

CASE NO.:
Appeal (civil) 4865 of 2007

PETITIONER:
Swapan Kumar Pal

RESPONDENT:
Achintya Kumar Nayak & Ors

DATE OF JUDGMENT: 12/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.21732 of 2006)

S.B. Sinha, J.

1. Leave granted.
2. The parties hereto were contenders for grant of a Modified Rationing (MR) Shop. The MR shop in question situated in village Sasanga was given to one Abdul Salim who was appointed as a MR dealer. He was found to have been committed some irregularities in relation to distribution of Kerosene. An enquiry in regard thereto was conducted. His licence was suspended. He preferred an appeal thereagainst. The Appellate Authority while confirming the suspension of licence for kerosene, however, directed restoration of dealership in respect of other items like rice, wheat, sugar etc.
3. Salim filed a writ petition which ultimately came up for hearing before a Division Bench. Keeping in view the fact that in the mean time MR dealership at village Sasanga was given to the first respondent herein, the Division Bench give liberty to Salim to make him as a party in the appeal preferred before the appellate authority.
4. During the pendency of the said proceedings, a regular selection for appointment process of MR dealers at Sasanga village was conducted. There were three contenders, one of them being one Ms. Sarama Mondal left the fray in the midway. Between rest of the two, recommendations were made by the competent authority to grant MR dealership of Sasanga to Achintya. Pursuant to the said recommendations, the Collector (District Controller) granted MR dealership to the first respondent by an order dated 15.2.2002.
5. A writ petition filed by the appellant herein was allowed by a learned Single Judge of the High Court. However, on an intra-court appeal having been preferred by the first respondent herein, a Division Bench of the Court allowed the same by reason of the impugned judgment dated 9,11,2006.
6. The appellant is, thus, before us.
7. Mr. S.B. Sanyal, learned senior counsel appearing on behalf of the appellant, inter alia, submitted that the Division Bench committed a manifest error in reversing the judgment of the learned Single Judge insofar as it took into consideration irrelevant factors, namely, educational qualifications of the candidates. It was urged that the learned Single Judge having taken into consideration the fact that the respondent did not own a godown on the date of filing of the application which was the determinative factor for grant of the dealership and the appellant herein having fulfilled the said criteria was entitled thereto.
8. Mr. Jaiswal, learned counsel appearing on behalf of the first respondent, on the other hand, supported the impugned judgment urging that the learned Single Judge, in a case of this nature, could not have exercised the power of judicial review.
9. Grant of MR dealership in the State of West Bengal does not appear to be governed by any statute or statutory rules. Appropriate Authority, however, have issued a notification on or about 21.11.2000 pursuant

where to, both, the appellants and the first respondent, filed their applications. So far as the appellant is concerned, he is said to be owning a godown of which he had been in possession. He financial solvency was stated to be Rs.50,000/- and the trade proficiency and experience in running the business for about five years. First Respondent had, however, in his application stated that he had been in possession of a godown which had been donated to him by his uncle.

10. The Sub-Divisional Controller of Food and Supplies, upon taking into consideration the relevant criteria for grant of MR dealership, made recommendations in favour of the first respondent. An enquiry thereto was also made. A spot visit was made by the competent authority. Qualifications and experiences of the respected candidates were taken into consideration and the first respondent was recommended by the Competent Authority on or about 26.2.2001. The District Controller of Food and Supplies thereafter passed an order on 15.2.2002 granting dealership in his favour, stating :

\023In due deference to the direction of His Lordship Hon\022ble Justice Ashim Kumar Banerjee in the High Court of Kolkata regarding the WP No.18364(W) of 2001 held the personal hearing of Sri Swapan Kumar Pal writ petitioner and Sri Achintya Kumar Nayak, the private respondent No.7 in my office chamber on 4.2.02 at 12 noon. Sri Swapan Kumar Pal was represented by his learned counsel while Sri Achinta Kumar Nayak represented himself personally. Both the parties were heard exhaustively and were allowed to disclose all their credentials papers and documents in support of their credentials rival contentions. While appointing of MR Dealer, salient aspect of suitability of storage space of MF Commodities, sound financial potentiality experience and workable educational qualifications are generally taken into consideration. Both the candidature were examined on the above light and I found that Sri Achintya Kumar Nayak has fulfilled the aforesaid criteria and I do not find any point to negate the edge of Sri A.K. Nayak over the other.

Sub-Divisional Controller, Food & Supplies, Burdwan being the appertaining (sic for appointing) authority of the MR Dealer in the like extent case would proceed accordingly and also ensure obtaining approval of the MR vacancy by the Government which is deficient in this case.\024

11. On a writ petition filed by the appellant herein, a learned Single Judge arrived at a finding that the first respondent had no valid title either by way of ownership or tenancy in respect of the godown and the said order of the Collector could not be sustained. It was directed :

\023I, thus, find that the petitioner is the only other person who has all the requisite qualifications as the case of the other one need not be considered as per the order of Ashim Kumar Banerjee, J. which is binding upon the parties.

I, therefore, set aside the order impugned and direct the State-respondent to appoint the petitioner in place of the private respondent subject, however, to approval of the vacancy as indicated in the order impugned. Formal order should be passed within a period of fortnight from the date of communication of this order.\024

12. As noticed hereinbefore, the Division Bench of the said High Court

reversed the said decision.

13. The criterias which were relevant for grant of MR dealership, inter alia, were :

1. Financial Solvency
2. Possession of Godown
3. Trade Proficiency.

14. It may be true that the candidates were not required to have any particular educated qualification. Workable knowledge was sufficient. It, however, appears from the counter affidavit of the first respondent that the scheme in question was meant for the \021Educated Unemployed People\022. The Competent Authority, therefore, was to consider the respective cases of the parties upon application of the relevant criterias so far as the candidates are concerned.

15. No statutory order or any notification operating in the field has been produced before us. Relevant criterias therefor, however, can be ascertained from the form of the applications filed by the parties.

16. It appears that sites of the shop and the capacity of the godwon as also a valid document for possession thereof were some of the relevant criterias besides trade proficiency and the period during which the applicant was in business. Ownership of the godown was not an essential condition but the possession thereof was.

17. Learned Single Judge of the High Court, therefore, in our opinion, misdirected himself in posing a wrong question. He had taken into consideration a factor, namely, ownership of the godown which was not of much relevance.

18. The Division Bench of the High Court might have committed an error in taking into consideration the respective educational qualifications of the petitioner and the first respondent and might have also erred in taking into consideration a subsequent event, namely execution of a deed of gift in favour of the first respondent by his uncle, but even the same are left out of consideration there would not be any change in the position of the parties. If any recommendation has been made in favour of the first respondent having regard to the sites of the shop, possession of the godown and trade proficiency as also the period during which candidates were in business, there cannot be any doubt whatsoever that the Competent Authority could grant MR dealership in favour of the first respondent relying on or on the basis of the said criteria.

19. In a case of this nature, ordinarily, the High Court would not exercise its discretionary jurisdiction under Article 226 of the Constitution. For exercising the power of judicial review, the Court has a limited role to play. It could interfere only if any legal error has been committed in the decision making process. It could not enter into the merit of the decision.

20. We, therefore, are of the opinion that there is no infirmity in the impugned judgment. This appeal is, therefore, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.