

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 30202 of 2014
With
CAN 1 of 2016 (Old No. CAN 11143 of 2016)
Raghunandapur S.K.U.S. Ltd. & Anr.
Versus
The State of West Bengal & Others

For the petitioner	:	Mr. Debabrata Saha Roy Mr. Ziaul Haque Mr. Himadri Kumar MahataAdvocates
For the State	:	Mr. Sushovan Sengupta Mr. Subir PalAdvocates
For the private respondent	:	Mr. Arindam Chattopadhyay Ms. Lipika Chatterjee Mr. Soumik Dey
Heard lastly on	:	23.03.2023
Judgment on	:	22.06.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for direction upon the respondent authorities not to give effect to and/or take further steps on the basis of the order in Memo No. 3010(9)/DCSF/MSD/14 dated 05.01.2014 and the order under Memo No. 2594(7)/S.Ganj/14 dated 11.11.2014.

2. Learned counsel for the petitioner, submitted as follows. Vacancy for MR Dealership was declared and advertisement was issued by the respondent authorities for appointment of M.R. Panchayat on 15.12.1992. In response of the said advertisement, the petitioner herein applied on 28.12.1992. That the Area Inspector (F & S) made enquiry into the matter and recommended the application of the petitioners hereof and the respondent no. 8 herein along with other 7 eligible candidates with the remarks “application may be considered”. In course of such enquiry Khadhya Sarbarah Sthyee Samity, Shamsorganj made recommendation to set up Godown at Khejurtala (Jotkashi) near village Raghunandanpur. On 31.01.1994 the Sub-Divisional Controller (F & S), Jangipur, considered such recommendation of the Khadhya Sarbarah Sthyee Samity, Shamsorganj directed that the case of the petitioners hereof (respondent no. 11 in W.P. No. 1857 (W) of 2021) might be considered if it offered another site for proposed godown at Raghunandanpur and a notice was issued upon the petitioners herein to provide a new site for the godown. In response to such notice the petitioners herein offered another site. In the mean time the respondent no. 8 herein challenged the recommendation of the Sub-

Divisional Controller (F & S) Jangipur, in a writ petition being C.O. No. 6241 (W) of 1994 and a stay of selection process was passed therein. The said writ petition was dismissed for default on 27.09.2005 and the respondent no. 8 herein moved another writ petition for the self same relief being W.P. No. 12309 (W) of 2010. The said writ petition was dismissed on 29.03.2012 by the Hon'ble Single Judge on the ground of second writ petition. The said respondent no. 8 preferred an appeal being MAT No. 724 of 2012 against the dismissal order dated 29.03.2012 and the Hon'ble Division Bench did not interfere with the impugned order dated 29.03.2012 passed by the Hon'ble Single Judge. The respondent no. 8 herein being the writ petitioner in C.O. No. 6241 (W) of 1994 renumbered as WP No. 6241 (W) of 1994 filed application for restoration and the W.P. No. 6241 (W) of 1994 was restored by the Hon'ble Single Judge. The petitioner herein respondent no. 11 in W.P. No. 6241(W) of 1994 preferred an appeal being FMA No. 2792 of 2013 and the Hon'ble Division Bench set aside the order of restoration and gave liberty to challenge the issuance of license. The respondent no. 8 filed a writ petition being W.P. No. 1857 (W) of 2014 (Kausar Ali Versus State of West Bengal & Ors.). On 18.07.2014 the Hon'ble Justice Joymalya Bagchi was pleased to dispose of the writ petition directing "....Accordingly, I am unwilling to interfere with the impugned order dated 31.03.1994 passed by the respondent no. 4 calling upon the inspector to enquiry into the matter as to whether respondent no. 11 was in a position to provide alternative site. However, the factual controversy as to whether respondent no. 11 had, in fact, offered plot no. 1976/2317, Khatian No. 3766, Mouza – Kankuria, in

respect of which the license has been issued, requires to be enquired into by the concerned authority. Accordingly, I dispose of the writ petition directing respondent no. 3 District Controller, to make enquiry into the matter and ascertain as to whether the respondent no. 11 had, in fact, offered the aforesaid plot in question in respect of which the impugned licence has been issued.....” The District Controller (Food and Supplies), by an order dated 05.11.2014, cancelled the license of the petitioner. The order of the District Controller was served by the Sub-Divisional Controller (Food and Supplies) on 11.11.2014. Challenging the order of cancellation, the present writ petition was filed. On 17.11.2014 this Court was pleased to stay the order of cancellation of the license of the petitioner. Thereafter time to time the interim order dated 17.11.2014 was extended and on 29.04.2016 this Court was pleased to pass an order that the interim order if any shall continue until further orders. During pendency of the writ petition, the Sub-Divisional Controller, Jangipur filed report as per order of the Hon’ble Court denying the application dated 22.05.2012 filed by the petitioner appearing at page 54 of the writ petition without any reason whatsoever and without annexing any document in the said report. The petitioner filed the reply to the report filed by the Sub-Divisional Controller by annexing all the supporting documents in respect of the enquiry done by the respondent authorities. The District Controller in the rejection order categorically stated that in pursuance of the order of the District Controller Shri Ashis Kumar Biswas, the Inspector under the establishment and Shri Sekhar Bhattacharya, area Inspector (Food and Supplies) Farakka were to cause an enquiry into the

matter vide office memo no. 2396/DCFS/MSD/14 dated 02.09.2014. Pursuant to the order of this Court passed on 18.07.2014, the District Controller made enquiry which was beyond the scope and ambit of the Court's directions. The District Controller was to make enquiry for considering whether the present petitioner (respondent no. 11 in W.P. No. 1875 (W) of 2014) had in fact offered the plot no. 1976/2317 before issuance of license dated 20.07.2012 or not? The District Controller ignored the enquiry report which was submitted by the enquiry team. This would appear at page 61 and 62 of the writ petition. The Manager of the writ petitioner had already adopted a resolution on 19.05.2012 as the earlier godown faced difficulties in distributing rationing commodities and ultimately for shifting of the godown from plot no. 1194 the said resolution was adopted which was annexed at page no. 52 of the present writ petition. The S.K.U.S. by letter dated 22.05.2012, made application before the then Sub-Divisional Controller, Food & Suppliers Department, Jangipur specifically stating about shifting at plot no. 2317. The authority duly received and docketed the same by putting seal and signature which had been annexed at page no. 55 of the present writ petition. On the basis of the prayer of the writ petitioners the then Sub-Divisional Controller, Food & Suppliers Department, Jangipur by a letter under Memo No. 1277/SCJ/12 dated 14.06.2012 directed the Area Chief Inspector (F & S) Shamsrganj Block to enquire into the proposed godown for storing M.R. Cereals for the said Society and to submit a report which has been annexed at page no. 61 of the present writ petition. The Area Chief Inspector caused an enquiry on

06.07.2012 whereby the said Inspector authenticated and selected the said plot no. 2317 by drawing a sketch map by putting seal and signature which the petitioners received a copy which was annexed at page no. 62 of the present writ petition. On being prima facie satisfied, the licensing authority granted licence in favour of the society on 20.07.2012 informing all other authorities. It is clear that the proposed site being plot no. 2317 was right and justified considering the enquiry reports and other ancillary papers. As per order of the Hon'ble Justice Joymalya Bagchi dated 18.07.2014 a fresh enquiry was conducted on 29.09.2014 by one Ashis Kumar Biswas and Shekar Bhattacharyya. They did not pay any heed to the same and they simply received those documents. Such statements has been stated in paragraph 21 of the writ petition. The District Controller exceeded his jurisdiction taking into other facts while passing the order of cancellation dated 05.11.2014 without adhering to the direction of the Hon'ble High Court's order dated 18.07.2014.

3. Learned counsel for the respondent no. 8 submitted as follows. By a notification dated 15.02.1992 issued by the Sub-Divisional Controller of Food and Supplies, Jangipur inviting application from the residents of Bogdanagar Gram Panchayet for appointment of M.R. Dealer at village Raghunandapur with particulars in prescribed form to be submitted by 22.12.1992 and accordingly, nine applicants submitted their applications. Enquiry report dated 05.01.1993 would evince that after consideration of Financial Condition and Godown, the Sub Inspector prepared enquiry report wherein Md. Kauser Ali/respondent no. 8 was shown as serial no. 1 and the

petitioner was shown in serial no. 7 and its Godown was beyond the advertised area of Raghunandanpur village. In spite of that the Samserganj Panchayat Samiti recommended the name of Raghunandanpur SKUS for allotting such appointment and challenging such recommendation, Kauser Ali moved a writ petition being C.O. No. 6241(W) of 1994 before this Court. This Court was pleased to pass an interim order of stay restraining the respondents from giving any appointment of M.R. Dealer in the Raghunandanpur village till disposal of the said writ petition and subsequently, the said writ petition was dismissed for default on 27.09.2005. For restoration of the dismissed for default order, Kauser Ali filed an application being CAN 4662 of 2010 and after hearing the parties, this Court was pleased to pass an order on 07.02.2013 allowing the restoration application subject to the payment of cost and challenging the said order, the present writ petitioner filed an appeal being MAT No. 1015 of 2013 and in the said appeal, the Division Bench of this Hon'ble Court was pleased to pass an order on 03.12.2013, whereby given liberty to Kauser Ali/Respondent no. 8 to initiate appropriate proceedings challenging the validity/legality of selection process with regard to the fair price shop in question. The petitioner in its original application had shown the Godown at plot no. 1194 of village Jotkashi, which was beyond the advertise area and accordingly, an enquiry report was prepared on 05.01.1993 showing the petitioner in serial no. 7 with a remark that Godown was beyond the advertised area. Subsequently by an letter dated 07.04.1994, the petitioner was directed to show a Godown at Raghunandapur village and accordingly,

one Godown was shown at plot no. 1900, Khatiyani No. 1857 at Kankuria Mouza. In the appointment of M.R. Dealer of the petitioner dated 20.07.2012, petitioner had shown a new Godown at plot no. 1976/2317, Khatiyani No. 3766, which was neither the original Godown nor the subsequent Godown offered by petitioner vide letter dated 15.04.1994. By a judgment and order dated 18.07.2014 passed in W.P. No. 1857 (W) of 2014, this Hon'ble Court specifically directed the District Controller to make an enquiry to ascertain where the petitioner had offered the plot no. 1976/2317 Khatiyani No. 3766 or not and to take steps accordingly and in terms of the said order the District Controller took up hearing and passed an order on 05.11.2014 with an observation that the SKUS failed to produce any such application in plain paper or in statutory form in support of its offered plot no. 1976/2317 and considering the enquiry report, the concerned authority took a decision for cancellation for fair dealership of the petitioner and accordingly by an order dated 11.11.2014, the Sub Divisional Controller cancelled the license of the petitioner. In the present writ petition the petitioner annexed a forged letter dated 22.05.2012 addressed to the Sub Divisional Controller in support of its new Godown at plot no. 2317, but said letter was not accompanied with receipt of the concerned authority and in the Writ petition at page no. 55 and 56, the petitioner annexed a lease agreement dated 23.06.2012 in support of new Godown at plot no. 2317 and said alleged agreement was executed after the date of offer letter dated 22.05.2012. For adducing false and fabricated evidence at page no. 54 to 56

of the writ petition, a proceeding under Section 340 of CrPC ought to be initiated by this Hon'ble Court by dismissing the writ petition with cost.

4. Learned counsel appearing on behalf of the State submitted as follows. It appeared that an inspection was done in respect of the earlier plot. Thereafter, licence was issued in respect of the plot purportedly offered at a subsequent stage. Reliance was placed on the order dated 18.07.2014 passed by this Court. In any event, the private respondent had no locus standi, either to question or to support the impugned order.

5. I heard the learned counsels for the parties and perused the writ petition, the affidavits, the available records and the written notes of arguments.

6. It appears that the issue at hand became subject matter of litigation in several earlier writ petitions. Finally, on 18.07.2014 this Court, after discussing the facts at length, passed the following directions in WP No. 1857(W) of 2014 -

“Accordingly I am unwilling to interfere with the impugned order dated 31.03.1994 passed by respondent no. 4 calling upon the Inspector to enquire into the matter as to whether respondent no. 11 was in a position to provide alternate site. However, the factual controversy as to whether respondent no. 11 had, in fact, offered Plot No. 1976/2317, Khatian No. 3766, Mouza Kankuria, in respect of which the licence has been issued, requires to be enquired into by the concerned authority.

Accordingly, I dispose of the writ petition directing respondent no. 3, District Controller, to make enquiry into the matter and ascertain as to

whether the respondent no. 11 had, in fact, offered the aforesaid plot in question in respect of which the impugned licence has been issued. In the course of such enquiry, respondent no. 3 shall give an opportunity of hearing to the petitioner as well as respondent no. 11. Respondent no. 3 will also be at liberty to make such further or other enquiry as he may deem fit and proper. Upon conclusion of such enquiry, he shall pass a reasoned order thereon. Such exercise shall be concluded within twelve weeks from the date of communication of this order. The decision so taken by respondent no. 3 shall be communicated to the parties within two weeks thereafter.

It is made clear that in the event respondent no. 3 comes to a conclusion that impugned licence was issued in respect of a plot which was not at all offered by respondent no. 11, it would be open to the respondent authorities to cancel the licence issued to respondent no. 11 in accordance with law.

There shall be no order as to costs.”

7. Therefore, the scope of acts to be performed by the respondent no. 3 was made absolutely clear by this Court. However, this is what the respondent no. 3 came up with in his impugned order -

“However he failed to produce any such application either in plain paper or in the statutory form. Also it is observed that the said resolution mentions a proposed godown under one Soharab Ali Biswas, S/O Eram Mondal but does not specify Dag & Khatian no. of the godown. Md. Kauser Ali the petitioner stated that no fresh enquiry was conducted against his application. From the enquiry order vide no. 1277/SCJ/12 dated 14.06.12 by the SCFS Jangipore it

is clear that the fresh enquiry was a unilateral one where no application other than Raghunandanpur SKUS Ltd. was considered.”

8. The respondent no. 3 seems to have gone beyond the mandate set by this Court and did not even do enough to comply with the directions.

9. First, it is not sufficient to say that the resolution did not specify the Dag and Khatian of the godown. If necessary, witnesses could have been examined, evidence could have been taken in this regard and records and documents properly perused.

10. The petitioner has alleged non-consideration of the report and relevant documents and has also relied on a few documents. The State is not in a position to support the contention of the respondent no. 8 that the document relied on by the petitioner is forged.

11. In fact, the respondent no. 3 records that there was an enquiry pursuant to which an order vide no. 1277/SCJ/12 dated 14.06.2012 was passed by the SCFS. It is thereafter recorded that the fresh enquiry was an unilateral one where no application other than that of the Raghunandanpur SKUS was considered. This portion is clearly beyond the ambit as delineated by this Court in its earlier order.

12. The only question to be answered was whether at the relevant time the petitioner had offered the particular plot in respect of which licence was granted.

13. On this score alone that the respondent no. 3 acted beyond the directions passed by this Court and contributed in confusing the whole issue, the impugned order dated 05.11.2014 ought to be set aside.

14. In view of the above, the impugned order dated 05.11.2014 and the consequent order dated 11.11.2014 are set aside and the matter is remanded back to the respondent no. 3 to consider the matter afresh and pass a reasoned order after hearing the concerned parties. The entire exercise should be completed within six weeks from the date of communication of this order. The result of such exercise shall thereafter be communicated to the parties within a week thereafter.

15. With these observations, the writ petition and the connected application are disposed of.

16. 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.)