

Constitutional WRIT

Present: The Hon'ble Mr. Justice Syamal Kanti Chakrabarti

Judgment on 25.08.2010

C.O. No. 13301 (W) of 1992

with

C.A.N. No. 431 of 2006

Gopal Chandra Adhikari & Ors.

Vs

The State of West Bengal & Ors.

Points:

Judicial review-Judicial review of administrative action of State by the writ court whether permissible – Constitution of India Art 226

Facts:

Stamp vendors have prayed for appropriate directions upon the respondents to implement the Government circulars and to ensure the modest income of the existing stamp vendors of the locality before declaration of a new vacancy in accordance with the eligibility criteria fixed by Government and to take the petitioners as Group "C" employees of the State and to pay the subsidy by way of compensation which is lesser than the emoluments which are paid to the Group "C" employees of the State and to restrain the respondents from giving any fresh appointment of stamp vendors before granting all benefits as provided to Group "C" employees of the State Government

Held:

There is no material on record to show that the respondent authorities appointed some additional stamp vendors without any regard to the average

income of the writ petitioners as contained in the aforesaid circular. In fact, to protect their future interest, they have filed the instant writ petition without making any specific averment to the effect that any particular appointment of the respondent in any particular premises has been made in violation of the aforesaid circular of the State Government. The policy decision of the State Government has not been challenged in the instant writ petition. Rather, it is argued on behalf of the Learned Lawyer for the writ petitioners that the said policy decision has not been taken into account by the District authority in inducting new vendors in the same premises where some of the vendors are working for gain. In absence of any such specific averment, Court holds that the petitioners are unable to make out a case in their favour and as such, I do not find any illegality or impropriety in appointing or engaging respondent nos. 10 to 14 as additional stamp vendors. Where government guidelines have not been challenged and no specific case of departure from such guidelines in granting license to new stamp vendors or additional stamp vendor at same premises has been made out in the writ petition no judicial review of such administrative action is permissible by the writ court. Para 8 and 9

For the Petitioners : Mr. Ramkrishna Roy.

Syamal Kanti Chakrabarti, J.:

In the instant application 54 writ petitioners have contended that they are registered stamp vendors under Tamluk Sub-Division and hold the requisite licences for stamp vending business for a long time. In 1949, members of the stamp vendors Association requested the State of West Bengal to enhance their income, who depend solely on the said business. In response the

Deputy Secretary to the Government of West Bengal issued a circular being no. 702(15) F.T. dated 4th April, 1940. Since the commission earned out of sale of stamps was insufficient, they made several representations to the Government of West Bengal to take effective steps so that new stamp vendors are not appointed by the District officials without considering the income of the existing stamp vendors. Considering the inadequate average income of the existing stamp vendors subsequently the Association moved a writ petition begin C. R. No. 3492(W) of 1982 against unlawful appointment of stamp vendors without taking into consideration the modest income of the existing stamp vendors as per circular dated 22nd July, 1967. Said Rule was discharged. Against such order, an appeal was preferred being F.M.A.T. No. 2634 of 1984. On 30.5.1985, the said appeal was disposed of by this Hon'ble Court with the direction that Government should decide the modest income of the existing stamp vendors working in the Collectorate, after considering the average income of the existing stamp vendors in accordance with Government circular No. 3007(15) dated 22.07.1967. It was also directed that the representation made by the stamp vendors Association should be considered and pending such determination no appointment should be given without leave of the Court. It was further observed that in arriving at a decision, the Government will have to consider the prevalent cost of living. In pursuance of the said directions of the said Hon'ble Court, the State of West Bengal issued a memo no. 1931 (17) F.T. dated 30.5.1986 determining the modest income of the existing stamp vendors with the following guidelines :

“a) No new licence shall be issued for selling stamps in premises of collectorates, Courts, Registrar or Sub- Registrar's office, unless it is found that average monthly income of the existing vendors selling stamps there,

exceeds the minimum monthly emolument drawn by Group “C” employees of the State Govt.

b) In determining their above modest income, the average monthly discount drawn by the vendors from sale of different kinds of stamps vide Judicial, Non-Judicial in a year shall be taken into account.

c) This will be applicable only in case of vendors working in same premises.”

2. Another Government order was also issued on 26.12.1986 in memo no. 4389 (17) F.T. amending the earlier Government order replacing the word Group “D” by the word Group “C” and it was further observed therein that in calculating their net income, 75 % of their gross income will be taken into account as their net income.

3. Further case of these petitioners is that on 10th January, 1990, State of West Bengal issued a circular being no. 116(17) F.T. dated 10th January, 1990 in supersession of all previous orders. In the said guideline age limit capacity to invest the capital required for the business and other paraphernalia were provided. The whole purpose of such circular was to facilitate the public service so that the stamps can be readily available. It was also observed therein that for the purpose of ensuring the modest income of the existing stamp vendors, the emoluments may be fixed as paid to the Group “C” employees of the State. The 50% of the gross income would be the net income in calculating the average income of the existing stamp vendors. The emoluments should be equivalent to the Group “C” employees of the State Government. The earning and/or income in the previous year of the existing stamp vendors equivalent to the Group “C” employees will be considered before granting the new licence out side the premises.

4. Thereafter, the respondent no. 2 issued an order stating, inter alia, the guideline of the stamp vendors. In the said Government order, the earlier department order no. 116(17) F.T. dated 10.1.1990 was referred to wherein it was decided that average minimum emoluments by way of pay and dearness allowance drawn by a Group “C” employee shall be taken into account for calculation of the net income of the licensed stamp vendors. In this context, the amount of pay of a Group “C” employee was calculated but without considering the said circular respondent no. 4 had declared the vacancies in the area where the existing stamp vendors were working at the same premises as shown below :

Existing vendors with licence Nos.	Proposed new Vacancies at the same premises.
a) Krishna Prasad Pramanick.	a) Kumar Chak.
b) Naran Maity.	b) Kuor Khali.
c) Sadhan Jana.	c) Dibakarpore.
d) Pankaj Dinda.	
e) Sibabrata Maity.	
f) Mahadeb Maity.	
g) Manindra Nath Kar.	

The appointments were also given in favour of respondent nos. 9 and 10 which are arbitrary, illegal and violative of the instruction enumerated in the aforesaid Government order and so, such appointments are liable to be set aside.

5. Under the circumstances, they have prayed for appropriate directions upon the respondents to implement the aforesaid Government circulars and

to ensure the modest income of the existing stamp vendors of the locality before declaration of a new vacancy in accordance with the eligibility criteria fixed by Government and to take the petitioners as Group "C" employees of the State and to pay the subsidy by way of compensation which is lesser than the emoluments which are paid to the Group "C" employees of the State and to restrain the respondents from giving any fresh appointment of stamp vendors before granting all benefits as provided to Group "C" employees of the State Government.

6. Though Affidavit-in-Opposition was filed on behalf of the respondent nos. 1 to 8, none was found on call to represent the State while the matter was taken up for hearing. But in their Affidavit-in-Reply thereto, the petitioners have further averred that the subsequent appointments made to respondent nos. 10, 11, 12, 13 and 14 has affected the interest of the other stamp vendors because requirements given in the aforesaid circulars were not strictly followed before their appointments. Regarding maintainability of the instant writ petition, they have further reiterated that since the respondent authority failed to take into account the Government circulars and income ceiling limit of the existing stamp vendors before engagement and/or appointment of additional stamp vendors inside and outside the premises of the existing stamp vendors, the writ petition is maintainable and is liable to be allowed.

7. After careful consideration of such rival contentions on record, I find that the main grievance of the present writ petitioners is directed against appointments of some respondents violating the norms laid down in the Government circulars. In para 12 of their averment, it has been specifically mentioned that as per department circular no. 116(17) F.T. dated 10.1.1990 average minimum emoluments by way of pay and dearness allowances

drawn by a Group “C” employee shall be taken into account for calculation of the net income of the licensed stamp vendors. In this context, the amount of pay of a Group “C” employee was calculated. At the relevant time the average monthly net income of the vendors should be equivalent to Rs. 1,518/- plus D.A. as admissible. The said average income should be calculated in case of stamp vendors after being deducted 50% of their gross income and at the time of appointing an additional stamp vendor the income of the particular existing stamp vendor in the premises should be considered.

8. In Annexure- “B” to the writ petition, the writ petitioners have furnished the names of the stamp vendors, their address, academic qualifications and monthly income by way of commission. From a perusal of the same against serial nos. 2, 6, 11, 19, 20, 21, 35, 38, 40, 41, 42, 43, 44, 46 and 48, it appears that their average monthly income was Rs. 2,000/- and above. In other cases such as serial nos. 1, 4, 12, 13, 15, 17 and 39, the monthly income exceeded Rs. 1,500/-. Therefore, prima facie there is no material on record to show that the respondent authorities appointed some additional stamp vendors without any regard to the average income of the writ petitioners as contained in the aforesaid circular. In fact, to protect their future interest, they have filed the instant writ petition without making any specific averment to the effect that any particular appointment of the respondent in any particular premises has been made in violation of the aforesaid circular of the State Government. The policy decision of the State Government has not been challenged in the instant writ petition. Rather, it is argued on behalf of the Learned Lawyer for the writ petitioners that the said policy decision has not been taken into account by the District authority in inducting new vendors in the same premises where some of the vendors are working for gain. In absence of any such specific averment, I hold that the

petitioners are unable to make out a case in their favour and as such, I do not find any illegality or impropriety in appointing or engaging respondent nos. 10 to 14 as additional stamp vendors.

9. Moreover, in para 13 of their writ petition, the writ petitioners have challenged the legality and propriety of declared vacancies at Kumar Chak, Kuor Khali and Dibakarpore. From the annexed chart at Annexure- "B", it will appear against serial no. 15 that one Dilip Kumar Maity hails from Kumar Chak, whose monthly average income was Rs. 1,500/-. But in the said list, I do not find any name of stamp vendor under the premises at Kour Khali and Dibakarpore. Therefore, the vacancies declared by district authorities cannot be treated as not in conformity with the principles or guidelines contained in the aforesaid Government circular. So I hold that where government guidelines have not been challenged and no specific case of departure from such guidelines in granting license to new stamp vendors or additional stamp vendor at same premises has been made out in the writ petition no judicial review of such administrative action is permissible by the writ court.

10. Therefore, I do not find any merit in this application, which is dismissed. In view of the above, the C.A.N. No. 431 of 2006 is also disposed of.

11. Urgent photostat copy of this order, if applied for, be given to all the parties upon compliance of all necessary formalities.

(Syamal Kanti Chakrabarti, J.)

