

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 13536 of 2021

Benimadhab Chatterjee

Vs.

State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Debabrata Saha Roy, Adv. Mr. Pingal Bhattacharyya, Adv. Mr. Subhankar Das, Adv. Mr. Neil Basu, Adv.
For the State	:-	Mr. Susovan Sengupta, Adv. Ms. Supriya Dubey, Adv.
Hearing concluded on	:-	10-09-2021
Judgment on	:-	29-09-2021

Amrita Sinha, J.

The petitioner is a licensed Fair Price Shop owner. He is aggrieved by the order dated 16th July, 2021 passed by the Director of Rationing, West Bengal whereby his license has been placed under suspension till disposal of the pending criminal case.

The brief facts of the case are as follows:

Rice and wheat grains under the Public Distribution Scheme were seized by the police authority when those were allegedly smuggled from the Fair Price Shop of the petitioner to a private shop on 25th April, 2020. FIR was lodged by the Food and Supplies Department before the Durgapur police station under the provisions of the Indian Penal Code and the Essential Commodities Act, 1955. The petitioner was arrested on the same day and his license was put under suspension. The ration cards of his Fair Price Shop were tagged with the nearest Fair Price Shop.

The petitioner was granted bail by the District Court on 11th May, 2020. After being enlarged on bail, the petitioner applied before the Licensing Authority i.e; the Rationing Officer praying for a direction to resume his business. By an order dated 24th June, 2020 the Rationing Officer terminated the license of the petitioner. Being aggrieved by the order of the Rationing Officer he preferred an appeal before the Deputy Director of Rationing. The said appeal was disposed of by an order dated 4th August, 2020 upholding the order passed by the Rationing Officer.

Being aggrieved by the said order the petitioner preferred a second appeal before the Director of Rationing. The Director, by an order dated 16th July, 2021, was of the opinion, that the order of termination passed by the Licensing Authority on 24th June, 2020 warrants modification and instead of termination, the license of the appellant was placed under suspension till disposal of the pending criminal case, so that an honourable acquittal may enable the petitioner to seek for revocation of suspension and recalculation of shortfall.

The Director directed the Licensing Authority to maintain a suspense account with the stock of rice and wheat stored in the separate room adjacent to the Fair Price Shop and arrange for sending samples of rice and wheat from the stock to the Directorate to find out whether the food grains are fit for distribution. If the stock is found fit for distribution, the Licensing Authority shall arrange for distribution of the same through the Fair Price Shops and the damage stock, if any, to be disposed of as per the Government norms. The Licensing Authority was directed to impose fine upon the petitioner based on the recalculated shortfall and to direct the petitioner to replenish the amount of damage stock, if any, at his own cost. On deposit of the fine and replenishment of damage stock, if any, the Licensing Authority shall revoke the suspension of the license of the petitioner and restore the dealership business as it existed prior to 25th April, 2020.

The petitioner is aggrieved by the same.

The petitioner relies upon paragraph 24 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013, hereinafter referred to as the 'Control Order'. It has been submitted that the order of suspension can be passed only during the pendency of the proceeding. As the appeal preferred by the petitioner has been disposed of finally by the appellate authority, accordingly, there is no scope to continue with the order of suspension. Control Order permits the authority to impose penalty by terminating the license or reduction in the volume of business or imposition of fine according to gravity of the offence.

Petitioner submits that the criminal proceeding which is pending before the District Court may take considerable time to be disposed and the petitioner ought not to remain under suspension till conclusion of the criminal proceeding. The petitioner submits that if any shortfall is assessed, he may pay the fine as directed.

The petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Brajendrasingh -vs- State of Madhya Pradesh; AIR 2012 SC 1552*** paragraph 16 where the Hon'ble Supreme Court held that the basic cannon of criminal jurisprudence is that an accused is innocent till proven guilty and the accused is entitled to a just and fair trial. According to the petitioner, as the criminal proceeding is still pending, he ought not to be punished by way of suspension of license, as that is his only means of livelihood.

The petitioner further relies upon the judgment of this Court in the matter of ***Md. Yeasin & Ors. -vs- State of West Bengal & Ors.; 2006 (3) CHN 655*** paragraphs 40 and 41 wherein the Court held that suspension of the dealer causes great inconvenience and hardship as the dealer is thrown out of his business without any subsistence during the suspension period.

The petitioner also relies upon the unreported order dated 11th September, 2013 passed by this Court in ***WP 26255 (W) of 2013 (Basana Das -vs- State of West Bengal & Ors.)*** paragraph 17 wherein the Court was of the opinion that the

Control Order does not authorise termination of a license on the ground of the licensee standing trial in a criminal court. A dealer cannot be punished only because investigation has resulted in a charge sheet. Punishment would follow if the evidence produced during the trial and consideration thereof by the Court leads to his conviction and sentence.

The petitioner prays for setting aside the impugned order of suspension and restoration of his license.

The learned advocate representing the State respondents submits that the license of the petitioner stood suspended during pendency of the criminal trial so that he does not indulge in any such similar activities in future. It has been submitted that the petitioner has been caught red handed and the food grains meant for public distribution were seized from a separate room and those were sought to be used for private gain.

It has been submitted that the Hon'ble Division Bench of this Court in ***Sukanta Samanta & Ors. -vs- State of West Bengal & Ors.; 2013 SCC Online Cal 7326*** held that the MR dealer ought not be entrusted with the responsibilities of handling rationed articles as MR dealer during pendency of the criminal proceedings against him relating to misappropriation of rationed articles. It has been submitted that as soon as the petitioner will be acquitted from the criminal case his suspension would be revoked.

Prayer has been made for dismissal of the writ petition.

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

There is no dispute with regard to the fact that food grains meant for public distribution were seized from a private place of the petitioner not being his shop or godown. A criminal complaint was lodged against him pursuant to which he was arrested and later enlarged on bail. The criminal proceeding is pending. Charge-

sheet has been filed against him. Charges against the petitioner are under the provisions of the Indian Penal Code, 1860 as well as the Essential Commodities Act, 1955. The Licensing Authority terminated the license and the first appellate authority upheld the order of termination. The Director of Rationing modified the said order. Termination was revoked and the license was put under suspension once again till disposal of the criminal proceeding.

The Director of Rationing ought to have appreciated that success in a criminal trial depends upon a variety of factors. If the prosecution fails to come up with proper evidence, the trial may fail. Failure of trial does not necessarily mean that the person concerned is innocent. Moreover, that is a matter to be decided by the competent Court. Here, admittedly, the petitioner being the owner of the ration shop removed the ration articles from his shop cum godown without prior written permission of the Licensing Authority. Shortfall in stock was detected. The same is enough for taking a decision in respect of the proceeding initiated against him by the department. For this limited purpose there is no reason to wait for conclusion of the criminal trial.

Had the police not initiated the criminal case against the petitioner, then also the department could have taken an independent decision under the Control Order with regard to the illegalities committed by the petitioner.

Conclusion of a criminal trial is a time taking affair and till a decision is taken by the Court, the petitioner cannot be labelled guilty in respect of the charges mentioned in the FIR. The departmental proceeding is distinctly different from a criminal trial. It revolves around preponderance of probabilities. Strict rules of evidence are not required to be followed. Standard of proof is different. If there is some evidence of illegality, the department is free to take an appropriate decision, on case to case basis, without waiting for the outcome of the criminal case. The criminal and departmental proceeding being independent of each other, one is not required to wait for the conclusion of the other. Two proceedings cover two

divergent fields. An accused is deemed innocent till proven guilty, is settled proposition of law. It is for the competent court to pass necessary order.

Fair Price Shop owner plays a very vital role in the Public Distribution System and accordingly, it is not desirable that a person who fails to act in strict compliance of the Control Order governing him be permitted to handle articles meant for public distribution. Keeping in mind the ultimate beneficiaries of the Public Distribution System it may not be proper to permit such a person to deal with public distribution articles. Honesty and integrity are essential qualities mandatorily required to provide service to the public. Slightest cloud in trustworthiness is more than enough to remove the element from the cycle of public distribution.

The charges against the petitioner relates to theft, breach of trust and dishonesty. The petitioner being a licensed Fair Price Shop owner is bound by the provisions of the Essential Commodities Act, 1955 and the various Control Orders passed by the Government from time to time. The Fair Price Shop owner being an essential part of the public distribution system has certain duties and responsibilities. He is not permitted to sell any ration commodity in the open market. He is also not allowed to store any public distribution commodity in any place outside the shop-cum-godown as endorsed in the license without previous permission of the licensing authority.

In the instant case, public distribution items were seized by the police when they were allegedly smuggled from the Fair Price Shop of the petitioner to a private shop. Upon physical verification of the stock huge quantity of shortfall in respect of rice and wheat were detected. The petitioner, before the appellate authority, has given reasons to defend the shortfall in physical stocks. The petitioner claims that he received the entire stock and a portion of it was kept in a nearest stock point. During his short absence his son was looking after the Fair Price Shop and not being aware of the stock point he could not exhibit the stock which was stored in

the other room. The petitioner practically admitted the charge that ration articles were stored at a place not endorsed in his license hence not permissible under the Control Order.

The act of the petitioner in storing the public distribution articles outside the shop-cum-godown as endorsed in the license without previous permission of the licensing authority is illegal and contrary to the Control Order.

The criminal case against the petitioner is still continuing. According to the petitioner as he is yet to be convicted, accordingly, he ought not to be punished and he may be permitted to run his business till a decision is taken by the competent court. Reliance has been placed by the petitioner on the ratio that an accused is deemed to be innocent unless he is proved to be guilty.

It is true that in criminal jurisprudence one cannot be punished prior to being proved guilty by a competent court of law. At the same time, it is true that the petitioner is holding a license and is dealing with public distribution items. The petitioner has admitted that a portion of his stocks were kept in another room. The allegation against the petitioner is that he was smuggling those goods to a private shop. Whether the allegation is true or not is to be decided by the competent court. The petitioner being a licensed FPS owner has to act with some amount of integrity and honesty. Dishonesty by persons dealing with public distribution articles ought not to be tolerated or encouraged in any manner.

The petitioner holds a position of trust in the society and if the said trust is somehow lost then the general public, more specially the consumers, will be the ultimate sufferers. Government provides various articles at subsidised rates to be distributed to the public through the Fair Price Shop owners under the Public Distribution System. It is not desirable that a person who loses the trust of the consumers be permitted to continue the business till he is proved innocent. If consumers lose faith and trust, then the public distribution system will collapse.

Other FPS owners may be encouraged to indulge in similar type of illegal activities. Inaction against such unscrupulous persons or any leniency shown will send a wrong message to the society and chances are that such type of activity may recur in future.

The Director of Rationing considered the second appeal filed by the petitioner and keeping in mind public interest thought it prudent not to entrust the petitioner the responsibility of handling rationed articles. Thereafter the authority misdirected himself and came to the opinion that the order of termination warrants modification. He further opined that the license of the appellant should be placed under suspension till disposal of the pending criminal case. The reason attributed for such modification is not supported by law.

According to the Control Order, a license may be kept under suspension till the disposal of the departmental proceeding by the Sub-Divisional Controller. The authority may terminate the license or may reduce the volume of business through reduction of tagged ration cards and/or impose fine according to the gravity of the offence. In the instant case, the Director of Rationing erroneously revoked the order of termination of the license of the petitioner and put him under suspension till the disposal of the pending criminal case.

Two different proceedings were initiated against the petitioner - one under the criminal law of the land and the other under the Control Order. The criminal case against the petitioner is pending but the departmental proceeding against him concluded. On conclusion of the departmental proceeding a final order is required to be passed. An order of suspension till disposal of a criminal proceeding, in my opinion, cannot be a final order. The departmental proceeding in that case remains pending subject to the order passed in the criminal proceeding.

As the petitioner was covered by the Essential Commodities Act, he will be punished, if found guilty, in accordance with the provisions of the said Act. If the

petitioner is found guilty in the criminal proceeding, he will be dealt with appropriately in accordance with the criminal law. Punishment in the departmental proceeding is awarded in accordance with the Control Order and not in accordance with the criminal law. In the departmental proceeding the authority concerned is to act in accordance with the statutory law governing the field. The department may impose fine as mentioned in the Schedule A of the Control Order, 2013. Licence may be terminated or the volume of business may be reduced. The appellate authority cannot continue to keep a licensee under suspension for an indefinite period.

In view of the above, the impugned order of the second appellate authority, i.e the Director of Rationing is liable to be set aside and is accordingly set aside. The instant writ petition is disposed of by directing the Director of Rationing, West Bengal, respondent No. 3 herein to take a fresh decision in the matter, strictly in accordance with the provisions of the Control Order within a period of eight weeks from the date of communication of this order. The said respondent shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.

WPA 13536 of 2021 is disposed of.

Urgent certified photo copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)