
(1997) 03 CAL CK 0031
In the Calcutta High Court
Case No : F.M.A.T. No. 189 of 1997

Sudhir Kumar Pal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 1 CALLT 444

Hon'ble Judges : Ruma Pal, J;D.K. Jain, J

Bench : Division Bench

Advocate : Tapas Kumar Banerjee, D.N. Lahiri and Arun Kumar Maity, for the Appellant;Debasish Kargupta and Shyamal Prasad Purkait, for the Respondent

Judgement

Ruma Pal, J.—By this judgment we are disposing of an appeal which was preferred from an interim order passed in a writ application filed by the appellant, as well as the writ application itself. The grievance in the writ application relates to the appointment of an M.R. Distributor at Marishdah, P.S. Contai in the District of Midnapore. A notice was issued on 22nd September 1993 by the Sub-Divisional Controller, Food & Supplies, Contai, Midnapore inviting applications for appointment of an M.R. Distributor at Marishdah from "bonafide resident and intending candidates of the locality". The appellant/writ petitioner applied. In accordance with the procedure prescribed for appointment of M.D. Distributor by the department of Food & Supplies, an enquiry was held by the Chief Inspector (F. & S.). A detailed enquiry report was submitted " by the Inspector on the basis of the documents produced before him and also on a local inspection. The conclusion of the enquiry report was as follows:

"Applicant Sri Sudhir Kumar Pal is a bonafide resident of the locality. His proposed godowns are also situated within 250 mtr. from Marishda B.D.O. Office. Godowns are very suitable for storage of foodgrains with a capacity of 1563.65 Qtls. after allowing alley space and weighment space. Godowns are easy accessible by trucks. Own Transport facility. Applicant is financially very solvent

to run M.R. Distributor business. He produced Rs. 13,36,249.44 as his capital in respect of financial solvency. Market reputation of the applicant is satisfactory. He is experienced in this trade and successfully completed one year's Transport Contractor ship with reputation. Applicant fulfilled all the requisite qualifications for appointment of M.R. Distributor at Marishda. Considering the above and comparing with all other contesting candidates for the above vacancy, case is strongly recommended for appointment as M.R. Distributor at Marishda on 1st priority.?

2. The report of the Chief Inspector (F & S) was duly placed before the Sub-Divisional Controller (F & S). The Sub-Divisional Officer considered the enquiry reports submitted in respect of the various candidates and stated that only two applicants out of 9 were eligible for appointment as M.R. Distributor against the vacancy in question "in all respects". These two applicants were (i) Sri Sudhir Kumar Pal (appellant) and (ii) Ms. Saptarshi Enterprise "though in respect of godown space and finance Sri Sudhir Kumar Pal stands in higher position." The Sub-Divisional Controller, however, said that "in respect of practical eligibility it is very difficult to fix any order of priority between these two applicants. Hence, either of the above two applicants can be appointed as an M.R. Distributor at Marishda." The matter was thereafter placed before the District Controller, Food & Supplies. The District Controller Food & Supplies by a note dated 29.12.93 recommended the candidature of the appellant for appointment as the M.R. Distributor for Marishda. The matter was thereafter placed before the Sabhadipati, Midnapore Zilla Parishad. The Sabhadipati passed the following order according to the "note sheet" The second priority case i.e. M/s. Saptarshi Enterprise with 7 partners is hereby recommended for issuing M.R. Distributor Licence at Marishda as they have fulfilled the conditions required and most of them are unemployed youths. The matter was thereafter sent back to the District Controller. The District Controller by detailed order dated 2nd June 1994 gave reasons why the candidature of M/s. Saptarshi Enterprise could not be accepted. He again proposed the candidature of Sudhir Kumar Pal. The candidature of the appellant was again placed for the approval of the Sabhadipati. The Sabhadipati again chose M/s. Saptarshi Enterprise. That decision, however, is not on record.

3. The writ petitioner filed a writ application sometime in 1994 (referred to as the 1st petition) challenging the decision of the Sabhadipati in favour of M/s, Saptarshi Enterprise. Initially an interim order was granted staying the operation of the order of the decision of the Sabhadipati. M/s. Saptarshi Enterprise then filed an affidavit in the first petition stating that they were not in a position to run the business and as such they were no longer interested in being M.R. Distributor for Marishda, in view of the affidavit of M/s. Saptarshi Enterprise that they were not interested in the appointment, the first writ application was disposed of on 6th December 1995 with the following order;

"The recommendation of the Sabhadhipati, Midnapore Zilla Parishad, stands quashed, and the writ petition is disposed of with this Direction upon the Khadya-

O-Sarbaraha Sthayee Samiti of the Zilla Parishad to consider the relevant records as well as the recommendations sent to it for consideration for appointment in M.R. Distributorship within one month from the date of communication of this order to the Samity and the Sub-divisional Controller, Food and Supplies, shall thereafter take necessary steps in accordance with law for the appointment of the aforesaid M.R. distributorship."

4. A notice was thereafter issued sometime in December 1996 to M/s. Saptarshi Enterprise as well as to the writ petitioner/appellant by the Khadya-O-Sarbaraha Sthayee Samiti of the Zilla Parishad (Hereinafter referred to as the Samiti). M/s. Saptarshi Enterprise attended the meeting before the Samiti and again stated in writing that they were not interested in the M.R. Distributorship.

5. On 27th December 1996 a Memo was issued by the District Controller, Food & Supplies, Midnapore to the appellant/writ petitioner stating that his case had been considered and after considering "of the relevant aspects" the appellant's prayer for appointment was rejected by the Samiti in their meeting held on 22nd December 1996 on the following grounds :

"1) As per vacancy Notification vide No. 3402 (12)/CFS/93 dated 22.9.93 issued by the Sub-divisional Controller, F & S Contai, it appears that you are not the inhabitant of the locality.

2) Your wife Smt. Kamini Rani Paul is a partner of M/s. Annapurna Enterprise, M.R. Distributor at Egra Contai Sub-division Dist Midnapore.

3) You are an existing Transport Contractor for Contai Govt. Food Dept under the food and supplies Deptt. Govt. of West Bengal."

6. It was also stated that the Samiti had decided at the meeting held on 2.12.96 that a fresh vacancy for the appointment of M.R. Distributor at Marishda would be declared to fill up the vacancy.

7. Challenging this decision a second writ application was filed by the appellant on 6th January 1997. Initially an interim order was granted but thereafter discontinued on 22nd January 1997. Being aggrieved by the order dated 22nd January 1997 this appeal was preferred on 24th January 1997. By an order dated 30th January 1997 the appeal court directed status quo to be maintained with regard to the appointment of the M.R. Distributorship in question and by consent of the parties the writ application itself was directed to be disposed of by the appeal court.

8. Thereafter an affidavit-in-opposition filed by the State authorities. No affidavit in opposition has been filed by the respondents No. 7 and 8 or 9 being the Sabhadhipati of the Zilla Parishad, the Samiti or the Chairman of the Samiti. Although no affidavit of service had been filed the duly receipted documents showing service on these three respondents were produced before this court and we have no reasons to dis-believe the same. However, the appellant will affirm and file an affidavit of service including the original documents showing such

service in the course of tomorrow, failing which the appeal and the writ petition will both stand dismissed.

9. The grounds upon which the appellant has challenged the decision of the Samiti are as follows. The first submission is that the order of first writ application did not permit the Samiti to reject the appointment of the appellant and to declare a fresh vacancy. The second submission is that the decision was tainted by mala fides. Explicit allegations have been made against the Sabhadhipati and the Samiti in the stay application which had not been controverted by any one on behalf of the Samiti nor indeed the State authorities two of whom formed part of the Samiti. The third submission is that the grounds upon which the decision had been taken to reject the petitioner's appointment were no grounds either in law or in fact and could not form the basis of any decision to call for a fresh vacancy. The final submission is that the decision was arbitrary, perverse and contrary to the rules framed in this regard.

10. The learned counsel appearing on behalf of the State respondents has submitted that he could not justify the stand taken by the Samiti as he was not briefed on their behalf. He has also submitted that there was no record with the State authorities to Justify the first ground for rejection of the petitioner's appointment. It was fairly conceded that the second two grounds listed in the impugned decision were not available in law.

11. Having considered the submission of the parties we are of the view that the appeal and the writ application must both be allowed. We, however, do not accept the first submission of the appellant's that the Samiti did not have the right to reject the appointment of the appellant in the manner in which it has been stated. If appropriate grounds were available before the Samiti, the Samiti could have rejected the application of the appellant such grounds would have to be something subsequent. It is possible to conceive of a situation where by reason of a subsequent disability or disqualification of the appellant, the appellant's case could have been validly rejected by the Samiti. However, the appellant's proposition more narrowly submitted that on the facts and circumstances as existing, the Samiti was left with no option but to appoint must, be accepted. The sudden decision of the Samiti to reject the appellant's case on the ground that he was not an inhabitant of the locality is not only contrary to the records (such as the report of the Chief Inspector and the series of documents referred to therein) but also is a stand which was not taken by the Samiti at any stage in the first writ proceedings. No record has been produced before us to show that there was any material before the Samiti to take a different view from that already taken with regard to the appellant's qualification on the ground of residence.

12. The only other two grounds for rejection of the appellant's case as already noted are not grounds of disqualification in law. Furthermore this was a fact which was known to the authorities earlier because they had been explicitly mentioned in the Inspector's report. Yet no grievance nor protest had not been

made at any stage by the Samiti with regard to these two grounds.

13. For the aforesaid reasons, the grounds for rejecting the appellant's appointment as the M.R. Distributor in the vacancy in question cannot be sustained. As the only reason for deciding to call for a fresh vacancy was the rejection of the case of the appellant, that decision too must fail along with the decision to reject the appellant's appointment.

14. The submission of the State authorities that the appointment was the grant of a privilege and could not be claimed as a matter of right by the appellant is too widely stated and perhaps in view of the decision of the Supreme Court in the case of International Airport Authority v. Ramana reported in AIR 1979 SC 1626 unacceptable. The grant of a licence for a dealership is largess which cannot be arbitrarily distributed at the whim of the Government or any other authority. Furthermore, where rules have been laid down by the State Government itself for the M.R. Distributorship, the applicant is entitled to insist that the State Government should be bound by those rules. According to the rules, no reasons have been disclosed why the appellant should not be appointed as the M.R. Distributor. The appellant has in the circumstances of this case an enforceable right against the respondent authorities. Accordingly and for the reasons stated the impugned decision dated 2nd December 1996 as communicated by the District Controller letter dated 27th December 1996 and all consequential steps taken on the basis thereof are quashed. There being no other admittedly eligible candidate in the field, we are of the view that we would be fully Justified to direct and we hereby direct the Sub-Divisional Controller being respondent No. 5, who is stated to be the appropriate authority, to appoint the petitioner as the M.R. Distributor of Marishda, P.S. Contai, District Midnapore within four weeks from this date.

Since the appeal has been disposed of by treating the same as on day's list, on further order need be passed on the application for stay which is also treated as disposed of.

There will be no order as to costs.

Certified xerox copy, if applied for be supplied expeditiously to both the parties.