitioners, Mr. S. Sen Gupta, learned GA appearing for the respondents No. 1-4 and Mr. S.P. Mahanta, learned senior counsel assisted by Ms. S. Pde, learned counsel appearing for the respondents No. 5-8.

2. The petitioner No. 1 was appointed as Govt. Nominee/Agent in PDS, Khliehriat in the year 2006 and his appointment was renewed/appointed successively till the year 2013. The petitioner No. 2 was appointed as Govt. Nominee/Agent in PDS, Khliehriat in the year 1977 and her appointment was renewed/appointed successively till the year 2013. The petitioners are the Govt. Nominees/Agents in PDS having proven track record for the last several years. The Govt. of Meghalaya in exercise of the power conferred by Section 3 of the Essential Commodities Act, 1955 [10 of 1955] read with the Order of the Govt. of India in the Ministry of Consumer Affairs, Food and Public Distribution, No. GSR. No. 630 (E) dated 31.08.2001, makes the Order called "Meghalaya Foodgrains [Public Distribution System] Control Order, 2004 (for short "the said Order of 2004"). The said Order of 2004 prescribes the procedure for appointment of Nominees/Agents of the Govt. for PDS. Under the said Order of 2004, applications for appointment of the Govt. Nominees/Agents for PDS are to be against the vacancies duly advertised. Para 05 of the said Order of 2004 provides the

procedure to be followed and requisites to be taken into consideration for appointing as Nominees/Agents. The relevant portions of the said Order of 204 are quoted hereunder:-

"THE MEGHALAYA FOODGRAINS [PUBLIC DISTRIBUTION SYSTEM] CONTROL ORDER, 2004

2. Definition:- In this Order, unless the context otherwise requires:-

(a) "Appointed Nominees/Agents" Government Nominees/Agents appointed or deemed to be appointed under Clause - 3.

(b) "Appointed Retailer" means a Retail Dealer appointed or deemed to be appointed under the Provision of Clause - 20, in respect of any Foodgrains.

(c) "Appointing Authority" means the Director of Food Civil Supplies and Consumer Affairs, Govt. of Meghalaya and includes the Deputy Commissioner/ Additional Deputy Commissioner and Sub-Divisional Officer, [C], in their respective jurisdiction.

(d) "Appellate Authority" means the Commissioner and Secretary, Weight and Measures Department or any other Officers to be appointed by the Govt. for the purpose.

(e) "Director" means the Director of Food Civil Supplies and Consumer Affairs, Govt. of Meghalaya, and includes any other Officers authorized by the Govt. to perform all or any function of the Director.

(f) "Deputy Commissioner" includes the Additional Deputy Commissioner and the Sub-Divisional Officer within the respective jurisdiction.

(g) "Family Identity Card" means a Card or document issued to the head of a Family in pursuance of the Provisions of this Order.

(h) "Foodgrains" means Rice, Paddy and Wheat and Wheat Products.

(i) "Form" means the Form set out in the Schedule to this Order.

(j) "Government Scheme" means the Scheme for distribution of Foodgrains to Consumer through Fair Price Shops set up by the Govt. in this behalf.

(k) "Person" includes any Company or Association or a body of individuals incorporated or not.

PAR-T A Appointment of Nominees/Agents and regulation of purchase, storage and Sale of Foodgrains by such Nominees/Agents.

3. Appointments as Govt. Nominees/Agents:-

With a view to distributing Foodgrains under the Govt. Scheme, the Director or the Deputy Commissioner, in his respective jurisdiction may by Order, appoint in

respect of any Area any Person as Govt. Nominees/Agents in respect of any Foodgrains for the purpose of this Order and thereupon such Nominees/Agents shall lift the Foodgrains allotted by the Govt. of India from the Local F.C.I., Godowns/depots and supply the required quantity to the Retail Dealers of the Area cover by such Nominees/Agents in time.

4. Application for appointment:-

An application for appointment under this Order shall be made in Form - "I", to the Appointing Authority when vacancies are duly advertised.

5. Procedure to be followed and requisites to be taken into consideration for appointing as Nominees/Agents:-

[1] In appointing or refusing to appoint under this Order, the Appointing Authority shall, among other things, have regard to the following namely:-

(a) the stock of Foodgrains available in the Locality for which the appointment is required;

(b) the number of Persons who have applied for and those who have been appointed in respect of the Foodgrains under this Order in the Locality;

(c) the business ordinarily carried on by the Applicant;

(d) the past activities of the Applicant as Businessmen/Firm; and

(e) Whether the Applicant is a Co-Operative Society.

[2] Notwithstanding anything contained in Sub-Clause (1), the State Govt. may, if it is of opinion that it is necessary to finalise distribution of Foodgrains through any special or specialized Agencies or Channels [including Co-Operative Societies] direct the Appointing Authority to appoint under this Order only to such Agencies or Channels.

6. Issue of Appointments:-

Every Appointment shall be issued under this order only on furnishing of undertaking in Form

- "II", by the Applicant.

7. Deposit of Security:-

Every Nominee/Agent who is appointed under this Order shall, before an Appointment is issued to him, deposit with the Appointing Authority a Security of Rs. 7,000/- [Rupees Seven Thousand] only in the Forms as may be prescribed by Govt. from time to time for the due performance of the terms and conditions of his/her Appointment.

8. Forfeiture of Security Deposit:-

(1) Without prejudices to the Provision of Clause-14, if the Appointing Authority

is satisfied that the Nominee/Agent contravened any of the terms and conditions of the appointment and that forfeiture of the Security Deposit is called for, it may after giving a Nominee/Agent a reasonable opportunity of stating his case against the proposed forfeiture, by order, forfeit the whole or any part of the Security Deposited by him and communicated a copy of the Order to the Nominee/Agent.

(2) The Nominees/Agents shall, if the amount of Security at any time falls short of the amount specified in Clause-7, forthwith deposit further security to make up that amount on being required by the Appointing Authority so to do.

(3) Upon due compliance by the Nominee/Agent with all the terms and conditions of the appointment, the amount of security or such part thereof which is not forfeited as aforesaid, shall be returned to the Nominee/Agent after the termination of the appointment.

9. Period of validity of the appointment:-

Every appointment issued under this Order be valid till the 31st day of December of the year of issue of the appointment."

3. The case of the petitioners in the present writ petition is that while appointing the private respondents No. 5-8 as Govt. Nominees/Agents under the impugned order dated 03.07.2014 (Annexure-9 to the writ petition), the procedure prescribed and requisites to be considered for appointment of Govt. Nominees/Agents for the PDS are not followed. Mr. S.P. Mahanta, learned senior counsel appearing for the respondents No. 5-8 controverted the case of the petitioners in the present writ petition. However, it is clear from the impugned order dated 03.07.2014 that the term of the respondents No. 5-8 as Govt. Nominees/Agents for PDS will expire on 31.12.2014. Mr. S.P. Mahanta, learned senior counsel appearing for the respondents No. 5-8 also stated that the PDS quota for the private respondents i.e. respondents No. 5-8 for the year 2015 had already been issued. Therefore, it is the submission of Mr. S.P. Mahanta, learned senior counsel that the present writ petition is virtually infructuous. Mr. H.S. Thangkhiew, learned senior counsel appearing for the petitioners strenuously contended that the matter for appointment of Govt. Nominees/Agents for PDS is a matter of public importance and therefore, the appointment of Nominees/Agents of the Govt. for PDS items should be in strict compliance of the said Order of 2004 issued by the Govt. itself. Mr. S.P. Mahanta, learned senior counsel appearing for the respondents No. 5-8 is also of the same view that the procedure prescribed for appointment of Nominees/Agents for PDS in the said Order i.e. Order of 2004 are to be followed inasmuch as, the authority cannot appoint any Nominee/Agent for PDS without following the prescribed procedure.

4. In the above factual backdrop, this writ petition is disposed of by directing the respondents No. 1-4 to strictly follow the said Order of 2004 made by the Govt.

in exercise of the power conferred by Section 3 of the Essential Commodities Act, 1955 [10 of 1955] read with the Order of the Govt. of India in the Ministry of Consumer Affairs, Food and Public Distribution, No. GSR. No. 630 (E) dated 31.08.2001 in the appointment of the Govt. Nominees/Agents for PDS, Khliehriat. As the term of the respondents No. 5-8 are expiring in the month of December, 2014, this Court is not deciding the illegality or otherwise in appointing the respondents No. 5-8 in the present writ petition. However, the present issue in the present writ petition which involves public importance will be decided in the appropriate cases. It is made clear that there should be an advertisement calling applications from the eligible candidates for appointment of the Govt. Nominees/Agents for PDS Khliehriat and also that the appointment shall be in strict compliance of the said Order of 2004 issued by the Govt..

5. With the above observations and directions, this writ petition is disposed of.