

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C). No.61 of 2023

Sri Prabhat Chandra Paul

.....Petitioner

_V_E_R_S_U_S_

The State of Tripura & 2 Others

.....Respondents.

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. K. Nath, Advocate.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A.
Date of hearing and delivery of judgment and order	:	14.12.2023
Legal reporting	:	YES/NO

HON'BLE MR. JUSTICE T. AMARNATH GOUD
_J_U_D_G_M_E_N_T_O_R_D_E_R_[ORAL]

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the petitioner also heard Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents.

[2] The present petition has been filed under Article-226 of the Constitution of India for directing the respondents to restore dealership of the petitioner of the F.P. Shop No.207 and also quashing the order dated 21.05.2022 by the appellate authority, Secretary to the Govt. of Tripura. Further, for cancelling the letter dated 23.07.2021 issued by the SDM, Sadar, West Tripura and cancelling the letter dated 17.07.2018 issued by the SDM, Sadar, West Tripura and another order dated 20.01.2020 passed by the SDM, Sadar.

[3] The facts in brief are that the petitioner has sought for necessary direction upon the respondents to restore the dealership of the petitioner of F.P. Shop No.207. The petitioner has sought for quashing and cancelling the order dated 21.05.2022, issued by the Appellate authority, Secretary to the Government of Tripura and the letter dated 23.07.2021 issued by the SDM, Sadar, West Tripura. The petitioner has also sought for quashing and cancelling the letter dated 17.07.2018 issued by the SDM, Sadar, West Tripura & the order dated 20.01.2020 passed by the SDM, Sadar.

[4] Mr. K. Nath, learned counsel appearing for the petitioner has submitted that the appellate authority by order dated 27.11.2018 dismissed the appeal. In the impugned order, the concerned authority as would be evident from the impugned order, relied on so called admission made by the son of the petitioner and relied on so called statement of Smt. Sumitra Roy to the effect, that, the petitioner stored kerosene oil in her house. It is necessary to mention here, that, the petitioner did not get any opportunity of cross examining Smt. Sumitra Roy, who allegedly stated, that, the petitioner has stored K.oil in her house, even no statement of Sumitra Roy was reduced into writing.

[5] On the basis of such alleged statement of one Sumitra Roy, who could not be examined and cross examined in presence of the petitioner before the appellate authority, the appellate authority relied on her so called statement. It is very much against the principle of natural justice and the petitioner was prejudiced by such reliance on the so called statement made by Sumitra Roy. The appellate authority did not consider, that, in respect to allegation of discrepancy of about 65 kg rice, the petitioner did not get any opportunity of defending him as without having gone through the stock and sale register, the petitioner could not counter such allegation.

[6] The petitioner by filing a writ petition vide WP(C) No. 299 of 2019 challenged the order, dated, 17.07.2018, passed by the SDM, Sadar, suspending his fair price shop dealership and the order, dated, 27.11.2018, issued by the appellate authority confirming the cancellation of the dealership of the petitioner. This Court vide judgment & order dated, 29.06.2019, disposed of WP(C) 299/2019, by setting aside and quashing the impugned orders, dated, 17.07.2018 and 27.11.2018. Thereafter, the Court remanded the matter to the Licensing Authority to afford opportunity of fresh hearing.

[7] Thereafter, on 13.11.2019, one Subrata Saha, Inspector of Food, called the petitioner and asked to meet him immediately within 10 minutes at the office of the SDM, sadar. Accordingly, the petitioner went to the office of the SDM, Sadar and met with Subrata Saha, Inspector of Food. When the petitioner met Subrata Saha, Inspector, then the said Subrata Saha & another officer forced the petitioner to put his signature in a purported statement of Smt. Sumitra Roy, which was taken behind the back of the petitioner. The petitioner was perplexed by such turn of event. The petitioner, by representation, dated, 02.12.2019,

informed the SDM, Sadar, about the said incident and by referring to the judgment and order dated, 29.06.2019, passed by this Court in WP(C) 299/2019, the petitioner stated, that, direction and observation given by the Court has been violated and without giving him any opportunity to examine and cross examine Sumitra Saha, the license has been cancelled.

[8] The SDM, Sadar, by memo, dated, 18.11.2019, asked the petitioner to remain present in office on 20.11.2019 at 2 pm. On that day, the petitioner duly appeared before the SDM, Sadar, with learned counsel. The SDM, Sadar, did not allow cross examination of two persons and stated, that, the question should be put to them in writing. The petitioner protested and stated, that, it is against the specific direction of the High Court given by Judgment and Order dated, 29.06.2019, passed in WP(C) 299/2019.

[9] On 21.01.2020, the petitioner appeared before the SDM, Sadar, along with learned counsel and Sumitra Roy also appeared before the SDM. Statement of Sumitra Roy was read over before her and the petitioner was asked to put his signature on the statement of Sumitra Roy, which was purportedly recorded on 13.05.2018. Despite repeated objection, the concerned officer assured the petitioner that, after obtaining the signature of the petitioner on the purported statement of Sumitra Roy, cross examination of her would be done.

[10] It has been further contended that the Court quashed and cancelled the earlier orders, dated, 17.07.2018 & 27.11.2018 as on the basis of the allegation behind the back of the petitioner, without providing reasonable opportunities to the petitioner, those orders were passed. The Court also observed that even though the petitioner did not confess his guilt but it was the basis on which the licensing authority has passed the impugned order suspending the license of the petitioner, even the appellate authority despite the specific plea raised in this regard, did not answer that question. In view of this, the court after quashing and setting aside the impugned order, dated, 17.07.2018 & 27.11.2018, remanded the matter to the licensing authority with the specific direction, that, the petitioner should be afforded opportunity of fresh hearing.

[11] The learned counsel has further averred that the scope of principle of natural justice as emphasized by the Court that fresh hearing including cross examination of the said two persons on the basis of whose statements, the licensing authority cancelled the license of the Petitioner. In fact, the

respondents have committed deliberate contempt of the Court by acting in disregard of the specific direction given by the Court. Earlier by the impugned order dated 17.07.2018, the Licensing authority suspended the F.P. Shop dealership of the petitioner. As the petitioner did not accept the earlier order dated 17.07.2018 & 27.11.2018 passed by the appellate and licensing authorities and took the matter to this Court, the petitioner earned the wrath of licensing authority and for this reasons, by the impugned order the dealership of the petitioner has been cancelled.

[12] Thereafter, no order was passed by the SDM, Sadar. i.e. the licensing authority. In view of this, the petitioner by representation, dated, 19.11.2021, approached the SDM, Sadar, and stated, that, though cross examination of Sumitra Roy took place on 03.07.2021, but till date, the petitioner has not been informed as to whether the licensing authority has passed any fresh order. The petitioner also stated, that, the dealership of F.P Shop No 207 has not yet been returned to him though this Court by Judgment & Order, dated, 26.03.2021 passed in WP(C) 523/2020, has quashed and cancelled the order, dated, 20.01.2020. Stating so, the petitioner submitted that he may be allowed to run the F.P shop no 207 as the cancellation order stood no more and he may be duly informed about the latest position.

[13] In view of above and having gone through the material evidence on record, this Court is of the view that the petitioner's licence was cancelled on the allegation of giving away 50kg of rice un-authorizedly and selling the same in an open market and also keeping 30 Ltr. of kerosene oil in a stranger's residence. Insofar as the selling of rice is concerned during the proceeding before the respondent was closed in favour of the petitioner but insofar as the 30 Ltr. Kerosene oil is concerned, the respondents have observed against the petitioner and passed adverse orders against the petitioner.

[14] It is seen from the record that invariably the petitioner contended that the stock register relating to the kerosene oil were as per requirement and found correct and only based on the statement of a stranger Smti. Sumitra Roy, the respondents have given credence to the statement taken against the petitioner. A criminal proceeding has also been initiated against the petitioner by the learned Court below has decided the proceeding in favour of the petitioner and acquitted. It is also seen from the record which is not disputed by the

respondents that from 2012 onwards the petitioner is doing the business of essential goods by way of supply under a valid licence without having any stigma and for the first time he has been drag into this litigation for some external affairs.

[15] Considering the overall records and for the reasons as indicted above, this Court is of the view that a lenient view can be taken in the present case more particularly, in the light of the omission made by the respondents in not considering the case of the petitioner with regard to tallying kerosene oil with the register. Since the said finding is absent by the respondents all through the proceeding, this Court giving the benefit of doubt in favour of the petitioner and accordingly, the present writ petition stands allowed consequently, the impugned proceeding stands set aside.

[16] In view of above observations, the present petition preferred by the petitioner stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

T. AMARNATH GOUD, J

A. Ghosh

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