

Constitutional Writ  
Present:  
The Hon'ble Justice Debasish Kar Gupta  
Judgment On : 04-05-2010.  
*W. P. No. 641 of 2006*  
*Ansar Ali Khan*  
*versus*  
*State of West Bengal & Ors.*

Points:

**Selection-** Selection of M.R. Dealership by the expertised authority - when can be challenged in writ court - West Bengal Public Distribution System(Maintenance and Control) Order, 2003-Clause 19.

Facts:

One Abdul Rashid Khan was the M.R. Dealer at Village- Pukuria, Post Office- Bangada, Police Station- Shyampore under Dhandali Gram Panchayet, District- Howrah. He surrendered his licence of the above M.R. Dealership to the respondent authority in the year 1999. Consequent thereupon the consumers of the above M.R. shop were tagged with another M.R. Dealer. A notice was issued by the respondent no.4 inviting applications from the eligible persons to issue licence in respect of the above M.R. Dealership. The petitioner and the respondent no.6 applied in response to the above notice amongst other eligible persons. After conducting enquiry, the respondent no.5 submitted his report in respect of all the participants recommending the names of the petitioner as also the respondent no.6 as suitable candidates. The Chief Inspector of the area concerned opined in favour of the petitioner as also the respondent no.6. The respondent no.4 sent the entire matter to the respondent no.3 under memo no.778 dated November 24, 2005. The respondent no.3, in his turn, referred the matter to the respondent no.2 under memo no.1508/DCH/MR dated December 5, 2005. After obtaining approval from the government the licence under reference was issued in favour of the respondent no.6. Allotment of M.R. serials was made in favour of the dealership of the respondent no.6 on November 18, 2008 for the first time.

Held:

There is no substance in the submissions made on behalf of the petitioner that purchasing of the land from the erstwhile M.R. Dealer of the area in question confer any legally enforceable right on him for granting licence of M.R. Dealership in question in his favour. It is not in dispute that the respondent authorities selected the respondent no.6 for granting licence under reference in his favour on the basis of the relative assessments of the merits of the petitioner and the respondent no.6. Therefore, the selection of the petitioner for granting M.R. Dealership licence in question was based on recommendations of the experts. No mala fide is alleged against the experts in this case. Para-10

It is the settled principles of law that whether a person is fit for selection has to be decided by the authority which has the expertise on the subject. The court has no expertise. The decision of such selection can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of selection body or its procedure vitiating the selection, or proved mala fides affecting the selection. No such ground is present in this writ application. It is also a settled principles of law that the court cannot sit in appeal over the selection made by the authority and to embark upon deciding the relative merits of the two eligible persons. Para-11

Cases Cited:

The State of U.P. Vs. Dharmander Prasad Singh, reported in AIR 1989 SC 997

Dalpat Abasaheb Solunke Vs. B. S. Mahajan, reported in AIR 1990 SC 434  
Neelima Misra Vs. Harinder Kaur Paintal, reported in AIR 1990 SC 1402.

For Petitioner : Mr. Milan Bhattacharya.

For the Private Respondent : Mr. Sagar Bandyopadhyay

Ms. Soma Kar Ghosh.

For the State Respondent : Mr. Najmul Haque.

## The Court

This writ application is directed against the appointment of the respondent no.6 as M.R. Dealer at Village – Pukuria, Post Office- Baganda, Police Station- Shyampore under Dhandali Gram Panchayet, District Howrah.

2) One Abdul Rashid Khan was the M.R. Dealer at Village- Pukuria, Post Office- Bangada, Police Station- Shyampore under Dhandali Gram Panchayet, District- Howrah. He surrendered his licence of the above M.R. Dealership to the respondent authority in the year 1999. Consequent thereupon the consumers of the above M.R. shop were tagged with another M.R. Dealer.

3) A notice dated July 1, 2005 was issued by the respondent no.4 inviting applications from the eligible persons to issue licence in respect of the above M.R. Dealership. The petitioner and the respondent no.6 applied in response to the above notice amongst other eligible persons. After conducting enquiry, the respondent no.5 submitted his report in respect of all the participants recommending the names of the petitioner as also the respondent no.6 as suitable candidates. The Chief Inspector of the area concerned opined in favour of the petitioner as also the respondent no.6. The respondent no.4 sent the entire matter to the respondent no.3 under memo no.778 dated November 24, 2005. The respondent no.3, in his turn, referred the matter to the respondent no.2 under memo no.1508/DCH/MR dated December5, 2005. After obtaining approval from the government the licence under reference was issued in favour of the respondent no.6. Allotment of M.R. serials was made in favour of the dealership of the respondent no.6 on November 18, 2008 for the first time.

4) It is submitted on behalf of the petitioner that the respondent no.6 was not a suitable persons in view of the enquiry conducted by the respondent no.5.

Attention of this court is drawn towards the enquiry report of the respondent No.5 dated November 23, 2005 to show that the name of the respondent no.6 appeared in the second page of that report. According to the petitioner, he purchased the land of the erstwhile M.R. dealer of the area in question to set up

his shop at the same place. From the enquiry report of the respondent no.5 it appeared that the nature of the above land was described as "Bastu". The attention of this court is also drawn towards the enquiry report of the respondent

no.5 that the proposed place of the respondent no.6 was described as "Danga".

Mr. Milan Bhattacharya, learned senior advocate appearing for the petitioner,

submitted that the selection of the respondent no.6 is liable to be set aside on the ground of procedural impropriety.

5) It is submitted by Mr. Sajal Chakraborty, learned Junior Government Advocate, that the respondent no.5, in his report dated November 23, 2005 found

the petitioner as also the respondent no.6 both as suitable persons for granting

licence under reference. In support of his submission the attention of this court

is drawn towards the above report of the respondent no.5 issued under memo no.216(F&S) Sham-I/2005 dated November 23, 2005. It is further submitted by

him that in the second page also the name of the respondent no.6 appeared due

to reason that he had submitted two applications. According to him, the second

application filed by the respondent no.6 was not supported by documents.

According to him the case of the respondent no.6 was recommended on the basis of

his first application which was accompanied by all necessary documents. It is

further submitted by him that the licence under reference was issued in accordance with the provisions of Clause 19 of the West Bengal Public Distribution System( Maintenance and Control) Order, 2003. According to him,

two applicants, namely the petitioner and the respondent no.6 were found suitable. The respondent authority selected the respondent no.6 on the basis of the assessment in accordance with the provisions of Clause 19 of the above control order. The propriety of the above selection cannot be reopened in course of judicial review under article 226 of the constitution of India for taking a different view. He relied upon the decision of the State of U.P. Vs. Dharmander Prasad Singh, reported in AIR 1989 SC 997 in support of above submissions.

6) The learned Advocate appearing for the respondent no.6 adopted the argument of the learned Junior Government Advocate, High Court Calcutta. According to him, the respondent no.6 filed two applications out of which one was accompanied by all the necessary documents and the other was not accompanied by the necessary documents. The respondent no.5 recorded his observations in respect of both the applications. The respondent no.5 recommended the name of the respondent no.6 on the basis of the application filed by him with all necessary documents. The above enquiry report contained a recommendation in his favour. According to him, the court cannot sit in appeal over the decision of the selection committee in the matter of deciding the relative merits of the candidates. He relied upon the decisions of Dalpat Abasaheb Solunke Vs. B. S. Mahajan, reported in AIR 1990 SC 434 and Neelima Misra Vs. Harinder Kaur Paintal, reported in AIR 1990 SC 1402.

7) Having heard the learned counsels appearing for the respective parties as also considering the facts and circumstances of this case I find that the respondent authorities conducted the process of selection for granting licence of M.R. Dealership under reference in according with the provisions of Clause 19 of the West Bengal Public Distribution System(Maintenance and Control) Order,

2003. In order to adjudicate the issues involved in this writ application the provisions of the above clause are quoted below:

*“19. Appointment, issued of licence and termination of Dealership:-*

*(i) In the event of resignation or death of any Dealer, a resultant vacancy as may arise, shall be filled up by appointment of a new Dealer and if it appears to be necessary to the District Administration for declaration of a new vacancy for catering the need of consumes in any particular area, the vacancy needs to be declared in consultation with the concerned Panchayat Samity/Municipality with the approval of the District Controller, Department of Food and Supplies. The vacancy may be declared through public notification/advertisement.*

*(ii) Any bona fide citizen of this State may apply for appointment of a Dealer in form A and after having the applications, the Sub-divisional Controller, Department of Food and Supplies shall arrange for an enquiry by the Inspecting staff attached to his office with a view to examining the eligibility of the applicants within one month from the last date of receipt of applications.*

*The enquiry report along with all documents with specific recommendations of the Sub-divisional Controller, Department of Food and Supplies shall be sent to the District Controller, Department of Food and Supplies through the concerned Panchayat Samity/Municipality for the approval of later. The District Controller, Department of Food and Supplies after having assessed the eligibility of the applicants and taking into account the recommendation made by the Sub-divisional Controller, Department of Food and Supplies and Panchayat Samity/Municipality shall accord his approval. In the event of any difference of opinion between the District Controller, Department of Food and Supplies and the recommending authorities, the District Controller, Department of Food and Supplies after recording the reasons for difference shall sent it to the Regional Deputy Director for his opinion within 15 days from the date of receipt of the recommendation from the Sub-divisional Controller, Department of Food and Supplies. The Regional Deputy Director shall dispose of the matter within 10 days from the date of receipt.*

*(iii) After having approval from the District Controller, Department of Food and Supplies or the Regional Deputy Director, Food and Supplies, as the case may be, the Sub-divisional Controller, Food and Supplies shall issue an appointment letter to the successful candidate and shall grant a licence in Form B against licence fee of Rs. 200.00 initially for a period of two years and the licence, so issued shall have to be renewed each year after the expiry of the initial period of two years on deposition of renewal*

*fee of Rs.50.00 by the licensee.*

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*(iv) Apart from the licence fee, the appointed Dealer shall be required to deposit a security deposit of Rs.1000.00 only in the form of any recognised security like Bank Guarantee, National Savings Certificate etc. The security so deposited shall be pledged in favour of the Governor of West Bengal.*

*(v) In the event of loss/defacement/damage of the licence so issued to a Dealer, the Dealer may apply for a duplicate licence on deposition of a fee of Rs.1000.00 and the Sub-divisional Controller, Department of Food and Supplies after causing an enquiry shall arrange for issue of licence within 10 days from the date of receipt of application from the dealer.”*

8) The selection process under reference was conducted in accordance with the above provisions. Admittedly, there is no challenge to that procedure on the

ground of violation of the above provisions. It is further revealed from the comparative sheet annexed to the report dated November 23, 2005 of the respondent no.5 that the names of the petitioner as also the respondent no.6 were recommended as “suitable persons”.

9) It is also revealed from the above comparative sheet that the name of the respondent no.6 appeared in the second page for the second time. The above application was not supported by the information/materials mentioned in column nos.3 to 7 of the comparative sheet. In connection with the second entry

no materials is produced before this court to show that submitting of more than

application was prohibited. Therefore, there was no procedural impropriety in

recommending the name of the respondent no.6 on the basis of his first application which was backed by all relevant documents.

10) I find no substance in the submissions made on behalf of the petitioner that purchasing of the land from the erstwhile M.R. Dealer of the area in question

confer any legally enforceable right on him for granting licence of M.R. Dealership

in question in his favour. It is not in dispute that the respondent authorities

selected the respondent no.6 for granting licence under reference in his favour on the basis of the relative assessments of the merits of the petitioner and the respondent no.6. Therefore, the selection of the petitioner for granting M.R. Dealership licence in question was based on recommendations of the experts. No mala fide is alleged against the experts in this case.

11) It is the settled principles of law that whether a person is fit for selection has to be decided by the authority which has the expertise on the subject. The court has no expertise. The decision of such selection can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of selection body or its procedure vitiating the selection, or proved mala fides affecting the selection. No such ground is present in this writ application. It is also a settled principles of law that the court cannot sit in appeal over the selection made by the authority and to embark upon deciding the relative merits of the two eligible persons.

12) Therefore, the selection of the respondent no.6 for granting M.R. Dealership licence under reference in his favour cannot be interfered with. This writ application fails.

]There will be, however, no order as to costs.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

( Debasish Kar Gupta, J. )