

13.03.2024
SI No.3
Court No.8
(gc)

MAT 1447 of 2023
CAN 1 of 2023
CAN 2 of 2023

The State of West Bengal & Ors.
Vs.
Kartick Chandra Pal & Ors.

Mr. T.M. Siddiqui, A.G.P.,
Mr. Amrita Lal Chatterjee
...for the Appellants.
Mr. Ramesh Dhara,
Ms. Mousumi Choudhury
...for the Respondents.

Re: CAN 1 of 2023

1. There is a delay of 53 days in filing the memorandum of appeal.
2. Sufficient cause being shown for not being able to file the memorandum of appeal within the period of limitation.
3. The delay of 53 days in filing the memorandum of appeal is condoned.
4. Accordingly, the application for condonation of delay is allowed and disposed of.

Re: MAT 1447 of 2023
CAN 2 of 2023

5. The appeal is arising out of an order dated 10th April, 2023 in a writ petition in which the private respondents have challenged, inter alia, the impugned order dated 22nd

December, 2022 passed by the Joint Secretary, Department of Food and Supplies and the notice dated 2nd January, 2023 issued thereafter by which the empanelment of the petitioners' Flour Mill for the district of Birbhum was cancelled. The matter has a chequered history. Previously, two writ petitions were filed being WPA 1447 of 2022 and WPA 12264 of 2022 by the writ petitioners raising issues with regard to their entitlement to empanelment and those issues were considered in favour of the writ petitioners with a direction to consider the representation of the writ petitioners in accordance with law.

6. The petitioners are the partners of one M/s. Ma Fullara Flour Mill which is engaged in the business of grinding of wheat into fortified atta/wholemeal atta in the district Birbhum. They have been carrying their business since 2009 until the notice was served upon them on 2nd January, 2023. The immediate grievance of the writ petitioners was that in terms of the Guidelines of 2017, the applications were invited from the roller flour

mill/chakki mills in 2016 pursuant to which they submitted their applications but they were not selected for which they made several representations.

7. In the first round of limitation, a direction was passed upon the respondents on 12th May, 2022 to inspect the petitioners' flour mill which they did and finally they rejected the prayer of the petitioners for empanelment without considering the case of the petitioners. This was followed by a second writ petition being WPA 12264 of 2022 in which an order passed on 10th November, 2022 by which the respondent No.2, that is the Joint Secretary, Food & Supplies Department was directed to consider the petitioners' case afresh after giving an opportunity of hearing to the petitioners within four weeks from the date of communication of that order. The writ petitioners alleged that the date of hearing was fixed on 6th December, 2022. This is a clear case of administrative mala fide that the concerned respondent went on a nitpicking spree to fish out one pretext or the other to delay the inevitable, that is to delay the empanelment of the petitioners

as a Flour Mill in particular district. Another inquiry was directed. But in its garb, the same issues were revisited. It is the unambiguous case of the petitioners that they were owning 41 decimals of land out of which conversion had taken place in respect of 33 decimals of land and the factory is situated within the said 33 decimals of land. This was the reason for which the respondent authorities were refusing to grant the licence. The writ petitioners in the later proceeding has relied upon the report of the General Manager, District Industries Centre, Birbhum dated 10th May, 2022 to show that they are eligible. However, surprisingly a purported inspection notice dated 2nd January, 2023 was issued and the petitioner was asked to keep the Flour Mills in running condition for a physical inspection which is clearly noticed in the mind of the writ petitioners that their contention was accepted. Since in spite of the report of the General Manger dated 10th May, 2023 and the inspection notice dated 2nd January, 2023, the licence was not granted. The third writ petition was

filed. In the third writ petition, an order was passed on 6th January, 2023 by which the respondent authorities were directed to file a report thereafter by an order dated 3rd March, 2023, it was recorded by the learned Single Judge that a surveyor empanelled with this Court may not be in the best position to analyze the land records and make measurement of land as required in this case and, therefore, the concerned BL&LRO was directed to file a fresh report after measurement of the land properly in the presence of the interested parties. Pursuant to such direction, a report has been filed. The relevant observation whereof is stated below:-

“x.) In the light of the aforesaid records/documents vis-à-vis the said inspection dated 22nd March, 2023 made in presence of the petitioner and the respondent no.5, it is respectfully submitted that the said flour mill building covering an area of 0.22 acre on the said plot of land is situated within the aforesaid converted land of 0.33 acre on the said LR Plot No.276”.

8. The said report read with proper report of the General Manager, District Industries Centre, Birbhum dated 10th May, 2022 and the inspection notice date 2nd January,

2023 clearly vindicate the stand of the writ petitioners and the contentious issue has been resolved once and for all. The said report clearly clarifies that the flour mill building situated on the converted area, as claimed by the petitioners, which was not beyond 0.33 decimals of land.

9. In view of such clear finding and having regard to the fact that the writ petitioners were made to run from pillar to post, the learned Single Judge, in our view, has passed the order which the authorities ought to have passed by exercising the mandamus jurisdiction in terms of the decision of the Hon'ble Supreme Court in the case of ***Comptroller & Auditor General of India Vs. K.S. Jagannathan & Anr.***, reported at **1986 (2) SCC 679**. In the said decision, the Hon'ble Supreme Court has summarised the principles in paragraphs 18 to 20. The power authority and jurisdiction to issue writ of mandamus and giving direction to the government or public authority to exercise its discretion in a particular manner has been summarised in the said paragraphs. The Hon'ble Supreme Court has stated that Article 226

is designedly couched in a wide language in order not to confine the power conferred by it on the High Courts only to the power to issue prerogative writs as understood in England. The High Courts exercising jurisdiction under Article 226 can issue 'directions, orders or writs' so as to enable the High Courts to reach injustice wherever it is found and to mould the reliefs to meet the peculiar and complicated requirements of this country. The High Courts have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court

can compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

10. The facts and circumstances of the instant matter justify the direction passed by the learned Single Judge since remanding the matter for a fresh consideration would cause unnecessary delay and prejudice to the rights of the writ petitioners.

11. We agree with the observation of Justice Sengupta that the said relief is necessary instead of “relegating them again to the respondent authorities who might again make them run from pillar to post with some convoluted logic or clever, but evasive choice of words”. In a given case if the court is satisfied that in the facts and circumstances of the case remanding the matter to the authorities would make no

difference in view of the unimpeachable and unquestionable right being established and clearly evident from the materials placed before the court a writ of mandamus can be issued directing the authorities to do the same very act which they have earlier refused. The reconsideration of the matter would be unnecessary. [see. ***Nirmal Singh v. State of Punjab, 1984 Supp SCC 407; AIR 1984 SC 1619; Sankari Cement Alai Thozhilalar Mummetra Sangam v. State of T.N. (1983) 1 SCC 304; M.P. Irrigation Karamchari Sangh v. State of M.P. (1985) 2 SCC 103; AIR 1985 SC 860; Veerarajan v. State of T.N. (1987) 1 SCC 479; AIR 1987 SC 695***]

12. In view of the report of the BL & LRO the empanelment of the writ petitioners is inescapable and the only duty now required to be discharged is to formally empanel the flour mill of the writ petitioner.
13. We approve the view expressed by Justice Sengupta that the facts and circumstances of the case justify extending the ratio in the case of ***K.S. Jagannathan***

(supra) by directing the authorities to issue the licence within the time specified in the said order. However, since the appeal was pending, we direct the authorities now to empanel the petitioners' flour mill for the district of Birbhum and enter into an agreement for such purpose within three weeks from date.

14. The appeal and the application are disposed of with the aforesaid modification.
15. However, there shall be no order as to costs.
16. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen,J.)

(Uday Kumar,J.)