

CONSTITUTIONAL WRIT

PRESENT:

The Hon'ble Justice Aniruddha Bose

Judgment On: 03.05.2010

W. P. No. 1945(W) of 2008

Re: C.A.N. No. 6978 of 2008

Shambhunath Agarwal

Vs.

State of West Bengal

Points:

Signature by Partner: Each partner whether has to sign documents on behalf of the firm- Partnership Act, 1932 S.18

Facts:

On 5 September 2004 an agreement had been executed between the petitioner and the respondent no. 6. In this agreement, it has been stated that for the last ten years the shop was being run by the father of the petitioner and the respondent no. 6 desired to transfer the shop licence to the writ petitioner. The writ petitioner had paid a certain sum of money and there was a clause to the effect that a further sum of rupees one lakh would be handed over to the respondent no. 6 by the petitioner after transfer of the license was effected. The petitioner thereafter had applied before the licensing authority for incorporating his name as the licensee. The concerned authority indicated to the petitioner that unless a joint application was made by the petitioner and the respondent no. 6 to run the business on partnership basis, no transfer of licence could take place. The broad feature of the deed was that in substance the petitioner would look after the entire activities of the shop so that same was run smoothly, but there would be share of loss or profit, as the case may be, on equal basis, i.e. fifty per cent each.

A request was made thereafter before the Director of Rationing for change of character of the dealership of the firm from a proprietary concern to partnership. The respondent no. 6 had agreed to the said arrangement and wrote a letter to the Director of Rationing for effecting the requisite changes. On 1 September 2005 the Director of Rationing accepted the resignation of the respondent no. 6 and appointed the writ petitioner and the respondent no. 6 as joint proprietors of the concerned shop. This was done on the basis of a

representation made by the respondent no. 6. In this representation, it was specifically stated that the respondent no. 6 had decided to take the writ petitioner as a partner. The petitioner and respondent no. 6 were thereafter directed to file 'C' form, and certain other papers, which appears to be the formal requirement for being appointed as licensee under the West Bengal Urban Public Distribution System (Maintenance & Control) Order 2003 (said Order). It is pleaded in the writ petition that the form 'C' was duly filed and thereby license was issued jointly in favour of the petitioner and the respondent no. 6. The licence issued in favour of Madhu Sudhan Dey and Shambhunath Agarwal, being the writ petitioner and the respondent no. 6. The initial validity of the licence was till 31 December 2005, which was being extended on a year to year basis, and for the Byear 2007, the petitioner and the respondent no. 6 had made joint application along with renewal fees and necessary documents. It is claimed on behalf of the petitioner that as per an internal arrangement, the respondent no. 6 had agreed to transfer the licence in favour of the petitioner, but this arrangement had fallen through. The dispute had started, according to the petitioner, sometime during the last part of October 2007, when the respondent no. 6 had refused to put his signature in the indent papers. This was necessary for making weekly allotment of public distribution commodities. The petitioner thereafter made a representation for release of such commodities in his favour. A hearing was posted before the Deputy Director of Rationing on 22 November 2007, and the Rationing Officer to the concerned area was directed to attend the hearing on 22 November 2007 with all necessary papers concerning the said shop. The petitioner and the respondent no. 6 were also required to appear in the said hearing. The petitioner attended such hearing and requested transfer of licence in his own name. It was on 11 December 2007, the Inspector, Food & Supplies, of the concerned area visited the shop of the petitioner and recorded in the inspection book that as per desire of the Deputy Director of Rationing as per Orders dated 5 December 2007 and 7 December 2007, the petitioner and the respondent no. 6 were directed to stop functioning their Fair Price Shop and the same was directed to remain closed. The cardholders of the said shop were delinked and allocated to another dealer

Held:

Though the question of forging of signature in the deed of partnership involved an element of factual enquiry, being of the view that that aspect of

the controversy required examination for effective adjudication of this writ petition, The Court had directed the signature in the original deed to be sent to the handwriting expert. The Director-in-Charge, Questionable Document Examination Bureau, compared the signature of the respondent no. 6 as appearing in the deed of partnership dated 7 March 2005 with his signature contained in a sheet of paper attested by the rationing officer, Haltu, on 23 September 2005. On such comparison, the Examiner of Questioned Documents, QDEB, C.I.D. opined:-

“I do not find any characteristic divergence which is fundamental in nature. Agreements are significant and sufficient to prove their same authorship.” Para-10

In the Control Order there is no requirement for joint signature of the partners. Under the Law of Partnership, there is no requirement that each partner has to sign the documents which are required to be filed on behalf of the firm. On the other hand, under Section 18 of the Partnership Act 1932, each partner of the firm is entitled to act as agent of other partner/partners. Para-14

The insistence on the part of the authorities for joint signatures was not valid. As there was no proceeding against the petitioner or the respondent no. 6 for cancelling or suspending their licences on the ground of any illegality, the rejection of their renewal applications were invalid. Para-15

Advocates for the Petitioner : Mr. D. Saha Roy

Mr. B. Goswami

Mr. P. Bhattacharjee

Advocates for the State

Respondents: Mr. Syed Nazmul Hossain

Advocate for the Respondent

No. 6: Mr. Soumen Saha

The Court:

1. The dispute in this matter relates to direction for stoppage of business of dealership of a Fair Price Shop mainly on account of dispute between two partners of an unregistered firm, having the license of dealership. One of the partners, being the respondent no. 6 has questioned the existence of the partnership itself, and I shall examine that aspect of the dispute in this judgment

at a later stage. The respondent no. 6 was originally appointed as dealer of the said shop in the year 1964 as per the regulation prevailing at that point of time.

Thereafter, it appears that the father of the writ petitioner was entrusted with the job of operating the said shop though the exact nature of arrangement and the question as to whether such arrangement was as per the provisions of the relevant Control Order is not clear, but that issue is not relevant for adjudication of the present proceeding.

2. On 5 September 2004 an agreement had been executed between the petitioner and the respondent no. 6. In this agreement, it has been stated that for the last ten years the shop was being run by the father of the petitioner and the respondent no. 6 desired to transfer the shop licence to the writ petitioner. It was recorded therein that the writ petitioner had paid a certain sum of money and there was a clause to the effect that a further sum of rupees one lakh would be handed over to the respondent no. 6 by the petitioner after transfer of the license was effected.

3

3. The petitioner thereafter had applied before the licensing authority for incorporating his name as the licensee. As pleaded in the writ petition, concerned authority indicated to the petitioner that unless a joint application was made by the petitioner and the respondent no. 6 to run the business on partnership basis, no transfer of licence could take place. Thereafter, a deed of partnership on 7 March 2005 is claimed to have been executed by the petitioner and the respondent no. 6. A copy of this deed of partnership has been made Annexure "P2" to the writ petition. The broad feature of the deed was that in substance the

petitioner would look after the entire activities of the shop so that same was run smoothly, but there would be share of loss or profit, as the case may be, on equal basis, i.e. fifty per cent each.

4. A request was made thereafter before the Director of Rationing for change of character of the dealership of the firm from a proprietary concern to partnership. It is the case of the petitioner that the respondent no. 6 had agreed to the said arrangement and wrote a letter to the Director of Rationing for effecting the requisite changes. On 1 September 2005 the Director of Rationing accepted the resignation of the respondent no. 6 and appointed the writ petitioner and the respondent no. 6 as joint proprietors of the concerned shop.

4

This was done on the basis of a representation made by the respondent no. 6, a copy of which has been made Annexure "P3" to the writ petition. In this representation, it was specifically stated that the respondent no. 6 had decided to take the writ petitioner as a partner, and the copy of the deed of partnership was enclosed to this representation, although it was wrongly described as a registered partnership deed. A copy of the memorandum issued by the Director of Rationing has been made Annexure "P4" to the writ petition. The petitioner and respondent no. 6 were thereafter directed to file 'C' form, and certain other papers, which appears to be the formal requirement for being appointed as licensee under the West Bengal Urban Public Distribution System (Maintenance & Control) Order 2003 (said Order). It is pleaded in the writ petition that the form 'C' was duly filed and thereby license was issued jointly in favour of the petitioner and the respondent no. 6. The licence issued in favour of Madhu Sudhan Dey and Shambhunath Agarwal, being the writ petitioner and the respondent no. 6,

bearing no. H/192(04) FP. S/3712/Haltu/IA-1/1952(20) has been made Annexure "P6" of the writ petition.

5. The case of the petitioner is that the initial validity of the licence was till 31

December 2005, which was being extended on a year to year basis, and for the

5

year 2007, the petitioner and the respondent no. 6 had made joint application along with renewal fees and necessary documents. It is claimed on behalf of the

petitioner that as per an internal arrangement, the respondent no. 6 had agreed

to transfer the licence in favour of the petitioner, but this arrangement had fallen

through.

6. The dispute had started, according to the petitioner, sometime during the last part of October 2007, when the respondent no. 6 had refused to put his signature in the indent papers. This was necessary for making weekly allotment

of public distribution commodities. The petitioner thereafter made a representation for release of such commodities in his favour. A hearing was posted before the Deputy Director of Rationing on 22 November 2007, and the

Rationing Officer to the concerned area was directed to attend the hearing on 22

November 2007 with all necessary papers concerning the said shop. The petitioner and the respondent no. 6 were also required to appear in the said hearing. The petitioner attended such hearing and requested transfer of licence

in his own name. It was on 11 December 2007, the Inspector, Food & Supplies,

of the concerned area visited the shop of the petitioner and recorded in the inspection book that as per desire of the Deputy Director of Rationing as per

6

Orders dated 5 December 2007 and 7 December 2007, the petitioner and the respondent no. 6 were directed to stop functioning their Fair Price Shop and the

same was directed to remain closed. The cardholders of the said shop were delinked and allocated to another dealer.

7. In this matter, at the initial stage none had appeared on behalf of the

respondent no. 6. He appeared through his counsel only on 7 May 2008, on which date hearing of the matter was in the process of conclusion. I accordingly

directed him to file an affidavit explaining the reason for his absence on earlier

occasions. On that date, learned counsel appearing on his behalf had submitted

that the respondent no. 6 was suffering from ill health, and only on receiving information from the rationing officer that the matter was in the process of conclusion, he felt the urgency to appear in the matter through his learned counsel. In pursuance of such direction, he filed an affidavit affirmed on 9 June

2008, which was filed on 11 June 2008. In this affidavit, he took the plea of suffering from different types of ailments.

7

8. On merit, he took the plea of being forced into a partnership, and alleged forging of his signature in the partnership deed and other documents. In paragraphs 3 and 4 of the affidavit, the respondent no. 6 stated:

“3. That thereafter due to huge blood sugar and some other chronic ailments, I had practically become unable to attend the shop regularly. Taking advantage of my long absence said Hemraj Agarwal started taking supply of goods from the Department by copying my signatures in the indents in regular manner. They also copied my signatures in the Registers. I had inter alia reported the matter to the Director Rationing on 29.7.2008 and to the Rationing Officer (Haltu) on 7.2.2007, xerox copies whereof are collectively annexed hereto and marked with letter ‘A’.

4. That said Hemraj Agarwal and the writ petitioner Sambhu Nath Agarwal had threatened and physically assaulted me forcing me to accept Sambhu Nath as partner. I reported this matter to Jadavpur and Tiljala P.S. Forging my signature in a partnership deed they managed partnership in this business and for such change I did not get any hearing from the Department and without my knowledge and consent they managed to change the shop from A.R. to F.P.S.”(Quoted verbatim).

9. The stand taken by the Food & Supplies authorities in an affidavit filed by the rationing officer working under the respondent no. 5 is that the petitioner and the respondent no. 6 had failed to renew their licenses in the year 2008 and

as such their licenses were deemed to have been terminated. It was further

8

argued on behalf of the authorities that the petitioner's prayer for operating as the sole proprietor had also been rejected by the licensing authority by an order dated 19 October 2006 and this order of rejection remained unchallenged. So far as the renewal prayer in the year 2007 is concerned, the joint licensees prayed for the same but it is the stand of the authorities that it could not be handed over because the joint proprietors did not receive the same under their joint signatures.

10. Though the question of forging of signature in the deed of partnership involved an element of factual enquiry, being of the view that that aspect of the controversy required examination for effective adjudication of this writ petition, I had directed the signature in the original deed to be sent to the handwriting expert. The Director-in-Charge, Questionable Document Examination Bureau, compared the signature of the respondent no. 6 as appearing in the deed of partnership dated 7 March 2005 with his signature contained in a sheet of paper attested by the rationing officer, Haltu, on 23 September 2005. On such comparison, the Examiner of Questioned Documents, QDEB, C.I.D. opined:-

"I do not find any characteristic divergence which is fundamental in nature. Agreements are significant and sufficient to prove their same authorship."

9

11. No contemporaneous signature of Smt. Sandhya Dey, wife of the respondent no. 6. was however available, and authenticity of her signature was not tested. For the purpose of adjudication of the present writ petition, this was not necessary. As such, I did not deem it necessary to direct further enquiry for verifying the authenticity of the signature of Smt. Sandhya Dey. An application

has also been filed on behalf of the respondent no. 6, being CAN 6978 of 2009, taking exception to the report of the handwriting expert. In this petition, it has been alleged that the signature of the respondent no. 6 in the deed of partnership is fabricated, and prayer has been made for reverification of the said signature in the questioned document.

12. I am however not inclined to direct re-examination of this signature, or authenticity of this document afresh. The licence for dealership in favour of the petitioner and the respondent no. 6 was issued on the strength of the deed of partnership, as it appears from the application of the respondent no. 6, a copy of which has been made Annexure "P3" to the writ petition. the Director of Rationing, West Bengal had accepted the resignation of the respondent no. 6 and appointed the petitioner and the respondent no. 6 as joint proprietors, as per 10 memorandum no. 2030/1(4)/A-I dated 1 September 2005 (Annexure "P4" to the writ petition). The entity has been treated as a partnership firm in the address column. Thus, the parties to this proceeding had acted upon the said deed, and the signature of the respondent no. 6 has been found to be genuine by the handwriting expert, comparing the same with contemporaneous signature of the respondent no. 6. The respondent no. 6 has not instituted any independent proceeding seeking invalidation of the said deed. In these circumstances, I do not think any further enquiry over the genuineness of the said document is warranted in the present proceeding, in which the constitutional writ jurisdiction of this Court has been invoked. The application of the respondent no. 6, being CAN 6978 of 2009, accordingly stands rejected.

13. Now I shall address the issues raised in the writ petition on merit. So far as

the contention of the respondent authorities is concerned, the main reason for not renewal of licence is that the petitioner and the respondent no. 6 did not sign jointly, initially in the indents of allotment, and thereafter in the renewal application, as it has been pleaded in the affidavit-in-reply of the petitioner to the affidavit-in-opposition filed on behalf of the respondent no. 5. The licence was given to them on a joint basis relying on the deed of partnership. There is no bar

11

in the Control Order for granting of licence to a partnership firm. The definition of dealer in the said Control Order is:

“(h) “Dealer” or “fair price shop owner” means a person and includes a co-operative society or a corporation or a company of a State Government or any other body in whose name a shop has been licensed to distribute public distribution commodities under the Public Distribution System by an order issued under section 3 of the Act.”

14. In the Control Order I do not find there is any requirement for joint signature of the partners. Since the licence was given to the firm on the basis of

deed of partnership, whatever be the nomenclature for describing the petitioner

and the respondent no. 6, in subsistence the licence was given to a partnership

firm. Under the Law of Partnership, there is no requirement that each partner has to sign the documents which are required to be filed on behalf of the firm. On

the other hand, under Section 18 of the Partnership Act 1932, each partner of the firm is entitled to act as agent of other partner/partners.

15. In the light of these facts, and the position of law, I do not think that the respondent authorities could insist on joint signatures solely because the petitioner and the respondent no. 6 were referred to as joint proprietors. In my

opinion the insistence on the part of the authorities for joint signatures was not

12

valid. As there was no proceeding against the petitioner or the respondent no. 6

for cancelling or suspending their licences on the ground of any illegality, the

rejection of their renewal applications were invalid. Under these circumstances, I

direct the respondent authorities to restore the licences of the firm.

14. In the Control Order I do not find there is any requirement for joint signature of the partners. Since the licence was given to the firm on the basis of

deed of partnership, whatever be the nomenclature for describing the petitioner

and the respondent no. 6, in subsistence the licence was given to a partnership

firm. Under the Law of Partnership, there is no requirement that each partner has to sign the documents which are required to be filed on behalf of the firm. On

the other hand, under Section 18 of the Partnership Act 1932, each partner of the firm is entitled to act as agent of other partner/partners.

15. In the light of these facts, and the position of law, I do not think that the respondent authorities could insist on joint signatures solely because the petitioner and the respondent no. 6 were referred to as joint proprietors. In my

opinion the insistence on the part of the authorities for joint signatures was not

12

valid. As there was no proceeding against the petitioner or the respondent no. 6

for cancelling or suspending their licences on the ground of any illegality, the

rejection of their renewal applications were invalid. Under these circumstances, I

direct the respondent authorities to restore the licences of the firm.

16. So far as making applications for renewals for the year 2008 onwards, the

case made out by the petitioner is that the application for 2008 could not be made because the authorities were insisting on joint signatures. This Court was

in seisin over the subject controversy when turn for renewal came in 2008 and

2009, and the very question as to whether joint signatures would be necessary or not was the main issue before this Court, I am of the opinion that if application is made for renewal on depositing requisite fees within one week from the date the certified copy of this judgment is made available to the petitioner, the licence shall be renewed in the joint names of the petitioner and the respondent no. 6.

So far as dispute between the petitioner and the respondent no. 6 is concerned, I do not make any comment in relation thereto and it would be up to the respondent no. 6 to question the legality or illegality of any action of the petitioner vis-à-vis the said firm.

17. In the affidavit-in-opposition filed by the respondent no. 5, certain allegations have been made relating to illegal shifting of the shop. I am not addressing that issue in this writ petition, as the same goes beyond the scope of the present writ petition. If there are any allegations of irregularity, the food and supplies authorities shall be at liberty to initiate proceeding against the licencees in accordance with the provisions of the Control Order.

18. The writ petition stands allowed in the above terms.

19. There shall, however, be no order as to costs.

20. Urgent Photostat certified copy be given to the parties if applied for on compliance of necessary formalities.

(ANIRUDDHA BOSE, J.)