IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 20951 of 2022

Dipta Kumar China & Anr.

Versus

The State of West Bengal & Ors.

For the petitioner	:	Mr. Ashok Kr. Banerjeee Mr. Ramesh Dhara Ms. Mousumi Chaudhury .....Advocates
For the State	:	Mr. Susovan Sengupta .....Advocate
Heard lastly on	:	09.11.2022
Judgment on	:	03.02.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for direction upon the respondents to rescind, recall and/or withdraw the impugned vacancy notification published in the website and the vacancy notification, both dated 29.07.2022.

2. The petitioners were running a partnership business under the name and style of M/s. D.K. Enterprise. The petitioner's firm was engaged as a wholesaler in the year 2016 under the West Bengal Public Distribution System (Maintenance and Control) Order 2003. After the said Control Order was replaced by the West Bengal Public Distribution System (Maintenance and Control) Order 2013, a fresh licence was granted to the firm being no. 24P (S)-ALP-S-195-20. In 2016 the State Government granted approval in favour of the firm to cater to the FPS dealers in the areas of Garden Reach and New Alipore. However, subsequently the State Government published a notice in the website that they were notifying vacancy in respect of 25 areas under the 2013 Control Order. On 29.07.2022 the State Government published a vacancy notification inviting application for appointment a wholesaler for the areas of Garden Reach and New Alipore. Being aggrieved, the petitioner preferred this writ application.

3. Learned senior counsel appearing on behalf of the petitioner submitted as follows. The petitioner challenged the vacancy notification no. 448/DR/SSLC/54/22 dated 29.07.2022 in respect of the area Garden Reach and 440/DR/SSLC/54/22 dated 29.07.2022 in respect of the area New Alipore, issued under the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2013. After being engaged as a wholesaler, the petitioner firm invested crores of rupees for building the infrastructure for the said business including three godowns, office room, loading unloading place and arranged for vehicle to reach the food grains to the doorstep of the dealers. It engaged about 76 direct employees and paid provident fund and ESI with the appropriate authorities. Without any complaints from any corner the petitioner firm successfully ran the distributorship business. That is why the firm was asked by the State Government to cater to the new areas of Garden Reach and New Alipore. They complied with the requirement of National Food Security Act, 2013 and executed doorstep delivery to the FPS dealers under the targeted public distribution system of 2015. The engagement or selection of the petitioner firm to cater to the FPS dealers of the new areas constituted an assurance or promise upon which the petitioner acted and made investments. The question of creating new vacancy for wholesaler did not arise as the petitioner firm was already selected and was operating in the area for a number of years. On the question of substantive appointment, reliance was placed on the decision reported at (1980) 3SCC 174. The Control Order of 2013 was made by the State Government in terms of delegation of powers under the Central Control Order being the Public Distribution System (Maintenance and Control) Order, 2001. Thereafter, the Central Government enacted the National Food Security Act, 2013 to provide for food and nutritional security in human life. The Central Government thereafter made the targeted Public Distribution System (Maintenance and Control) Order 2015 to implement NFS Act 2013. The 2015 Control Order superseded the 2001 Central Control Order. The State Government had not yet made any Control Order under the powers delegated in the Central Control Order of

2015. However, the licence and other existing rights were continuing in terms of the saving clause of the 2015 Central Control Order. The petitioner firm was an authorised agency approved by the State Government within the meaning of the Central Control Order of 2015. However, the said vacancy notifications were issued under the State Control Order of 2013 in exercise of powers delegated by the Central Control Order of 2001. But, the latter had already been superseded. After supersession of 2001 Control Order, except in respect of things done or omitted to be done, the 2013 Control Order could not survive. Therefore, the vacancy notice issued by the State respondents under the Control Order of 2013 was without jurisdiction and was liable to be set aside. In fact, in their opposition it was admitted by the State that the petitioner firm was selected to ensure doorstep delivery of goods to the dealers for complying with the National Food Security Act 2013 in terms of the State Control Order of 2013.

4. Learned counsel appearing on behalf of the State submitted as follows. There were two primary legislations that governed the present field- one was the Essential Commodities Act under which the Control Order was promulgated and the other one was the National Food Security Act. The National Food Security, in fact, recognised the Central Control Order of 2001. Therefore, there was no harm if actions were continued to be taken in terms of the State Control Order of 2013, which owed its origin to the said 2001 Control Order. The petitioner firm was accorded approval for engagement only as a short term measure, to execute door step delivery to the PDS outlets in Garden Reach and New Alipore sub-area under the

Kolkata sub-south control. Thereafter, there was a process for appointment of 15 wholesalers against vacancies including the two vacancies in question. Since no one applied, the Department accorded approval for re-notification of the vacancies in 2018. Thereafter, the Department was again directed to cancel the vacancy notification for different reasons. By an order dated 06.01.2001 passed by this Court in WPA 20918/2021, the respondent authorities were directed to take steps for filling up of vacancies strictly in accordance with the Control Order of 2013 at the earliest. That is why the respondents started the process to engage wholesaler. Moreover, the petitioner firm was a distributor having licence under WBPDS (M&C), Order 2013 and operated in the South 24 Paraganas. As the firm was engaged to cater to the sub-areas Garden Reach and New Alipore as a short term measure, no right had accrued to the petitioner as such.

5. I heard the submission of learned counsels for the parties and perused the writ petition, the application and the written notes of submissions.

6. The NFS Act of 2013 referred to the Central Control Order of 2001 because by the time the former was promulgated, the subsequent targeted Public Distribution System of 2015 had not come into force. Therefore, it does not amount to a post - 2015 revalidation of the Central Control Order of 2001.

7. The West Bengal Urban Public Distribution System (Maintenance and Control) Order of 2013 has thus spent its force as the same was brought in pursuance of the said Central Control Order. The State Government is indeed yet to formulate a Control Order in terms of the Central Control Order of 2015.

8. However, this does not mean that the entire Public Distribution System would come to a grinding halt.

9. An Hon'ble Division Bench of this Court in Sekh Abdul Majed vs. State of West Bengal & Ors., 2022 SCC Online Cal 3030, laid down as follows –

"54. *When learned Advocate General being the highest officer of the State and supposed to be in know of the facts is submitting that 'NFS Act' has not yet been implemented in full in the State, in absence of positive averments in the pleadings in the writ petition by the petitioner-appellant, we cannot simply deny the assertion made by learned Advocate General. Clause 2 of 'Central Control Order, 2015' clearly negated the contention raised by Mr. Kar, learned Senior Counsel appearing for the appellant and it cannot be held that 'Rural Control Order, 2013' and 'Urban Control Order, 2013' are non-existent in view of supersession of 'Central Control Order, 2001'. In view of such fact the amendment carried out by the State Government in both the aforesaid Control Order of 2013 cannot be held to be invalid.*"

10. Therefore, till the NFS Act is fully implemented in the State or for that matter, an appropriate pleading in this regard is available, one may fairly continue to take steps in terms of the State Control Orders of 2013.

11. Thus, it cannot be said that the impugned vacancy notice is bad simply because it was passed in terms of the State Control Order of 2013.

12. Now, on the question of whether the petitioner firm could hold on to its distributorship for a larger area simply because it was permitted to do so some time ago, it appears that the initial licence for the petitioner firm to operate was for a rural area of South 24 Paraganas as a distributor. In this context, the contention of the State that the petitioner firm could not act as a wholesaler for the urban area because its initial licence was as a distributor for a rural area is not quite tenable. The respondent authorities themselves permitted the petitioner firm to act as a wholesaler in the urban area for a very long time.

13. However, there is no law which grants the petitioner a right to hold on to such extra business in perpetuity, simply because it was asked to cater to such areas as a temporary measure.

14. The State respondents have been able to show that as a matter of policy, they were looking for appointing others as wholesalers for the two urban areas. Finally, they started acting in terms of an order passed by this Court. Such actions on their part cannot be faulted with simply because the petitioner had made more investments for catering to the other areas.

15. When the other urban areas were given to the petitioner, the petitioner was well aware that it was not a permanent measure. Otherwise, he would have been granted a formal licence under the relevant Control Order for the same. He might have made investments for this extra business and must have reaped profits for the same. Thus, it pertains more to the appetite of the petitioner firm to take risks for having additional business even on a temporary arrangement. However, this cannot amount to an entitlement to carry on such additional business for eternity.

16. Besides, the policy of the State to encourage different entities to cater to the needs of the people through the Public Distribution System, thus preventing monopolies in this, is quite sound and well tested. This Court would loath to interfere with such fair and reasonable policy decisions of the Executive.

17. In view of the above discussions, I do not find any merit in this application.

18. Accordingly, the writ petition is dismissed.

19. However, there shall be no order as to costs.

20. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

S.M