

Item-
47. 09-01-2024

MAT 5 of 2024
CAN 1 of 2024

sg Ct. 8

Pawan Kumar Agarwal
Versus
Asit Kumar Mondal & Ors.

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Ramesh Dhara, Adv.
Miss. Mousumi Chakraborty, Adv.
Miss. Anju Manat, Adv.

...for the appellant

Mr. Debabrata Saha Roy, Adv.
Mr. Pingal Bhattacharya, Adv.
Mr. S. Das, Adv.

...for the private respondent

Mr. Suman Sengupta, Adv.
Mr. A. Chatterjee, Adv.
Mr. S. Panja

...for the State

1. The appellant filed a writ petition being WPA 8833 of 2023 in which an order was passed on 27th June, 2023 directing the State respondents to carry out an inspection and if the structure of the godown fulfils requirement, the respondent authority shall act in accordance with law regarding grant of licence of wholesale under Urban Public Distribution (Management and Control) Order, 2013.
2. Subsequently, the learned Single Judge in the writ petition filed by the private respondent being WPA 27955 of 2022 passed an order on 2nd August, 2023 disposing of the writ petition on the basis of the submission made by the learned Advocate General that none of the applicants applied pursuant to the vacancy notification met by requiring specifications specified in the vacancy notice and the application stand rejected.
3. The learned Single Judge disposed of the writ petition on the

basis of the aforesaid order. However, what has been missed out is that, in the writ petition the private respondent has challenged the very jurisdiction of the authority concerned to issue the notification dated 29th July, 2022 and pursuant whereof, the vacancy notification had taken place and applications were invited.

4. The learned Single Judge observed that the Court does not consider the submission made by Ms. Amrita Panja Moulick that the entire notification dated 29th July, 2022 was cancelled as the said submission is not factually correct in view of the letter dated 6th March, 2023. Ms. Moulick represented the private respondent in the said proceeding. Hence, it is clear that there has been no adjudication with regard to power and jurisdiction of the authority concerned to issue the notification dated 29th July, 2022.
5. In fact, in the earlier writ petition, it was confined to the declaration of vacancy notice dated 29th July, 2022 and not any subsequent events. It is pertinent to mention that the appellant did not apply pursuant to the declaration of the earlier vacancy notice. In the earlier writ petition, the private respondent has stated that the writ petitioner was very much interested to carry out rationing business and started searching for a suitable godown to set up wholesale business under the Public Distribution System. It was only upon declaration of vacancy notifications that he challenged the entire process in which it has duly questioned the jurisdiction of the authority concerned to issue the notification. However, as observed earlier, the notification was not set aside by the

learned Single Judge while disposing of the earlier writ petition meaning thereby, that the submission made on behalf of the private respondent that the order dated 6th March, 2023 would automatically nullify the notification, was not accepted.

6. The present appellant has challenged the order of 6th March, 2023 by which his application was rejected. It is true that in the proceeding, the jurisdiction to issue notification was not gone into as it was not raised. The learned Single Judge on consideration of the materials on record, found that the appellant had complied with certain requirements and direction was given upon the Directorate Level Selection Committee to carry out certain inspection and it is only after fulfilment of some criteria. The authority may consider granting licence under 2013 order. The appellant, pursuant to the aforesaid order, has complied with all the directions and fulfil the requirement to the satisfaction of the Directorate and accordingly, was granted the licence on 3rd November, 2023.
7. The present writ petition has been filed by private respondent challenging such allotment in which it was contended that by reason of an earlier interim order passed by the learned Single Judge on 2nd January, 2023, the subsequent order dated 27th June, 2023 could not have been passed. It appears that on 2nd January, 2023, the learned Single Judge was prima facie satisfied with the submission made on behalf of the private respondent that in the Central Control Order, 2015, there was no provision for wholesaler and on such prima

facie view, the respondent was directed not to finally appoint any candidate in terms of the vacancy notification in question. However, they may proceed with the selection process. On 6th March, 2023, the order of the Government shows that none of the applicants could fulfil all the requirements. It is not in dispute that the private respondent did not apply in terms of the said notification.

8. In the aforesaid conspectus, the impugned order has to be assessed. The Court needs to be very careful in dealing with the interim order where licence has already been granted by a competent authority in terms of an order of the Court unless, the Court is of the prima facie opinion that the order obtained on 27th June, 2023 is nullity or obtained fraudulently, any benefit that has accrued in favour of a litigant should not be disturbed. It is only one of the cases where an arguable case has been made out by the respondent for which a drastic order is admissible.
9. Pursuant to the order passed by the learned Single Judge, licence has already been issued in favour of the appellant on 3rd November, 2023. The Court seems to have overlooked that there has been no adjudication on the notification which was the subject matter of challenge in the earlier writ petition. This issue could have been considered if the said notification was set aside and in suppression thereof, an order is snatched from the Court thereby benefiting a litigant illegally. There is no fraudulent intent inherent in the proceeding. It seems that the present writ petition has been filed on the basis of an observation made in the order dated

2nd August, 2023 that the order disposing of the earlier writ petition filed by the private respondent as infructuous, would not disentitle the petitioner to file a fresh writ petition, if so advised. It needs to be seen in the said subsequent proceeding to which extent the writ petitioner can challenge the action of the Government in granting the licence to the private respondent.

10. On such consideration, we vacate the interim order.

However, we make it clear that the grant of licence and any steps taken by the appellant with regard to the licence, shall abide by the result of the writ petition. The appeal and the application are thus, disposed of. However, there shall be no order as to costs.

11. We make it clear that the views expressed by us, are prima facie and shall not influence the learned Single Judge in deciding the writ petition on merit.

12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)