

Form J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

WPA No. 21924 of 2013

Abinash Chandra Roy
Vs.
The State of West Bengal & Ors.

For the petitioner : Mrs. Papiya Chattopadhyay.

For the State : Ms. Sangeeta Roy,
Ms. Kalpita Paul.

Judgement on : 23.08.2023.

Bibek Chaudhuri, J.

In pursuance of a vacancy notification of grant of licence of S.K.Oil Dalership the petitioner made an application in prescribed form for grant of licence in respect of village – Durachapri under Bera Sakdal Gram Panchayat within Police Station Dinhata, Cooch Behar. The notification dated 2nd July, 2009 is annexed with the instant writ petition as Annexure – P/1. It is found from the said notification that it was issued by the District Controller, Food and Supplies, Cooch Behar on being approved by the District Magistrate, Cooch Behar in terms of G.O. No. 5096/FS dated 25th July, 2007. It is not in dispute that the aforesaid G.O. was published under West Bengal Kerosene Control Order, 1968. The petitioner filed an application along with others. An enquiry was conducted by the Chief Inspector, Food and

Supplies, Dinhata. In the inquiry report, it is clearly stated that the petitioner fulfilled the conditions for getting S.K. Oil Dealership. All relevant documents were verified by the Enquiry Officer who recommended the case of the petitioner for dealership. Therefore, the Chief Inspector forwarded his recommendation in the name of the petitioner to the Sub-Divisional Controller, Food and Supplies, Cooch Behar. The Sub-Divisional Controller in turn by a letter dated 17th March, 2010 recommended the petitioner for S.K. Oil Dealership to the District Controller, Food and Supplies, Cooch Behar. Since the petitioner was not granted dealership in respect of fulfillment of all eligibility criteria, he filed a writ petition being WP No. 2040 (W)/2013 before this Court. A Coordinate Bench vide order dated 30th January, 2013 disposed of the said writ petition directing the Director of Consumer Goods to take a decision on the petitioner's application within a period of eight weeks from the date of communication of the order and such decision shall be communicated to the petitioner within a further period of one week. The Director of Consumer Goods took up the matter as per the direction of this Court made in the above-mentioned writ petition for disposal. It is recorded by the Director of Consumer Goods in his report dated 7th May, 2013 that though the District Controller, Foods and Supplies, Cooch Behar claimed to have sent all records relating to the vacancy at Durachapri to the office of the Director vide Memo. No. 592 dated 24th March, 2010 along with three other proposals for appointment of S. K. Oil dealers requesting the Director of Consumer Goods to arrange for obtaining necessary approval of the Government to fill up the said vacancy with retrospective effect as well as for approval of the appointment of S.K.Oil dealers amongst the applicants as

recommended by the Sub-Divisional Controller, Food and Supplies, Cooch Behar. However, it is recorded by the Director of Consumer Goods that no such file could be traced out in the Directorate. Moreover, it is directed by the Director of Consumer Goods to the District Controller, Food and Supplies and the Sub-Divisional Controller, Food and Supplies, Cooch Behar to search out the related documents once again and to submit a proposal of the vacancy of S.K.Oil dealer at Durachapri for obtaining prior approval of the Government. If not found, the Sub-Divisional Controller, Food and Supplies will explore whether the conditions for declaration of vacancy still exists at Durachapri or not, and send fresh proposal with recommendation from the District Magistrate, Cooch Behar for obtaining prior approval of the Government. If Government in the Food and Supplies Department approves the proposal, vacancy will be declared in strict adherence to the stipulation of the above-mentioned G.O. including publication of the vacancy notice in local dailies, a copy of the vacancy notice will be served upon the instant petitioner to give him an opportunity of applying afresh.

Thus, practically the Director of the Consumer Goods closed the case of the petitioner with regard to his prayer for S.K.Oil Dealership.

It is submitted by the Learned Advocate for the petitioner that it is the duty of the State respondents to take a decision or, in other words, to dispose of the application which the petitioner filed in prescribed format on 14th August, 2009. The petitioner cannot be held responsible or that his prayer cannot be thrown out on the ground that his file was lost from the office of the respondents. The learned Advocate for the petitioner submits that from the report in the form of affidavit filed on behalf of the State respondents it is clear

that the vacancy is in existence till date. Therefore, in accordance with the vacancy notification the petitioner should be granted the licence.

On careful consideration of the report of the Director of Consumer Goods dated 7th May, 2013 this Court fails to consider as to how the case of the petitioner was closed and the District Authority of Food and Supplies Department was directed to issue fresh notification declaring the vacancy permitting the petitioner to file an application for consideration, when the petitioner was previously considered as the most suitable candidate and he was recommended for dealership by the Inspector, Sub-Divisional Controller and District Controller, Food and Supplies Department, Cooch Behar. It is found from the record that along with the writ petition the petitioner has filed the recommendation letter of the Inspector and Sub-Divisional Controller. The letter of the District Controller forwarding the file in question of the petitioner to the Director of Consumer Goods but Director of Consumer Goods failed to take any action because of the fact that the file was lost.

In view of such circumstances, the learned Advocate for the State respondents is directed to send a complete copy of the writ petition to the Director of Consumer Goods for consideration. The Director of Consumer Goods shall reconsider the case of the petitioner on the basis of the documents annexed with the instant writ petition and take a fresh decision regarding grant of dealership of S.K. Oil within 60 days from the date of this order.

For abundant caution, the learned Advocate for the petitioner is directed to serve a complete set of legible copy of the writ petition to

the learned Advocate for the State respondent for his consideration and necessary order.

The instant writ petition is, thus, disposed of.

The parties shall act on the server copy of the order.

However, there shall be no order as to costs.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 10.