

(2007) 03 CAL CK 0012

Calcutta High Court

Case No: A.P.O. No. 333 of 2006, W.P. No. 897 of 2006, A.P.O. No. 89 of 2007, W.P. No. 897 of 2006

State of West Bengal and Others
and Guin Developers Pvt. Ltd.

APPELLANT

Vs

Amit Chowdhury and Another

RESPONDENT

Date of Decision: March 28, 2007

Citation: 112 CWN 675

Hon'ble Judges: Sengupta, J; Arun Kumar Bhattacharya, J

Bench: Division Bench

Judgement

Sengupta, J.

Both the aforesaid appeals are heard analogously for the sake of convenience, as the same judgement and order impugned has given rise to two separate appeals. Guin Developers Private Limited was not originally a party to the writ petition being W.P. No. 897 of 2006. It made an application before the learned court below for being added as a party respondent in the writ petition which was eventually allowed by the learned trial judge. The said writ petition was filed by Mr. Bose's client praying inter alia for issuance of a writ in the nature of mandamus commanding the respondents, each one of them, their servants, agents and/or assigns to issue separate M. R. Distributorship license to the petitioner's firm, namely, M/s. Silda Trading Society in respect of their M. R. Distributorship business at Village Swarupnarayanpur under Police Station Lalgah, District Paschim Medinipur forthwith; and a writ in the nature of mandamus commanding the respondents, each one of them, their servants, agents and/or assigns to renew M. R. Distributorship license of the petitioner's firm in respect of their M. R. Distributorship business at Village Swarupnarayanpur under Police Station Lalgah, District Paschim Medinipur forthwith.

2. From reading of the prayers it appears to us that two separate reliefs are sought for, one for issuance of fresh licence in respect of an area under police station

Lalgarh and another for renewal of the licence already granted in respect of the same area. We are of the view that these two reliefs simultaneously cannot be maintained. Learned counsel for the writ petitioner/respondent concedes before us that his client really wants a fresh licence under West Bengal Distribution System (Maintenance & Control) Order, 2003 (as amended in 2005), hereinafter referred to as "the said Order". According to the writ petitioner, he made application for obtaining the fresh licence under the said Order. In spite of necessary enquiry having been made and recommendations being forwarded by the Inspector concerned, no decision has been taken formally by the authority, namely, the Director, District Distribution, Procurement & Supply, Department of Food & Supplies, Government of West Bengal under the said order. This dispute relates to Lalgarh area. Admittedly the writ petitioner is having licence of distributorship for Jhargram area and he is enjoying the distributorship pursuant to this licence. The writ petitioner thus wants two separate licenses for carrying on business of distributorship at two different places. It appears a document has been annexed to the writ petition which purports to record the approval of the said Director for granting such licence. We are of the view such document cannot be taken note of formally or officially. Moreover, Mr. Sarkar, learned counsel for the State, contends that it is not an official decision at all and such decision has been withdrawn.

3. Mr. Kalayan Bandopadhyay, learned senior counsel appearing for the added respondent contends that though his client was added as a party respondent, the learned trial judge, without considering his client's contention and claim in respect of the M. R. Distributorship touching the same area, has passed a mandatory order.

4. Mr. Sarkar says that no mandatory order could be passed in a matter of this nature. This contention is also supported by Mr. Bandopadhyay. According to both of them, if any application is made that has to be scrutinised and all the legal formalities are to be observed and thereafter decision has to be taken. Both of them say in chorus that there are serious impediments in this matter as this court has passed several orders involving these issues and without considering those things the order of the learned trial judge has caused a serious administrative chaos.

5. Mr. Bose, learned advocate appearing for the writ petitioner/ respondent submits that it is true that mandatory order has been passed by this court but the materials placed before the learned trial judge were good enough to pass such an order. We are unable to accept his contention. We have not seen that any decision has been taken by the authority concerned for granting licence in favour of the writ petitioner. The material prima facie shows that application of Bose's client has been processed and apparently enquiry was held and thereafter no formal decision has been taken. The writ court, in our view, cannot take a decision which might be or which could have been taken by the Director. The order passed by the learned trial judge, again without assigning any reason, is mandatory in nature by which all the reliefs claimed by the writ petitioner have been granted. The learned trial judge has not made any

endeavour to discuss the rival contentions of both the contending parties while granting such reliefs.

6. We, therefore, cannot uphold this order of the learned trial judge. Accordingly, the same is set aside. However, we feel that the respondent/ writ petitioner should not go away from the court without having any relief which is just and proper in a case of this nature. The application made by Mr. Bose's client must reach a logical conclusion with a formal decision of the Director. ?

7. Therefore, we direct the said Director to take a decision on the application made by Mr. Bose's client with regard to grant of issue of licence of distributorship at Village Swarupnarayanpur under Police Station Lalgah, District Paschim Medinipur. Before taking any decision, the said Director shall give notice to the District and/or Sub Divisional Controller of Food & Supplies, the writ petitioner as well as Mr. Bandopadhyay's client, namely, Guin Developers Private Limited. He shall hear all of them and shall arrive at a decision with reasons dealing with the contentions which might be raised before him. Obviously, the decision shall be a speaking one and it shall be taken within a period of one month from the date of communication of this order. As regards the distributorship of the writ petitioner, status quo as on today shall be maintained till one week after the date of taking such decision. The decision shall be communicated forthwith.

8. We place it on record that we have not decided or adjudicated anything on the claims and contentions of any of the parties herein.

9. Save and except as aforesaid, interim order/s passed will stand vacated.

10. Both the appeals are thus disposed of. There will be no order" as to costs. Xerox signed copy of this order shall be supplied to the parties upon their putting in requisitions for drawing up and completion of the order as well as for obtaining certified copy thereof.

Sengupta, J.

Arun Kumar Bhattacharya, J.