

17.12.2021
SL No. 239
Court No. 24
(P.M)/ AB

WPA 4421 of 2015

**Patahensal Samabay Krishi Unnayan
Samity Limited & Anr.**

Vs

**The State of West Bengal & Ors.
(Via Video Conference)**

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

Mr. Susovan Sengupta,
Mr. Subir Pal
... for the State

The petitioner No. 1 is a Co-operative Society and the petitioner No. 2 is its Secretary. The petitioners are aggrieved by the order dated 28th January, 2015 passed by the District Controller, Food and Supplies, Purulia, the Appellate Authority, upholding the order of termination of license passed by the Sub-Divisional Controller, Food and Supplies, Purulia.

The Sub-Divisional Controller, Food and Supplies, Purulia issued a show cause notice dated 5th June, 2014 to the Secretary of the Co-operative Society wherein as many as six irregularities were mentioned. The petitioner was asked to show cause in writing within seven days from the receipt of the notice

for such irregularities and also asked to appear for a hearing on 13th June, 2014.

According to the petitioners, the aforesaid communication dated 5th June, 2014 was served through post under a postal envelope dated 5th June, 2014 but was dispatched on 9th June, 2014. The postal envelope was actually served upon the petitioners on 18th June, 2014. By the time the envelope reached the petitioners, the period for filing reply to the show cause and the date of hearing was over.

A termination notice was issued by the Sub-Divisional Controller, Food and Supplies on 13th June, 2014 wherein it was mentioned that the answer to the show cause was found not satisfactory and in the hearing the petitioner admitted the faults, so the license stood terminated.

The petitioners challenged the same by filing a writ petition being W.P. No. 19413(W) of 2014 which stood disposed of by an order dated 17th July, 2014 wherein the Court was pleased to dismiss the writ petition on the ground of existence of alternative and efficacious remedy. The Court observed that the petitioners were at liberty to file an appeal against the impugned order.

The petitioners thereafter preferred an appeal before the District Controller, Food and Supplies, Purulia on 18th July, 2014. The petitioners raised all points in the appeal and in the said appeal the petitioners admitted that on 11th June, 2014 the petitioner No. 2 went to the office of the respondent No. 4 for submitting the report to the show cause notice and on the self-same date the petitioner No. 2 was heard. The petitioner No. 2 did not have any preparation for the hearing.

As no order was passed in the appeal within a reasonable period of time the petitioners again filed a writ petition being W.P. No. 29066 (W) of 2014 which stood disposed of by this Court on 10th December, 2014. The Court directed the Appellate Authority to dispose of the appeal upon giving opportunity of hearing to the petitioner. The petitioners were giving liberty to file written notes of submissions before the appellate authority.

In compliance of the order passed by the Court, hearing was conducted by the District Controller, Food and Supplies on 7th January, 2015. Written notes of submission were submitted by the petitioners on 7th January, 2015. The Appellate Authority after considering the written submission filed by the petitioners passed an order on 28th January, 2015

upholding the order passed by the Sub-Divisional Controller, Food Supplies, Purulia.

The petitioners are aggrieved by the same. It is the categorical case of the petitioners that as the show cause notice dated 5th June, 2014 was not served prior to 18th June, 2014, the authority under any stretch of imagination could not have issued the order of termination on 13th June, 2014.

It has been contended as the date of hearing as mentioned in the show cause notice was fixed on 13th June, 2014 and the petitioners received the said notice on 18th June, 2014 a fresh opportunity ought to be given to the petitioners to place their case.

In support of the submission made by the petitioners that the authorities ought not to decide the issue with a pre-determined mind set the petitioners have relied upon the judgment delivered by the Hon'ble Supreme Court in the matter of ORYX Fisheries Private Limited Vs. Union of India & Ors. reported in (2010) 13 SCC 427.

The court in the aforesaid decision held that a quasi-judicial authority while acting in exercise of its statutory power must act fairly and must act with an open mind by initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making

his objection against the proposed charges indicated in the notice.

According to the petitioners, the authorities took a decision in the matter prior to giving a reasonable opportunity of hearing to the petitioners.

The learned advocate representing the respondents opposes the prayer of the petitioners. It has been submitted that the petitioner No.2 duly appeared before the concerned authority on 11th June, 2014 and made submissions on behalf of the petitioners.

It has further been argued that assuming that the disciplinary authority did not afford any opportunity of hearing to the petitioners, but the said opportunity was extended by the appellate authority. The petitioners were duly heard by the appellate authority and the petitioners submitted their written notes of submissions which was duly considered by the appellate authority. There is no requirement of giving any further opportunity of hearing.

I have heard and considered the submissions made on behalf of both the parties.

It appears from records that an inspection team comprising of the Sub-Divisional Controller, Chief Inspector and Sub-Inspector visited the shop of the petitioners on 4th June, 2014. Certain irregularities

were noticed by the inspection team. Immediately on 5th June, 2014 a show cause notice was issued directing the petitioners to show cause within seven days from the receipt of the notice for such irregularities. Date was fixed for hearing on 13th June, 2014.

Though the petitioners have submitted that they received the notice to show cause after expiry of the stipulated time period, but admittedly the representative of the petitioners visited the office of the respondent authority on 11th June, 2014 and made submissions. The appellate authority has clearly taken note of the fact that on 11th June, 2014 the petitioner's representative appeared before the Sub-Divisional Controller, Food and Supplies on 11th June, 2014 and made submissions.

The alibi of the petitioners that on 11th June, 2014 they went to the office of the Sub-Divisional Controller for submitting weekly return for the Fair Price Shop was negated. The appellate authority observed that the owners are supposed to submit the weekly return of the Fair Price Shop to the Inspector and not to the Sub-Divisional Controller. The contention of the petitioners that on 11th June, 2014 they went for the purpose of submission of the weekly

return was disbelieved and found contradictory by the appellate authority.

The submission of the petitioners that the impugned order is a cryptic one and no reason has been mentioned therein does not appeal to the Court. On perusal of the order of termination as well as the order passed by the appellate authority it appears that very many reasons have been mentioned for termination of the license of the petitioners. An opportunity of hearing was also granted to the petitioners by the appellate authority.

The grievance of the petitioners that the disciplinary authority did not grant any opportunity of hearing to the petitioners was taken care of by the appellate authority where both hearing was afforded as well as written notes submitted by the petitioners were accepted.

The ratio of the judgment referred to by the petitioners is a very settled proposition of law. Quasi-judicial authority ought not to decide an issue with a closed and/or pre-determined mind set. It does not appear from the facts of the case that the authority proceeded with a closed mind and passed the order of termination. Enough opportunity was given to the petitioners to defend their case which the petitioners failed to do. It does not appear that there was any

procedural impropriety at the time of passing the order impugned.

It seems that the petitioners are trying to reopen the issue all over again on the plea of non-receipt of notice in proper time when actually all steps leading to termination of license were followed by the authority. Delayed receipt of the show cause notice did not make much of a difference in as much as the procedure followed by the authority was in accordance with law, and the petitioner was not prejudiced in any manner.

In view of the above, I do not find any reason to interfere with the order of termination.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)