

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 10846 of 2021

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

Vs.

The State of West Bengal & Ors.

For the petitioners:

Mr. Kalyan Bandyopadhyay
Mr. Ram Anand Agarwal
Ms. Nibedita Pal
Mr. Ramesh Dhara
Mr. Ananda Gopal Mukherjee
Ms. Sonam Ray
Mr. Saurabh Kumar Das

For the State:

Mr. Susovan Sengupta
Mr. Subir Pal

Heard on :

17.02.2022

Judgment on:

23.02.2022

Krishna Rao, J.

The petitioner has challenged the order passed by the Secretary, Food and Supplies Department dated 11 May, 2021, wherein the application of distributorship filed by the petitioner, M/s. Sony Food Marketing Pvt. Ltd. was rejected.

The State Government published the public distribution system (Maintenance and Control Order), 2013 by a Notification dated 8th August,

2013, in exercise of power conferred under Section 3 of the Essential Commodities Act, 1955.

Paragraph 26 of the order provides for engagement of distributor and Paragraph 26(ii) of the order provides for declaration of a new vacancy for better functioning of public distribution in a particular area with the approval of the department.

Declaration of vacancies, the concerned Sub-Divisional Controller, Food and Supplies is required to submit a proposal to the concerned District Controller, Food and Supplies who will send the same to the District, District Distribution, Procurement and Supplies with the opinion of the concerned District Magistrate and the Director shall send the same to the State Government with his specific views for consideration.

As per Paragraph 26 (ii) (a) of the order provides that the concerned District Controller, upon receipt of approval of the vacancy, shall publish notice in the Official Gazette specifying the eligibility criteria and shall also publish an indicative advertisement for the information of general public in the newspaper and the last date of receipt of application shall be thirty days from the date of publication of vacancy notice.

In the instant case, the concerned Sub-Divisional Controller, Food and Supplies Department, submitted the proposal for declaration of two vacancies in Raghunathpur-II Block and Joypur Block to the District Controller, Food and Supplies, Purulia, for his opinion and after favourable opinion of the District Magistrate, Purulia forwarded the same to the Director, District Distribution, Procurement and Supply to examine the

proposal and send to the State Government for consideration. The Director, upon examining the proposal sent the same to the State Government and upon approval by the State Government, the vacancies were published in two Official Gazette notifications respectively dated 29th January, 2019 and published advertisement in the newspaper on 4th March, 2019.

In response to the notification dated 29th January, 2019, and the advertisement dated 4th March, 2019, the petitioner had submitted two separate applications against the said vacancies notified under the cover of two separate letters dated 1st April, 2019 along with the requisite documents which were received by the office of the D.C.F.S. on 2nd April, 2019. On receipt of the applications of the petitioner as well as other applicants, in both the areas, inspection was carried out by S.C.F.S. in respect of the applicants except the writ petitioner on the ground that the company of the petitioner is not entitled to apply against the vacancies in question.

Being aggrieved with the decision of the authorities, the petitioners have filed a writ petition before this Court being W.P. No. 16013(W) of 2019 praying for declaration that a company is entitled to apply for distribution under 2013 order. During the pendency of the writ application, the petitioners came to know that the State Government had issued an order dated 7th August, 2019, directing the concerned District Controller to cancel the vacancy notification including the vacancies notification of Raghunathpur-II, and Joypur Block in the District of Purulia.

Being aggrieved with the order dated 7th August, 2019, the petitioners have filed a writ petition being W.P. No. 1673(W) of 2019 praying

for quashing of the order dated 7th August, 2019. The Co-ordinate Bench of the Court had disposed of both the writ petitions as mentioned above on 17.03.2021 directing the petitioner company to deposit requisite application fee and also directing the respondent authorities to consider the application of the petitioners for distribution in Raghunathpur-II and Joypur Block in the District of Purulia respectively in accordance with law and to give a reasoned order after hearing the parties.

In terms of the order passed by the Co-ordinate Bench the petitioner company deposited the application fee in respect of the application for both the places and the Secretary, Food and Supplies Department directed the petitioner to appear for hearing on 16th April, 2021. On receipt of the notice dated 7th April, 2021, the petitioner had informed the Secretary, *inter alia*, that no enquiry has been conducted by the concerned S.C.F.S. and hearing can be held only after the statutory formalities.

The Secretary did not accept the contention of the petitioner and fixed the hearing on 16th April, 2021. On 16th April, 2021 the learned Counsel for the petitioner appeared before the Secretary and made his submission along with the written notes of argument.

On 11th May, 2021, the Secretary, Department of Food and Supplies, Government of West Bengal had passed an order rejecting the petitioner's application alleging that the company is not covered under the notification.

The order dated 11th May, 2021, passed by the Secretary of Department of Food and Supplies is impugned in the instant writ application.

Learned Senior Counsel Mr. Kalyan Bandyopadhyay submitted that Paragraph 2(j) of 2013 order provides the definition of “distributor” which includes “Company” within the meaning thereof and the same was applicable for making application for distributorship at the relevant point of time.

Mr. Bandyopadhyay submitted that the word “Company” includes within the expression “group of individuals as an entity”

Mr. Bandyopadhyay. Learned Senior Counsel appearing for the petitioner company submitted that when a group of individuals is configured to an entity, the petitioner company would qualify to be considered as an entity in the juristic sense.

Learned Senior Counsel has relied upon the judgment passed by the Division Bench of this Court in M.A.T. No. 562 of 2021 with CAN 1 of 2021 (M/s. Sonai Food Marketing Pvt. Ltd. Vs. State of West Bengal and Ors.) and submitted that the Hon’ble Division Bench has already settled the issue and had relied upon paragraphs IX and X of the judgment, inter alia, as follows:-

“ IX. It is also difficult for this Court to appreciate the concept of a group of individuals as an entity restricted only to a fluid aggregation of so-called natural persons. To the mind of this Court, the expression group of individuals as an entity or, in other words, acting as an entity could also relate to a juristic entity such as the Company formed out of a group

of individuals being its promoters, shareholders and Directors.

X. In the event, the expression natural persons is to be applied to the tender notice, it must be applied across the board to the other categories of applicants such as Registered Co-Operative Societies/Self Help Groups and Semi-Government Bodies which, by their very own configuration, are ineligible to be treated as natural persons. Carrying the above discussion further, this Court is left in doubt whether the meaning given to group of individuals as an entity by the communication dated 28th January, 2021 although not so appearing from the Notification itself, could be designed to act in a particular manner to eliminate the Appellants/the Company from applying at the threshold itself and, the Hon'ble Single Bench, with respect, could have perceived that the so called literal/ordinary meaning of the expression group of individuals as an entity is not a legal contextual meaning at all. Since, the so-called literal/ordinary meaning carries no legal context at all having regard to the present facts and circumstances, this Court must resort to a purposeful construction which must negate such legal absurdity.

In the backdrop of the above discussion, the order impugned of the Hon'ble Single Bench stands set aside.

The application for MR Distributorship of the Appellants/the Company shall be now processed in accordance with law."

Mr. Susovan Sengupta representing the respondents submitted that on scrutiny of the application and supporting documents submitted by the petitioner company, it is found that the petitioner company is not eligible

for engagement as M.R. Distributor against the vacancy declared at Raghunathpur-II Block as well as Joypur Block on the ground that the applications were invited only from the intending self-help groups/Registered Co-operative Society/semi government bodies/individual/group of individuals as entity but the petitioner is a Private Limited Company.

Mr. Sengupta submitted that the eligibility criteria of a group of individuals as an entity would only apply to the natural person and not to artificial persons such as the petitioner company.

Mr. Sengupta further submitted that it was also transpired that the address of the registered office of the petitioner company is 24/1 Bethun Row, Kolkata and the petitioner is not the permanent resident of the District.

Mr. Sengupta has supported the order passed by the Secretary, Department of Food and prayed for dismissal of the writ application.

This Court considered the contention of both the parties, documents available on record and the judgment passed by the Hon'ble Division Bench in MAT No. 562 of 2021 dated 26th August, 2021.

As per the impugned order dated 11th May, 2021, the Secretary, Department of Food and Supplies had rejected the claim of the petitioner on the ground that the petitioner is a private limited company and the company cannot be treated to be in the nature of a group of individuals as an entity.

The judgement relied by the counsel for the petitioner passed in MAT 562 of 2021, (M/s Sonai Food Marketing Pvt. Ltd. & Anr. -vs- State of West Bengal & Ors. (supra), the similar issue was raised and the Hon'ble Division Bench held that

“ VIII) It is hence incomprehensible that tender specifications should be designed in a manner construing a group of individuals as an entity as limited to eliminating the Appellants/the Company. It is equally incomprehensible that the construction of the expression a group of individuals as an entity has been argued as limited to natural persons whereas the legal grundnorm persuades this Court to hold otherwise by purposively interpreting the expression to include within its scope, ambit and meaning juristic entities constituted by a group of individuals. To the mind of this Court such a condition in the tender stands out to be ex facie discriminatory and since such a tender condition fails to provide a level plying field, the exclusion of the Appellants/the Company is liable to be struck down.”

In the judgement passed by the Hon'ble Division Bench (supra) it is settled that the expression group of individuals as an entity or, in other words, acting as an entity could also relate to a juristic entity as the company formed out of group of individuals being its promoters, shareholders and Directors.

In view of the settled law this Court has no other alternative but to set aside the order passed by the Secretary, Department of Food & Supplies, Government of West Bengal dated 11.05.2021.

The respondents are directed to proceed with the applications submitted by the petitioners for M.R. Distribution of both the places in accordance with law.

WPA 10846 of 2021 is disposed of.

Urgent photostat certified copy of this judgment, if applied for,
be given to the learned advocates for the parties.

(Krishna Rao, J.)

kb.