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Calcutta High Court

Case No: Writ Petition No. 1297 (W) of 2005

Suresh Chandra Sinha and Others	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision: Aug. 26, 2005

Citation: 110 CWN 863

Hon'ble Judges: Pranab Kumar Chattopadhyay, J

Bench: Single Bench

Advocate: Sakti Nath Mukherjee, Shyamal Sarkar, Ram Agarwal and Nibedita Pal, for the Appellant; Asis Sanyal and Tulsidas Maiti, for the Respondent

Final Decision: Allowed

Judgement

Pranab Kumar Chattopadhyay, J.
This writ petition has been filed on behalf of the petitioners challenging the power, authority and jurisdiction of the State-respondents to grant kerosene dealer licence to the respondent No. 6 without declaring any vacancy for the said dealership of kerosene oil in the area in question and following the prescribed procedure for filling up the said vacancy. The respondent No. 6 herein undisputedly had a kerosene dealer licence for Kharagpur area which lapsed on December 31, 1987. The said respondent No. 6 applied for renewal of his aforesaid lapsed licence on December 20, 2004, that: is, after lapse of almost 17 years. Furthermore, the said application for renewal of the dealership licence was not submitted in prescribed statutory form "C". In any event, fresh licence was issued to the respondent No. 6 by the Sub Divisional Controller, Food and Supplies, Kharagpur on April 21, 2005. The Sub Divisional Controller while issuing the aforesaid licence to the respondent No. 6 specifically mentioned in the said licence that the same has been issued as per order of the ADM (G) /DM, Paschim Medinipur and District Controller (F & S), Paschim Medinipur. An affidavit has been affirmed on behalf of the State-respondents in the present proceeding wherein it has been specifically admitted that in case of lapsed

licence, declaration of vacancy is to be notified. However, in a desperate attempt to justify the decision already taken by the concerned State-respondents regarding issuance of the kerosene dealership licence in favour of the respondent No. 6 it has been urged before this Court that the said licence was granted on compassionate ground.

2. The learned advocate of the State-respondents submits that the fresh dealership licence was granted to the respondent No. 6 against his lapsed licence and therefore, the question of observing the prescribed procedure for grant of fresh licence did not arise. It has also been submitted on behalf of the State-respondents that the competent authority of the State Government in its discretion, conferred under paragraph 7 of the Control Order, 1968 renewed the licence of the respondent No. 6 by issuing a fresh licence.

3. In the aforesaid affidavit filed on behalf of the State-respondents it has been specifically admitted that the District Controller, Food and Supplies directed the Sub Divisional Controller, Food & Supplies, Kharagpur by a written note dated May 11, 2005 to accommodate the respondent No. 6 with special permits for 12-14 Kl of kerosene oil per month pursuant to the desire of the DM/ADM (G). The Sub Divisional Controller, Kharagpur by the subsequent Memo dated May 16, 2005 asked the Area Inspector, Food and Supplies, Kharagpur to allot 6040 of S.K. Oil on account of special permits and establishment permits against the licence issued in favour of the said respondent No. 6. It has not been disputed on behalf of the respondent No. 6 that the competent authority of the State Government on compassionate consideration of the circumstances felt that licensee deserves restoration of his special permit quota as dealer of kerosene oil. It is although not in dispute that the said respondent No. 6 applied for renewal of his kerosene dealer licence in the month of December, 2004 although the said licence lapsed on December 31, 1987. The objections raised on behalf of the writ petitioners against the grant of kerosene dealer licence and allotment of stocks of kerosene oil on account of special permit are summarised hereunder:

(1) Grant of kerosene dealership licence to the respondent No. 6 without declaring the vacancy and observing the prescribed procedure for filling up such vacancy is totally illegal.

(2) The respondent authorities deviated from the prescribed procedure while granting kerosene dealership licence to the respondent No. 6.

4. According to the writ petitioner, there was no reason to grant any fresh licence to the respondent No. 6 on compassionate ground particularly when another kerosene dealership licence was issued to the said respondent No. 6 by the concerned respondent for Dantan-I Block in the year 2000, which is still valid, operative and subsisting. Factually, it is not in dispute that the respondent-Sub Divisional Controller, Food and Supplies, Kharagpur granted licence to the respondent No. 6 without declaring any vacancy in respect of the area in question.

5. Referring to the circulars bearing nos. CG/K Oil/Cell/Order/22/98/ 20 dated 7.1.2004, 5880/FS/FS/Secil/Food/4P-2/O1-(P) dated 22.12.2003 and 7044-FS dated 18.11.2004 issued by the Director General, Food and Supplies, Government of West Bengal, the learned Counsel of the respondent No. 6 submits that the vacancy caused due to the death, resignation, infirmity and medical grounds of the dealer is not required to be notified and it can be filled up by the District Magistrate/District Controller, Food and Supplies.

6. In the aforesaid cases, the legal heirs of the erstwhile dealer are entitled to submit application for appointment as dealer in place of the said erstwhile dealer within the prescribed time limit of thirty days. According to the learned advocate of the said respondent No. 6, the aforesaid circulars do not envisage a peculiar situation when the licence of a dealer lapsed for non-renewal on medical grounds. In the present case, the petitioner has been suffering from cancer and therefore, could not apply for renewal of the previous licence within the prescribed time period.

7. Mr. Asis Sanyal, learned Senior Counsel, appearing on behalf of the respondent No. 6 submits that the said respondent survived the attack of cancer and applied for renewal of his licence after lapse of almost 17 years. Mr. Sanyal urged before this Court that the said respondent No. 6 did not die nor resigned nor became totally unfit to run the dealership business which could result in a vacancy and therefore, following the aforesaid circulars the legal heirs of the erstwhile dealer had no opportunity to submit any application before the concerned authority for appointment as a dealer in place of the erstwhile dealer without even declaring the vacancy. Mr. Sanyal further submits that the deviation followed in case of legal heirs of an ex-dealer for not notifying the vacancy should also hold good in respect of the dealer when he himself comes back to claim his licence after recovery from the serious illness.

8. It has been admitted on behalf of the State-respondents that the District Controller, Food & Supplies, Paschim Medinipur directed the Sub Divisional Controller, Food & Supplies, Kharagpur by a written instruction dated May 11, 2005 to accommodate the respondent No. 6 with special permits and pursuant to the said direction, the Sub-Divisional Controller allotted kerosene oil on account of special permits in favour of the said respondent No. 6 by curtailing the allotment of kerosene oil of the existing suppliers, namely, the petitioners herein. Although, it has been urged on behalf of the State-respondents that the competent authority, in its discretion, conferred under paragraph 7 of the West Bengal Kerosene Control Order, 1968 renewed the licence of the respondent No. 6 but scrutinising the said licence issued to the respondent No. 6, it appears that the respondent Sub-Divisional Controller, Food & Supplies, Kharagpur issued fresh licence in favour of the respondent No. 6 as per order of the ADM (G)/DM, Paschim Medinipur only for the purpose of enjoying benefit of special permit in respect of allocation of kerosene oil.

9. It has been specifically admitted on behalf of the respondents that the fresh licence was issued to the respondent No. 6 against his lapsed licence and the authority in its discretion conferred under Paragraph 7 of the Control Order, 1968 renewed the licence of the respondent No. 6 by issuing a fresh licence. In view of the aforesaid stand of the respondent authorities, it cannot be said that the competent authority granted fresh licence to the respondent No. 6 in terms of Para 6 of the Kerosene Control Order, 1968. In the aforesaid circumstances, now it should be examined whether Para 7 of the said Control Order confers any power or the authority on the prescribed authority to renew lapsed licence of the respondent No. 6 by issuing a fresh licence after the expiry of the validity period of the said licence.

10. Para 7 of the said Control Order confers power on the prescribed authority to renew the licence granted earlier for successive periods of one year provided appropriate application is made in that behalf in the prescribed manner before the expiry of the date of validity period of original licence. The relevant portion of the said Para 7 of the West Bengal Kerosene Control Order, 1968 is set out hereunder:

7. Renewal of licences, licence fees, etc. - (1) Every licence issued under paragraph 5 or paragraph 6 or paragraph 6A of this Order shall be valid up to 31st December next following the date of issue and may. at the discretion of the authority by which the licence was granted, be renewed for successive periods of one year on an application made in that behalf to such authority in the manner provided hereinafter before the expiry of the date of validity of the licence :..... (2) Every application for the issue of licence under paragraph 5 or paragraph 6 or paragraph 6A of the Order or for the renewal of such licence under this paragraph shall be made to the appropriate authority in Form C.....

11. In the present case, the respondent No. 6, undisputedly. did not submit any application for renewal of the licence in prescribed manner to the appropriate authority in "Form C" before the expiry of the date of validity of licence as the validity period of licence of the said respondent No. 6 expired on 31st December. 1987 and the said respondent No. 6 applied for renewal of the said lapsed licence on December 20, 2004 ie. long after the expiry of the validity period of the said licence.

12. Since no application was submitted by the respondent No. 6 to the prescribed authority for renewal of his licence in prescribed "Form C" before the expiry of the validity period of the said licence, the prescribed" authority under the West Bengal Kerosene Control Order. 1968 had no power, authority and/or discretion to renew the said licence of the respondent No. 6.

13. In the aforesaid circumstances, issuance of the fresh licence in favour of the respondent No. 6 by renewing the lapsed licence on compassionate ground is not only irregular but also illegal, as the respondent authority had no power, authority and/or jurisdiction to renew the licence of the respondent No. 6 by issuing a fresh licence in

terms of the West Bengal Kerosene Control Order. 1968. Furthermore, the question of issuing any licence in favour of the respondent No. 6 on compassionate ground cannot and does not arise in view of the fact that the said respondent No. 6 was granted another licence for Dantan-I Block in the year 2000 which is still valid, operative and subsisting.

14. A very interesting argument has been advanced on behalf of the respondent No. 6 in a desperate attempt to defend the actions of the State-respondents in the matter of granting fresh licence to the respondent No. 6 without observing the prescribed procedure.

15. Mr. Sanyal. learned Senior Counsel of the respondent No. 6 also cited various decisions of the Hon''ble Supreme Court and different High Courts in support of his arguments. In my view, the said decisions cited by Mr. Sanyal are not at all relevant and applicable in the facts of the present case.

16. For the reasons mentioned hereinbefore, the renewal of the lapsed licence of the respondent No. 6, by issuing a fresh licence on compassionate ground only for special permit, cannot be sustained in the eye of law as the said respondent Mo. 6 did not apply for renewal of his licence in prescribed form and manner before the expiry of the validity period of the licence.

17. Accordingly, the licence bearing No. 275/KGP issued by the Sub Divisional Controller. Food & Supplies. Kharagpur in favour of the respondent No. 6 and subsequent allotment of stocks of kerosene oil on account of special permit against the said licence No. 275/KGP in favour of the said respondent No. 6 by curtailing the allotment of the existing suppliers, namely, the petitioners herein pursuant to the Memo No. 514/ 2(6) dated May 23, 2005 are liable to be quashed and the same are therefore, quashed.

18. The respondent authorities are. however, directed to take appropriate steps in accordance with law to fill up the vacancy of the kerosene oil dealer at Kharagpur area which arose due to the expiry of the validity period of the licence of the respondent No. 6 herein on 31st December. 1987 and non-renewal of the same in accordance with law. This writ petition thus stands allowed. There will be no order as to costs.

All parties are to act. on a xerox signed copy of this dictated order on usual undertaking.