

SL.07
25.09.2020
mb

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side
(Via video conference)**

W.P.A. No. 6333 of 2020

with

**IA No.: CAN 1 of 2020
(Old No. CAN 4876 of 2020)**

**Ratan Banik
-Vs.-
State of West Bengal & Ors.**

Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das,
Mr. Neil Basu

... for the petitioner

Mr. Swapan Kumar Datta,
Mr. Tapas Kumar Dey

...for the State respondents

The grievance of the petitioner is that the respondent-authorities sent a notice dated May 15, 2020 to the petitioner, vide Memo No. 540/SCFS/SLG, whereby the petitioner was directed to show-cause in writing within seven days from the date of receipt of the notice as to why suitable penal action would not be taken against the petitioner for violation of the condition laid down in paragraph 19 of the WBPDS (M&C) Order, 2013.

The MR Dealership licence of the petitioner was placed under suspension pending disposal of the proceedings initiated with the said notice. Clause 24 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 provides that the dealership may be under suspension till disposal of the proceedings before the Sub Divisional Controller, Food and Supplies. However, the said clause itself stipulates that the entire proceeding shall be completed within 60 days from the date of issuance of the show-cause notice. In the present case, the petitioner places certain communications, particularly, the letter dated May 22, 2020, sent by the respondent authorities to the petitioner pertaining to Memo No. 540/SCFS/SLG, dated May 15, 2020, which indicates that the reply given by the petitioner was not satisfactory regarding the shifting of PDS articles. Therefore, in order to provide the petitioner an opportunity of explanation, the licensing authority directed the petitioner to appear for personal hearing on May 28, 2020 with all requisite documents related to the case.

At this juncture, learned counsel for the petitioner relies upon a Division Bench judgment of this Court, reported at **2003(3) CHN 655, (Md. Yeasin & Ors. Vs. State of WEST Bengal &**

Ors.), where it was held, *inter alia*, that the period stipulated for disposal of a proceeding initiated upon a show-cause under the then Control Order of 2003 was mandatory.

The reasons therefor were discussed in detail at paragraph 40 of the said Division Bench judgment, which is quoted below:

“40. In view of the aforesaid discussions, this Court is of the opinion that the statutory provision about conclusion of the proceedings within the period of 3 months from the date of issuance of the show-cause notice cannot be held to be mandatory. The same is directory in nature. But one thing is clear that the proceedings which have been initiated should be disposed of as expeditiously as possible. But the suspension of the deadlier causes great inconvenience and headship as the dealer is thrown out of his business without any subsistence during the suspension period. So the period of 3 months should be considered as mandatory so far as the continuance of suspension in connection with the proceeding is concerned. Therefore, this Court holds that the suspension of the dealer in connection with such proceedings must come to an end after a period of 3 months if within that period the proceedings are not completed. But the proceedings are not ipso facto terminated just on the expiry of the said period of 3 months but should be concluded as early as possible if not within the period of 3 months, but very soon thereafter.”

Learned counsel appearing for the respondent-authorities hands up a copy of the purported final order, alleged to be dated May 28,

2020, which, learned counsel for the petitioner claims, was the final disposal of the proceeding pursuant to the show-cause notice impugned in the present writ petition.

The purported final order is also alleged to contain the signature of the petitioner therein.

However, it is clear from the said photocopy that the signature of the official present refers to an illegible date, which can be deciphered either as “2/5/20” or, at best, as “20/5/20”.

Moreover, it is incredible that, at the juncture when the petitioner was given an opportunity for personal hearing by a letter dated May 22, 2020, fixing the date of personal hearing as May 28, 2020, the proceeding already stood disposed of. Moreover, the photocopy handed over in Court today shows that the order was hand-written, though two signatures are appear thereon, one in the name of the petitioner and the other in the name of the concerned Sub Divisional Controller. However, from the date of signature as apparent from the photocopy, the order-in-question could not have been passed on May 28, 2020 and it defies reason how the final hearing was concluded prior to the authorities giving an opportunity of personal hearing to the petitioner

on May 28, 2020 as per the respondents' own letter.

That apart, even the photocopy handed up in court (which is kept with the record) shows that the purported order depicted therein culminated in a decision that the petitioner's shop would be placed under suspension, until further order from the court of law.

In the absence of any materials being produced by the respondents to satisfy this Court that there was a specific order of stay in respect of the proceedings-in-question, even the pendency of a criminal proceeding, as argued by learned counsel for the respondent, could not be an impediment for the respondents to conclude the hearing of the investigation based on the show-cause notice impugned in the writ petition.

This court is bound by the decision of the Division Bench cited by learned counsel for the petitioner to the extent that, in the present circumstances, in view of the inordinate delay in disposing of the proceeding-in-question, the order of suspension passed against the petitioner ought to be quashed.

However, in order to avoid unnecessary inconvenience, the respondents are directed to afford a personal hearing to the petitioner, either

in person or online, as per both parties' convenience, within a week from date, to conclude the entire investigation and pass a final order thereon by October 5, 2020.

In default, on and from October 6, 2020, the suspension order passed against the petitioner, as evident from the impugned notice dated May 15, 2020, as well as the other connected impugned order dated May 15, 2020, annexed at page 21 (Annexure- P3) of the writ petition, shall automatically stand quashed without further reference to court.

On such quashing, if the same becomes operative, the respondent authorities shall immediately re-tag the concerned ration cards with the dealership of the petitioner and shall make allotment of ration to the petitioner, as well as take all consequential steps accordingly.

However, it is made clear that the fate of the decision taken by the licensing authority, that is, the respondent no. 5 in the writ petition, shall not be prejudiced in any manner by any of the observations made herein. The respondent no. 5 shall be free to decide the investigation upon hearing the petitioner in accordance with law, without being prejudiced in any manner by this order.

Since no affidavits were invited, it is deemed that the respondents deny all the allegations made in the writ petition.

There shall be no order as to costs.

(Sabyasachi Bhattacharyya, J.)