

**(2009) 08 CAL CK 0049**

**Calcutta High Court**

**Case No:** Writ Petition No. 12501 of (W) 2008

Tapan Ghosh Dastidar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** Aug. 28, 2009

**Citation:** (2011) 1 RCR(Civil) 47

**Hon'ble Judges:** Jayanta Kumar Biswas, J

**Bench:** Single Bench

**Advocate:** Bhaskar Chandra Manna, for the Appellant; Syed Nazmul Hossain, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Jayanta Kumar Biswas, J.

The Petitioner in this writ petition dated June 30, 2008 is questioning the appointment of the seventh Respondent, Baruna Bakshi, as a dealer within the meaning of para 3(c) of the West Bengal Kerosene Control Order, 1968 and seeking a mandamus commanding the authorities under the control order to appoint him as the dealer.

2. Clause (c) of para 3 of the West Bengal Kerosene Control Order, 1968 provides as follows:

(c) "dealer" means a person who has been granted a licence under paragraph 6 of this Order authorising him to carry on trade in kerosene

3. Paragraph 6 of the control order provides as follows.

6. Grant of licence to dealer. - (1) The Director or the District Magistrate having jurisdiction may grant a licence to any person authorising such person to carry on trade in kerosene as a dealer.

(2) A licence granted under sub-paragraph (1) shall be in Form B and shall be subject to such conditions as are specified therein and such other conditions as the Director or the District Magistrate having jurisdiction may impose from time to time for the sake of fair distribution of kerosene.

4. To my repeated queries Mr. Hossain, counsel for the State, has said that there is no provision other than the provisions of para 6 of the control order following which the appointment in question was to be made. The appointment was made by the sub-divisional Controller, Food & Supplies, Basirhat.

5. Paragraph 3(e) of the control order provides as follows:

(e)"District Magistrate" includes the Deputy Commissioner of a district and also includes any person not below the rank of a Sub-divisional Controller of Food and Supplies in the Department of Food and Supplies, Government of West Bengal, authorised by the District Magistrate or Deputy Commissioner, as the case may be, in writing to perform all or any of the functions of the District Magistrate under this Order

6. It has been submitted that the sub-divisional controller was duly authorized by the district magistrate to make the appointment in the present case. Hence as the authority competent to make the appointment the sub- divisional controller was required to make the appointment strictly according to the provisions of para 6 of the control order. The question is whether Baruna was appointed according to the provisions of para 6 of the control order.

7. The sub-divisional controller issued a public notice inviting application from persons willing to be appointed as a dealer for a centre in the "village of Media, Tapul-Mirzapur G. P." within the territorial limits of Swarupnagar P. S. in the district North 24 Parganas. Under a memo dated June 11, 2007 copies of the notice were forwarded to thirteen officials and places for information and wide circulation. It was mentioned in the notice that the statutory terms and conditions were to be strictly maintained. It was specifically mentioned in the notice that preference would be given to the local applicants.

8. A part of the notice reads as follows:

Statutory terms and conditions are to be strictly maintained.

1. Prescribed form "Care to be duly filled up. (Applicants must be bonafide Indian citizens).

2. Latest passport size photograph.

3. A Pacca and suitable S.K. Oil shop/godown within the notified area is a must.

4. Each candidate shall submit only one application for the post.

5. The u/s reserves all the rights to reject any or all applications without assigning any reasons therefore whatsoever.

6. Canvassing in any form shall be deemed as disqualification of the concerned candidate.

9. Both the Petitioner and Baruna applied in response to the public notice, and while the Petitioner was a local applicant, Baruna was not. She was a resident of Khantura (Chanditala) within the territorial limits of Habra P. S. in Gobardanga Municipality. The area inspector of food and supplies made necessary inquiry and prepared his report indicating respective merit positions of three candidates including the Petitioner and Baruna. In the comparative chart the area inspector placed the Petitioner in the first merit position and Baruna in the second position.

10. On June 13, 2008 the sub-divisional controller made the following notes in the records of the selection process.

Gone through all the records, where it appears that Sri Tapan Ghosh Dastidar is in 1st position, Smt. Baruna Bakshi is second and Sri Sambhu Nath Das the 3rd as per the comparative chart submitted by Area Inspector after enquiry.

Here it may be enlightened that in case of Smt. Baruna Bakshi, The Principal Secretary, Department of Information and Cultural Affairs, Government of West Bengal, Sri D.K. Chakraborty (C. P. 78) has strongly recommended her candidature.

It is also observed that her mother is suffering from cancer, and she is a lone woman left by her husband and she is needy. She needs a means of livelihood. Therefore, her case may be considered if approved. Submitted to S.D.O. But for approval & transmission to District Magistrate North 24 Parganas.

11. It is the case of the sub-divisional controller who has filed an opposition dated March 20, 2009 that his written views dated June 13, 2008 were approved and accepted by the higher authorities, and that accordingly he decided to appoint Baruna as the dealer for the place and issued the requisite licence.

12. According to counsel for the State, since the licence was issued by the sub-divisional controller who was not bound by the inquiry report of the area inspector who placed the Petitioner in the first merit position and Baruna in the second position, and since the decision of the sub-divisional controller was approved by the district magistrate, there is no reason to say that Baruna's appointment is illegal or vitiated by any irregularity. As to the recommendation of Baruna's case by the Principal Secretary of the Department of Information and Cultural Affairs of the Government of West Bengal, his submission is that the principal secretary just made a recommendation, but the actual decision was taken by the sub-divisional controller, and hence there is no reason to give much importance to the principal secretary's recommendation. It is to be noted that notice was given to Baruna more than once, but she has chosen not to enter

appearance and contest the case.

13. It is evident from the provisions of the control order, specifically noted hereinbefore, that under them the Principal Secretary of the Department of Information and Cultural Affairs, Government of West Bengal has been given no power to exercise or a role to play in the entire process.

14. It was specifically mentioned in the public notice inviting application for the vacancy that "canvassing in any form" would be deemed to be a disqualification of the candidate concerned. There can be no doubt that through some extralegal means Baruna reached the Principal Secretary, Department of Information and Cultural Affairs, Government of West Bengal for ensuring her appointment irrespective of whether under the provisions of the control order and according to merit she was entitled to it or not

15. It is manifest from the written views of the sub-divisional controller dated June 13, 2008 that he ignored (without recording disagreement) the findings of the area inspector regarding the comparative merits of the candidates who applied for the dealership, only because he was unable to ignore the extralegal recommendation of the principal secretary. Baruna's appointment is the obvious end product of the extralegal positional influence exercised by the principal secretary and not her merits, the process not only deprived the Petitioner of his legitimate right to be considered for appointment as the person occupying the first merit position, but it also clearly disqualified Baruna for the dealership.

16. The sub-divisional controller and the persons who applied in response to the public notice all were unconditionally and equally bound by the professed terms and conditions mentioned in the public notice. By deviating from the professed norms, the sub-divisional controller not only illegally gave Baruna the dealership, but he also deprived all similarly situated persons of the opportunity of applying for the dealership citing similar humanitarian grounds. There is no reason to presume that no person other than Baruna was available to apply for the dealership, if it was mentioned in the public notice that a person deserving an appointment on humanitarian consideration would be preferred to candidates more meritorious than him.

17. In this case the Petitioner was to be preferred because he was the first in merit position and a local applicant. On the other hand, Baruna was second in merit position and not a local applicant

18. For these reasons, I allow the writ petition and order as follows. Baruna's appointment and licence issued to her are hereby quashed. Within seven days from the date of communication of this order the sub-divisional controller shall offer the dealership to the Petitioner. Baruna shall not be permitted to function henceforth and the sub-divisional controller will be free to make ad hoc arrangements till five days after the dealership is offered to the Petitioner. There shall be no order for

costs.

19. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.