

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/14559/2023

**Kalyan Ray
Vs
State of West Bengal & Ors.**

For the Petitioner: Mr. Ram Anand Agarwala, Adv.,
 Ms. Nibedita Paul, Adv.,
 Mr. Ananda Gopal Mukherjee, Adv.,
 Ms. Sonam Ray, Adv.

For the Respondent No.4:
 Mr. S. N. Mitra, Sr. Adv.,
 Mr. Timir Baran Saha, Adv.

For the State:- Mr. Sirsanya Bandopadhyay, Adv.,
 Mr. Arka Kumar Nag, Adv.

Hearing concluded on: 29 August, 2023.

Judgment on: 13 September, 2023.

BIBEK CHAUDHURI, J. : –

1. Petitioner is a MR Distributor at Ranaghat, Nadia. Previously the said distributorship was run under a partnership agreement in the name and style of M/s Roy Enterprise at Birnagar, Ranaghat, Nadia of which the father, mother, both deceased and the present petitioner were the partners. After the death of the parents MR Distributorship is being continued as a sole proprietorship business by the petitioner. It is the grievance of the petitioner that initially the partnership firm used to distribute food grains amongst 37 dealers. Subsequently, distributorship

licence of one Pradipta Kundu of Ranaghat who used to distribute food grains to 19 dealers was temporarily tagged with the said partnership firm of the petitioner and his parents, since deceased. As the number of fair price shop dealers increased to 56, the petitioner had to extend the infrastructure of his distributorship business to store food grains for 56 dealers on permanent basis. After promulgation of WBPDS (Maintenance and Control) Order, 2013, the licence was issued to the petitioner directing him to distribute food grains for 56 dealers. It is also submitted by the petitioner that his distributorship includes 2,47,000 ration cards. It was held in a review meeting dated 19th May, 2018 by the Food and Supplies Department, presided over by the Principal Secretary to the Government of West Bengal, Food and Supplies, that the existing provision of tagging 2.50 lakh ration cards with a M.R Distributor is to be followed and in case of disparity, rearrangement for tagging ration cards with MR Distributors in order to achieve the said number would be made by the Department. In spite of such decision, the Director, District Distribution, Procurement and Supply issued a notice dated 1st September, 2022 inviting application for appointment of distributor at Ranaghat Municipality so that 18 dealers from the petitioner's distributorship may be de-tagged and the same tagged with the new appointed distributor. The vacancy notification was published in the newspaper as well as in the official website of the Department on 6th September, 2022.

2. Challenging the said notification the petitioner filed a writ petition being WPA No.5211 of 2023 praying for setting aside the said vacancy notification and further commanding the respondents not to de-tag any dealer and ration card from the petitioner's distributorship. However, in spite of specific order passed by a Coordinate Bench, the respondent authority failed to submit any report in support of its case. On the contrary, the competent authority issued an online devise list to the petitioner on 30th May, 2023 directing distribution of the ration commodities only to 38 dealers for the month of July, 2023 in the name of the petitioner. Since the said order was passed during the pendency of WPA 5211 of 2023, the petitioner obtained leave to withdraw the said writ petition in order to file a new writ petition agitating changed circumstances.

3. It is also submitted by the petitioner that by promulgation of Targeted Public Distribution System (Control) Order, 2015 dated 20th March, 2015 by the Central Government, the WBPDS (Maintenance and Control) Order, 2015 should be held to be repealed. The petitioner also states that under Clause 26 of 2013 Control Order the District Controller, Food and Supplies is the only authority to publish notification notice in official gazette and also in local newspapers and the Director, DDPS has no authority to issue vacancy notification in respect of appointment of new distributor for 18 members of dealers in Ranaghat. Under such circumstances, the petitioner has prayed for issuance of writ in the nature of mandamus commending the respondents and each of them to

resign and/or withdraw, and/or cancel the vacancy notice dated 1st September, 2022 issued by the Director, DDPS for appointment of distributor at Ranaghat Municipality for 18 members of dealers and other incidental reliefs.

4. The Deputy Directors, DDPS has filed an affidavit-in-opposition controverting the allegation made in the writ petition by the petitioner. It is stated on behalf of the State respondents that by an order dated 12th March, 2004, the Sub-Divisional Controller, Food and Supplies, Ranaghat tagged 19 dealers the petitioner's partnership firm on the death of proprietor of M/s Gobinda Chandra Kundu and brothers, a M.R Distributor in the area of Ranaghat, Rathtala in the district of Nadia.

5. Subsequently, the respondent No.3, i.e., District Controller, Food and Supplies Department sent a proposal of M.R Distributorship at Ranaghat Municipality to fill up the vacancy arising due to the demise of the said proprietor of M/s Gobinda Chandra Kundu. After getting the approval the said vacancy was re-notified vide Memo dated 28th December, 2018. Subsequently, the said notification was cancelled for want of a suitable applicant. 19 members of dealers were temporarily tagged with the distributorship of the petitioner. Subsequently, on 1st September, 2022 the respondent No.2 declared a resultant vacancy of M.R Distributorship within Ranaghat Municipality the said notification was published in the official gazette as well as two leading newspapers. By an order dated 28th April, 2023 the Deputy Director, DDPS engaged respondent No.4 against the said resultant notification and issued the

offer letter. It is submitted on behalf of the respondents that the vacancy that was filled up by the respondents is not a new vacancy by curtailing the number of dealers from the distributorship of the petitioner. This is a resultant vacancy on the death of the distributor sometimes in 2004. It is true that the dealers to whom the deceased distributor used to settle food grains were temporarily tagged with the petitioner for smooth running of Public Distribution System. But in respect of the said 19 dealers the petitioner has not gained any vested right.

6. The respondent No.4 also filed an affidavit-in-opposition stating, inter alia, that on the basis of a notification dated 1st September, 2022 he applied for distributorship and his application was allowed after proper inquiry and the Deputy Director (Licence), DDPS issued a letter dated 27th April, 2023 granting M.R Distributor against the resultant notification at Ranaghat Municipality.

7. Mr. Agarwala, learned Advocate for the petitioner submits before me that the petitioner continuously and uninterruptedly acted as distributor of 19 tagged dealers since 2004 for providing food grains to those 19 dealers he had to extend his infrastructure. Till 2004-2022 no vacancy was declared by the department. In the year 2018 a vacancy declaration was made but subsequently it was cancelled. Under such circumstances, it is submitted by Mr. Agarwala that the petitioner has achieved a vested right for long continuation of distributorship for about 14 years. Though, the petitioner has accrued right of catering 56 members of dealers

continuously and uninterruptedly for a period of 18 years the said 19 dealers cannot be de-tagged from the distributorship of the petitioner.

8. The learned Advocate for the State respondents submits that the specific case of the petitioner is that 19 dealers of Ranaghat Municipality were tagged temporarily with the petitioner. The petitioner cannot claim any right for such distributorship. A resultant vacancy on the death of a distributor can be filled up under Clause 26(VI) of the WBPDS (Maintenance and Control) Order. The petitioner's case is totally based on legitimate expectation. A person may have legitimate expectation of certain fact, but writ remedy cannot be exercised in support of such legitimate expectation. In support of his contention he refers to a judgment of the Hon'ble Supreme Court in the case of **Sethi Auto Service Station & Anr. Vs. Delhi Development Authority & Ors.** reported in **(2009) 1 SCC 180**.

9. It is submitted on behalf of the respondent No.4 that in the instant writ petition the petitioner has prayed for issuance a writ in the nature of mandamus commanding the respondents to resign and/or withdraw and/or cancel the vacancy notification dated 1st September, 2022. The petitioner has challenged the order of approval of the vacancy of distributor at Ranaghat Municipality dated 3rd June, 2022 and 22nd August, 2022. It is also submitted by the learned Senior Counsel on behalf of the respondent No.4 that the primary scope and function of maintenance is to "command" and "execute" rather than to "inquire" and "adjudicate". It cannot be issued to change the decision of a body so as to

suit the petitioner. Obligations which are not of a statutory nature cannot be enforced by mandamus. In the instant case, the order dated 12th March, 2004 passed by the Sub-Divisional Controller, Food and Supplies, Ranaghat clearly states that upon death of one Pradipta Kundu, M.R Distributor, Ranaghat Rathtala the M.R Dealers of the said Pradipta Kundu, since deceased were relinked with the petitioner on **purely temporary basis** with effect from 15.03.2004 **until further order**. Thus, the M.R Dealers originally attached with the deceased distributor Pradipta Kundu were not permanently tagged with the petitioner. It is also submitted by the Senior Advocate on behalf of the respondent No.4 that the petitioner obtained order on 18th May, 2023 in WPA 5211 of 2023 restraining the State from finally appointing anyone in respect of the vacancy notification suppressing the fact that the respondent authority appointed respondent No.4 on 28th April, 2023. Since the petitioner did not approach the court with clean hands, he is not entitled to get any equitable relief from this court.

10. Having heard the learned Counsels for the parties and on careful perusal of the entire materials on record this Court is of the view that the petitioner is not entitled to get any relief in the instant writ petition.

11. Let me assign the reason:-

Clause 26(i)(b) states that in the event of death of incapacitation of the existing distributor of medical ground, unless any of his/her family members is found suitable for engagement of compassionate ground as per Sub-Clause (vi),

the resultant vacancy has to be notified by the District Controller, Food and Supplies with prior approval of the Department.

12. Indisputably, one Pradipta Kundu, since deceased was a distributor of food grains to M.R Dealers within Ranaghat Municipality. On his death a resultant vacancy occurred. As per Rule 26(i)(b) the Department was under statutory obligation to fill up the resultant vacancy of the said distributor. This cannot be a ground to challenge the step taken by the State respondents to fill up the resultant vacancy albeit after inordinate delay. By lapse of time temporary tagging of 19 dealers with the distributorship of the petitioner does not give him a legal right to claim that the vacancy notification and consequent appointment of respondent No.4 as distributor within Ranaghat Municipality is bad in law and liable to be set aside.

13. I am in agreement with the learned Counsel for the respondent No.4 that a writ of mandamus may be issued in favour of a person who establishes a legal right in himself. It may be issued against a person who has a legal duty to perform to as failed or as neglected to do so. Such a legal duty emanates by operation of law.

14. In the instant case no legal right has accrued in favour of the petitioner for temporarily tagging the dealers within Ranaghat Municipality with the distributorship of the petitioner for supplying the food grains. Since such tagging was done temporarily for a limited period of time, the petitioner cannot claim any legal right which has been

violated by the State respondents or that the respondents had the legal duty to tag the said 19 dealers with the petitioner permanently.

15. For the reasons stated above the instant writ petition is dismissed on contest. There shall however be no order as to cost.

(Bibek Chaudhuri, J.)