

ORDER SHEET

WPO 340 of 2020
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

PRASANTA KUMAR MONDAL
VS.
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE TAPABRATA CHAKRABORTY

Date: 13th October, 2020

Mr. Subir Sanyal, Mr. Ramesh Dhara, Mr. Gourav Banerji,
Advocates for the petitioner.
Mr. Amitesh Banerjee, Sr. Standing Counsel, Mrs. Ipsita
Banerjee Advocate for the State.

The Court : The present writ petition has been preferred challenging *inter alia* an order dated 11th March, 2020 passed by the Deputy Director (Licence), the respondent no.3 herein.

Mr. Sanyal, learned Counsel appearing for the petitioner submits that the impugned order suffers from a jurisdictional error inasmuch as the respondent no.3 has no authority to reject the petitioner's prayer for restoration of Fair Price Shop (in short, FPS) licence. In support of such contention he has drawn the attention of this Court to the definition of licensing authority in the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 (in short, the said Control Order).

He argues that the impugned order does not even disclose the existing norms or the statutory provisions, on the basis of which the

petitioner's claim was rejected and as such the said order, being a cryptic one, is not sustainable in law.

Drawing attention of this Court to the documents annexed at pages 32 to 37 of the writ petition, Mr. Sanyal submits that the petitioner's name till date stands endorsed in the ration cards which have been issued by the competent authority.

Per contra Mr. Banerjee, learned Senior Standing Counsel appearing for the State respondent submits that the petitioner himself surrendered his licence as he had joined as a primary school teacher. In view thereof, the petitioner's licence was terminated by an order dated 9th November, 2016. The said order was accepted by the petitioner. It is only after about four years, the petitioner submitted a fresh representation to the respondent no.2 with a prayer for restoration of his licence. In the said conspectus, it was rightly informed by the respondent no.3 that the petitioner's prayer for such restoration of licence, which was surrendered earlier, is not acceptable. There is no infirmity in the order impugned warranting interference of this court.

In reply, Mr. Sanyal submits that the application for restoration of licence was, in fact, submitted by the petitioner on 22nd August, 2019 before the competent authority.

Records reveal that the petitioner was an MR dealer under Gosaba block. Having suffered a cardiac arrest, he submitted a representation for transfer of his licence in the name of his son. During pendency of the said representation, the petitioner got an appointment to the post of a primary

teacher on 17th April, 2013. Thereafter by an order dated 30th October, 2013, the ration cards were detagged from the petitioner's shop. As the representation for transfer of his licence in the name of his son was not considered, this Court was approached and on the basis of an order passed by the Court, the petitioner's claim for transfer was considered and rejected by an order dated 13th March, 2015 taking into consideration the fact that the petitioner had got an appointment to the post of a primary teacher on 17th April, 2013. Challenging the said order, a writ petition was again preferred but the same was also dismissed. Thereafter the petitioner submitted a prayer for restoration of his dealership on 7th November, 2013. Such prayer was refused and the petitioner's licence was terminated by an order dated 9th November, 2016 passed by the respondent no5.

In the said order dated 9th November, 2016 the reasons towards cancellation of the petitioner's licence were detailed and having not challenged the said order, the petitioner cannot re-agitate the issue afresh and as such in response to the representation submitted by the petitioner to the Director, Directorate of District Distribution, Procurement and Supply, the Deputy Director (Licence) in the said Directorate rightly intimated that the petitioner's prayer for restoration of licence, is not acceptable and such intimation given by the respondent no.3 pertaining to restoration of licence, in my opinion, does not suffer from any jurisdictional error. Question of relegation of the petitioner's claim for further consideration, as urged by Mr. Sanyal, also does not arise. It does not appear from the pleadings that the authorities have acted arbitrarily or in a *mala fide* manner.

It is well settled that the power of the High Court to be exercised under Article 226 of the Constitution of India is discretionary; it must be judicious and reasonable. Applying such proposition to the facts of this case, this Court is reluctant to exercise any discretion in favour of the petitioner and the writ petition is, accordingly, dismissed.

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

(TAPABRATA CHAKRABORTY, J.)