
(1995) 06 CAL CK 0018

Calcutta High Court

Case No: Civil Order No. 6107 (W) of 1994

Jyoti Prakash Mukherjee

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: June 29, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1997) 1 ILR (Cal) 129

Hon'ble Judges: Satyabrata Sinha, J

Bench: Single Bench

Advocate: Ashoke De, Amalesh Roy and Indranath Mukherjee, for the Appellant; Saktinath Mukherjee, Sadananda Ganguly, Koushik Roy for Respondent No. 8 and Leela Chowdhury, for the Respondent

Judgement

Satyabrata Sinha, J.

This writ application is directed against an order dated June 1, 1994 as contained in annexure "F" to the writ application whereby and whereunder the S.D.O., Sadar South Midnapore, has opined that the application for grant of M.R. Dealership filed by the Petitioner and the Respondent No. 8 along with other candidates, should be granted to the Respondent No. 8 and not in favour of the Petitioner.

2. The fact of the matter lies in a very narrow compass.

2(a). Applications were invited for grant of M.R. Dealership in terms of the advertisement dated March 29, 1994 as contained in annexure "A" to the writ application. The said dealership was to be granted for distribution of food grains under the modified rationing system for which the following particulars were required to be furnished:

- a) Name of the Applicant with Father's/husband's name.
- b) Full address of the Applicant.

c) Financial solvency.

(This has to be supported by appropriate documents at the time of enquiry and if called for by the S.C.F.S).

d) Shop/godown condition with its address.

e) Capacity of the godown.

f) If the Applicant possesses valid document for possession of the godown.

g) Whether the Applicant has any prior conviction and if so, state the nature,

h) Trade proficiency and the period during which Applicant was in the business.

3. The Petitioner and the Respondent No. 8 along with other eligible candidates filed their respective applications. The said applications were sent for verification to the Inspection Team. The enquiry reports were submitted in relation to the applications of the Petitioner and the Respondent No. 8. The said enquiry report was, therefore, in favour of the Petitioner and against the Respondent No. 8. By reason of the impugned order, however, the learned S.D.O. who is the competent authority in terms of the Circular letter as contained in annexure "D" to the application for vacating stay held as follows:

Jyoti Prakash Mukherjee - Aged about 31, recently employment card holder since 25.4.94 where the application for M.R. Shop was invited by 18.4.94. He is self-employed youth and carrying on supply business in food & supply office of dist. controller as inferred from the sale-tax clearance certificate. He owns a Pucca godown and the premises by registered deed a few days before the date of inviting applications for the M.R. Shop.

4. So far as the Respondent No. 8 is concerned the said authority states thus:

Kisore Kr. Bhadra - Aged about 21, unemployed card holder since 1987. He possesses pucca godown owned on sublet on permissive possession. This godown is suitable for M.R. Shop as observed by the I.O.

As per guiding norms Sri Sil and Bhadra do fulfil all the major points. Their godowns and plots though transferred on permissive possession in the matter of use only, the proprietary interest of the Railway is not disturbed like the above rejected cases of Sri Choudhury and Sri Mukherjee.

Out of these two cases of serial (3) + (4) Sri Kisore Kr. Bhadra is qualified having passed the Higher Sec. Exam, where Sri Sil read up to class VIII. Apart from this the other differentiating point is godown where Sri Bhadra leads to Sri Sil.

Considering all these points, I do select Sri Kisore Kr. Bhadra to be appointed as M.R. Dealer. Sent back to S.C.F.S. all enclosures and the file for arranging appointment as above.

5. Mr. De, learned Counsel for the Petitioner has raised a short contention in support of this writ application. It was urged that the said authority has committed an illegality so far as he failed to consider the relevant facts and arrived at a decision in favour of the Respondent No. 8. It is submitted that the opinion arrived at by the said authority in favour of the Respondent No. 8 was not based on about materials and thus he has failed to take into consideration of the enquiry report and thus must be held to be committed an illegality. The learned Counsel for the Petitioner in support of the aforementioned contention has relied upon a decision of the Supreme Court in [Tata Cellular Vs. Union of India](#),

6. Mr. Mukherjee, learned Counsel appearing on behalf of the Respondent No. 8 submits that the Petitioner's application suffers from various misstatements. The learned Counsel has pointed out that wherein the Petitioner described himself as an unemployed youth but from the deed of sale as contained in annexure "C to the writ application it would appear that therein that he had described himself as a business man. It was submitted that the Petitioner did not purchase the land but by reason of the aforementioned sale deed merely purchased the structure and thus the property in question cannot be said to be legally in his possession. It was contended that the property being an encumbered one and having been transferred by lessee, the Respondent S.D.O., cannot be said to have been committed any illegality in rejecting the Petitioner's application for grant of M.R. Dealership. It is further submitted that admittedly the Respondent No. 8 is in permissive possession of a godown which according to the Inspecting Team is suitable for the purpose of carrying on M.R. Shop. My attention has been drawn to an Information Slip filed by the Respondent No. 8 in a Suit and it was contended on the basis thereof that the Petitioner is a debtor to a Bank and thus he being a business man, his case could not have been considered. It was urged that keeping in view the conduct of the Petitioner, this writ application should not be entertained. The learned Counsel contends that from a bare perusal of the inspection report as contained in annexure "D" to the writ application it appears that the contention of the Respondent No. 8 that he is in possession of a suitable godown was not accepted only because he allegedly could not produce the Railway receipt voucher for payment of occupation fees and letter of consent. The learned Counsel in this connection has drawn my attention to page 26 of the affidavit-in-opposition as well as to page 19 of the application for vacating stay and submitted that the relevant documents have been annexed therewith. Therefore the learned Counsel contends that the Respondent No. 8 is a better candidate than the Petitioner.

7. In the instant case as noticed hereinbefore the Inspection Team has categorically found that the go-down belongs to Respondent No. 8 is inter communicated with the other room of its original occupant and there is no accommodation for the rationees for taking shelter in rain and sunshine. From the inspection report as contained in annexure "D" to the writ application it appears that apart from the non-filing of the relevant documents, the Inspection Team gave their comments

with regard to the suitability of the godown which was in occupation of the Respondent No. 8. The impugned order issued by the S.D.O. clearly shows that the said Respondent has not applied his mind at all with regard thereto. He has merely held that the godown which was in possession of the Respondent No. 8 was suitable probably on the basis of the statement made in column No. 6 thereof. It is evident from various columns excepting the column for recommendation, that the statements made therein were taken from the application filed by the respective contenders. The Inspection Teams, therefore, did not state that the godown which was in possession of the Respondent No. 8 was a suitable one.

8. It is well-known that for the purpose of consideration of a document, the same has to be read in its entirety. It is also necessary for the purpose of arriving at a correct decision to consider the statements made in the application filed by the contending parties as also the recommendation made by the Inspecting Team. The Respondent authority had a right to ask the Inspecting Team to submit another report or furnish such other particular or particulars as may be necessary for arriving at a correct decision.

9. As the S.D.O. is empowered to take a decision in terms of the aforementioned Government Circular as contained in annexure "D" to the writ application the said authority was required to ask himself the correct question so as to enable him to be acquainted with the relevant facts. Failure to do so would amount to misdirection in law.

10. In the instant case the said authority did not at all consider the recommendations of the Inspection Team which was essential for the purpose of arriving at a correct decision. It was also necessary for the said authority to acquaint himself with the relevant facts so as to enable him to arrive at a conclusion as to who is more suitable for being given the aforementioned M.R. Dealership.

11. So far as the submission of Mr. Mukherjee, learned Counsel, to the effect that the Petitioner is in illegal possession of the godown, is concerned, in my opinion, the same does not fall for consideration before the S.D.O. The S.D.O. was required to apply his mind with regard to the particulars necessary for the purpose of making an application for the said M.R. Dealership. The complicated question of Title/possession of the Petitioner in terms of the deed of sale was not required to be gone into by the said authority. He had considered the case of the Respondent No. 8 for grant of Mr. Shop only on the ground that he is in permissive possession of the godown in question but the Petitioner having purchased at least the structure was not found to be a better candidate than the Respondent No. 8, although his claim to be in exclusive possession of the godown was not disputed.

12. It is not necessary for this Court to consider the other statements made at the Bar to the effect that the Petitioner was not an unemployed youth and in fact he was a businessman as it appears from the information slip as well as from the deed of

sale as no opinion has been expressed in that regard by the S.D.O. The sad question shall fall for consideration before him and it will be open to the Petitioner to explain away the discrepancy, if any.

13. It was submitted that Shri Sil has not been impleaded as a party in this application as from the impugned order as contained in annexure "F" to the writ application it would appear that the Respondent, S.D.O. found both the Respondent No. 8 and Shri Sil to be suitable candidate for grant of M.R. Dealership. In my opinion, the said submission has no force.

14. This Court in exercise of its power of judicial review cannot direct the Respondent to grant the M.R. Dealership to the Petitioner. This Court may remit the matter back to the concerned authority so as to enable him to consider the matter afresh.

15. Parameters of jurisdiction of this Court under Article 226 of the Constitution of India is very well known. This Court can interfere with the administrative decision if the same suffers from illegality irrationality, or procedural impropriety. The Supreme Court in Tata Cellular's case (Supra), inter alia, observed as follows:

The duty of the Court is to confine itself to the question of legality. Its concern should

1. Whether a decision-making authority exceeded its powers ?
2. Committed an error of law.
3. Committed a breach of the rules of natural justice.
4. Reached a decision which no reasonable tribunal would have reached or,
5. Abused its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds open which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety

The above are only the broad bounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R.V. Secretary of State for the Home Department, ex Brind. Lord Diplock refers specifically to the development,

namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the Court should "consider whether something has gone wrong of a nature and degree which requires its intervention".

16.. In view of my findings aforementioned, it is evident that the S.D.O. while arriving at his finding has failed to take into consideration the relevant facts and has taken into consideration the irrelevant facts not germane for the purpose of arriving at a correct decision and thus he has committed an error of law and also misdirected himself in law.

17. For the reason aforementioned, this writ application is allowed, The impugned order as contained in annexure "F" to the writ application is set aside and the matter is remitted back to the S.D.O., Sadar, South Midnapore with the following directions and observations. The said authority shall pass a fresh order upon taking into consideration the entire materials on record. He may also allow the parties to produce such other material or materials, some of which have been produced before this Court, as referred to hereinbefore. He may, if he so desires, give an opportunity of hearing to the contesting parties so as to enable him to clear any doubt which he may have in his mind and pass an appropriate order in accordance with law at an early date and preferably within a period of four weeks from the date of communication of this order.

18. It will be open to the parties concerned to raise all contentions in support of their respective cases and to produce the relevant materials in support thereof as well as for the purpose of showing that the cases projected by the other Applicants are not correct.

19. It will also be open to the concerned parties to question the correctness of the contents of the application of other Applicants or the report submitted by the Inspection Team by producing cogent materials. It will be open to the concerned Respondent to inspect the godown in question personally or through responsible officer for arriving at an independent decision. However, in the facts and circumstances of the case, there will be no order as to costs.