

24.06.2022
Court No.12
S/L. No.17
Suvayan/
Sourav

MAT 697 of 2022
With
IA No. CAN 1 of 2022

Sri Badal Saha
Vs.
The Union of India & Ors.

Mr. Debabrata Saha Roy
Mr. Shamit Sanyal
Ms. Priyakshi Banerjee

...for the appellant.

Mr. Sujit Bhunia

...for the U.O.I.

Mr. Susovan Sengupta
Mr. Manas Kr. Sadhu

...for the State.

Ms. Manali Biswas
Mr. Pritam Banerjee

...for the respondent no.7.

Heard Mr. Debabrata Saha Roy, learned Counsel
appearing for the appellant.

Ms. Manali Biswas, learned Counsel appearing
for the respondent no.7.

Mr. Susovan Sengupta, learned Counsel
appearing for the State.

The writ petition being WPA 12047 of 2021 was
filed by the present respondent No. 7 being the
grandson of one deceased Netai Chandra Saha claiming
that he is entitled to be issued with the licence under
Sub-clause VI of Clause 20 of the West Bengal Public
Distribution System (Maintenance & Control) Order,

2013. The writ petition was disposed of directing the Sub-divisional Controller (being the respondent No.4 in the writ petition) to grant licence in favour of the petitioner (respondent No.7) at the earliest, but positively within a period of six weeks from the date of communication of the order. The aforesaid order passed on April 5, 2022 in the writ petition is challenged in the present appeal as erroneous and illegal. In course of hearing of the appeal, it was brought to our notice by Mr. Sengupta, learned Counsel appearing for the State that on August 20, 2021 licence in favour of the present appellant being the son of the deceased Netai Chandra Saha has already been granted which was valid till December 31, 2021 and extended further with effect from May 10, 2022 and the extended licence is valid till December 31, 2023.

After this fact is brought to our notice in course of hearing, it is found that had this fact been brought to the notice of learned Single Judge while hearing WPA 12047 of 2021 the result in the case would have been different. The validity or otherwise of the licence issued in favour of the appellant has not been gone into by the learned Single Judge and the licence filed before us as a document in course of hearing by Mr. Sengupta, learned Counsel appearing for the State is a

document which is beyond the brief and has not been adjudicated upon in accordance with law.

Therefore, in the fitness of things, this appeal has become infructuous by issuance of licence in favour of the appellant in the meantime and we cannot adjudicate upon the validity or otherwise of the licence that has been issued in favour of the present appellant, that being a document beyond the brief.

We, accordingly, dismiss the appeal as infructuous but before parting with the order, we deem it just and proper and in the interest of justice to elaborate the conduct of the present appellant as a respondent before the writ court.

The present respondent No.7 being the grandson of deceased Netai Chandra Saha had preferred the writ petition claiming compassionate issuance of licence in his favour under Sub-clause VI of Clause 20 of the West Bengal Public Distribution System (Maintenance & Control) Order, 2013. In the writ petition notice was sufficient on the present appellant being the respondent there. In spite of sufficiency of notice the present appellant opted not to appear and by the time of receipt of notice of the Court in the writ petition in fact the licence had been issued in his favour. Such conduct of the petitioner we deprecate as it stood on the way of proper adjudication by the writ court.

We, accordingly, feel inclined to compensate the present respondent No.7 adequately for suffering mental agony and bearing the pain of the litigation by exercise of our plenary power under Article 226 of the Constitution of India. We, accordingly, saddle cost of Rs.25,000/- on the appellant to be paid to the respondent No.7 within a period of four weeks from today. That amount we are awarding as cost so that respondent No.7 can bear the burden of another litigation to question the validity of licence issued in favour of the present appellant under Sub-clause VI of Clause 20 of the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 and we feel it proper to make it clear that we have not decided the right of any parties in this appeal and rights of parties and entitlement of issuance of licence in their favour in accordance with law is kept open to be decided by the learned Single Judge in the writ petition if filed by present respondent No.7.

The impugned order is set aside and the interim order passed in the appeal stands vacated.

The interim application being CAN 1 of 2022 is, thus, disposed of.

(Chitta Ranjan Dash, J.)

(Aniruddha Roy, J.)