

HIGH COURT OF TRIPURA AGARTALA

WP(C) No.1167 of 2018

Sri Sachindra Chandra Das, son of late Sarat Chandra Das, resident of Ramnagar Road no. 8, Agartala, West Agartala, PIN-799002

....Petitioner

-VERSUS-

1. The State of Tripura, Represented by the Secretary, Food Civil Supplies and Consumers Affairs Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, PIN-799006

2. The Director, Food Civil Supplies and Consumers Affairs Department, P.N. Complex, Gorkhabasti, Agartala, West Tripura

3. The Sub Divisional Magistrate, Sadar, West Tripura

....Respondents.

For Petitioner (s) : Mr. K. Nath, Advocate For Respondent (s) : Mr. D. Sharma, Additional
GA Date of hearing & delivery : 20.11.2019

of judgment & order

Whether fit for reporting : No

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER

1. Heard Mr. K. Nath, learned counsel appearing for the petitioner as well as Mr. D. Sharma, learned Additional GA appearing for the State-respondents.

2. The brief facts of the case are that the petitioner was appointed as a dealer of Fair Price Shop vide order dated

Page 2 of 5

07.09.1968 (Annexure 1 to the writ petition). In the said order, it is clearly written that “the appointed retail dealer shall also abide by the provisions of the Tripura Foodgrains Dealers Licensing Order, 1964”. The petitioner at present is aged about 86 years. A show cause notice was issued upon the petitioner on 02.06.2018 by the Sub Divisional Magistrate, Sadar, West Tripura, stating inter alia as under:

“ Whereas, it is restricted by Director, Food, Civil Supplies & CA, that no power of Attorney will be allowed in case of running of F.P. Shop instead of actual dealer; And Whereas, it is reported by the area inspector Food that the F.P. Shop No. 4 has been running through proxy dealer since long; And Whereas, it is also reported that during the visit of F.P. Shop No. 4 on 22/05/2018 the dealer has sold only 685 kgs. APL rice out of 9770 kgs. 1185 kgs. PG rice out of 1780 kgs. rice through epos machine inspite of direction of DFCS as well as strict instruction of Inspector.

Hence it is proved that the dealer has violated the guideline for his personal gain. Now therefore the dealer of F.P. Shop No. 4 is hereby asked to show cause within 7(seven) days on receipt of this notice why legal action as per provision of Law shall not be taken against him together with suspension/cancellation of his dealership with forfeiture of security money. If no reply is received within the stipulated period exparte will be taken on the issue.” 3. The petitioner had answered to the show-cause notice vide

his reply dated 08.06.2018, wherein he has stated that he has

attained the age of 86 years and suffering from Parkinson disease for which he is unable to move independently without help of others and there is no other alternative but to engage one person/employee for smooth functioning of the F.P. Shop no. 4.

He has further stated in his reply that due to old age problem his finger print also does not reflect the actual status which is essential for operating EPOS Machine.

4. The writ petitioner being the dealer of the respondent no.2, has executed a deed of Power of Attorney in favour of Ratan

Page 3 of 5

Acharjee, S/O Sri Abani Mohan Acharjee, resident of Bhati Abhoynagar, Agartala, West Tripura to run the F.P. Shop no. 4 on his behalf and, he has urged that said Ratan Acharjee should not be treated as proxy dealer. Finally he has prayed for exonerating him from the charges levelled against him.

5. After perusal of the said show-cause notice dated 02.06.2018 and the reply dated 08.06.2018, I have taken into consideration the nature of the deed of Power of Attorney wherein it has been clearly stated that "And whereas, I am busy in other purpose and it is very much difficult on my part to look after, manage, control the business including putting signature(s) in all documents. Now, I think it necessary to appoint, nominate and constitute an attorney by executing this GENERAL POWER OF ATTORNEY to Shri

Ratan Acharjee, Son of Late Abani Mohan Acharjee, resident of Bhati Abhoynagar, Cantonment Road, P.S. West Agartala, Dist. West Tripura, by faith- Hindu, by Occupation- Business, Indian Citizen as my true and lawful attorney..”.

6. From the contents of the said deed of Power of Attorney, it is apparent that the writ petitioner has conferred all responsibilities and liabilities upon his attorney, namely, Ratan Acharjee and he is in no manner involved with the business of running the F.P. Shop. Thus, it is admitted position that the petitioner has not been running the business for which he was appointed as dealer in the year 1968 and he remained himself busy in other purposes and not at all interested to look after the business of his Fair Price shop and, further, the petitioner has admitted that he has nominated

Page 4 of 5

another person to run his Fair Price shop, even if it is not the fact that the responsibility is not conferred upon to any of the persons of his family.

7. I have taken note of the memorandum dated 18.03.2011 issued by the Director, Food, Civil supplies & Consumer Affairs, Government of Tripura. The said memorandum speaks as follows which has been reproduced in verbatim for convenience:

“GOVERNMENT OF TRIPURA DIRECTORATE OF FOOD,CIVIL SUPPLIES & CONSUMER AFFAIRS No. F.15-1(12)-LIT/DF/2010 Dated, Agartala the 18/03/2011 MEMORANDUM It has come to the notice of the Food, Civil supplies & Consumer Affairs Department that in various parts of the State many Fair Price Shops are being run by persons/attorneys other than the dealer/licensee as appointed by the

concerned Licensing Authority. In many cases, it is reported that such arrangement has got a permanent shape by way of constituting certain "Power of Attorney" by a section of licensees/dealers without obtaining permission from the Licensing authorities. Since Fair Price Shop licenses are issued purely on the discretion of the Licensing Authorities with the view to arrange proper, effective & equitable distribution of essential commodities, only such appointed dealers/licensees are responsible for the job to run uninterrupted PDS/TPDS in respective areas of operation and such licenses are not transferable. Considering the above and in exercise of power under clause-21 of the Tripura Foodgrains (Distribution) Control Order, 1972, it is hereby directed that hence-forth no F.P. Shop shall be allowed to run by any person other than the original licensee (i.e. in favour of whom the license has been issued by the Licensing Authority) for an unlimited or unreasonable period except such cases, including the cases related to the F.P. Shops those are run by Govt. Co-operatives/Lamps/Pacs/SHGs, where the Licensing Authorities may have the discretion to allow such system in a lawful manner for purely limited/defined/ reasonable period, and in no event not more than two months at a time, as the case may be, in a genuine case where situation warrants such a temporary arrangement for the interest of uninterrupted Public Distribution System. All the Power of Attorneys by virtue of which certain F.P. shops are run by persons other than the original licensee without the permission of the Licensing Authority are hereby declared invalid for running the F.P. Shops and the actual licensees are hereby directed to take over the charge of the F.P. shops from the nominees. Running of Fair Price Shop by persons other than the original licensees/attorneys for temporary period may only be allowed strictly subject to the approval of the Licensing Authority. All the Sub-divisional Magistrates/OC, ARA (Licensing Authorities) will examine the status of each case and take action as per the letter and spirit of this order. This is issued with the approval of the Government in food, Civil Supplies & Consumer Affairs Department and will take immediate effect".

8. On a bare reading of this memorandum, it is clearly surfaced that the Government of Tripura has taken conscious decision not to allow any person other than the original licensee i.e. in favour of whom the license was/has been issued by the Licensing

Page 5 of 5

Authority. The admission of the petitioner clearly reveals that he runs his business of F.P. Shop in contradiction with the decision of the government, which was taken vide memorandum dated

18.03.2011, as aforesaid. The decision of the government was not to allow any person to run the Fair Price Shop other than the original licensee, is a policy decision of the government and the court has no jurisdiction to invade/replace the decision of the government. It is apparent from the records that the petitioner has executed the Power of Attorney as well as allowed other person to run the business in contravention of the directives of the government.

9. Accordingly, the instant writ petition is bereft of merit and, thus dismissed.

JUDGE