

6, 7 & 8
08.10.2024
Court No. 25
Tudu (p.a)

WPA 23452 of 2024

Mangal Sarkar
Vs.
Union of India & Ors.

With

WPA 23453 of 2024

Sujit Sarkar
Vs.
Union of India & Ors.

With

WPA 23609 of 2024

Jabed Sk. & Anr.
Vs.
Union of India & Ors.

Mr. Dilip Kumar Samanta,
Mr. Biswapriya Samanta,

... for the Petitioner

Mr. Sunil Kumar Singhania.
... for the Respondent No.1

Mr. N.I. Khan,
Mr. Amlan Mukherje,
Mr. Abhijit Mandal.

... for the Respondent No. 7 & 8

Mr. Pantu Deb Roy, Ld. AGP.,
Mr. Pannalal Bandyopadhyay.

... for the State Respondent
(In WPA 23452 of 2024
&
WPA 23609 of 2024)

Mr. Amal Kumar Sen, Ld. AGP.,
Mr. Reshma Chatterjee.
...for the State Respondent
(In WPA 23453 of 2024)

In these cases the writ petitioners have challenged the order of the Appellate authority dated September 6, 2024.

Mr. Samanta, appearing for the petitioners have submitted that the petitioners are the “Associate Dealer” of the Parent Manufacturer and thus are entitled to obtain a trade certificate. From the records he would show that the petitioners have applied duly by fulfilling statutory requirements, by specially referring to the statutory Form No. 16A, that is, the “Dealership Authorization Certificate”.

Therefore according to Mr. Samanta, the petitioners would be entitled for a trade certificate as per the statutory provisions. In such view of the fact, cancellation of the trade certificate, earlier granted to them, by dint of the impugned order dated September 6, 2024 is illegal and unsustainable, Mr. Samanta says.

Mr. Samanta has further pointed out to the fact that in issuing the impugned order the respondent authority has relied on the objections raised by one existing trade certificate holder/dealer, for which the same would have no jurisdiction under the law. Such objection would be unsustainable in the eye of law. In support of such submission Mr. Samanta would rely on the following two judgments (i) ***The Nagar Rice & Flour Mills & Ors.*** reported in (1970) 1 SCC 575, (ii) ***Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed & Ors.*** reported in (1976) 1 SCC 671.

So far as the term “dealer” is concerned Mr. Samanta would rely on the two Co-ordinate Benches decisions of this Court dated November 9, 2021 and January 25, 2022, in writ petitions No. WPA 16302

of 2021 and WPA 13 of 2022 respectively. He would also rely on the judgment of the Kerala High Court dated March 2, 2020, Biju K.K. vs. Transport Commissioner Trans Towers & Ors. in WP (C) No. 13689 OF 2019.

Therefore Mr. Samanta sums up that the trade certificate dated October 12, 2023, issued to his client would be in confirmity with the law and undeniable to the petitioners. In such view of the fact, he says, the impugned order dated September 6, 2024 would be liable to be set aside.

As an interim measure, Mr. Samanta would ask for an order of stay of operation of the impugned order dated September 6, 2024.

The private respondent/objector is represented by Mr. Khan. Mr. Khan would submit that the petitioner's contentions and prayer is unsustainable. He would say by referring to the various provisions of the Central Motor Vehicles Rules, 1989 that an authorized dealer and not associate or sub-dealer would be eligible for grant of trade certificate. Therefore according to the private respondent, petitioners' prayer would not be even maintainable, them being the "Associate Dealer". Mr. Khan would support the impugned order that the Appellate authority after due consideration of the relevant legal provisions and the concerned facts, has directed for cancellation of the trade certificate, issued to the petitioners.

Mr. Deb Roy has appeared for the State respondent in WPA No. 23452 of 2024 and WPA No. 23609 of 2024 and Mr. Sen in WPA No. 23453 of 2024. Mr. Sen has submitted that in this case the Court would be required to interpret as to if an "Associate Dealer" can be understood under the law to be an "Authorised Dealer" or "Dealer" or if the

benefit allowable to a dealer would similarly be extendable to an Associate Dealer or not.

Considering the entire facts and circumstances and the relevant legal provisions referred to by the respective ld. lawyers and also the judgments/orders referred to before this Court, the Court is of the considered opinion that this matter can properly be adjudicated only upon affidavits being filed by the parties.

Therefore it is directed that the respondents file affidavit-in-opposition within a period of three weeks from the date of reopening. An affidavit-in-reply may be filed within one week thereafter by the petitioners. This matter so appear in the list under the heading “Adjourned Hearing” on December 6, 2024.

It is directed that the impugned order dated September 6, 2024, shall not be given effect/further effect to, till December 31, 2024.

(Rai Chattopadhyay, J.)