

WPA 9680 OF 2022

10.12.2024

Sl no. 7

Ct no. 24

P.M.

M/s. Sonai Food Marketing Pvt. Ltd. & Anr.

- Vs -

The State of West Bengal & Ors.

Mr. Ram Anand Agarwal,
Ms. Nibedita Paul,
Mr. Ramesh Dhara,
Mr. Ananda Gopal Mukherjee,
Ms. Soham Roy,
Ms. N. Khatoon

... for the Petitioners

Mr. Joyak Kr. Gupta

... for the State

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This is a third round of litigation of the petitioners before this Court.

Petitioners applied for M.R. distributorship licence under the authority concerned. Before the second round of litigation this Court in several writ petitions has directed the authority concerned to consider the representations. Lastly in WPA NO. 5469 of 2021 this Court has directed the concerned authority to dispose of the application of the petitioner for granting M.R. Distributorship licence at the concerned block. After hearing the parties the concerned authority has passed the reasoned order on 23rd May, 2022.

The operative portion of the said order is as follows : -

“ It appears from scrutiny of papers and verification of records that M/s. Sonai Food Marketing Pvt. Ltd. of 24/1, Bethune Row, Kolkata 700006 is holding a M.R. Distributorship vide License No. BUR-BUR-S(S)-21/(PROV.)/02 dated 09/11/2021 and business at Surekalna, Mouza-Kansra, Plot No. 2585, LR Khatian No. 1748, JL No. 044, Block - Jamalpur, P.S. – Jamalpur in Purba Bardhaman district. And so, your farm fails in respect of eligibility criteria No. 07 of Notification Memo No. 1943 /DCF&S/N-24Pgs/Estt/2019 dated 09.01.2019 on the ground that your farm already possess a Distributorship license.”

Mr. Agarwal, learned counsel appearing on behalf of the petitioners submits that the observation of the concerned District Controller, Food and Supply is de hors to the law declare by this Court. He submits tht the same issue was raised before this Court in Writ petition No. WPA 2836 of 2021. In the said writ petition the petitioners therein have challenged the similar vacancy notification of identical date but for different blocks, challenging the

constitutional validity of Clause No. 1, 2, 7 and 8 of the said notification. The Clause No. 7 of the notification which was under challenge before this Court in WPA No. 2836 of 2021 is identical to the Clause No. 7 of the impugned notification being notification No. 1943 /DCF&S/N-24Pgs/Estt/2019 dated 09.01.2019.

Mr. Agarwal submits that when this Court has declared a clause of notification to be ultra vires and which was struck down, the District Controller/concerned authority is legally not empowered to dispose of any representation by citing the said Clause in the notification again. He further submits that the authority has acted illegally and only to show the grudge against the present petitioner has passed the impugned order denying the M.R. Distributorship in favour of the present petitioners.

Learned counsel appearing on behalf of the State authority submits that the impugned Clause No. 7 of the notification dated 9th January, 2019 was not challenged before this Court.

He further submits that the instant writ petition is not at all maintainable. He again submits that the petitioner has applied for distributorship

licence knowing the clauses of the notification, now they cannot challenge one clause of such notification.

Learned counsel for the State authority submits that petitioner legally estopped to challenge the said clause after applying the licence on the basis of such advertisement.

Having heard the learned counsel for the parties also considering the materials on record it appears to me that the present petitioner is roaming before this court thrice for getting licence, reasons thereof he was debarred by the authority concerned for different grounds. On the other litigations this Court has directed the authority concerned to allow the petitioner to file application for getting licence . All the time the concerned authority is denying the distributorship licence in favour of the petitioner on several pretext. Now the concerned District Controller, Food and Supply by citing the eligible criteria in clause 7 of the impugned notification, is of view that the petitioner is holding M.R. Distributorship licence thus his candidature cannot be considered for giving distributorship licence.

I make it clear that when a clause of notification has been declared before this Court to be ultra vires, and as the State authority has not

preferred any appeal against the said order, the order passed by this Court become binding upon the State authority. The State authority now again cannot deny the M.R. Distributorship licence of the petitioner on the said eligible criteria which was already declared as ultra vires in several writ petitions.

I can understand that this Court has declared a Clause of a vacancy notification to be ultra vires which is in respect of separate location but it appears that, the clause which was declared to be ultra vires is identical to the clause of impugned notification vide Memo No. 1943 dated 09.01.2019.

Under the above observation the impugned letter /communication dated 23rd May, 2022 is hereby quashed.

Petitioner is roaming around before the door this Court for quite long time thus I consider it necessary to issue a direction upon this concerned authority to provide M.R. Distributorship licence in favour of the petitioner if he is otherwise eligible according to law within eight weeks from the date of communication of this order.

Under the above observation this writ petition being WPA 9680 of 2022 is disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties after observing all legal formalities.

(Subhendu Samanta, J.)