

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

HON'BLE MR. JUSTICE ABHIJIT GANGOPADHYAY

WPA 19824 of 2019

**Sujit Moulik
-Versus-
The State of West Bengal & Ors.**

For the petitioner : Mr. Bijoy Adhikary

**For the State : Mr. Susovan Sengupta
Mr. Subir Pal**

**Heard on : 14.01.2021, 15.01.2021,
27.01.2021, 02.02.2021 &
04.02.2021**

Judgment on : 08.02.2021

1. The petitioner filed this writ application praying for mandamus for considering its representation being annexure P-8 (which should be annexure P-7, annexure P-8 is not any representation) for granting licence of an M.R. Dealer shop in the District of Alipurduar. He also prayed for a mandamus for setting aside the Government

notification No. 2893-FS/SECH/4M-195/2018 dated 12.09.2018 for filling up vacancy of Fair Price Shop Dealer in different places including a Village namely Damanpur in the District of Alipurduar. M.R. Dealer shops are now termed as Fair Price Shops.

2. From the representation of the petitioner dated 18th August, 2017 it is found that the M.R. Shop No. 38 had two partners namely Debabrata Moulik and Ratan Kumar Moulik. After death of one of the partners Debabrata the other partner Ratan, who was unmarried and physically handicapped, by submitting a representation wanted the licence of the M.R. shop to be given in the name of his younger brother Sujit Moulik i.e. the petitioner herein. Ratan expired on 17th December, 2016. (Debabrata, elder brother of the petitioner, expired before Ratan on 29th June, 2013, as is found from annexure P-3 of the writ application).
3. Therefore the case of the petitioner as appears from the writ application is that after the death of the partners namely Debabrata and Ratan he wanted the licence of M.R. Shop and as his representation dated 18th August, 2017 was not considered by the concerned authority, Government should be restrained from filling up the resultant vacancy of Fair Price Shop Dealership and such decision of the government was required to be set aside.
4. The petitioner has submitted that there was an agreement dated 9th March, 1983 between the Governor of West Bengal on one part and Debabrata Moulik and Ratan Moulik on the other, as retailer in food stuffs under the scheme framed by the government for distribution

of food stuffs to consumer in the Districts of West Bengal. The petitioner submitted that the state cannot terminate this agreement by any order or notification as it is a contract under Article 299(1) of the Constitution of India.

5. Such submission is wholly without merit as from annexure P-2 of the writ application it is found that a licence was granted in 2005 to one M/s. A.K. Moulik & company having partners Debabrata and Ratan as a Dealer under West Bengal Public Distribution system (Maintenance & Control) Order 2003. This licence dated 30th December, 2005 shows that the agreement between the Governor on the one part and Debabrata and Ratan and the other had no existence in the year 2005 i.e. after lapse of nearly 22 years from the date of the said agreement of 1983. There is no document or pleading that Debabrata and Ratan raised objection as to non existence of the 1983 agreement, on the contrary from annexure P-2 it is found that the said licence was renewed from year to year and endorsement towards renewal in different years is there on the said licence. Debabrata and Ratan, partners of the partnership firm, also had a dealership under West Bengal kerosene control order which was also renewed from time to time as appears from at page 28 and 29 of annexure P-2.
6. Though the petitioner has claimed by making submission from the bar that he is running the Fair Price Shop of A.K. Moulik & Co as a joint family business nothing has been disclosed to show that the petitioner was ever granted any licence of M.R. Shop/ Fair Price

Shop as the proprietor or partner of M/s. A.K. Moulik & Co. Nor he was granted any licence for kerosene dealership as partner or proprietor of the above named firm. The Petitioner has also not disclosed any documents showing that it was a joint family business.

It was also never stated by Ratan in his representation dated 19.11.2013 (Annexure P-4) nor any such claim is found by other members of the family as is found from a copy of an affidavit dated 30.09.2013 (vide annexure R-2 of the affidavit-in-opposition of R-4). Therefore the claim of the petitioner that he is running a joint family business of M.R, dealership is wholly baseless. On the contrary and fact the petitioner filed application for dealership under Public Distribution System (Maintenance & Control) Order 2003 on 29th October, 2013 and on the same date also applied for licence of a kerosene dealership under West Bengal Kerosene Control order 1968 for himself and not for the joint family business which clearly shows that in 2013 it was not his case that he was running a joint family business.

- 7.** Learned advocate for the state has indicated to this court that in the application for dealership (at page 38 of the application which was a Form for 2003 Control order) the date has been interpolated as 29th October, 2013. It is the submission that on 8th August, 2013 the West Bengal Public Distribution System (Maintenance & Control) Order 2013 came into existence and there was no occasion in 2013 for filing application in a Form of 2003 Control order. In fact, from

the date of the application of the petitioner (29th October, 2013) it is found that there is an interpolation in the date of the application whereby the date has been shown as of 2013 when actually it was of 2003.

- 8.** After the death of Debabrata on 29th June, 2013 (vide annexure P-3, at page 30), the M.R. shop was tagged with one R.M. enterprise, from 1st July, and 2013 (vide annexure P-9 at page 44). This tagging was made by the Sub Divisional Controller, Food & Supplies, Alipurduar.
- 9.** The petitioner submits that he still runs the M.R. dealership under the name and style of A.K. Moulik & Co. As the said business was a joint family business he has been automatically inducted to the said joint family partnership business on the death of his two elder brothers namely Debabrata and Ratan. It is not understood at all how the petitioner is running the M.R. dealership (Fair Price Shop) and Kerosene dealership, without any licence. Nothing has come to light that there was any joint family business. On the contrary it is found from the licences at pages 27 and 28 of the writ application that A.K. Moulik & co. was a partnership firm of two partners.

The petitioner produced one document at the time of hearing (and later in supplementary affidavit affirmed on 21.01.2021), a stock summery report dated 9th December, 2020 in respect of FPS 132800900046 in the name of M/s. A.K. Moulik and submitted that he was actually running the M.R. shop even in December, 2020. On the basis of such submission and as the respondent authority could

not clarify the document, limited period interim order was granted on 15th January, 2021 protecting the petitioner by restraining the state respondent from taking any further steps in respect of engaging new dealer of Fair Price Shop and kerosene dealership for the village Damanpur (i.e. in the petitioner's area) in the district of Alipurduar till 8th February, 2021.

10. The respondent No. 4 being the Sub-Divisional Controller Food Supplies by filling affidavit-in-opposition (affirmed on 19th January, 2021) has shown that :

- (i) The petitioner does not come within the definition of family members of the 2013 Control order which would be evident from Section 2 (m) of the said Control Order. Thus there was no question of granting licence to the petitioner by the state authorities on compassionate ground.
- (ii) As the application of the petitioner for granting the licence on companionate ground was recommended and forwarded by the then Sub-Divisional Controller, Food and Supplies, Alipurduar the said officer was issued one show-cause notice on 4th August, 2015 and subsequently the said officer was warned by the Director of District Distribution, Procurement and Supply on 17th November, 2015.

11. The petitioner filed one supplementary affidavit (affirmed on 21.01.2021) disclosing the stock summery report in support of his submission that even in December 2020 he was still running the Fair Price shop.

This has been dealt with by the respondent No. 4 by filing another affidavit (affirmed on 29th January, 2021) who has clarified that if any Fair Price Shop is tagged to any other Fair Price shop then the name of the tagged Fair Price Shop appears with the name of the Fair Price Shop to which it was tagged unless and until the new licence is given in place of the tagged fair Price Shop. The name of A.K. Moulik appears in the annexure of the supplementary affidavit of the petitioner with the expression “tagged” with Markus Barla, Anu chakraborty & Jagabandhu Sharma. The respondent No. 4 has also given one example from government records of stock summary report in his affidavit to the supplementary affidavit of the writ petitioner in annexure R-1 (at page 8 thereof) which shows that one Fair Price Shop of one Bijoy Lama was tagged with Gopi Krishna Agarwal and Bijoy Lama’s name appears there along with Gopi Krishna Agarwal. The respondent No. 4 has also stated that mere mentioning of the name of erstwhile FPS is not proof of running a Fair Price Shop. It has also been stated specifically by the respondent No. 4 that the petitioner was never issued FPS licence by the department of Food and Supplies in his name.

I accept this explanation as reasonable and as the same is based on government record in similar circumstances.

Despite receiving the affidavit in opposition the petitioner has not filed any reply thereto and tried to take advantage of such non filing of affidavit under the technical question of no direction of court to file affidavit-in-reply, which technical question was rejected by this

court and hearing was held. The petitioner had enough opportunity to deal with the affidavits of the respondent No. 4 which the petitioner has not done.

- 12.** It is found from the pleading of the writ application and also from the submission made on behalf of the petitioner that he has tried to create a wrong impression in the mind of the court that he is still running the partnership, firm as an M.R. Dealer and a kerosene dealer.

The petitioner at the time of hearing instead of filing any affidavit-in-reply has filed photocopy of some papers and photograph of the Fair Price Shop that was running by him are not taken into account as the same have not been filed under any affidavit. Apart from that this papers and the photograph also do not create any impression in the mind of this court otherwise.

- 13.** The petitioner in support of his case has referred to certain judgments which are as follows:

- (i) AIR 1996 Patna 1
- (ii) (2016)6 WBLR (Cal) 614
- (iii) (2017) WBLR (Cal) 144
- (iv) One unreported judgment in A.S.T. No. 25 of 2015
- (v) AIR 1978 SC 597
- (vi) AIR 1996 SC 51
- (vii) 1979 (3) SCC 489

On perusal of those judgments cited by the petitioner, I find that those cases do not support the case of the petitioner at all as the petitioner has not been able to establish the fundamental requirement for getting an order in this matter that after death of his brothers he was ever granted licence by the appropriate authority for running the Fair Price Shop and the kerosene dealership and he is running any such shop with licence and he has also failed to establish that despite such situation the respondent authority is going to engage new dealer in the relevant area.

- 14.** The case of the petitioner is wholly meritless. Interim order passed on 15.01.2021 is vacated. The respondents have no impediment to take steps in terms of the notification No. ICA 1577 (1) / 2020 and memo No. 2893-FS/SecH/4M-195/2018 dated 12 July, 2019.

I do not find any merit in the writ application, and the writ application is dismissed.

No costs.

(Abhijit Gangopadhyay, J)

Later : After the judgment is passed, the Learned Advocate for the petitioner prays for stay of operation of this order which is considered and rejected.

(Abhijit Gangopadhyay, J)