

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA 9315 of 2020

**Md. Irfan Alam
Vs.
State of West Bengal and others**

For the petitioner	:	Mr. Debabrata Saha Roy, Mr. Ekramul Bari, Mr. Syed Mansur Ali
For the State	:	Mr. Susovan Dasgupta, Mr. Subir Pal
For the addition of party	:	Mr. Anjan Bhattacharya, Md. Habibur Rahman
Hearing concluded on	:	04.12.2020
Judgment on	:	10.12.2020

Sabyasachi Bhattacharyya, J:-

1. The petitioner runs a fair price shop and has a kerosene dealership.
Vide Notice dated October 13, 2020 (Memo No. 1783/SCFS/ISP/2020), the respondent no. 5 directed the petitioner under Clause 24 (1) of the WBPDS (M & C) Order, 2013 and Clause 9A (i) of WB Kerosene Control Order, 1968 to show cause in writing why penal action would not be taken against the petitioner for contraventions of provisions of the 2013 Order and Clause 6B of the 1968 Order, as amended from time to time (lastly in 2014). The petitioner's reply was to be given at the time of hearing, to be held on

October 14, 2020 at 3:00 PM positively, failing which legal action would be taken as per law against the petitioner.

2. The petitioner gave a written reply to the show cause notice. However, it was pointed out in the said reply that the petitioner had not been provided minimum time to submit his “show-cause letter” and that the complaint petition had not been attached with the show-cause notice for proper response by the petitioner.
3. Vide another notice dated November 6, 2020, respondent no. 5 communicated to the petitioner that the petitioner’s shop, being no. 49/CK at Garrah, was kept under suspension “in the interest of the Public Service” with effect from issuing the suspension letter until completion of “the whole proceeding”.
4. The petitioner has filed the present writ petition asking for writs of mandamus quashing the suspension order dated November 6, 2020 as well as the entire proceedings initiated on the basis of the show cause notice dated October 13, 2020.
5. Learned senior counsel appearing for the petitioner argues that the show cause notice dated October 13, 2020 was bad in law insofar as the same clubbed two provisions of distinct and different Control Orders of 2013 and 1968 respectively, which is not permissible in law. Moreover, only a single day was given to the petitioner to show cause, which made it impossible for the petitioner to use a proper reply.

6. The suspension order dated November 6, 2020 was vitiated in law for the same reason, that is, the same was passed simultaneously under two different provisions of separate Control Orders.
7. Learned senior counsel next argues that, as per Clause 24 (i) of the 2013 Order, in case of contravention of any provision of the Order, the Sub-Divisional Controller, Food and Supplies shall issue a notice to the concerned dealer asking for explanation in writing for such contravention and discrepancy and may also place the dealership under suspension till the disposal of the proceedings by the Sub-Divisional Controller. In case of suspension, the concerned ration card holders shall be tagged temporarily with the neighbouring dealer for uninterrupted supply of public distribution commodities. Hence, counsel argues, the order of suspension, if any, could only be issued at the time of seeking the explanation and not later. In the present case, however, no order of suspension was recorded in the show cause notice. Only by a separate and subsequent order, such suspension was handed out, which was beyond the charter of the respondent no. 5 as per Clause 24.
8. That apart, as per Clause 24 (ii) of the 2013 Order, it is submitted, the licensing authority may terminate the licence or reduce the volume of business through reduction of tagged ration cards and/or impose fine according to the gravity of the offence, after giving the licensee an opportunity of being heard and after recording the reasons thereof. Therefore, the only recourse before the licensing authority, after a

reply was given to the show-cause notice, was to ascertain the veracity of such reply and, if dissatisfied with the same, to give an opportunity of hearing to the accused licensee. If the authority was not satisfied with the licensee's defence even thereafter, the course of action left was to penalize the licensee, by termination of licence, reduction of volume of business and/or imposition of fine. However, once the licensee used a reply to the show cause notice, no subsequent order of suspension could be passed. The time of passing such an order was limited to the stage of issuance of the show cause notice and not thereafter.

9. In this context, learned senior counsel for the petitioner cites a co-ordinate bench judgment dated May 19, 2020 passed in *W.P. No. 5404 (W) of 2020 with CAN 3100 of 2020 (Taraknath Ghosh v. State of West Bengal & Ors.)*. In the said judgment, the learned Single Judge recorded that at the time of commencing the proceeding and asking for explanation, the authority in the said case did not think fit to issue an order of suspension. The explanation had come in and it was for the authority to deliberate on the explanation, give a hearing to the petitioner and decide whether or not the licence should be terminated. It was held that, at that stage, issuance of suspension order was not what was provided in paragraph 24 of the Control Order (of 2013). The suspension order was thus set aside and quashed.

10. Learned senior counsel next cites another co-ordinate bench decision, dated February 27, 2008, passed in *W.P. No. 958(W) of 2008 (Tarun Kumar Roy v. State of West Bengal & Ors.)*. The learned Single Judge observed that two authorities were cited in support of the proposition that a composite notice of show-cause alleging violation of the provisions of two Control Orders was not sustainable, though in both the said cases the orders of suspension, and not the final orders of termination, were challenged. Following such proposition, the learned Single Judge also quashed the impugned order of cancellation and/or termination.
11. However, the learned Single Judge, in *Tarun Kumar Roy (supra)*, did not quash the show-cause notice as a whole but instead, treated the same as a notice under the 2003 Order (it was issued under the 2003 Order and the 1968 Order) but directed *de novo* hearing since the hearing officer had considered breach of both the Control Orders before termination of licence. The order of suspension was also quashed as breach of both the Control Orders was considered.
12. The petitioner next cites *Oryx Fisheries Private Limited v. Union of India and Others*, reported at (2010) 13 SCC 427. In the said judgment, upon considering the language of the show cause notice issued by the Marine Products Export Development Authority, Cochin, the Supreme Court observed that the concerned authority had demonstrated a closed mind at the stage of show cause itself. It was reiterated that a quasi-judicial authority, while acting in exercise

of its statutory power, must act fairly and must act with an open mind while initiating a show-cause proceeding. Such a proceeding was meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. The Supreme Court accordingly quashed the show cause notice as well as the consequent order in the said case.

- 13.** Learned senior counsel for the petitioner also submits that hearing was fixed on the very next day by the show cause notice, even prior to submission, let alone consideration, of any reply thereto. This itself shows, it is argued, that the authority was biased and had pre-determined its mind before hearing the petitioner.
- 14.** Not only was a single day (the very next date after the date of issuance of the show cause) given after the show cause notice for reply and hearing, the materials relied on by the authority for issuance of the show cause notice and suspension order were never shown or handed over to the petitioner, which disabled the petitioner from responding to those. Unlike Clause 9 (A) (ii) of the 1968 Order, suspension under Clause 24 (i) of the 2013 Order need not be simultaneous with the show cause notice, but is an additional power, given to the authority over and above that of issuing show cause notice.

15. Under such circumstances, the petitioner argues, the proceeding arising from the impugned show cause notice, and also the suspension order, ought to be quashed.
16. Learned counsel for the respondent-authorities seeks to justify the composite issuance of the show cause notice under two different Control Orders by arguing that there is no bar in law to do so. In the same vein, counsel submits that the 2013 Order does not prohibit issuance of a suspension order subsequent to the issuance of a show cause notice.
17. Learned counsel contends that the facts of the cited judgments of this court were different from the present case. It is further contended that since the petitioner, in the present case, has already filed his reply to the show cause notice, only the hearing of the matter is left incomplete, which can be directed by this court to be concluded within a reasonable period. However, issuance of the show cause notice and the suspension order were within the powers of the respondent authorities.
18. Hence learned counsel for the respondents prays for dismissal of the writ petition.
19. A perusal of the materials on record show that the show cause notice dated October 13, 2020 suffers from various lacunae. First, it directed the petitioner to file his reply on the very next day, that is, October 14, 2020. Secondly, the date of hearing was also fixed on

October 14, 2020, simultaneously with the filing of reply. Not only did such an act preclude the petitioner, at the outset, from replying to the show cause notice comprehensively and in a proper manner, it also put the cart before the horse by juxtaposing the time of hearing and filing of reply to the show cause notice by the accused licensee.

- 20.** Hence, inevitably, the 'reply' filed by the petitioner was cryptic and sketchy, barely touching the tip of the possible body of defence. Also, there was no time-gap left before the reply was filed and the hearing was undertaken, which would give scope to the concerned authority to consider the reply and decide on further course of action. This gives an impression of a closed mind and pre-determination of the respondents in the matter of dealing with the allegations against the petitioner.
- 21.** The petitioner, in any event, could not file a reply worth the name; all the more, because the petitioner was not provided with an inspection or copies of the documents on the basis of which he was directed to show cause and ultimately his licence was suspended, being the purported 'mass petition' and the enquiry reports of the BDO, Goalpokher-II and the Area Inspector, Food & Supplies, if any, as mentioned in the impugned show cause notice and suspension order.
- 22.** However, there is, on the face of it, some doubt as regards the petitioner's argument that the suspension order had to be simultaneous with the show cause notice, which deserves a consideration at the expense of a short deviation from the moot issue.

A comparison between the language of Clause 24 (i) of the 2013 Order and Clause 9 (A) (ii) of the 1968 Order (as amended in 2014) shows that, whereas the expression “simultaneously with issue of the notice” is used in the latter to qualify a suspension order, there is no similar or corresponding expression in the former. The power to grant suspension is granted in Clause 24 (i) over and above that of issuing a notice asking for explanation. Such suspension has a terminus in the disposal of the proceedings by the Sub-Divisional Controller, Food and Supplies, but there is nothing envisaged in Clause 24 (i) to fix its genesis simultaneously with the issuance of show cause notice. Thus, a suspension order under Section 24 (i) of the 2013 order could arguably originate at any time from the issuance of a show cause notice till the disposal of the proceeding. However, such an interpretation is rendered invalid by the following logic:

- 23.** If, instead of being Siamese twins, the powers to issue a show cause notice and a suspension order were to be treated as independent powers having varied parentage, it would necessarily follow that a suspension order, which curtails the rights of the accused (unlike a show cause notice which merely levels allegations and seeks explanation), would have to be backed by sound reasons. This might bring in, as a corollary, the prior right of notice and hearing of the accused or, in the least (if granted ex parte), the requisite recording of reasons for the urgency. This would create an incompatible dichotomy, in that even if an order of suspension is issued

simultaneously with the show cause notice, it would require a prior hearing of the accused or strong reasons for being passed ex parte, which is impossible in a non-adversarial system, since there would be no plaintiff/complainant giving rise to the proceeding (even if the show cause is on the basis of a complaint, the proceeding is between the adjudicating authority and the accused, and without an 'adversary'). Yet, a show cause notice itself originates the proceeding and it is impossible to conceptualize a prior hearing or recording of reasons at that stage, since the accused does not even know the allegations against her/him yet, let alone having got an opportunity of being heard. This marginal case exemplifies the impossibility of the theory that a suspension order springs from an independent genesis than the show cause notice, because in such case, there might arise the Schrodinger's cat situation of the suspension order being issued and not issued simultaneously with the show cause notice.

24. Moreover, since the 2014 amendment to the 1968 Order came in after the 2013 Order (which is rather obvious!), the 2013 Order could not have been authored with conscious choice of words vis-à-vis the provisions of the 2014 amendment; rather, the contrary holds true. The simultaneity of show cause and suspension in the 2014 amendment of the 1968 Order could have been introduced to fill in the chinks of similar provisions in the 2013 Order.

25. Looking into *Taraknath Ghosh (supra)*, there can be found certain distinctions on facts with the present case. For example, one

complainant apparently withdrew the complaint and an explanation to the show cause notice had already been given by the accused licensee. However, in the present case, there are other factors justifying adoption of the view taken by the learned Single Judge in that report. In the instant case, the show cause notice was issued on October 13, 2020 and reply was directed to be given on the very next date, that is, October 14, 2020, at the hearing itself. This left no time for the petitioner to furnish a reply/explanation, worth the name, to the allegations made in the show cause notice. The time given was illusory, resulting in the petitioner being deprived of a proper opportunity to show cause. Thus, the 'reply' filed by the petitioner contains virtually no explanation at all.

26. In the first place, a reply to the show cause could not have been directed to be filed directly at the hearing, because that would essentially obliterate the intermediate steps of a primary consideration of the petitioner's explanation and a decision by the authority on whether the charges which would be proceeded with or dropped, either partially or entirely. Only thereafter could a hearing be fixed.

27. Moreover, the allegations levelled in the show cause notice are as vague as can be and do not include any specific instance of irregularity. The 'mass petition', on the basis of which the allegations were made, was never disclosed to, or served upon, the petitioner for the latter to answer. Enquiries by two authorities were cited in the

suspension order, which were also not substantiated by the mention of any enquiry report. Neither was the petitioner informed about such enquiry nor was any report or other document handed over to the petitioner to back up the veracity of such 'enquiry', for the petitioner to reply accordingly.

28. In *Tarun Kumar Roy (supra)*, two previous co-ordinate bench orders of this court, holding that a composite notice of show cause alleging violation of the provisions of two Control Orders is not sustainable, were relied on by the learned Single Judge. However, such authority was deviated from on the facts of the case and the show cause therein was retained as valid only as regards one of the Control Orders, while negating the other. Borrowing such logic, that component of the impugned show cause notice in the instant case, which relates to provisions of the 1968 Order, has to be quashed in any case, since in the instant matter, akin to the precedent discussed last, there was no specific allegation touching the 1968 Order, either in the show cause notice or in the suspension order.

29. Even the other component of the show cause notice, pertaining to the 2013 Order, has to give way since the petitioner was deprived of a proper opportunity to give an explanation, as envisaged in Clause 24 (i) of the 2013 Order. Direction to file a reply on the very next day, that too directly at the hearing, cannot even qualify as lip-service to the provision of opportunity to reply, inbuilt in Clause 24 (i) and in the mores of natural justice. The allegations were not spelt out

specifically and documents were mentioned in the show cause notice, which were never disclosed in, or annexed to, the notice. Such a notice cannot stand a moment's scrutiny.

30. The suspension order goes automatically, since it was based on the show cause notice, which itself cannot be sustained. That apart, the suspension order, having been issued subsequent to the show cause notice, defies reason in the absence of any further cause of action having arisen. Instead of pre-empting the right of hearing of the petitioner, the respondent-authorities would do better in granting appropriate opportunity to the petitioner to reply to the show cause notice and to consider whether such reply satisfies any of the queries put to him, and only then fix a date of hearing. The respondent-authorities also failed in their duty to hand over to the petitioner all relevant material on which they relied, such as the purported 'mass petition' and enquiry report, if any.

31. The ratio laid down by the Supreme Court in *Oryx Fisheries (supra)* also acquires relevance in the context, since the direction on the petitioner (in the show cause notice), to file his reply on the very next day directly at the hearing, *ex facie* reeks of mala fides and a pre-determined closure of mind to the petitioner's contentions. This making up of mind and pre-conclusion of alleged guilt of the petitioner vitiates the notice and the consequential proceedings and suspension order.

32. In view of the above discussions, the writ petition succeeds.

33. WPA 9315 of 2020 is thus allowed on contest, thereby quashing the impugned show cause notice dated October 13, 2020 (Annexure P/2 at page 25 of the writ petition), as well as the ensuing proceeding and the consequential suspension order dated November 6, 2020 (Annexure P/4 at page 28 of the writ petition). However, this order will not preclude the respondent-authorities from issuing separate fresh notices to the petitioner in accordance with law under the relevant provisions of the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 and the West Bengal Kerosene Control Order, 1968, as amended by Notification No. 2566/FS/FS/Sectt/Sup/4M-16/ 2014 dated November 3, 2014 (referred to above as “the 1968 Order”).

34. There will be no order as to costs.

35. Urgent certified website copies of the order shall be provided to the parties upon due compliance of all the requisite formalities.

(Sabyasachi Bhattacharyya, J.)