

THE HIGH COURT OF TRIPURA AGARTALA

WA 71 of 2014

Sri Harendra Debbarma

S/o Sri Budhurai Debbarma,
Village-Basanta Sardar Para,
PO-Uttar Dashgaria, P.S. Sidhai,
District-West Tripura.

..... Appellant

Versus

1. The State of Tripura

Represented by the Commissioner-cum-Secretary, Government of Tripura, Food, Civil Supplies and Consumer Affairs Department, New Secretariat Complex, Agartala, New Capital Complex, Kunjaban, Agartala, West Tripura, PIN-799006.

2. The Commissioner and Secretary,

Government of Tripura, Food, Civil Supplies and Consumer Affairs Department, New Secretariat Complex, Agartala, New Capital Complex, Kunjaban, Agartala, West Tripura, PIN-799006.

3. The Sub - Divisional Magistrate,

Mohanpur Sub-Division, Mohanpur, P.S. Sidhai, District-West Tripura, PIN-799211.

4. The Sub-Divisional Magistrate,

Sadar Sub-Division, Agartala, West Tripura, Old Secretariat Complex, Agartala, West Tripura, PIN-799001.

5. The Director of Food, Civil Supplies and Consumer Affairs Department,

Government of Tripura, Khadya and Bhokta Bhawan, Pandit Nehru Complex, Gorkha Basti, Agartala, West Tripura, PIN-799006.

6. Sri Sandeep Debbarma,

Chief Inspector of Food, Mohanpur, Hezamara area, (Notice may be served through the Director, Food, Civil

Supplies and Consumer Affairs
Department, Government of Tripura.).

- 7. Sri Nibaran Debbarma,**
S/o Late Gaya Charan Debbarma
Village-Bakia Rampara, P.S. Sidhai,
Mohanpur, District-West Tripura.

..... Respondents

WA 16 of 2015

Sri Harendra Debbarma
S/o Sri Budhurai Debbarma,
Village-Basanta Sardar Para,
PO-Uttar Dashgaria, P.S. Sidhai,
District-West Tripura.

..... Appellant

Versus

- 1. The State of Tripura**
Represented by the Commissioner-
cum-Secretary, Government of Tripura,
Food, Civil Supplies and Consumer
Affairs Department, New Secretariat
Complex, Agartala, New Capital
Complex, Kunjaban, Agartala, West
Tripura, PIN-799006.
- 2. The Commissioner and Secretary,**
Government of Tripura, Food, Civil
Supplies and Consumer Affairs
Department, New Secretariat
Complex, Agartala, New Capital
Complex, Kunjaban, Agartala, West
Tripura, PIN-799006.
- 3. The Sub - Divisional Magistrate,**
Mohanpur Sub-Division, Mohanpur, P.S.
Sidhai, District-West Tripura, PIN-799211.
- 4. The Sub-Divisional Magistrate, Sadar**
Sub-Division, Agartala, West Tripura,
Old Secretariat Complex, Agartala,
West Tripura, PIN-799001.
- 5. The Director of Food, Civil Supplies and
Consumer Affairs Department,**
Government of Tripura, Khadya and
Bhokta Bhawan, Pandit Nehru

Complex, Gorkha Basti, Agartala, West
Tripura, PIN-799006.

6. **Sri Sandeep Debbarma,**
Chief Inspector of Food, Mohanpur,
Hezamara area, (Notice may be
served through the Director, Food, Civil
Supplies and Consumer Affairs
Department, Government of Tripura.).
7. **Sri Nibaran Debbarma,**
S/o Late Gaya Charan Debbarma
Village-Bakia Rampara, P.S. Sidhai,
Mohanpur, District-West Tripura.

..... Respondents

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE UB SAHA

IN BOTH THE CASES

For the appellant	: Mr. AK Bhowmik, Sr. Advocate Mr. B Debbarma, Advocate.
For the State respondents	: Mr. S Chakraborty, Addl. GA
For the respondent No. 7	: Mr. P Roy Barman, Advocate
Date of hearing and delivery of Judgment & Order	: 20.08.2015.
Whether fit for reporting	: Yes

JUDGMENT AND ORDER (ORAL)

(Deepak Gupta, CJ)

This case has an interesting history. One Nibaran Debbarma was the dealer of a Fair Price Shop at Sonaijala. The Sub-Divisional Officer, Sadar vide order dated 03.08.2011 cancelled the allocation of Fair Price Shop in favour of Nibaran Debbarma. Appeal filed by Nibaran Debbarma was dismissed on 03.01.2012. Thereafter, the said Fair Price Shop was allocated in favour of the petitioner, Harendra Debbarma on 03.01.2012.

2. Nibaran Debbarma filed WP(C)33/2013 in this Court. A learned Single Judge of this Court vide judgment dated 09.12.2013 allowed the writ petition and held that the cancellation of licence of Nibaran Debbarma was illegal. It is not disputed that the present writ appellant Harendra Debbarma was not a party in WP(C)33/2013. The learned Single Judge was not even apprised of the fact that after the cancellation of the Fair Price Shop in favour of Nibaran Debbarma the same had been allotted in favour of Harendra Debbarma.

3. Thereafter, the present appellant filed a writ petition being WP(C)107/2014 which was listed before another learned Single Judge of this Court and not before the same Single Judge who had decided WP(C)33/2013. The learned Single Judge held that the writ petition was not maintainable and that the petitioner should have either filed a review petition against the order passed in WP(C)33/2013 or should have filed an appeal against the said order. The appellant, thereafter, filed Review Petition No.18/2014 which was listed before the learned Single Judge who decided WP(C)33/2013. The learned Single Judge dismissed the review petition on 12.11.2014 holding that the review petition was not maintainable.

4. We are purposely not deciding the question as to whether it is a review petition which should have been filed or a fresh writ petition. Whatever may be the remedy, we are clearly of the view that there were certain facts which were not brought to the knowledge of the Court while deciding WP(C)33/2013 and this very important fact was that the present appellant Harendra Debbarma had been allotted the Fair Price Shop before Nibaran Debbarma had filed the writ petition, and he was running the shop and pursuant to the direction of the Court

the State had taken action to cancel the licence of the writ appellant Harendra Debbarma. This action has been taken against him only on the basis of the order passed by the learned Single Judge in WP(C)33/2013. It is, therefore, more than amply clear that this writ petition has vitally affected the rights of the present appellant. Probably if the learned Single Judge had been informed about this either by the State or by the petitioner, notice may have been issued to Harendra Debbarma by the learned Single Judge. What has transpired, thereafter, is that one learned Single Judge of this Court held that the writ petition is not maintainable and the petitioner shall be at liberty to file a review petition. When the petitioner filed a review petition, the review petition was rejected on the ground that there were no new facts.

5. We are clearly of the view that this amounts to denial of hearing to the petitioner. He has been virtually condemned unheard. We must remember that appellate jurisdiction is a limited jurisdiction. It is not that we cannot interfere in appellate jurisdiction but we are faced with a situation where one learned Single Judge says that the fresh petition is not maintainable and the petitioner should file a review petition and the other learned Single Judge says that the review petition is not maintainable.

6. No party to legal proceedings can be left remediless. We have already stated hereinabove that we are not deciding which of these two options is the correct option but we are clearly of the view that at least one of these two options, either a fresh writ petition or a review petition should be available to the writ appellant Harendra Debbarma.

7. We consequently set aside both the judgments passed in WP(C)107/2014 as well as in Review Petition 18/2014 and remand the matter to Hon'ble Mr. Justice S. C. Das, who had heard WP(C)33/2013. He shall now entertain both the writ petition as well as the review petition and shall decide which of the two should be entertained and proceed accordingly.

8. Registry is directed to take necessary steps for placing the matter before the learned Single Judge. Parties, through their learned counsel are directed to appear before the learned Single Judge.

9. In view of the above, both the writ appeals are allowed and accordingly disposed of.

JUDGE

CHIEF JUSTICE

lodh