

23.09.2022
Court No.12
S/L. No. 1
Suvayan/
Sourav

MAT 1387 of 2022
With
IA No. CAN 1 of 2022
With
IA No. CAN 2 of 2022
With
IA No. CAN 3 of 2022

Hossain Mohammad Kaizar
Vs.
National Consumers Co-operative
Stores Limited & Ors.

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Neil Basu

...for the appellant.

Mr. Abhrotosh Majumder, Sr. Adv.
Mr. Puspall Chakraborty
Mr. Arkadip Sengupta
Mr. Prasanna Ganguly

...for the respondent/writ petitioner.

Mr. Sirsanya Bandopadhyay
Mr. Arka Kr. Nag

...for the State.

Heard Mr. Debabrata Saha Roy, learned Counsel appearing for the appellant, Mr. Abhrotosh Majumder, learned Senior Counsel appearing for the contesting opposite party and Mr. Sirsanya Bandopadhyay, learned Counsel appearing for the State in the aforesaid appeal.

In Re: CAN 1 of 2022
With
CAN 2 of 2022
With
CAN 3 of 2022

The interim application being **CAN 1 of 2022** has been filed for grant of leave to the appellant to file

appeal on the ground that though he is aggrieved by the impugned order, he was not made a party by the opposite party No. 1 in the impugned writ petition.

CAN 2 of 2022 is an application for condonation of delay in filing the appeal.

CAN 3 of 2022 is an application filed by the appellant to grant stay of the impugned order.

We are taking of the hearing in **CAN 1 of 2022** first. We feel it appropriate to refer to some relevant facts. The notification dated March 23, 2007 was issued by the appropriate authority for filling up vacancy of new distributorship at Chowki Mouza under Bewa – II G.P. For the said vacancy, the petitioner, present opposite party No. 1 and 9 others applied. On September 29, 2008 field verification in respect of go-down, etc. were taken up by the Sub-Divisional Controller (F&S) in presence of the petitioner and others. On April 13, 2009 a list of 12 eligible candidates was prepared by Sub-Divisional Controller (F&S). One Baba Baidyanath Bhandar was one of the applicants for the aforesaid vacancy and one Rathindranath Das was one of the partners of that Baba Baidyanath Bhandar. He filed a writ petition being WP 18223 (W) of 2009 to consider his case for the aforesaid vacancy. The writ petition was disposed of on July 29, 2010 directing the appropriate authority to consider the representation of the petitioner in the

aforesaid writ petition, i.e., Baba Baidyanath Bhandar while taking a call on appointment of M. R. Dealer.

The Director of DDP & S on November 12, 2010 took up the matter as per the direction given by this Court in the aforesaid writ petition. By a reasoned order, the candidature of the Baba Baidyanath Bhandar was rejected on November 12, 2010 by order of the DDP & S.

While the matter for filling up the vacancy was pending before the appropriate authority, the present petitioner being one of the applicants, i.e., Hossain Mohammad Kaizar filed a separate writ petition before this Court being WP 2394 (W) of 2011. By order dated November 12, 2010, the said writ petition was disposed of with the specific finding that the petitioner has no cause of action to challenge the recommendation of the present opposite party No. 1, National Consumers Co-operative Stores Ltd. for appointment as a M. R. Dealer.

The aforesaid order passed by this Court in WP 2394 (W) of 2011 was not challenged in the higher forum. The petitioner, however, went on making representation to different authorities for redressal of his grievance.

When the recommendation in favour of the present opposite party No. 1, National Consumers Co-operative Stores Ltd. for appointment as M. R. Dealer

was passed and no action was taken by the appropriate authority, the present opposite party No. 1 filed writ petition being WP 16066 (W) of 2012 against the State for a specific direction to the effect that the recommendation in favour of the present opposite party No. 1, National Consumers Co-operative Stores Ltd. be processed and decision be taken to appoint him as a M. R. Dealer.

The said writ petition came to be disposed of on January 8, 2015 with the following observations:

“In view of the above, I direct the competent authority to issue the licence of M. R. distributorship under reference in favour of the petitioner within a period of six weeks from the date of communication of this order provided the petitioner is otherwise eligible for granting the above licence and subject to compliance of all formalities in accordance with law.”

It is apposite here to mention that the order dated January 8, 2015 passed by this Court in WP 16066 (W) of 2012 in favour of the present opposite party No. 1 was also not challenged in the higher forum.

On April 8, 2015, notification was issued by the State canceling all the applications pending under 2003 Control Order in view of the coming into force of 2013 Control Order in the interregnum and

applications were also invited on May 12, 2015 from intervening self-help groups/registered co-operative society/some Government bodies/individuals/groups of individuals as an entity for filling up the vacancy of the captioned M. R. Dealership for which this Court had already passed the order in WP 16066 (W) of 2012 to appoint the present opposite party No. 1, National Consumers Co-operative Stores Ltd.

The petitioner, therefore, filed the impugned writ petition being WPA 12047 of 2015 and it was disposed of on May 19, 2022 directing the appropriate authority to issue licence in favour of the present opposite party No. 1 in accordance with 2003 Control Order.

The order dated May 19, 2022 passed in WPA 12047 of 2015 is proposed to be challenged by the client of Mr. Saha Roy, learned Counsel on the ground that he being an applicant in the panel prepared by the appropriate Sub-Divisional Authority and he being not made a party to the writ petition filed by the present opposite party No. 1 and he being aggrieved by the order proposed to be impugned in the appeal, leave should be granted in his favour to file the appeal.

Mr. Majumder, learned Senior Counsel for the respondent, on the other hand, submits that the petitioner was neither the necessary nor the proper party in the impugned writ petition and secondly, one order having been passed against the petitioner

observing that he has no cause of action and that order having attained finality, the present petitioner was not at all necessary party in the impugned writ petition. It is also submitted by Mr. Majumder, that the order dated January 8, 2015 passed by this Court in WP 16066 (W) of 2012 having also attained finality not being challenged in higher forum either by the State or any other party, now the claim of not impleading the petitioner in the present writ petition and his claim of being aggrieved by the impugned order does not subsist.

Having heard the learned Counsel for the parties and having perused the materials available on record, i.e., CAN 3 of 2022, we find that the writ petition filed by the petitioner, vide, WP 2394 (W) of 2011 having been disposed of with the observation that there is no cause of action in favour of the petitioner and he having accepted the position without assailing the order before any higher forum, it is to be held that the petitioner though an empanelled candidate cannot claim a right to be considered after such order was passed against him by this Court. Furthermore, this Court in WP 16066 (W) of 2012 has specifically passed the order to appoint the present opposite party No. 1, i.e., National Consumers Co-operative Stores Ltd. as M. R. Dealer in respect of the captioned dealership, that order has also not been challenged either by the

State or by the present petitioner and that order has also attained finality.

In the present writ petition, the cancellation of application and declaration of the vacancy by the State after coming into force of 2013 Control Order was challenged and order was passed by this Court to consider the case of the petitioner taking the vacancy to be one under 2003 Control Order.

In reply, Mr. Saha Roy, learned Counsel for the appellant rely on a judgment of Hon'ble Division Bench of this Court, in **MAT 201 of 2016** disposed of on September 25, 2018 to submit that in Page 25 of the order Hon'ble Division Bench has specifically held that cancellation of application during 2003 Control Order is not arbitrary after coming into force of 2013 Control Order.

So far as the present case is concerned, the petitioner cannot be said to be a person aggrieved as after the disposal of WP 2394 (W) of 2011 against him, he had no subsisting legal right in coming to such conclusion, we are supported by a judgment of the Hon'ble Supreme Court in the case of **Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and Others** reported in **(2013) 4 Supreme Court Cases 465**.

We, however, with due regard to Mr. Saha Roy, learned Counsel, hold that the aforesaid decision has

no application to the facts of the present case to give leave to the petitioner here to file appeal.

Accordingly, the prayer for leave is refused but we make it clear that we are not giving any imprimatur so far as the impugned order is concerned because the State may come up to challenge the said order if they feel it so fit.

In view of the aforesaid order, **CAN 1 of 2022**, **CAN 2 of 2022** and **CAN 3 of 2022** are disposed of accordingly.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)