

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

W.P.A. No. 8470 of 2021

Sri Durga Enterprise & Anr.

Vs.

The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Ashok Banerjee, Sr. Adv. Mr. R. A. Agarwala, Adv. Mr. D. Saha Roy, Adv. Ms. Nibedita Pal, Adv. Mr. Ramesh Dhara, Adv. Mr. Ananda G. Mukherjee, Adv.
For the State	:-	Mr. Susovan Sengupta, Adv. Mr. Subir Pal, Adv.
For the respondent no. 4	:-	Mr. Sagar Bandyopadhyay, Adv. Ms. Soma Kar Ghosh, Adv. Mr. Abhisek Banerjee, Adv.
Hearing concluded on	:-	12.08.2021
Judgment on	:-	19.08.2021

Amrita Sinha, J.

In response to a vacancy notice published in the year 2005 for appointment of distributor, the petitioner No.1 being a partnership firm applied for the vacancy at Bhupatinagar within one kilometre from Block office of Bhagwanpur- II. The petitioner No.1 was found eligible and a license was issued in favour of the petitioner No.1 in 2009 to act as distributor for the location Bhupatinagar within one kilometre from Block Office of Bhagwanpur-II. Tagging of the Fair Price shops with the firm was made on 15th September, 2009. The petitioners are running the

business from 2009 onwards and the license issued in favour of the petitioner No.1 was renewed from time to time by the respondents.

The petitioners are aggrieved by the number of ration cards which have been tagged with the private respondents. According to the petitioners only 20 dealers having 1,54,197 ration cards have been tagged with them, whereas the private respondent no. 4, Alaka Mandal, has 37 dealers with 2,81,460 ration cards and an additional load of seven dealers with 46,901 ration cards. Respondent no. 5, M/S. Ramkrishna Enterprise, has 41 tagged dealers with 2,96,504 ration cards with two additional dealers with 14,862 ration cards. Discrimination is alleged.

The petitioners' contention is that a distributorship becomes viable upon tagging of at least 2,50,000 ration cards. The petitioners rely upon a memo dated 13th April, 1999 issued by the Department of Food and Supplies, Government of West Bengal which mentions that the guidelines set out in the said memo is to be followed in respect of appointment, tagging and retagging of distributors, wholesalers and retailers in MR area. It mentions that not more than 2.5 lakh ration cards shall be tagged with an MR distributor.

It is the contention of the petitioners that relying on the aforesaid memo the petitioners reasonably expected that at least 2.5 lakh ration cards will be tagged with them, but surprisingly only 1,54,197 ration cards have been tagged, whereas more than the prescribed limit of 2.5 lakh cards has been tagged with the private respondents. Petitioners seek equal treatment.

It has been argued that the respondents were estopped from taking a different stand and ought to have allotted the prescribed limit of 2.5 lakh ration cards to the petitioners in terms of the memo dated 13th April, 1999.

According to the petitioners in compliance of the direction passed by the Court on 6th April, 2021 the respondents were to file a report in the form of an affidavit

disclosing the reasons why the petitioners were unequally treated contra the other two distributors.

It has been submitted that the report filed by the respondents does not disclose any reason whatsoever as to why the petitioners have been treated unequally. It has been argued that the alleged report filed on behalf of the State respondents is devoid the required information and accordingly no reliance may be placed on the same.

The petitioners pray for issuance of a writ of Mandamus commanding the respondents to tag all the dealers of Bhagwanpur-II block with the petitioners' distributorship.

The prayer of the petitioners has been strongly opposed by the State as well as the private respondent Alaka Mandal.

It is the contention of the State that license was granted to the petitioner on 14th September, 2009 in respect of Bhupatinagar under Purba Medinipur district. The petitioners are continuing with the business from 2009 onwards without raising any objection seeking tagging of more ration cards. It has been submitted that the grievance of the petitioners that the business was not viable for want of enough ration cards, was never ventilated before the respondent authorities. It has been submitted that the 1999 memo relied upon by the petitioners lost its force the moment West Bengal Public Distribution System (Maintenance and Control) Order came into force. There is no concept of block-wise distributorship in West Bengal Public Distribution System (Maintenance and Control) Order, 2013 (Control Order, 2013 in short).

After the promulgation of the National Food Security Act, 2013 with effect from 5th July, 2013 it is the duty of the State Government to identify the eligible beneficiaries under the Act for the purpose of Targeted Public Distribution System

(TDPS in short). The eligible beneficiaries have been selected in accordance with the eligibility criteria laid down in the said Act. The eligible beneficiaries currently under TPDS are required to be tagged with the respective Fair Price Shops from where they get their entitled quantity of food grains as stipulated under the Act. There is a need of de novo tagging of eligible beneficiaries with the Fair Price Shops which may result in reduction in the number of ration cards tagged with such dealers under the National Food Security Act norms.

Vide Memorandum dated 12th March, 2015 issued by the Principal Secretary & Food Commissioner, Food and Supplies department, the department's earlier memo dated 13th April, 1999 in connection with declaration of vacancies for dealers and distributors, appointment, de-tagging and re-tagging of distributors, wholesalers and dealers has been cancelled with immediate effect. Declaration of new vacancies and appointment of dealers and distributors, tagging of eligible beneficiaries under the National Food Security Act, 2013 with Fair Price Shop dealers, wholesalers and distributors is to be guided by the number of eligible beneficiaries selected in the local area, geographical location suiting convenience of the beneficiaries, remoteness and accessibility to the Fair Price Shops and the distance travelled by the beneficiaries in keeping with compactness and homogeneity of the area.

It has been submitted that the petitioner No.1 was never appointed as distributor for the entire Bhagwanpur-II block. The petitioners' license was restricted only to the Bhupatinagar area, under block Bhagwanpur-II.

Tagging of the ration cards to the private respondents was done strictly on the basis of the norms laid down under the National Food Security Act. The geographical location, convenience of the beneficiaries, the distance travelled by the beneficiaries were taken into consideration prior to tagging the ration cards with the private respondents.

It has been submitted that the writ petition at the instance of the petitioners ought not to be entertained as there has been no violation of any fundamental right of the petitioners. The petitioners are carrying business from 2009 and there has been no de-tagging of ration cards from the petitioners. There is no occasion for the petitioners either to stand in the way or be aggrieved by the act of tagging the ration cards of eligible beneficiaries with any other dealer/distributor in accordance with the norms laid down under the National Food Security Act. The memo relied upon by the petitioners has been cancelled and has ceased to exist in view of the subsequent memo issued by the State Government on 12th March, 2015.

The provision relating to engagement of distributor as laid down in the Control Order, 2013 has been placed in Court. It appears therefrom that the District Administration for better functioning of the Public Distribution System in a particular area may declare the vacancy with the approval of the Department. Advertisements are published for filling up the vacancies with the most suitable candidate. After obtaining the government approval an offer letter is issued to the successful candidate. The petitioner No.1 being a successful candidate was issued the license in respect of a particular area and relying upon the requirement of the eligible beneficiaries the ration cards have been tagged with the petitioners. The prime interest at the time of tagging ration cards with a particular dealer/distributor is the convenience of the eligible beneficiaries.

The learned advocate representing the private respondent no. 4, Alaka Mandal submits that there has been no change in the number of ration cards tagged with petitioner No.1. The petitioners are in the business since 2009. Objection has never been raised with the concerned authority praying for tagging more ration cards for making the business viable. Submission has been advanced for dismissal of the writ petition on the ground of approaching the Court after inordinate unexplained delay.

It has been submitted that assessment was done by the concerned authority to assess the requirement of the eligible beneficiaries. After proper assessment the concerned authority distributed the eligible beneficiaries to the respective dealers/distributors. At the time of tagging, several factors were taken into consideration namely, the distance of the godown of the dealers/distributors from the Food Corporation of India godown, convenience of the eligible beneficiaries, accessibility of the Fair Price Shop etc.

It has been submitted that the Government bears the transportation charges of the items from the FCI godown to the godown of the dealers/distributors. More the distance, higher the cost incurred by the Government. To keep the incurring expenditure under control, the Government always takes into consideration the nearest dealer/distributor to whom the ration cards of the eligible beneficiaries may be tagged.

It has been reiterated that the petitioners were issued license only in respect of the Bhupatinagar area and not in respect of the entire block of Bhagwanpur-II. It has been submitted that Bhagwanpur-II is a big area and there are other dealers/distributors.

Additional ration cards were tagged with the private respondent M/s. Ramkrishna Enterprise as a temporary measure, for smooth functioning of the Public Distribution System, as the original distributor Brajo Kishore Mandal of Bajkul, Bhagwanpur-I block died on 26th October, 2020. The license was thereafter granted, on compassionate ground, in favour of Alaka Mandal, widow of late Brajo Kishore Mandal, and the dealers previously tagged with M/s. Ramkrishna Enterprise was de-tagged and subsequently tagged with newly engaged MR distributor Alaka Mandal in Bhagwanpur-I block. It has been submitted that as the godown of the private respondent is located at a convenient place accordingly more number of ration cards are tagged.

The private respondent relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***District Collector & Anr. -vs- B. Suresh & Ors.*** reported in ***(1999) 5 SCC 612*** (para 4) wherein the Court held that a Fair Price Shop dealer has no right to be appointed as dealer. The license which such dealer has obtained under the provision of the Andhra Pradesh Scheduled Commodities (Regulation and Distribution by Card System) Order, 1973 to deal with the commodities has not been cancelled. The right to trade under Article 19(1)(g) of the Constitution of India is not being affected in any manner. The Government, as a policy decision, decided to reduce the number of cards per dealer. Such decision does not affect the rights, if any, of the Fair Price Shop dealers.

Reliance has been placed on the judgment of the Hon'ble Supreme Court in the matter of ***Chairman/Managing Director, U.P Power Corporation Ltd. & Ors. -vs- Ram Gopal*** reported in ***2020 SCC Online SC 101*** (paragraphs 14-17) wherein the Court held that while it is true that limitation does not strictly apply to proceedings under Article 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delay would always be relevant in writ action and writ courts naturally ought to be reluctant in exercising their judicial power to protect those who have slept over wrongs and allow illegalities to fester. Fence sitters cannot be allowed to barge into courts and cry for their rights at their convenience.

Judgment of the Supreme Court in the matter of ***State of Madhya Pradesh & Anr. -vs- Bhailal Bhai & Ors.*** reported in ***AIR 1964 SC 1006*** (paragraphs 17 and 21) has been relied upon by the private respondent, wherein the Court held the power to give relief under Article 226 is a discretionary power. Where a person comes to the Court at a delayed stage, the Court can rightly refuse the relief sought for by the aggrieved party.

The respondents pray for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of all the parties.

It appears that pursuant to an advertisement published in 2005 the petitioner No.1 was successful and was issued a license in the year 2009 and is continuing business since then. The sheet anchor of the petitioners' argument is the memo dated 13th April, 1999 which speaks of an upper limit of 2.5 lakh cards to be tagged with a dealer/distributor. The same is the outer limit of cards that may be tagged. The said memo does not speak of any lower limit, which implies that, any number of cards below 2.5 lakh is permissible to be tagged with a dealer/distributor.

In the case at hand more than 1.54 lakh cards have been tagged with the petitioners for long. The petitioners never raised any objection before the concerned authority praying for tagging more cards on the plea that less amount of cards affects the viability of the business. The petitioners rushed to the writ court challenging the tagging of cards of the private respondents.

The memo of the year 1999 relied upon by the petitioners was cancelled way back in 12th March, 2015. The petitioners never felt the requirement or necessity to challenge the same. The petitioners continued their business without any murmur or protest. After the promulgation of the National Food Security Act, 2013 the procedure for tagging and de-tagging the eligible beneficiaries got changed. The Control Order, 2013 was published in August, 2013. The norms for engagement of distributor have been laid down therein.

For the purpose of better functioning of the Public Distribution System the District Administration is the appropriate authority to take necessary steps for declaration of vacancy and for filling up the same. Several factors are required to be taken into consideration at the time of tagging/de-tagging of ration cards. The Administration took into consideration the relevant factors and found it fit to tag the

additional ration cards with the private respondents as a temporary measure. The authority certainly has the right to do so.

The equal treatment right which the petitioners are seeking is grossly misconceived in the facts and circumstances of the instant case. Firstly, the petitioners have approached this Court directly without highlighting their grievance before the concerned authorities, that too, at a delayed date without any plausible excuse. Secondly, the petitioners have failed to produce any evidence to show that there has been any arbitrariness or mala fide on the part of the respondent authorities by tagging more number of cards with the private respondents than that has been tagged with them.

The license of the petitioner No.1 was issued only in respect of Bhupatinagar area and not in respect of the entire Bhagwanpur-II block. It was/is open for the District Administration to assess the relevant factors including the convenience of the eligible beneficiaries and the proper functioning of the Public Distribution System at the time of taking the decision for tagging the cards. Location of the Fair Price Shop, distance of the godown, accessibility etc. are pertinent issues which plays a vital role in the decision making process.

The Hon'ble Supreme Court in the matter B. Suresh (supra) held that the right to trade under Article 19(1)(g) of the Constitution of India does not get effected by the policy decision of the State Government to reduce the number of cards per dealer. Here, the cards of the petitioners have not been reduced. The District Administration acted in accordance with the Control Order, 2013 and the provisions of the National Food Security Act, 2013 and tagged the required number of cards with the respective dealers/distributors.

The petitioner cannot claim, as a matter right, issuance of a writ of Mandamus to tag all the dealers of Bhagwanpur-II block with them, because of the

reason that the petitioners were never issued any license in respect of the entire Bhagwanpur-II block. The license of the petitioners was issued only in respect of the area Bhupatinagar under Bhagwanpur - II block.

I do not find any reason to interfere in this matter in the absence of infringement of either any fundamental or statutory right of the petitioners. The writ petition fails and is hereby dismissed.

WPA 8470 of 2021 is dismissed.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.

(Amrita Sinha, J.)