

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :-

Hon'ble Justice Partha Sarathi Sen

W.P.A No. 29746 (W) of 2016

Arunava Sasmal

-Versus-

The State of West Bengal & Ors.

For the Petitioner: Mr. Timir Baran Saha, Adv.

**For the Respondent no.6 : Mr. Saptanshu Basu, Sr. Adv.
 Mr. Debabrata Saha Roy, Adv.
 Mr. Pingal Bhattacharya, Adv.
 Mr. A. Mukherjee, Adv.
 Ms. S. Ray, Adv.**

**For the State: Mr. Jaharlal De, Adv.
 Mr. Pranab Halder, Adv.**

Heard on: : 22.12.2022

Judgment on. : 09.01.2023

PARTHA SARATHI SEN, J. : –

1. In this writ petition under Article 226 of the Constitution of India the writ petitioner is aggrieved by the decision of the District Controller (F & S) and Ex-Officio Director, Paschim Medinipur, who issued a licence dated 12.04.2012, in favour of the private respondent no.6 to act as a distributor under the provisions of West Bengal Public Distribution System (Maintenance and

Control) Order, 2003 hereinafter referred to as the 'Control Order of 2003'. By the impugned licence no. 36/WB/PDS/MID(S) dated 12.04.2012, the aforementioned authority has permitted the private respondent no.6 which is a partnership firm to include one outsider namely; Dinesh Kumar Agarwala in place of deceased Jagadish Prasad Sharma. In this writ petition, it has been alleged by the writ petitioner that since a vacancy arose on account of the death of one of the original partners of the private respondent no.6 firm, such vacancy has to be filled up from the legal heirs of the said deceased partner on compassionate ground, failing which the State/respondents are duty bound to declare a new vacancy under the provisions of the Control Order, 2003. At the time of hearing of the instant writ petition Mr. Saha, learned advocate for the writ petitioner draws attention of this Court to Clause 23 of the Control Order, 2003. Attention of this court is also drawn to the impugned licence dated 12.04.2012, the photocopy of the reply letter dated 28.04.2016 as written by S.P.I.O of the State respondents indicating that an outsider cannot be included as a partner for M.R Distributorship on compassionate ground. Attention of this Court is also drawn on behalf of the writ petitioner to page 25 of the writ petition wherefrom it reveals that S.P.I.O of the State/respondents on an application made by the writ petitioner under the provisions of the Right to Information Act, clearly indicated that in 2003 Control Order there was no such provision to include an outsider as a partner in M.R Distributorship on compassionate ground. It is argued on behalf of the writ petitioner that since the inclusion of an outsider namely; Dinesh Kumar Agarwala in the partnership firm of private respondent no.6 in place and stead of one of the

original partners namely; Jagadish Prasad Sharma is foreign to the Control Order, 2003, the State/respondents ought not to have issued the said licence dated 12.04.2012 in favour of the aforementioned reconstituted partnership firm i.e. private respondent no.6. It is further argued by Mr. Saha that in the event such licence was not issued in favour of the reconstructed partnership firm of private respondent no. 6, the present petitioner could have got the opportunity to make application for the said distributorship on a declaration of a fresh vacancy due to cessation of licence in favour of the newly reconstructed partnership firm of private respondent no.6. It is thus submitted that an appropriate writ be issued for declaration of the vacancy quashing the licence dated 12.04.2012.

2. In support of his contention Mr. Saha, learned advocate for the writ petitioner placed his reliance upon the following reported decisions:-

- I. **Mehsana District Central Cooperative Bank Ltd. And Others vs. State of Gujarat and Others reported in (2004) 2 SCC 463**
- II. **Barun Ghosh vs. Goutam Kumar Saha and Ors. Reported in (2011)4 WBLR (Cal) 231**
- III. **Commissioner Of Income Tax vs Anjum M.H.Ghaswala & Ors reported in (2002)1 SCC633**
- IV. **State of Haryana vs. Chandra Mani and others reported in AIR 1996 SC 1623.**

3. While opposing the contention of the writ petitioner Mr. Basu, learned Sr. Advocate on behalf of the private respondent no.6 argued that the present writ petitioner is not entitled to get any relief since on account of the inordinate and unexplained delay, the grant of relief as prayed for has become time barred. Drawing attention to the different provisions of Control Order,2003

vis-a-vis Control Order, 2013, it is argued that with the implementation of Control Order 2013, Control Order 2003 has been repealed and since the instant writ petition was filed long after repealing of Control Order, 2003 when Control Order, 2013 was in force the present writ petitioner cannot seek any relief under the repealed Control Order of 2003. Mr. Basu, learned Sr. Advocate for the private respondent no. 6 in course of his argument draws attention of this Court to the judgement as passed in WPA 17857(W)/13 by a Coordinate Bench of this Hon'ble High Court. It is argued that in the said judgement the reconstitution of the partnership firm of the private respondent no.6 was under challenge and by the said judgement dated 25.07.2014 this Hon'ble Court affirmed the reconstitution of the partnership firm of the private respondent no.6 and accordingly the present writ petitioner cannot raise the self same point in this writ petition afresh. It is argued further that since the vacancy arose on account of death of a partner of the private respondent no.6 partnership firm, in view of the provisions of the Clause 23 of 2003 Control Order, the State/respondents are very much justified in not issuing any fresh notification or vacancy. Mr. Basu, learned Sr. Advocate in course of his argument also submitted that under no stretch of imagination the present writ petitioner cannot be considered as a person aggrieved and thus the present writ petitioner is not entitled to any relief as prayed for. Mr. Basu, learned Sr. Advocate for the private respondent no.6 places his reliance upon the following three reported decisions namely:-

i)State of M.P and others Vs. Nandalal Jaiswal and others reported in (1986)4 SCC 566;

ii)Bar Council of Maharashtra vs. M.V Dabholkar and others reported in (1975) 2 SCC 702;

iii)Shripal Bhati and Anr. vs. State of Uttar Pradesh and Others reported in (2020)12 SCC87.

Mr. Basu, learned Sr. Advocate for the private respondent no.6 urges that the instant writ petition be dismissed.

4. Mr. Jaharlal Dey, learned advocate duly assisted by Mr. Pranab Halder, learned advocate for the State in course of their submission practically echoes the argument as advanced by Mr. Basu. It is submitted that after passing of the judgement dated 25.07.2014, in WPA No. 17857(W)/13, if any contrary decision is taken in this writ petition, that will violate the established principle of judicial discipline and as such the present writ petitioner is not entitled to any relief as prayed for. It is further submitted that since the present writ petitioner is a rank outsider, he has got no legal right to challenge the licence in question since the State /respondents are very much justified in not declaring the vacancy on account of death of the one of the partners of the private respondent no.6 partnership firm. It is thus submitted that the present writ petition may be dismissed.

5. This Court has meticulously gone through the writ petition and the affidavits-in-opposition as used by the State/respondents as well as the private respondents no.6. This Court has given its due consideration over the submissions of the learned advocates for the contending parties. This court has meticulously gone through the reported decisions as cited from the Bar.

6. For effective adjudication of the instant writ petition this Court proposes to look to the Clause 23 of the Control Order ,2003 and the same is reproduced herein in verbatim:-

“23. Appointment of Distributor.- (i) in the event of a vacancy arising out of death or resignation of an existing Distributor or for better functioning of the PDS in a particular area, the vacancy is to be declared with the approval of the Government. The concerned SCFS will report the vacancy to the respective DCFS within 10 days from the date of receipt of the vacancy report and the DCRS will transmit the same to Director-DDP &S for necessary action in the matter. The Director –DDP &S after obtaining necessary approval from the Government shall declare such vacancy through public notification/advertisement in the concerned SCFS/DCFS officer for new vacancy only. Where vacancy arises due to death, incapacitation on medical ground for existing Distributor, such vacancy shall not initially be notified. In such cases, prayer of the legal heirs will be considered with preference on compassionate ground provided required minimum qualifications are fulfilled, if out of several legal heirs, one legal heir is the claimant, he is to submit no objection of other legal heirs along with his prayer.

This order will not take effect when both husband and wife possess separate licences and one of them dies, Government is the final authority for such appointment.”

7. Keeping in mind the aforementioned provisions of Control Order, 2003 this Court proposes to look to Clause 11 of the impugned licence dated 12.4.12 which reads as under:-

“The licence will cease to be valid in the event of death or resignation of the licensee or reconstitution of a partnership firm or transfer of interest of the licensee in his business”

8. From the aforesaid clause it thus reveals that the licence under the Control Order,2003 became invalid in the event of death of the licensee or

reconstitution of a partnership firm. From the various replies as given by the State respondents through its S.P.I.O, it appears to this Court that an outsider cannot be included as a partner for MR Distributorship on compassionate ground under the Control Order, 2003. On perusal of the entire materials as passed before this Court there is no doubt in the mind of this Court that on account of death of Jagadish Prasad Sharma, one of the original partners of the private respondent no.6, one outsider Dinesh Kumar Agarwala, was included in the partnership business of private respondent no.6. It is worthy to mention herein that for some reason or others, none of the legal heirs of the deceased Jagadish Prasad Sharma was included in the said partnership firm.

9. In view of such, the moot question arises as to whether the inclusion of an outsider in the partnership firm of private respondent no.6 can be held to be valid under the provisions of 2003 Control Order. On conjoint perusal of Clause 23 of the Control Order, 2003 vis-à-vis the replies of the State respondents in answer to the various RTI applications made by the present writ petitioner, it has become crystal clear that under the Control Order, 2003 an outsider cannot be included as a partner for MR Distributorship on compassionate ground and at the same time reconstitution of a partnership firm by including an outsider for whatever reason has the effect of cessation of licence as issued in favour of the said partnership firm. In view of such, this Court holds that since the legal heirs of the original partners Jagadish Prasad Sharma, was/were not included in the partnership firm, the State/respondents ought to have declared vacancy afresh under the provisions of Control Order, 2003 and therefore the State/respondents ought not to have

issued a fresh licence dated 12.04.2012 in favour of the reconstituted partnership firm of private respondent no.6.

10. In considered view of this Court the view taken by the Hon'ble Supreme Court of India in **Mehsana District Central Cooperative Bank Ltd** case (supra) is very much relevant for the purpose of disposal of this instant writ petition and the relevant portion of the said judgement is as under:-

“In the facts and circumstances stated above, the High Court by the impugned order issued a writ of mandamus, directing respondent Nos. 4 and 5 to take appropriate action against the appellants in accordance with the provisions contained in the Gujarat Cooperative Societies Act and the rules framed thereunder. We do not see any infirmity in the impugned order. The Acts and Rules are made to be followed and not to be violated. When the Statute prescribed the norms to be followed, it has to be in that fashion. Converse would be contrary to law. If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if the concerned authorities do not perform their statutory obligation, as in the present case, any aggrieved citizen can always bring to the notice of the High Court about the inaction of the statutory authorities and in such event it would always be open to the High Court to pass an appropriate order as deemed fit and proper in the facts and circumstances of the case.”

11. In the reported decision of **Barun Ghosh (supra)** reliance was placed upon the reported decision of **Mehsana (supra)** and accordingly the same view was taken by the Hon'ble Division Bench of the High Court at Calcutta. In the reported decision of **Anjim M.H Ghaswala and Others (supra)** the Hon'ble Supreme Court of India while dealing with the authorities of the State expressed the following:-

“27.It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.”

12. On perusal of the aforesaid three reported decisions it thus appears that in the case in hand the State respondents prior to issuing the impugned licence dated 12.04.2012 ought to have perused Clause 23 of Control Order, 2003 and thus must not issue licence in favour of the private respondent no.6 especially when it is the clear admission of the State/respondents that under the provisions of Control Order, 2003 inclusion of an outsider as a partner in MR Distributorship Firm is impermissible and therefore, the State authorities are bound declare the vacancy afresh under the 2003 Control Order.

13. So far as the locus standi of the present writ petitioner is concerned in challenging the impugned licence, the matter is set at rest in view of the decision taken by the Hon'ble Supreme Court in **Mehsana (supra)** case where it has been categorically observed that any aggrieved citizens can always bring to the notice of the Court the inaction of the statutory authorities and/or if it is found that the State Authorities have acted contrary to the statutory requirement and thus failed to perform their statutory obligation.

14. In considered view of this Court the reported decision of **M.V Dabholkar (supra)** supports present writ petitioner instead of private respondent no.6 since before this Court the present writ petitioner ventilates his genuine grievance for not getting opportunity to apply for MR Distributorship in the relevant location because of issuance of licence of the State/respondents in favour of the private respondent no.6 violating the relevant provisions of 2003 Control Order. In view of the aforesaid discussion, this Court also finds that

the decision of **Shripal Bhati (supra)** is of no help to the private respondent no.6.

15. In considered view of this Court the reported decision of **Ritesh Tewari and Another vs. State of Uttar Pradesh and Others reported in (2010) 10 SCC 677** as cited from the side of the writ petitioner is very much relevant wherein the Hon'ble Supreme Court expressed the following :-

"It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironical to permit a person to rely upon a law, in violation of which he has obtained the benefits. (Vide Upen Chandra Gogoi Vs. State of Assam & Ors., (1998) 3 SCC 381; Satchidananda Misra Vs. State of Orissa & Ors., (2004) 8 SCC 599; and Regional Manager, SBI Vs. Rakesh Kumar Tewari, (2006) 1 SCC 530).

27. In C. Albert Morris Vs. K. Chandrasekaran & Ors., (2006) 1 SCC 228, this Court held that a right in law exists only and only when it has a lawful origin.

28. In Mangal Prasad Tamoli (dead) by LRs. Vs. Narvadeshwar Mishra (dead) by LRs. & Ors., (2005) 3 SCC 422, this Court held that if an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside."

16. In considered view of this Court the alleged delay in filing the instant writ petition that too after repealing the Control Order, 2003 with the introduction of the Control Order, 2013 is not much fatal since the present State/respondents as well as private respondent no.6 cannot take advantage of their own wrong as committed by them and as discussed hereinabove.

17. In view of the discussion made hereinabove, this Court holds that the impugned licence no. 36 dated 12.4.2012 by the State/respondents in favour of private respondent no.6 cannot be considered to be a valid one and the same has been issued contrary to the provisions of Control Order, 2003 and

thus the same is liable to be quashed. Accordingly, the instant writ petition succeeds.

18. The State/respondents more specifically State-respondent no.4 is hereby directed to cancel the licence no. 36/WB/PDS/MID(S) dated 12.04.2012 as issued in favour of the private respondent no.6 within six weeks from the date of passing of this order with a direction to proceed to fill up the vacancy in accordance with the prevailing Control Order.

19. There is no order as to costs. Parties to act on server copies of this order.

20. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)