

Sitaram Bajla and ors. Vs. District Controller of Food and Supplies and ors.

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Court : Kolkata

Decided On : May-04-1989

Reported in : (1989)2CALLT251(HC)

Judge : Paritosh Kumar Mukherjee, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.O. No. 8743(W) of 1988

Appellant : Sitaram Bajla and ors.

Respondent : District Controller of Food and Supplies and ors.

Advocate for Def. : Dhruba Kumar Mukherjee and ;K. Chakraborty, Advs.

Advocate for Pet/Ap. : Saktinath Mukherje, ;Prabir K. Samanta, ;Phalguni Sarkar, ;Samiran Giri, ;Amal Baran Chatterjee and ;Mandira Mukherjee, Advs.;Satyendra Nath Ganguli, Adv.

Disposition : Application allowed

Judgement :

P.K. Mukherjee, J.

1. The present writ petition was moved before this Court challenging, inter alia, the notice, dated June 16 ,1988 contained in Memo. No. 2639/1 (14), dated June 16,

1988 issued by the Sub-Divisional Controller of Food and Supplies, Siliguri.

2. A copy of the said notice has been annexed as Annexure 'G' to the writ petition at page 40 which runs as follows :

Notice

Applications in prescribed proforma are invited from the bona fide and intending candidates for appointment of a M. R. Distributor in Upper Bagdogra P.S. & P.O. Bagdogra, under Siliguri Sub-Division Dist. Darjeeling. The godown site should be at or nearly Upper Bagdogra preferably Bangdubi Road. A candidate should be financially solvent to invest in the business. It is estimated that the amount required for 1 (One) week for supplying M. R. Commodities, including all items under production-cum-distribution scheme to 10 (ten) M.R. dealers come to nearest Rs. 3 (three), lakhs, (ITCC to produce) should have godown for storing M. R. Commodities. The applicant should also be prepared to lift M. R. Commodities for two weeks at a time.

3. The applicant should be Indian Nationals. The last date of receipt of application is 4 p.m. on 60.67.88 in the office of the undersigned.

Sub-divisional Controller of Food and

Supplies, Siliguri.

GOVERNMENT OF WEST BENGAL

OFFICE OF THE SUB-DIVISIONAL CONTROLLER OF

FOOD AND SUPPLIES : SILIGURI

MEMO NO. 263911 (14) DATED 16.6.88 Copy to for information and necessary action for wide publicity.

1. The District Magistrate, Darjeeling.

2. The Sub-Divisional Officer, Siliguri

3. The Dist. Controller of F&S, Darjeeling at Siliguri with his Memo No. 607 dated 13.6.88.
 4. The Block Development Officer, Siliguri/Naxalbari and Kharibarij/Phansidewa Block.
 5. D.E.O., Siliguri.
 6. Post Master, Bagdogra.
 7. O/C, Matigara P.S., Naxalbari P.S., Kharibari P.S., Phansidewa P.S. and Siliguri P.S.
 8. The SC/ST Welfare Officer, Siliguri.
 9. The Station Director, All India Radio Siliguri. He is requested to make a broadcast through the radio for side publicity.
 10. Asstt. Registrar of Co-operative Societies, Siliguri.
 11. Zilla Parishad, Darjeeling.
 12. Office Notice Board.
 13. Chairman, Siliguri Municipality.
 14. Area C.I./Inspector.
4. The writ petitioners, who are 14 in number, have referred to a paragraph regarding procedure for adopting M. R. Distributors where from it appears that certain guidelines were prescribed which are as follows :
- (a) At least 30 M.R. dealers should be tagged with one M. R. Distributor. The number may be increased upto 50 having regard to the economic viability of the M. R. distributors.
 - (b) The financial capacity and performance of the M. R. Distributors to lift stocks of food grains by the D. R. dealers tagged to him for at least 2 weeks at a time

should also be considered.

(c) The logistic problem of giving delivery to the M. R. dealers tagged with the M. R. distributors should also be taken into consideration.

(d) In all fairness one distributor should be appointed in each police station provided the number of M. R. dealers in that police station is more than 30 in number.

(e) The question of saving Government money on account of transport rebate should also be taken into account.

5. The case of the writ petitioners is as follows :

The writ petitioners, 14 in number, are all M. R. Distributors in Siliguri Sub-division in the district of Darjeeling. The petitioners have challenged the impugned Memo referred to here in above, dated June 16, 1988 whereby application for appointment of an M. R. Distributor in Upper Bagdogra were invited and by the said Memo it was indicated that the intending candidates should have a godown at or nearby Upper Bagdogra preferably to Bengdubi Road. The petitioners are all M. R. Distributors in the Siliguri Sub-division and claimed that each one of them should have 30 M. R. dealers under them. The petitioners as partners/proprietors of their respective firms carry on their business of M. R. Distributorship. All the firms of the petitioners were appointed M. R. Distributors by the Competent Authorities in respect of the respective areas mentioned as mentioned against each of the aforesaid firms. All the aforesaid firms, since appointed, as M. R. Distributors were and are discharging their distributorship business perfectly and in accordance with the Rules and Regulations.

6. It is further the case of the writ petitioners that the M. R. Dealers in Siliguri Sub-division are classified in two groups, namely, Rural M. R. Dealers and Urban M. R. Dealers. Each of the aforesaid firms of the petitioners having been appointed M. R. Distributors for supply of M. R. Commodities to the M. R. Dealers was tagged with certain numbers of M. R. Dealers consisting of both Rural and Urban M. R. Dealers. In particular,, the firm of M/s. Amal Bhowmic, M. R. Distributor, Siliguri

was tagged with 9 Urban M. R. Dealers and 10 Rural M. R. Dealers of Siliguri Sub-division for supply of M. R. Commodities to them. Accordingly, the said firm of M/s Amal Bhowmic, M. R. Distributor, Siliguri was tagged with all the 19 M. R. Dealers for supply of M. R. Commodities. The firm, namely M/s S.C. Ghose, Naxalbari was tagged with 27 M. R. Dealers for supply of M. R. Commodities to them. The particulars of all the aforesaid 27 M. R. Dealers will be evident from the supply order made by the Sub-divisional Controller, Food and Supply, Siliguri to the aforesaid M/s S.C. Ghose, Naxalbari. Similarly, like the other petitioners, the firm M/s S.C. Ghose, Siliguri was tagged with 8 Urban, and 13 Rural M. R. Dealers for supply of M. R. Commodities. In the alternative, the aforesaid partnership has been tagged with all 21 M. R. Dealers for supply of M. R. Commodities to them.

7. According to the writ petitioners, each of the aforesaid firms has been tagged with less than 30 M. R. Dealers for supply of M.R. Commodities to the 'M. R. Dealers of Siliguri Sub-division, The entire Siliguri Sub-division which also includes Upper Bagdogra region is also being distributed by the aforesaid M. R. Distributors and as such there are no other M. R. Dealers in the whole of Siliguri Sub-division which required to be supplied with the M. R. Commodities besides the aforesaid M. R. Distributor Firms.

8. In view of the aforesaid facts and circumstances, there is no necessity and or requirement for appointment of another new M. R. Distributor for the Siliguri Sub-division inasmuch as all the aforesaid M. R. Distributors have been tagged with much less than 30 M. R, Dealers for supply of M. R. Commodities which is in accordance with the guidelines.

9. It is the further case of the petitioners that there is no remark and or report whatsoever against any of the aforesaid Distributors about their financial capacity and performance of the Distributorship relating to lifting of stock of food grains required by the M. R. Dealers tagged to them or for delivery of the same to the M. R. Dealers tagged with M. R. Distributors at any point of time. There was no occasion in the past when any of the aforesaid M. R. Distributors had failed to supply M. R. Commodities to any of the M. R. Dealers in Siliguri Sub-division for any reason whatsoever.

10. The petitioners have also asserted in the instant writ petition that the appointment of an M. R. Distributor in Upper Bagdogra under Siliguri Sub-division is absolutely unnecessary and the aforesaid Memorandum for such appointment was made purportedly with mala fide motive and favouring a person of choice of the authority concerned.

11. In this context, it was further asserted in the instant writ petition that it would be evident from the impugned notice that the godown should be preferably at Bengdubi Road, which condition had been inserted only to favour the private respondent, who had been added as a party respondent during the pendency of the writ petition.

12. The writ petitioners have further asserted that there has not been a single M. R. Dealer appointed recently in the Upper Bagdogra for which it can be suggested that there might be any necessity for appointment of an M. R. Distributor which would adversely affect the writ petitioners in carrying on their business as the same would curtail the business of the writ petitioners.

13. The writ petitioners further asserted that it was the clear policy of the State Government that one M. R. Distributor should be tagged with at least 30 M. R. Dealers which might be increased upto 50 having regard to the economic viability of the M. R. Distributors.

14. The petitioners have further asserted that the aforesaid M. R. Distributors firms of the petitioners are economically potential and they are having sound financial capacity for performing the M. R. Distributorship by lifting the stocks of food grains required by the M. R. Dealers tagged with them and by giving delivery of the same to the M. R. Dealers tagged with each of the M. R. Distributors regularly and without any default. Further, there was no complaint whatsoever even for a single instance against any one of the aforesaid M. R. Distributors either from the M. R. Dealers or from the authorities concerned that because of financial incapacity the supply of M. R. Commodities to any of the M. R. Dealers was affected.

15. Moreover, the policy of the State Government clearly shows that one distributor should be appointed in each police station provided the number of M. R.

Dealers in that police station is not more than 30 in number, according to the Guidelines referred to hereinabove.

16. Mr. Saktinath Mukherjee, learned Advocate for the writ petitioners has submitted that the concerned respondents acted illegally and in violation of the norms prescribed for appointment of M. R. Distributor for a particular area. The respondents concerned acted arbitrarily and with a mala fide motive in inviting applications for appointment of M. R. Distributor even though under the guidelines prescribed for appointment of M. R. Distributor, referred to above, such an appointment was absolutely irregular.

17. It has been further contended that the appointment of M. R. Distributor for Upper Bagdogra has been made in utter violation of the standard and or norms prescribed for such appointment.

18. The writ petition was admitted on July 8, 1988 when without hearing the respondents and dispensing with Rule 27A an interim order was passed to the effect that any decision for distributorship had been made by the respondents the same would not be given effect to for a period of 14 days with liberty to apply for extension upon notice.

19. Thereafter, the said interim order was extended on July 21, 1988 when none appeared for respondents.

20. It appears that on January 25, 1988 an application for addition of party was filed by the private respondent Shyamal Kumar Sanyal and the same was allowed. Thereafter an application for vacating injunction was also filed on behalf of the said Shyamal Kumar Sanyal.

21. In the said application for addition of party, the applicant stated that he had applied for being appointed M. R. Distributor satisfying all the requirements and specifications regarding eligibility as enumerated in the aforesaid Memorandum, dated June 16, 1988. In support of the claim for such appointment, the applicant also annexed evidence about capability and also a certificate issued by the Branch Manager of Khaporail Bank of Uttarabany Khetriya Gramin Bank, where from it

was patent that the applicant had a credit balance of Rs. 4,36,491 in the said Bank as on July 1, 1988.

22. The writ petition came up for hearing along with the application for vacating interim order.

23. In the affidavit affirmed on behalf of the State respondents by one Nira Pada Biswas, attached to the office of the Sub-divisional Controller of Food and Supplies, Siliguri the following relevant facts have been stated which are set out here in below :

(a) 6 M. R. Distributors were appointed in Siliguri Sub-division between 1966 and 1973 and no distributor has been appointed in the said Siliguri Sub-division during the last 11 years since 1973.

(b) Out of the six distributors only one distributor is situated at Naxal-bari and remaining five distributors are operating in the Municipal area of Siliguri Sub-division. It is therefore evident that distribution point of M. R. Commodities is centrally located in Municipal area of Siliguri Sub-division and the dealers of rural area functioning in distant places from Siliguri Municipal area is to traverse a long way for lifting the M. R. Commodities to be distributed through P.D. System.

(c) Regarding tagging of M.R. Dealers, which was initially made from 10 to 15, as per Government Order and thereafter with the fresh appointment of new M.R. Dealers the number of M.R. Dealers tagged with the petitioner M. R. Distributors increased and, as such, it is clear that the petitioner M.R. Distributors started their business with a lesser number of M.R. Dealers than those served by them at present and that number subsequently with the increase of MR. Dealers through fresh appointment.

(d) A detailed list showing the name of the M.R. Dealers along with their individual units tagged with the individual M.R. Distributor is also annexed to the said affidavit.

(e) It was also stated in paragraph 6 of the affidavit that during the time of first appointment of the petitioner M.R. Distributors, the M.R. Dealers were tagged with

each of the M.R. Distributor in terms of G. O. No. 4567(15)-FS/6R-1/66, dated 28th April, 1966 which, inter alia, stipulated guidelines that an M.R. Distributor was selected and/or appointed initially with 10 to 15 dealers.

(f) The deponent has further denied that the impugned notice inviting applications was not made in public interest at it has been amply made clear that public interest is aroused when it is observed that the interest of a group of persons will be served rather than the interest of an individual or of a particular group. As in the instant case, the interest of the general public was considered as a prime necessity than that if an individual person, this Court may not interfere with such impugned notice.

g) In paragraph 12 of the said affidavit, the deponent disputed that the business of the writ petitioners would be curtailed to a great extent.

24. In dealing with the specific allegations and assertions made in paragraph 12 of the writ petition, the deponent has merely denied the allegations and submitted that it is also amply made clear that public interest is aroused when it is observed that the interest of a group of persons or mass will be served rather than the interest of an individual of a particular group and, as such, in the instant case, the interest of the general public should be considered to be of prime necessity than that of an individual person.

25. The said deponent in dealing with the allegations and assertions made in paragraphs 13 and 14 of the writ petition in fact merely referred to the records of the case and virtually the allegations made in the writ petition go unchallenged.

26. In this context, the deponent states that Siliguri Sub-division is populated by more than 5 lakhs of people, and the population due to commercial importance of this Sub-division is gradually increasing. It was also observed that 12 M.R. Dealers who were also distributing K. Oil are lifting their K. Oil from the agent operating from Bagdogra and as such it was deemed necessary to appoint an M.R. Distributor in and around Bagdogra so that the dealers who are lifting K. Oil from Bagdogra are not forced to come to Siliguri and/or Naxalbari for lifting their M.R. Commodities.

27. In dealing with the statements made in paragraph 14 of the writ petition, where the writ petitioners have stated that in view of the proposal for appointment of the new M.R. Distributor the petitioners' business would be decreased potentially and the petitioners will suffer loss, the deponent admitted that a few M.R. Dealers tagged with the petitioners would have to be delinked and subsequently be fitted with the proposed MR. Distributor in the interest of the public and submitted that the fresh appointment of the M.R. Distributor would in no way affect the business of the writ petitioners as was being carried on by them at the time of first appointment.

28. This submission in my view cannot be accepted.

29. Mr. Dhruva Kumar Mukherjee, learned Advocate for the added respondents, has submitted that the respondents having filed application for appointment of M.R. Distributor in the prescribed form and having produced the document of proof having financial solvency, the respondents should be allowed to process the appointment in favour of the added respondents.

30. It is submitted that if the appointment is made of another distributor within Siliguri Sub-division the writ petitioners would be prejudicially affected inasmuch as the number of M.R. Distributors would be bigger causing loss of business to them.

31. It is submitted by the learned Advocate appearing for the added respondents that the same being a purely administrative order cannot be called in question in the writ Court.

32. On the basis of the aforesaid pleadings, I am of the view that the assertions made by the writ petitioners in paragraph 14 of the writ petition that the appointment of an M.R. Distributor in upper Bagdogra under Siliguri Sub-division was absolutely unnecessary and the aforesaid memorandum for such appointment was purportedly issued with the mala fide motive for favouring a 'particular person of choice of the authority concerned' goes uncontroverted in the Government affidavit.

33. Before parting, I notice one significant fact that by the impugned notice inviting applications for appointment of M.R. Distributor which is impugned in the present writ petition the respondents have indicated that the godown should be at or nearby Upper Bagdogra, preferably at Bengdubi Road, which has been purposely made to prefer the candidature of the private respondent and to exclude the writ petitioners who could not apply for such appointment in accordance with law.

34. It further appears from record that Sri Shyamal Kumar Sanyal made an application for being appointed an M.R. Distributor in Siliguri Sub-division to the Director D.D. F.S. on May 25, 1987, which is Annexure 'X' to the affidavit-in-reply on behalf of the writ petitioners. It further appears that the said respondent approached the Director for favourable attention in the matter of appointment of Additional M.R. Distributorship in Siliguri Sub-division. He has introduced himself and offered himself for being appointed an M.R. Distributor at the relevant place. Pursuant thereto, the District Controller, F & S, Darjeeling at Siliguri, directed Sri H. Biswas to 'hold an enquiry to find as to whether there was any necessity for appointing any distributor and, if so at what point.

35. In conclusion, I am of the view that the impugned notice has been issued in violation of the 'Guidelines' only to accommodate the private Respondent and, as such, it should be quashed.

36. Further, in view of the decision of the Supreme Court in the case of Union of India v. K.P. Joseph, reported in : [1973]2SCR752 , it has been held that executive instructions including the Guidelines should be followed.

37. Accordingly, in my view, the writ petition is entitled to succeed and the impugned notice inviting applications for appointment of M.R. Director as per Memo No. 2639/1(14), dated June 16, 1988, which is Annexure 'G' to the writ petition, is liable to be set aside by an appropriate writ in the nature of Certiorari.

38. This will not prevent the respondents from issuing fresh notice without laying down any condition about existing site of the godown near Upper Bagdogra, preferably Bengdubi Road, in accordance with law.

39. The application is allowed.

40. In view of the fact, the writ petition is allowed, no separate order need be passed on the application for vacating interim order.

41. Let a plain copy of the ordering portion of the judgment be given to the learned Advocate for the added respondents, as prayed for.

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