
(2004) 08 CAL CK 0037

In the Calcutta High Court

Case No : Writ Petition No. 11578 (W) of 1998

Sukumar Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Citation : (2004) 4 CHN 629

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Amal Sen, D.N. Bose and Sabyasachi Mondal, for the Appellant; Bikash Kumar Mukherjee, for the Respondent

Judgement

Soumitra Pal, J.—The writ petitioner has contended that the respondent No. 8 was granted licence in respect of an M. R. shop. At that relevant point of time since the respondent No. 8 was serving as a Primary School Teacher, the school authorities by a letter directed the respondent No. 8 to report whether he would continue as a Primary Teacher or as M.R. dealer. Thereafter, the respondent No. 8 executed a registered power-of-attorney in favour of the petitioner to run the M.R. shop. Contention has been made that the authorities concerned accepted the said power-of-attorney executed in favour of the petitioner and allowed him to lift the articles. Licence in respect of the M.R. shop was also renewed regularly. Later, though the power-of-attorney was not revoked, the respondent No. 8 sought to get control over the shop. There were proceedings before the Civil Courts. It is contended by the petitioner that in spite of specific orders by the Civil Courts, the State respondents have failed and neglected to supply articles in respect of the said M.R. shop. Representation was made demanding allotment of articles in respect of the M.R. shop. However, the State authorities have wrongfully refused to continue such supply. Instead the respondent No. 7 has been appointed dealer and granted allotment order on M.R. commodities. Contentions have been made that the petitioner being empowered by the registered power-of-attorney is entitled to receive M.R. commodities.

2. Mr. Amal Sen reiterating the statements made in the writ petition submitted that under the West Bengal Rationing Order, 1964 (for short "the Rationing Order") even an agent of an M.R. dealer can run an M.R. shop. Attention was drawn to the definition of "appointed retailer" appearing in clause 2(2) of the Rationing Order. It was submitted that the said definition includes a person in charge of a godown in which rationing article is stored for sale or distribution. Thus, an agent can be construed as person in charge of godown and can be deemed to be a dealer. Similarly under clause 2(3) of the Rationing Order the definition of "appointed establishment proprietor" included any other person owning, managing or having control of an establishment. It was submitted that as an agent has been recognized under the Rationing Order, anybody who is continuing as an M.R. dealer pursuant to a registered power-of-attorney should be allowed to continue as M.R. dealer and articles should be supplied subject to the terms and conditions of the licence. Referring to clause 3A of the Rationing Order it was pointed out that anybody who is appointed as a wholesale dealer or retail dealer has to execute an agreement with the authorities. A standard form of agreement has been set out in the schedule to the Rationing Order. Referring to clause 9 of the standard form of agreement it was pointed out that in the instant case the power-of-attorney being annexed to the affidavit-in-reply was sent to the authorities concerned in the year 1974. It was within the knowledge of the authorities and on the strength of the said power-of-attorney the petitioner was continuing as M.R. dealer. The authorities have knowingly permitted the petitioner to manage the affairs of the shop. Thus, it was submitted the State authorities acted illegally in not allotting M.R. commodities. Regarding the appointment of respondent No. 7 as an M.R. dealer it has been submitted that the said appointment is illegal since it was not done in accordance with law.

3. Mr. Bikash Kumar Mukherjee appearing on behalf of the respondent Nos. 7 and 8 submitted that the power-of-attorney which has been relied on by the petitioner is not genuine and was the subject-matter of certain proceedings.

4. I have heard the learned Advocates for the petitioner and the respondent Nos. 7 and 8. None has appeared on behalf of the State respondents. As no copy of the affidavit-in-opposition filed by the respondent Nos. 2, 3, 4, 5 and 6 was found from the records, a copy of the same furnished by the petitioner was kept on record. However, no affidavit-in-opposition has been filed on behalf of the respondent Nos. 7 and 8 in spite of directions.

5. Perusing clause 9 of the standard agreement in the schedule to the Rationing Order, I find that an agent can be appointed under a registered power-of-attorney. It is relevant to set out clause 9 of the standard form of agreement:-

"9. The dealer shall personally supervise the management of the shop unless he is allowed by the Director or the Deputy Controller of Rationing or the Rationing Officer to manage the affairs of the shop through an agent duly appointed by him under a registered power-of-attorney for such period as may be specified in this

behalf."

6. It is clear that the Director or the Deputy Director of Rationing or the Rationing Officer, that is, the authorities may allow an agent appointed by the dealer to manage the affairs of a shop under a registered power-of-attorney. However, since in the standard form of agreement the words "unless he is allowed" have been incorporated, in my view, a dealer should have a written permission from the authorities. Such permission should be on record. I am unable to accept the submission of Mr. Sen that since the authorities have knowingly permitted the petitioner to manage the affairs of the shop pursuant to the submission of the power-of-attorney in 1974, the petitioner is entitled to allotment.

7. The State in paragraph 6 of the affidavit-in-opposition has stated as follows:

"Further I say that there is no question to allow the petitioner to run the M.R. shop on behalf of Sri Manik Chandra Ghosh M.R. dealer by power-of-attorney as the office had not received any power-of-attorney from any corner for allowing to carry on business on behalf of Sri Manik Chandra Ghosh. It also appears from the office records that the allotment of M.R. serials was always made in favour of Sri Manik Chandra Ghosh, M.R. dealer and not in favour of Sri Sukumar Ghosh, the petitioner."

8. Thus, according to the State there is nothing on record to show that the said power-of-attorney is with the authorities concerned though Mr. Sen submitted that a copy of the said power-of-attorney was furnished to the authorities in 1974. It is a disputed question of fact which cannot be adjudicated in the writ jurisdiction.

9. Therefore, I dispose of the writ petition by granting liberty to the petitioner to make a representation before the authority concerned annexing all the documents in support of his contentions. If such a representation is made, the authority concerned shall within a period of six weeks from the date of furnishing such representation dispose of the same after hearing the petitioner, the private respondent Nos. 7 and 8 and by passing a reasoned order within a period of two weeks thereafter.

10. I make it clear that I have not gone into the merits of the case.

11. The writ application is thus disposed of. No order as to costs.

12. Urgent xerox certified copy of this judgment and order, if applied for, be given to the appearing parties on priority basis.