

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

WPA 2570 of 2020

Dalgobinda Deogharia

Vs.

State of West Bengal and Ors.

For the petitioners : Mr. Ram Anand Agarwal
Ms Nibedita Pal
Mr. Ananda Gopal Mukherjee

For the State : Mr. Susovan Sengupta
Mr. Subir Pal
Mr. Manas Kr. Sadhu

Heard on : 18.12.2020, 20.12.2020, 14.01.2021

Judgment on : 21.04.2021

Ravi Krishan Kapur, J.:

1. The petitioner assails an order dated 10th December 2019 (“the impugned order”) issued by the Director, Directorate of District Distribution, Procurement and Supply Department of Food and Supplies, Government of West Bengal affirming the decision dated 26 September 2019 by the Divisional Controller Food & Supplies, Bakura terminating the fair price shop dealership of the petitioner.
2. The brief facts of the case are that the petitioner is a fair price shop dealer and is also a kerosene dealer licensed under the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 and the West Bengal Kerosene Control Order 1968 respectively.

3. On 4 July 2019, the Area Inspector (Food and Supplies) Bankura II visited the shop premises of the petitioner and sealed the same since the shop had remained closed on 4 July 2019 without prior intimation to the concerned authority.
4. Thereafter, the Sub-Divisional Controller issued a show-cause notice dated 5 July 2019 to the petitioner and also directed suspension of his dealership on inter-alia the grounds that the shop of the petitioner had remained closed on 4 July, 2019 and that the petitioner had not furnished weekly or monthly distribution reports or returns for the period January, 2019 to June, 2019 notwithstanding the fact that food-grains had been allotted to the petitioner.
5. Upon receiving replies to the show cause notices from the petitioner, the Sub-Divisional Controller, Food and Supplies directed the petitioner to appear at the hearings on 25 July and 31 July 2019 respectively. Thereafter, the Sub-Divisional Controller, Food and Supplies passed an order terminating the dealership of the petitioner's fair price shop dealership and the kerosene dealership by two separate Memos being Memo no. 510/SCF&S/BNK/2019 dated 8 August 2019 and Memo No. 511/SCF&S/BNK/SKOil/2019 dated 8 August 2019 respectively alleging violation of the provisions of the Control Order 2013 and the Control Order 1968 respectively.
6. Being aggrieved by the orders passed by the Sub Divisional Controller, Food and Supplies, the petitioner preferred an appeal before the District Controller Food & Supplies against the Memo no 510/SCF&S/BNK/2019 dated 8 August 2019 in connection with the

Fair Price shop dealership. The petitioner also preferred an appeal before the Director of Consumer of Goods against the Memo No 511/SCF&S/BNK/SKOil/2019 dated 8 August 2019 in connection with the termination of his kerosene dealership.

7. Thereafter, the Director of Consumer of Goods set aside the order of the Sub Divisional Controller, Food and Supplies in connection with the kerosene dealership by imposing a penalty of Rs 15000/- for restoration of the petitioner's kerosene dealership.
8. On the other hand, upon giving the petitioner an opportunity of hearing the District Controller Food & Supplies by an order dated 26 September 2019, upheld the order of the Sub Divisional Controller, Food and Supplies. Thereafter, the petitioner preferred a second appeal against the order of the District Controller Food & Supplies before the Director, District Distribution Procurement and Supplies, wherein the impugned order was passed whereby the order of the District Controller Food & Supplies dated 26 September, 2019 was affirmed.
9. The petitioner contends that the petitioner had verbally informed the card holders that the fair price shop would remain closed on 4 July 2019 as the petitioner was in Kolkata for the admission of his son. He further contends that the allegations against the petitioner are not sustainable in the eye of law and that the termination order is bereft of any reason. He also contends that the entire proceeding held before the Sub Divisional Controller, Food and Supplies was void *ab initio* and illegal. The petitioner also alleges violation of

principles of natural justice. The petitioner also relies on the order passed in the appeal in connection with the kerosene dealership to assail the quantum of punishment awarded to the petitioner in the impugned order. In support of his contentions the petitioner relies on *Sri Swapan Ray Vs Indian Airlines Limited reported in 1996 (1) CHN 147*, *Narinder Mohan Ary Vs United India Assurance Co Ltd & Ors (2006) 4SCC 713* and *Anil Kumar Vs Presiding Officer & Ors (1985) 3SCC 378*.

10. It is submitted on behalf of the respondent authorities that there were diverse irregularities and malpractices in the manner in which the petitioner was conducting his business which compelled the respondent authority in passing the impugned order. It is further alleged that the petitioner had been negligent in carrying on the said business. It is also alleged that the petitioner had not only kept the shop closed without prior intimation but also failed to get the sale register duly authenticated by the Competent Authority on and from 2 May 2019. Furthermore, the ration card category and the cash memo numbers were regularly not mentioned against the transactions recorded in the Sale Register on and from 5 June 2019. Additionally, there were no quantities of grains sold recorded against diverse transactions on several occasions. Moreover, the cash memo books had not been authenticated by the Competent Authority and also the cash memos had not been issued in accordance with law. It is further alleged that the allegations made by the respondents were admitted by the petitioner at the time of hearing. It is further

submitted that the petitioner is a habitual offender and in view of the gravity of the offence the petitioner has been appropriately and proportionately punished for the charges levelled against him. It is also submitted that the two proceedings initiated against the petitioner are distinct and separate proceedings which deal with separate charges levelled against an accused. Hence, there is no question of applying a similar yardstick to both the proceedings.

11. I have heard the parties and I have also considered the submissions made on their behalf.
12. As a principle of law, it is settled that the writ jurisdiction is supervisory in nature and a Court exercising the same does not act as an appellate authority nor does it ordinarily review findings of facts.
13. I have perused the impugned order. I find from the records that the petitioner had unequivocally admitted to several irregularities and discrepancies which have been enumerated in the order dated 8 August, 2019 before the Sub-Divisional Controller, Food and Supplies Department, Bankura (S). Accordingly, it was found that the petitioner had violated the provisions of the 2013 Control Order and the dealership of the petitioner had been terminated. In the statutory appeal, the petitioner also admitted to the fact that there was an illegal insertion of a line at his instance in a letter signed by the Area Inspector, Food and Supplies Department, Bankura. As a principle of law, admissions if true and clear are by far the best proof of facts admitted. (*Nagindas Ramdas vs. Dalpatram Ichharam @ Brijram and Others.* (1974) 1 SCC 242 at para 27). I find that the reasoned order

dated 8 August, 2019 was justifiably passed on the basis of the relevant materials before the Sub-Divisional Controller, Food & Supplies Department, Bankura.

14. I also find no procedural impropriety nor perversity nor illegality nor contravention of any law in the impugned orders passed by the respondent authorities. The petitioner had been given an adequate opportunity of hearing before passing of the impugned order. I also find that there has been no violation of the principles of natural justice. There is no unfairness shown by the respondent authorities. I am also of the view that the order of the Director of Consumer Goods passed in connection with the Kerosene Oil dealership has no binding effect on the order passed by the Director, District Distribution, Procurement and Supply Department of Food and Supplies, Government of West Bengal. These are two separate and distinct adjudicatory authorities for the two separate dealerships and the parameters of adjudication cannot be compared to one another. Hence, I find no reason for the Director, District Distribution, Procurement and Supply Department of Food and Supplies, Government of West Bengal to be bound by the order of the Director of Consumer Goods for reinstatement of the kerosene dealership upon imposition of a monetary penalty.
15. It is also well settled that a writ court does not ordinarily interfere with the quantum of punishment levied without sufficient reasons [*State of Meghalaya and Ors Vs Mecken Singh N. Marak* (2008) 7SCC 580]. Accordingly, I find that the petitioner has failed to demonstrate any

reasons to interfere with the impugned order. The authorities cited by the petitioner are distinguishable and inapposite to the facts of the instant case.

16. For the foregoing reasons WPA No 2570 of 2020 stands dismissed.

However, there will be no orders as to costs.

17. Urgent certified photostat copies of this judgment, if applied for, be given to the parties upon compliance with all necessary formalities.

(Ravi Krishan Kapur, J.)