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31.03.2022

WPA 2186 (W) 2019

Prodyut Kr. Ghosh vs. State of West Bengal @ Ors.

Ct
.25.

Mr. Sanat Kumar Roy
Mr. B. Ghosal
Mr. A. Banerjee
..For the petitioner.

Heard the learned advocate for the petitioner.

The petitioner was M.R. cum Kerosene Oil Dealer. The petitioner made a representation to the authorities stating that since he was medically unfit at the relevant point of time, the ration card may be tagged or his dealership be terminated.

The writ petitioner approached this Hon'ble Court by filing a writ petition bearing no. 9564 (W) of 2014 praying for a direction upon the Sub-Division Controller, Burdwan to allow him to resume the dealership. The said writ petition was disposed of by directing the Sub-Divisional Controller, Burdwan to dispose of the representation dated May 3, 2012 and October 31, 2012 by passing a reasoned order and after giving an opportunity of hearing to the petitioner. Sub-Divisional Controller thereafter passed an order on May 20, 2014 rejecting the representation of the petitioner dated May 4, 2021 and October 31, 2012. The petitioner thereafter submitted another representation on October 21, 2014 praying for recalling the decision taken by the Sub-Divisional Controller on May 20, 2014. The grievance of the petitioner is that though the dealership has not been terminated, the respondent authority is not allowing the petitioner to resume

his business.

Mr. Roy learned advocate for the petitioner submits that in spite of the fact that the petitioner submitted a representation dated 16.10.2014 before the concerned respondent, the said respondent has not yet communicated its decision. He further submits that the order dated May 20, 2014, was not passed by the said authority in terms of the direction contained in the order passed by this Hon'ble Court in WP 9514 of 2014. He submits that the authorities ought to have allowed the petitioner to resume the dealership business since the same was not expressly terminated by the authority. He further submits that in spite of direction passed by this Court, the State respondent have not used any affidavit, thus the allegations contained in the writ petition remains uncontroverted and a writ of mandamus is to be issued.

The submission of Mr. Roy that since no affidavit-in-opposition has been filed by the respondents the allegation contained in the writ petition should be deemed to have been admitted by applying doctrine of non traverse and a writ of mandamus is to follow can not be accepted in the instant case for the following reason. The respondent-authorities has passed an order on May 20, 2014 considering the case of the petitioner for renewal of his license and the decision of such authority is under challenge in the writ petition. This Court while exercising its jurisdiction under Article 226 of the Constitution of India has to consider whether such decision suffers from any infirmity. Merely because of the fact that no

affidavit-in-opposition has been filed a writ of mandamus should not follow automatically by applying the doctrine of non-traverse in the instant case.

The sub Divisional Controller has passed an order, wherein it has been recorded that an inspection was conducted on June 10, 2011 and discrepancies were detected and show cause notice was issued to the petitioner and in reply to the said show cause notice, the petitioner said that he has no objection with regard to either termination of dealership or for tagging of the ration cards with other dealer. The Sub-Divisional Controller, on facts, has held that the resignation letter was submitted by the petitioner in order to escape from the proceeding that was initiated against him for contravention of WBPDS(M&C) Order, 2003.

It was further recorded therein that a vacancy was declared for the area in question relating to engagement of a dealer in the existing vacancy and applications were invited for filling up the vacancy of the dealership at Shyamnagar but the petitioner in spite of declaration of such vacancy did not submit any application for the said vacancy. It was further recorded in the said order that the licence of the petitioner was not renewed after 2011. Such factual findings cannot be interfered with by the writ Court.

The fact that the licence of the petitioner was valid till December, 2011 is not disputed and the same was not renewed thereafter. Petitioner in reply to the show cause notice sated that he did not have any objection with regard to termination of such dealership. In view thereof, there is no

question of termination of such licence after expiry of the period of such licence as a valid licence can only be terminated.

Since this Court finds that similar prayer of the petitioner to allow him to run the shop made in the earlier representation dated May 4, 2012 and October 31, 2012 was rejected by the authority by passing a reasoned order dated May 20, 2014, and this Court does not find any infirmity therein, no useful purpose will be served by directing the State-respondents to take a decision on the representation dated May 20, 2014.

For the reasons as aforesaid, this Court does not find any merit in the writ petition and the same is, accordingly, dismissed without any order as to costs.

(Hiranmay Bhattacharyya, J.)