

(1985) 08 CAL CK 0001
In the Calcutta High Court
Case No : Civil Rule No. 9442 (W) of 1978

Sm. Chandrakala Choudhury

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 08-08-1985

Acts Referred:

Citation : AIR 1987 Cal 11

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Monotosh Mukherjee and L.K. Gupta, for the Appellant; B.N. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Paritosh Kumar Mukherjee, J.—The petitioner moved this writ petition challenging an order dt. Aug. 30/31, 1978 passed by the Deputy Controller of Rationing, Initial Area II, by which the petitioner's petition for transferring the ownership of A. R. Shop No. 2987 was rejected on the ground that the petitioner's husband is the proprietor of an A. R. Shop is Muchipara Sub-Area.

2. At the time of hearing of the writ petition, Dr. Mukherjee appearing for the petitioner submitted that the impugned order proceeded on the basis that the petitioner, being the wife is not entitled to get the A. R. shop transferred in her name, although in para 11 of the affidavit-in-opposition affirmed by one Rathindra Kumar Basu on Aug. 2, 1979, it was stated that as the husband of the petitioner has a shop situated at Muchipara area, the petitioner is not entitled to get the appointment of the A. R. Shop transferred in her favour in terms of para 3(1) of the West Bengal Rationing Order, 1964.

3. Thus, the respondents have tried to shift from the original stand, they had taken by passing the impugned order, as stated above.

4. Learned Counsel for the petitioner submitted that respondents are not entitled to shift from the original ground, in the affidavit. In this context, Dr. Mukherjee

referred to the decision of the Supreme Court in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , in particular, passage in para 9 thereof, where the Supreme Court had observed that as a general proposition of law that the public orders passed, in exercise of statutory authority could not be construed, in the light of explanation subsequently given by the officer making the order, i.e., whatever contained in the order cannot be supplemented by the reasoning given in the affidavit, as has been done in the instant case.

5. In this regard, he has also referred to another decision of the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, of the said judgment, it has been held by the Supreme Court that when the statutory functionary makes an order based on certain grounds, its validity must be judged by reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the latter case, the Supreme Court had relied on the observations of Bose, J. in Gordhandas Bhanji's case (supra).

6. Mr. Birendra Nath Ghose, learned Advocate appearing for the respondents, has submitted that although there was no express prohibition for transfer and/or mutating the name in favour of the petitioner, under Clause 3(1) of the West Bengal Rationing Order, 1964, yet in the facts of the present case, before passing of the impugned order on Aug. 30/31, 1978, the authorities made enquiry and came to the conclusion that there should not be any concentration of dealership in a family and, accordingly, the impugned order was passed.

7. In support of his contention, Mr. Ghose has relied on the statements made in the affidavit-in-opposition, in particular, the statements made in para 7 of the said affidavit, wherein it has been stated as follows : --

"It is stated that such appointment relates to the person concerned only in whose favour the said appointment is being given and, on the death of the appointee, such appointment stands automatically cancelled. I further state that the right to carry on the business is admittedly a right to freedom within the meaning of Article 19(1)(g) of the Constitution of India I further state that such an employment confers purely a personal right in favour of the appointee and, as such, no statutory provisions of the said West Bengal Rationing Order 1964 were infringed."

8. After having heard the learned Advocates on both sides, I am of the view that the reasons given in the impugned order dt. Aug. 30/31, 1978 by the Deputy Controller of Rationing, Initial Area -- II cannot be sustained in law, as there is no provision in West bengal Rationing Order 1964 forbidding transfer and/or mutation of the name of the transferee, on the ground of alleged concentration of business, in a family. Such direction, of the authorities if any, which might have guided, the respondents, in not transferring the name of the petitioner, is extraneous and should be struck down.

9. More so, reliance has been placed by the learned Advocate for the petitioner

on Annex. "A" to the affidavit-in-reply, where from it can be gathered that earlier the appointment of Chiranjilal Gupta, father of the petitioner, was made in favour of Smt. Ratna Debi Gupta, wife of the deceased proprietor.

10. That being the position, this writ petition is entitled to succeed.

11. Accordingly, the impugned order dt. Aug. 30/31, 1978, is set aside and the Rule is made absolute.

12. Let a Writ in the nature of Certiorari issue quashing the impugned order of rejection.

13. Let consequential writ in the nature of Mandamus also issue upon the respondents directing them to consider the application of the petitioner for transfer of licence and/or grant the same, in favour of the petitioner from the name of Smt. Ratna Debi Gupta, as the proprietor of the A. R. Shop No. 2987 in accordance with law.

14. I make it clear that such consideration is to be made within a period of one month from the date of communication of this order to the respondent 3, Director of Rationing, Government of West Bengal.

15. In the facts and circumstances of this case, there will be no order as to costs.