

04 **18.01.**
2024

Ct. No. 04

Ab & Akd

MAT 296 of 2022
IA No. CAN 3 of 2022
IA No. CAN 4 of 2022

Shakuntala Devi Kataruka
Vs.
M/s. Sonai Food Marketing Private Limited
and others.

Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das.

... for the appellant.

Mr. Kalyan Bandyopadhyay,
Mr. Ram Anand Agarwal,
Ms. Nibedita Pal,
Mr. Ramesh Dhara,
Mr. Ananda Gopal Mukherjee,
Ms. Sonam Ray.

... for the respondent no. 1 & 2.

Mr. Sirsanya Bandyopadhyay,
Mr. Arka Kumar Nag.

... for the State.

The instant appeal is at the instance of the appellant being a third party to a writ proceeding being WPA 10846 of 2021 alleging that the order disposing of the said writ petition prejudicially affected her right and, therefore, she has satisfied the ingredients of a 'person aggrieved'.

A leave to appeal was sought and the Co-ordinate Bench disposed of the said application on 8th April 2022 granting leave to appeal with a rider that the grant of leave is restricted on the reasons stated therein and shall not be construed to have any impact on the merit of the matter, which would be considered when the appeal is listed for admission.

A little prelude to the genesis of the litigation is required to be recapitulated in order to ascertain whether the point agitated in the instant appeal deserves any merit. A writ petition was filed by the respondent no. 1

assailing the order of the competent authority whereby and whereunder the application for MR Distributorship in respect of Raghunathpur-II in the district of Purulia was rejected on a solitary ground of being the company.

The aforesaid application was taken out by the respondent no. 1 pursuant to the Notification dated 16th January 2019 issued by the Office of the District Collector, Food & Supplies, Purulia, Government of West Bengal for engagement as Distributor in Raghunathpur-II in the district of Purulia. Immediately after the said Notification, spate of litigation started pouring to this Court assailing the legality and validity of the said Notification and ultimately by an order of this Court, the authorities decided to withdraw the aforesaid Notification.

The order of withdrawal was assailed by one of the aspiring candidates, which traveled up to the Supreme Court and the resultant effect appears to be that the order of withdrawal was quashed and set aside. As a corollary effect, the said Notification dated 16th January 2019 was resuscitated and it was imperative on the part of the authorities to proceed with the applications filed by the aspirants on the basis of the said Notification dated 16th January 2019. The order setting aside the order of withdrawal by the Government having attained finality, there is no impediment on the part of the authorities to proceed on the basis of the said Notification dated 16th January 2019, which, in fact, has been done in relation to an application filed by the respondent no. 1.

As indicated above, the rejection was founded solely upon the count that the respondent no. 1 being the company is neither an individual nor a group of individuals, which is one of the essential conditions enshrined in the said Notification. By the impugned order dated 23rd February 2022, the Single Bench accepted the contention of the respondent no. 1 that the company has a legal entity comprising of the group of individuals and,

therefore, the decision of the authorities in arriving at the decision that the company cannot be equated with the group of individuals is untenable and unacceptable. Ultimately, the Single Bench directed the authorities to proceed with the application filed by the respondent no. 1 in accordance with law.

Such being the substratum of facts discerned from the record, the first and foremost point, which emerged in the instant case, is whether the appellant can be held to be a 'person aggrieved'. Though the leave to appeal was granted by the Co-ordinate Bench on 8th April 2022, but subsequently by an order dated 12th April 2022, the Co-ordinate Bench was apprised of the fact that the leave to file an appeal was granted on the basis of wrong facts having placed before the Court and an order was passed that the observations made in an order granting leave to appeal is a prima facie opinion and shall be decided at the time of final hearing of the proceeding.

The conjoint reading of the aforesaid two orders manifestly indicate that the order granting leave to appeal was tentative and no final opinion was expressed by the Co-ordinate Bench and, therefore, at the time of hearing of the instant appeal, there is no impediment on the part of this Bench to consider the aforesaid plea on the well-known legal parameters.

Mr. Kalyan Bandyopadhyay, learned Senior Advocate appearing for the respondent no. 1 and 2, vehemently raises an issue of locus of the appellant satisfying the ingredients of 'person aggrieved' and submits that the nature of the order cannot act prejudicially to the interest of the appellant and, therefore, she cannot be regard as a 'person aggrieved' to maintain the instant appeal. It is vociferously submitted that the ultimate decision taken in the impugned order does not affect the right of any person as the Single Bench directed the authorities to consider the application filed by the respondent no. 1 afresh on the basis of the

law applicable in this regard and, therefore, in absence of any decision taken by the authorities, no prejudice can be presumed to be caused to the appellant.

Though a plea of locus against the appellant as 'busy body' is taken, but according to Mr. Bandyopadhyay, if the point, which he agitated, is decided in affirmative, there is no necessity of entering into the above aspect.

On the other hand, Mr. Debabrata Saha Roy, learned Advocate appearing for the appellant, submits that though the leave to appeal was granted on 8th April 2022 by the Co-ordinate Bench, but in a later order dated 12th April 2022 there is an express recording to the effect that such leave is tentative in nature and all points agitated in the instant appeal shall be decided at the time of final hearing including the one with regard to the locus as 'person aggrieved'. He submits that clause (2) and (7) of the said Notification dated 16th January 2019 postulates that the application cannot be made by a group of individuals, who are not residents of the locality for which such application for MR Distributorship is made nor entitles a group of individuals to be considered eligible for such MR Distributorship, if they are holding the licence in respect of any other area. He further submits that the respondent no. 1 has a subsisting licence of MR Distributorship in other area and, therefore, she is not entitled to be considered for MR Distributorship of Raghunathpur-II in the district of Purulia. As a last resort, it is contended by Mr. Saha Roy that, while considering the application, the authority must afford an opportunity of hearing to his client as she has sufficient material to disclose on the ineligibility of the respondent no. 1.

The object and purport of engagement of Distributor or a Dealer can be envisioned from the control orders that the same is intended for maintaining the supply of the essential commodities under the Public Distribution

System. The object is further laudable from the aforesaid purpose that any Notification relating to the engagement of a Distributor or a Dealer is to ensure better functioning of the Public Distribution System in a particular area and the power has been vested upon the authorities to examine the proposals and to fill up the vacancies as and when the same arise.

The moment the applications are invited, the authorities have to make a subjective satisfaction not only on the ground of eligibility but suitability as well and, therefore, we do not find that there is any scope of adhering the principle of *audi alteram partem* in this regard. Even the applicant cannot claim the right of hearing at the time of determining the suitability and/or eligibility of its candidature and, therefore, a third party even if she has some grievance cannot seek that she should be afforded an opportunity of hearing at the time of taking a decision on the application filed by the aspirant.

We, therefore, cannot countenance the submission of Mr. Saha Roy that he should be given an opportunity of hearing at the time of considering the application of the respondent no. 1.

Having given an anxious consideration on the issues raised before us, the first and foremost point involved in the instant appeal relates to the locus of the appellant as 'person aggrieved' in the context and perspective of the impugned order. The Notification dated 16th January 2019 embodied within itself certain conditions as eligibility criteria for the purpose of consideration to grant licence for MR Distributorship in Raghunathganj-II in the district of Purulia. The application was initially dismissed by the authorities as the respondent no. 1 is incorporated as company and to the judgment of the authorities it does not satisfy the conditions relating thereto. In other words, the authorities were of the view that the company cannot be

equated with the individual or a group of individuals and, therefore, their application is liable to be rejected.

By the impugned order, the Single Bench has held that the company being a legal entity is in effect a group of individuals and, therefore, the decision of the authorities in this regard is not proper and/or appropriate. There does not appear to be any dissent in the instant appeal with regard to the locus or the eligibility of the respondent no. 1 to make an application for MR Distributorship in the said block as a company. Even Mr. Saha Roy does not make any submissions thereupon; rather accepted the portion of the decision impugned in the instant appeal that the company is liable to offer its candidature for such Distributorship but raises an issue that having already obtained a subsisting licence of similar nature in another area, the respondent no. 1 has disentitled itself to be considered for MR Distributorship in the said block.

We, therefore, need not venture to go into the aforesaid aspect and proceeded to decide the point of locus treating that the respondent no. 1 is otherwise eligible as a company to make an application under the aforesaid Notification. The point, which is urged by Mr. Saha Roy, relates to the satisfaction of the conditions imposed in the said Notification and, according to him, there are cogent materials available with his client, which would be sufficient enough to dislodge the claim of the respondent no. 1 having offended one or two of the conditions incorporated therein.

We do not think that the ultimate decision taken in the impugned order has foreclosed the right of the respondent no. 1 nor it closes the doors of the authorities in not considering the application on the basis of the conditions incorporated in the said Notification. The impugned order neither bestowed any right as a successful candidate nor any imposition is made upon the authorities to decide the said application in one way

or other. The order is innocuous to the extent that the authorities have to proceed with the application filed by the respondent no. 1 and it is obvious that the authorities shall take into account all the conditions attached to the said Notification and shall take an independent decision in this regard.

Since no decision has yet been taken, the right of the appellant does not appear to have been infringed and, therefore, the plea of 'person aggrieved' does not appear to be sound and logical at this stage. The concept of 'person aggrieved' originates on a principle that if an order is passed in a proceeding between the litigants affecting the right of a third party, who is not impleaded in the proceeding, such third party may assailed the said order before the higher forum upon seeking leave to appeal. The grievance has to be judged in the context on the decision taken by the original authority or the Court of first instance on the basis of the cause of action pleaded therein and the tenet of the ultimate decisions. Merely a proceeding is initiated and the ultimate decision does not affect the right as no final decision has been taken, as in this case, the appellant cannot be said to be 'person aggrieved' to maintain an appeal as a 'person aggrieved'.

Since all the points were kept open including the point of locus and having held so that the appellant does not have a locus as a 'person aggrieved', we do not venture to decide the other issues raised in the instant appeal. We have been given to understand that several litigations are pending in the docket of this Court in relation to a distribution system within the State of West Bengal on various grounds including the grounds, which have been taken in the instant appeal, therefore, it would be apposite to record that those points shall not be treated to have been decided by us in the instant appeal, impliedly or expressly.

Since our judgment is restricted to locus of the

appellant to maintain the appeal as 'person aggrieved', therefore, all other issues are undecided and kept open and if taken in any other proceedings, be it collateral or otherwise, shall not be construed to have been impliedly decided by us in the instant appeal.

Since we held that the appellant is not a 'person aggrieved' in view of the nature of the ultimate decision taken in the impugned order, the leave to file appeal is rejected. As a consequence whereof, the instant appeal and the connected applications are, accordingly, dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)