

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.A. NO.16713 of 2019

with

W.P.A. NO.16013 of 2019

M/s. Sonai Food Marketing Pvt. Ltd. & Anr.

-vs-

State of West Bengal & Ors.

For the petitioner : Mr. Kalyan Bandyopadhyay
Mr. Ram Anad Agarwal
Mr. Nibedita Pal
Mr. Ramesh Dhara
Mr. Anada Gopal Mukherjee

For the State : Mr. Kishore Dutta, Ld. Advocate General
Mr. Susovan Sengupta
Mr. Subir Pal

For the Intervenor : Mr. Dilip Kumar Samanta

Heard on : 18.01.2021, 27.01.2021

Judgment on : 17.03.2021

Ravi Krishan Kapur, J.:

1. These two petitions are taken up for hearing together. In WPA No.16013 of 2019, the petitioners seek its right to be considered as a potential distributor in respect of two separate vacancies notified by the State respondents. By two separate Notifications both dated 6 January, 2019 published in the Official Gazette, the respondent authorities invited applications for engagement as a distributor in the Raghunathpur II area and the Jaipur block area both in the district of Purulia. Both the

notifications stipulated the eligibility criteria. The notifications also stipulated the prescribed documents which are to be submitted by a prospective applicant.

2. Subsequently by an order dated 7 August, 2019 the aforesaid vacancies issued by the respondent authorities was sought to be withdrawn. The order dated 7 August, 2019 is the subject matter of challenge in the writ petition being WPA no. 16713 of 2019.
3. Pursuant to the vacancy notification dated 6 January, 2019 the petitioners submitted two separate applications dated 1 April, 2019 respectively. There is nothing on record to demonstrate that the said two applications filed by the petitioner have been considered or dealt with by the respondent authorities. In the affidavit-in-opposition filed on behalf of the respondents there are only two grounds which have been urged by the State respondents (a) that the petitioner no.1 is a company and is not entitled to a distributorship and (b) pursuant to the order dated 7 August, 2019, the vacancy in respect of the areas for which the petitioners had applied have been duly cancelled for all the applicants.
4. It is submitted on behalf of the petitioners that there is no reason in law to deprive the petitioner company from being considered as a potential distributor merely on the ground that the petitioner no.1 is a company. In this connection, reliance was placed on Section 2(j) of the West Bengal Public Distribution System (Maintenance and Control) Order 2013 which defines “distributor” and also on the statutory form no.1 under paragraph-27 (1) of the Control order wherein a licence for

distributorship is granted to Co-Operative society/ Self Help Group/ Company/partnership firm. Moreover, emphasis was also placed on the definition of “a group of individuals as an entity”. In support of their contentions, the petitioners also rely on the decision reported in *The State Trading Corporation of India Ltd. and Ors. vs. The Commercial Tax Officer, Visakhapatnam and Ors.* (AIR 1963 SC 1811). It was also submitted on behalf of the petitioner that the refund of the application money and the encashment of the same does not create any estoppel against the petitioners to challenge the action of the concerned authorities. In support of this contention the petitioners also relied on the decisions reported in *Olga Tellis & Ors. Vs. Bombay Municipal Corporation & Ors.* AIR 1986 SC 180, *Nar Singh Pal Vs. Union of India & Ors.* and *Basheshar Nath Vs. Commissioner of Income Tax, Delhi & Rajasthan & Anr.* AIR 1959 SC 149.

5. On behalf of the State respondents it is contended that the fact that the applicant should be a permanent resident of the concerned district as stipulated in the eligibility criteria excludes the petitioner company from the scope of consideration for the respective vacancies. It is also urged on behalf of the State respondents that the subsequent fact that the petitioners have been refunded the application money prevents them from raising the impugned challenge.
6. I have considered the submissions made on behalf of the parties.
7. At the outset, I deal with the aspect of waiver and estoppel raised on behalf of the State respondents. It is contended on behalf of the State

respondents that since the petitioners have been refunded their application money they are estopped from impugning the actions of the respondent authorities. It appears from the records that the first writ petition was filed on 14 August 2019. The cheque refunding the application money to the petitioner company was issued by the respondent authorities on 29 August 2019. Hence, it is an admitted position that the refund of the application money had taken place subsequent to the filing of the first petition. In any event, I am of the view that the subsequent receipt of the cheque for the application fee by the petitioners cannot prevent the petitioners from pursuing its constitutional remedy. Ordinarily, there can be no waiver of any of the fundamental rights guaranteed under Part III of the Constitution. (*See AIR 1986 SC 180 Olga Tellis and Others Vs. Bombay Municipal Corporation and Others @ Para 29, AIR 1959 SC 149 Basheshar Nath Vs. Commissioner of Income Tax Delhi & Rajasthan and Another @ Para 32*). I find that the refund of the application money to the petitioner and the subsequent encashment of the same does not create any estoppel against the petitioners nor does it amount to waiver of any of their rights. Accordingly, this contention raised on behalf of the State respondent is rejected.

8. On merits, I find that the petitioner company had applied for distributorship in respect of the aforesaid two blocks pursuant to the Notifications dated 16 January, 2019 which was published in the Official Gazette on 29 July, 2019. In fact, the petitioner no.1 had submitted two

separate applications dated April, 2019 respectively. I am of the view that upon the submission of the said two applications a right of being at least considered in accordance with law accrues in favour of the petitioners.

9. I am fully mindful that an applicant responding to a notice or making an offer pursuant to an advertisement does not have a vested right to obtain distributorship. But, such an applicant at least has a right to have its application lawfully considered.

10. I also find that the order dated 7 August, 2019 cancelling the notifications inviting offers for distributorship contains no lawful or justifiable grounds justifying the cancellation of the impugned notification. I am of the view that the State cannot cancel or withdraw any notification once issued without citing any cogent ground especially after accepting applications in terms thereof. There is no policy instruction or order which has been cited by the State. An arbitrary, irrational decision of the authority like the present one under challenge cannot therefore be termed as a policy decision. Infact, the order dated 7 August, 2019 has been the subject matter of diverse litigation. In different proceedings this Court has interfered with the order dated 7 August, 2019. [*F.M.A. 913 of 2020 (M.A.T. 617 of 2020) with CAN 1 of 2020 (M/s. Kultali Food Marketing Private Limited & Anr. Versus State of West Bengal & Ors.)*, *WPO No.359 of 2020 and WPO No.360 of 2020 (M/s. Sonai Food Marketing Pvt. Ltd. & Anr. Versus State of West Bengal & Ors.)* and *WPO 362 of 2020 (M/s. Sonai Food Marketing Pvt. Ltd. & Anr. Versus The State of West Bengal & Ors.)*]. For the reasons aforesaid, the

impugned order dated August 7 2019 insofar as it pertains to the cancellation of distributorship in the Raghunathpur II area and the Jaipur Block area in the District of Purulia does not appear to be justified or proper.

11. Accordingly, I am of the view that the fact that the subsequent order dated 7 August, 2019 seeks to cancel the vacancies cannot prejudice the right of the petitioner company to be considered in accordance with law. In any event, I for the aforesaid reasons have held the order dated 7 August, 2019 to be unjustified and improper. Accordingly, since there has been no consideration at all of the applications of the petitioners, I am of the view that the petitioner company has a right to be considered in accordance with law.

12. For the foregoing reasons, I direct the petitioner company to deposit the requisite application fees with respondent authorities within a week from date. Upon such deposit being made the respondent authorities are directed to consider the applications received by the petitioner no 1 for distributorship in the Raghunathpur II area and the Jaipur block in the district of Purulia respectively in accordance with law within a period of four weeks from the date of deposit of the application fees. In considering the applications of the petitioner no.1 company, the respondent authorities are directed to give a right of hearing to petitioner no.1 company. The respondent authorities will also give a right of hearing to the concerned State respondents if it deems fit and necessary. Thereafter, the respondent authorities are directed to give a reasoned

order and communicate the same to the petitioners company forthwith. Insofar as the merits of the applications filed by the petitioner company, all points are left open to be decided by the respondent authorities in accordance with law. With the aforesaid directions, WPA No.16713 of 2019 and WPA No.16013 of 2019 stand disposed off. However, there shall be no order as to costs.

13. Urgent certified photocopy of this judgment, if applied for, be given to the parties upon compliance with all the necessary formalities.

(Ravi Krishan Kapur, J.)