

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 14013 of 2021

Mrityunjoy Garang & Ors.

Vs.

State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Joydip Kar, Sr. Adv. Mr. Debabrata Saha Roy, Adv. Mr. Pingal Bhattacharyya, Adv. Mr. Subhankar Das, Adv. Mr. Neil Basu, Adv.
For the State	:-	Mr. Kishore Dutta, Ld. A.G. Mr. Anirban Roy, Ld. G.P. Mr. Susovan Sengupta, Adv. Mr. Manas Kumar Sadhu, Adv.
For the Union of India	:-	Mr. Ajay Chaubey, Adv.
Heard on	:-	09-09-2021 & 10-09-2021
Judgment on	:-	15-09-2021

Amrita Sinha, J.:-

Necessity is the mother of invention. An invisible virus has practically compelled mankind to innovate ideas for their survival. Human life style has undergone a sea change. People have been forced to stay indoors to save themselves from falling prey to the deadly virus. Authorities are devising mechanisms to supply utilities and essential articles and services at the doorstep of the citizens. Private bodies are taking a lead and showing the way but the Government and semi-Government bodies are not far behind. Medical, banking, education,

judicial services are being made available at the click of a button. All types of articles both essential and non-essential, medicine, luxury goods, clothing, food items- both cooked and non-cooked are supplied at the doorstep of the consumers. The concept of workplace is changing. People are learning to work from home. Individuals are getting accustomed to virtual shops and literally avoiding the idea to actually go to a shop physically.

It is at this juncture that the Government of West Bengal, Department of Food and Supplies have come up with the novel idea to supply ration under the National Food Security Act and Rajya Khadya Suraksha Yojana at the doorstep of the consumers. The project has been named 'Duare Ration Scheme', herein after referred to as 'the Scheme'.

It is a pilot project of this nature and certain guidelines have been framed for implementation of the Scheme. The guidelines for the month of September, 2021 have been issued by the Secretary, Food and Supplies Department by a memo dated 27th August, 2021.

The petitioners being the licensed Fair Price Shop owners are aggrieved by the act of the Government in undertaking the Scheme. The primary contention of the petitioners is that the Scheme is contrary to the provisions of the Essential Commodities Act, 1955 ('ECA' for short), the National Food Security Act, 2013 ('NFSA' for short) and the various Control Orders promulgated under the Acts.

The petitioners contend that as per the provisions of the aforesaid Acts, essential commodities are to be sold from the Fair Price Shops to

the ration card holders. Targeted Public Distribution System ('TPDS' for short) under NFSA means the system for distribution of essential commodities to the ration card holders through Fair Price Shops ('FPS' for short). There is no provision in law for distribution of ration by the FPS owners at the door step of the consumers. It is the duty of the card holders to collect the ration from the FPS and it is neither the duty nor the responsibility of the FPS owners to supply ration at the door step of the consumers. The State Government by way of this Scheme is trying to introduce the system of door to door delivery of ration items by the FPS owners. The State Government is by this method trying to tweak the manner of distribution of ration items to the consumers.

The learned senior counsel representing the petitioners has referred to the provisions of Sections 2(4), 2(16), 2(23), 12(1), 12(2), 36, 40(1) and 40(3) of NFSA. Provisions of Section 3 and 5 of ECA have also been relied upon.

The West Bengal Public Distribution System (Maintenance and Control) Order, 2013 published in the Calcutta Gazette Extraordinary on 8th August, 2013 ('CO, 2013' for short) has also been placed. Paragraph 2(l) has been relied upon.

The Targeted Public Distribution System (Control Order), 2015 published in the Gazette of India, Extraordinary on 20th March, 2015 ('CO, 2015' for short) has also been relied upon. Paragraphs 2(j), 4, 7(11), 8(3), 8(4) have been placed.

The notification published by the Ministry of Consumers Affairs, Food and Public Distribution on 17th August, 2015 promulgating the

Food Security (Assistance to State Government) Rules, 2015 has also been placed. Rules 2(g), 5 of the said Rules have been relied upon.

It has been contended that the Scheme which has been published by the State Government is by way of an administrative order which has not been notified nor has it been laid in the House of the State Legislature in accordance with Section 40(3) of NFSA.

It has been submitted that the Government of NCT of Delhi by a notification dated 20th February, 2021 undertook to implement a State specific scheme titled as 'Mukhya Mantri Ghar Ghar Ration Yojna (MMGGRY)' for door step delivery of ration under TPDS. The same was challenged before the High Court of Delhi. As the Central Government raised objection to the floating of the said Scheme, the same was ultimately withdrawn by the State Government.

The petitioners pray for grant of leave to move the writ petition in representative capacity under provisions of Order 1, Rule 8 of CPC read with Rule 12 of the Rules framed by this Court relating to the applications under Article 226 of the Constitution of India. The petitioners pray for cancellation of the Scheme. The petitioners also pray for an interim order staying the operation of the guidelines of the Scheme and to permit the FPS owners to distribute ration articles from their licensed shops.

The learned Advocate General representing the respondent State opposes the prayers of the petitioners. An issue of maintainability as regards the locus standi of the petitioners to move the writ petition has been raised. It has been submitted that the petitioners are not 'aggrieved

persons' in as much as none of their substantial rights guaranteed under law have been affected by the implementation of the Scheme. No legal right of the petitioners has either been infringed or affected by the said Scheme.

It has been submitted that there are approximately 10.3 crore beneficiaries and approximately 20,261 FPS in the State. Out of the aforesaid, only 7 FPS owners have approached this Court. The beneficiaries of the said Scheme have not been impleaded as respondents in the writ petition.

It has been submitted that Entry 33 of List 3 Schedule 7 of the Constitution of India enables the State to make laws with respect to trade and commerce and production, supply and distribution of food stuff, including edible oilseeds and oils. The State has acted strictly in accordance with the provisions of law.

Sections 2(c), 2(cc), 3(2)(d), 3(2), 3(f), 5 of ECA has been relied upon. Paragraph 21 of CO, 2013 whereby license is to be issued in Form E has also been placed in Court. Paragraph 9 of the aforesaid Form E mentions that the licensee shall abide by any instruction as may be given to him by an authority not below the rank of Sub-Inspector under the Food and Supplies Department. The licensees do not have any higher right than the consumers and the licensees are bound to carry out the instruction given by the Department.

The preamble of NFSA has been placed. Sections 3, 5 and 12 of the aforesaid Act have been relied upon. It has been contended that in terms of Section 12(1) of NFSA it is the duty of the State Government to

endeavour to progressively undertake necessary reforms in TPDS. The reforms as mentioned in Section 12(2)(h) of NFSA clearly mention that introducing schemes in order to ensure the food grain entitlement to the targeted beneficiaries is permissible. The State Government by way of the Scheme is acting a step ahead to deliver ration at the doorstep of the consumers. The same is a necessary reform and has been rightly undertaken by the State.

The action of the State is absolutely reformatory in nature and not at all in derogation of the various provisions of law governing the field.

Stress has been laid on the obligation of the State Government as mentioned in Chapter IX, Section 24 NFSA. It has been submitted that it is the responsibility and the obligation of the State Government to implement and monitor schemes of various departments of the Central Government in accordance with the guidelines issued by the Central Government for each scheme, and their own schemes for ensuring food security to the targeted beneficiaries in the State.

It is the duty of the State Government to take delivery of the food grains from the Central Government depots and deliver the same to the door step of each FPS and also to ensure actual delivery or supply of the food grains to the entitled persons at the scheduled rates. As it is the duty of the State Government to ensure actual delivery of food grains to the entitled persons accordingly, the State Government has taken up the initiative to deliver the ration items at the door step of the consumers. The said act of the State Government is in line with the object and purpose of NFSA.

It has been contended that the State Government has not exercised its rule-making power as yet. The State Government by an administrative order has merely floated a project as a Scheme to ensure that ration articles are delivered at the door step of the consumers.

It has been argued that the State is the implementing authority of the Public Distribution System of the Central Government. The State has not come up with any new scheme or rule that is in contradiction of any Scheme, Act or Rule framed by the Central Government. The same is also not in derogation to any of the laws governing the field.

The State has exercised its incidental ancillary power to give a better effect to the provisions of NFSA. It has been denied that the State Government has tweaked the provisions of the Central Act in any manner whatsoever. No prohibition has been made in the Act to supply ration to the door step of a beneficiary as the door step supply is aimed to serve the consumers of the State in a better manner.

It has been submitted that the Scheme floated by the Government of Delhi is dissimilar to the Scheme floated by the Government of West Bengal. It has been highlighted that the ration items will be delivered at the scheduled rates and the FPS owners have been appropriately provided additional commission for making door step delivery. An order dated 8th September, 2021 passed by the Department of Food and Supplies providing additional commission to FPS dealers for door step delivery of food grains and providing financial support for purchase of delivery vehicles has been placed in Court. The State Government, with a view to motivate the FPS dealers, took the decision to provide subsidy

to the dealers, so that they may purchase their own vehicles for delivery of the food articles.

It has been argued that the Scheme is a pilot project and it will be made applicable in phases in different areas. The procedure of collecting ration items from the FPS is still available. Any consumer, who for any reason whatsoever, fails to collect the ration item on the day the same is delivered at his/her door step, is always at liberty to collect the same from the FPS as per the prevailing practice. It has been contended that the Scheme has been floated in the best interest of the consumers and the State Government does not have any intention to either violate any provision of law or tweak any scheme of the Central Government.

The learned Advocate General has relied on the judgment passed by the Hon'ble Supreme Court in the matter of ***Mani Subrat Jain & Ors. -vs- State of Haryana & Ors.; (1997) 1 SCC 486*** paragraph 9 wherein the Court held that no one can ask for a Mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a Mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal right to do something or to abstain from doing something.

Reference has been made to the judgment delivered by the Hon'ble Supreme Court in the matter of ***Jamal Uddin Ahmad -vs- Abu Saleh Najmuddin & Anr.; (2003) 4 SCC 257*** paragraph 11 wherein the Court reiterated the principles of statutory interpretation. The Court held that conferment of a power implies authority to do everything which could be

fairly and reasonably recorded as incidental or sequential to the power conferred.

Reference has also been made to the decision by the Hon'ble Supreme Court in the matter of ***Balco Employees' Union -vs- Union of India; (2002) 2 SCC 333*** paragraphs 46 and 92.

Prayer has been made for dismissal of the writ petition.

The learned counsel representing the Union of India adopts the submissions made on behalf of the petitioners.

Submission was sought to be made on behalf of consumers claiming to be beneficiaries of the proposed Scheme. Prayer has been made for adding them as parties and granting them an opportunity of hearing.

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

The parties have advanced arguments on points of law. There is hardly any factual inconsistency. Prayer for interim order has been made pending final disposal of the writ petition. The manner in which hearing of the petition proceeded, the Court thinks it fit to decide the same finally on the basis of the documents on record.

What is to be decided in the instant writ petition is-

1. Whether the Scheme floated by the Government of West Bengal is in accordance with the provisions of law?

2. Whether the writ petition is maintainable at the instance of the petitioners in its present form?

Let's decide the issue of maintainability first. Petitioners are licensed FPS owners. They allege that the Scheme that has been undertaken by the State is contrary to the laws covering the arena. They are aggrieved by the act of the State mandating them to deliver ration items at the door step of the consumers. According to the petitioners, law prescribes the consumers to collect ration items from the designated ration shops. The State could not have started the practice of delivery of goods to the consumer's door step in contravention of the provision of law. Admittedly, as of now, FPS owners has the legal obligation and duty to deliver goods from the recorded address of their ration shops. The Scheme requires FPS owners to additionally deliver goods at the recorded address of the consumers. The same being a shift from the procedure laid in law there is enough reason for the petitioners to be aggrieved. Hence, writ petition at the instance of the FPS owners who are aggrieved by the same, is held to be maintainable. Mani Subrat Jain (supra) supports the case of the petitioners.

As regards objection raised of not making the beneficiaries a party in the proceeding does not appeal to the Court. The State, for the benefit of the common public and in the best interest of its subjects, is always at liberty to implement new ideas, devise scheme, policy, plan etc. The State, prior to the implementation of such policy/plan/scheme is not required to afford opportunity of hearing to the public at large. No legal right accrues in favour of the beneficiary at this stage. It is only after certain benefits, if already granted, is taken away without following or in

contravention of the law, can the beneficiaries put forward their claim to be heard. Accordingly, the objection raised by the respondents is overruled.

As the learned Advocate General being representative of the State Government has defended the validity of the Scheme, in my opinion, there is no requirement of hearing the beneficiaries at this stage.

For better appreciation of the case certain Sections which will be required to be looked into for deciding the issue is set out herein below.

NFSA Section 2(4)- “**fair price shop**” means a shop which has been licensed to distribute essential commodities by an order issued under Section 3 of the Essential Commodities Act, 1955, to the ration card holders under the Targeted Public Distribution System;

NFSA Section 2(16)- “**Ration card**” means a document issued under an order or authority of the State Government for the purchase of essential commodities from the fair price shops under the Targeted Public Distribution System;

NFSA Section 2(23)- “**Targeted Public Distribution System**” means the system for distribution of essential commodities to the ration card holders through fair price shops;

NFSA Section 12(1)- The Central and State Governments shall endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for them in this Act.

(2) The reforms shall, inter alia, include-

(a) doorstep delivery of foodgrains to the Targeted Public Distribution System outlets;

(h) introducing schemes, such as, cash transfer, food coupons, or other schemes, to the targeted beneficiaries in order to ensure their foodgrain entitlements specified in Chapter II, in such area and manner as may be prescribed by the Central Government.

NFSA Section 24(1)- The State Government shall be responsible for implementation and monitoring of the schemes of various Ministries and Departments of the Central Government in accordance with guidelines issued by the Central Government for each scheme, and their own schemes, for ensuring food security to the targeted beneficiaries in their State.

(2) Under the Targeted Public Distribution System, it shall be the duty of the State Government to-

(a) take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I, organise intra-State allocations for delivery of the allocated foodgrains through their authorised agencies at the door-step of each fair price shop; and

(b) ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule I.

(3) For foodgrain requirements in respect of entitlements under Sections 4, 5 and Section 6, it shall be the responsibility of the State

Government to take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule-I for persons belonging to eligible households and ensure actual delivery of entitled benefits, as specified in the aforesaid Sections.

NFSA Section 36- The provisions of this Act or the schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law.

NFSA Section 40(1)- The State Government may, by notification, and subject to the condition of previous publication, and consistent with this Act and the rules made by the Central Government, make rule to carry out the provisions of this Act.

(3) Every rule, notification and guidelines made or issued by the State Government under This Act shall, as soon as may be after it is made or issued, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.

Section 2 ECA- In this Act, unless the context otherwise requires:-

(C) “notified order” means an order notified in the Official Gazette;

[(cc) “order” includes a direction issued thereunder;]

Section 5 ECA- Delegation of powers- The Central Government may, by notified order, direct that the power to make orders or issue notifications under Section 3 shall, in relation to such matters and

subject to such conditions, if any, as may be specified in the direction, be exercisable also by:-

(a) Such officer or authority subordinate to the Central Government, or

(b) Such State Government or such officer or such authority subordinate to a State Government.

as may be specified in the direction.

Prior to delving in the matter in details let's peruse the highlights of the disputed Scheme "Duare Ration". 'Duar' is a Bengali term meaning door. It implies that the proposed Scheme will be doorstep delivery of ration. The Scheme mentions that the ration under the National Food Security Act and Rajya Khadya Suraksha Yojna including special package will be delivered at the doorstep. In accordance with the said Scheme, FPS dealers shall visit different paras/villages/hamlets divided in small clusters to be covered on a prefixed and pre-announced date and time with food grains, electronic point of scale devise and weighing scale. The delivery to the beneficiary shall be made as per existing subsidised rates of food grains stipulated by the Central Government/State Government from time to time without any additional financial burden on the beneficiary. The beneficiaries will get all entitled food grains (rice, wheat/fortified atta and sugar) at one go. The State Government will consider providing additional commission to the FPS dealers for distribution of food grains and will also consider providing some financial support in the form of subsidy to purchase vehicle for

distribution of food grains. The entire ration for the one-month period shall be delivered to the beneficiary at one go.

The guidelines for the beneficiaries, dealers, distributors, district administration/KMC, Sub-Divisional Administration, Block Administration / Municipalities and the role of District Controller, Food and Supplies/DDR, SCFS/RO have been specified in the Scheme. The roles and responsibilities of the inspecting staff have also been clearly mentioned.

The guidelines of the distributors mention that the distributors should play an important role in ensuring that the food grains reach at the doorstep of the FPS so that the ration dealer is able to distribute food grains to the beneficiaries of that shop in one go.

It appears from the Scheme that the previous practice of ration being sold from the ration shop has not been done away with. The prevailing system of the consumers visiting the ration shops for collecting ration items continues. Over and above the erstwhile practice, the Scheme ensures that the FPS owners supply the ration articles at the doorstep of the consumers.

The preamble to NFSA clearly lays down that the said Act has been promulgated to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable price to people to live a life with dignity and for matters connected therewith or incidental thereto.

The Scheme under reference has been published with the view to provide ration items which are available in the FPS at the price prefixed by the Central Government at the doorstep of the consumer. The Scheme does not appear to be in derogation or contrary to the aforesaid Act. The sole purpose of the Scheme is to facilitate delivery of the goods at the doorstep of the consumers.

In modern days and especially during the pandemic, all items required for daily life are being made available at the doorstep of the consumers. It is a growing trend to provide the consumers the last mile connectivity so that they can get the articles for daily use at their doorstep without the requirement of moving out of their homes.

The situs of the FPS is certainly important but the act of delivery of the food grains is equally important. The recorded address and the place of business of the FPS remains the same. The consumers who are the ultimate beneficiaries of the ration items will, hopefully, find the Scheme to be a beneficial one because they would not be required to step out of their homes for collecting the items, but will be delivered the items at their homes in the prefixed rates, that too, without any delivery charges.

Subsidised ration items delivered free to the homes is a new concept. Several stakeholders are involved in the Public Distribution System. The category of stakeholders who may be aggrieved are the shop owners. It is only the FPS owners who may be in a bit of a disadvantageous position because of the shift in the mode of delivery of the goods. It goes without saying that at the initial stage the ration shop

owners may face a problem as they will have to take the extra burden of delivering the articles at the doorstep of the consumers. There are quite a few logistic issues that are to be put in place for implementation of the Scheme. It is true that whenever a new scheme or project is floated or undertaken there are initial hiccups as the people who are used to a particular system tend to resist the change. The issues are taken care of and resolved after the project gains some speed.

The Scheme has taken care of the FPS owners and have allotted additional commission to them to compensate the cost of delivering the articles at the doorstep. The Government has also decided to provide subsidy for purchase of delivery van with a view to motivate the dealers. Over a period of time, it is expected, that the FPS owners will catch up and adopt the system. The fundamental right of the petitioners to continue their business has not been infringed in any manner. The right to trade or carry on business is left intact. The licensee is bound to abide by any instruction as may be given by the Department.

The concept of consumers visiting the shops for purchase of goods is taking a back seat. Right now it is just the other way round, where the shops are reaching the doorstep of the consumers for selling the articles. The concept of a static shop is slowly fading away in favour of the mobile shop. The targeted public can be served in a better manner and the object and purpose of NSFA can be achieved to a great extent if adequate quantity of quality food at affordable price can be provided to them. Nothing can be better if the same is delivered to them directly to their homes with no extra charges.

Section 24 (2)(b) NFSA mentions that under the Targeted Public Distribution System, it shall be the duty of the State Government to ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule I. The State Government is implementing the same through the Scheme. It is the same articles supplied by the Central Government that are being delivered by the State on the basis of the ration cards held by the consumers. The Central Act is not being offended in any manner.

FPS in the present context has to be taken as a mobile FPS which will go to the doorstep of the consumers for delivery of the ration items. It is just an extension of the static shop which functions from the address mentioned in the records. The fixed shop at the recorded address remains functional. Dual modes of service become available. The consumer can exercise choice whether to purchase goods from the static shop or the mobile shop. The same is a step forward to achieve the object and purpose of NFSA to provide quality food at affordable prices to the targeted people. Price being the same, it is the quality and quantity of the food that matters and not the mode of delivery of the same.

It is a well settled proposition that the rules of procedures are handmaid of justice. The substantive right of the consumer to get the ration items is supreme. Law has to move simultaneously and keep pace with time. The old order change giving place to the new. Time has come for the shop to reach the door step of the consumers. Procedural change in the mode of delivery of goods, if is in the nature of advancing the

Public Distribution System, then the same has to be taken as legal and valid.

The issue before the Hon'ble Delhi High Court remained undecided as the Government of Delhi withdrew the Scheme to deliver ration items at the doorsteps of the consumers.

The Scheme clearly mentions that based on the feedback from the beneficiaries and FPS dealers, learning and experience gained in the pilot scheme in September, revised guidelines for the following month will be issued. The guidelines are in the form of administrative orders hence not required to be notified. It is the duty of the legislature to legislate the law, but it is the duty of the administration to implement and apply the law in a manner to ensure that best result is achieved out of it. The guidelines are ancillary and incidental to the obligation of the State Government to implement and monitor schemes for ensuring food security to the targeted beneficiaries. The Government has acted within the limits as conferred by the NFSA. Steps taken by the Government are in aid of the primary Act.

In *Balco* (supra) the Hon'ble Supreme Court held that "it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. In a democracy, it is the prerogative of the elected Government to follow its own policy. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court."

It is not that all the schemes undertaken by the Government will become successful. Whether the present Scheme will be accepted by the consumers, be successful or beneficial to the consumers, can be assessed only after a period of time. Whether the Scheme will survive or fizzle out after some time is a different question altogether. At the touchstone of the law governing the field it does not appear that the Scheme contravenes any of the provisions of law.

In view of the discussions made herein above the Court feels fit not to interfere with the Scheme under reference.

Writ petition stands dismissed.

No costs.

Urgent Photostat certified copy of this judgment be supplied to this parties upon compliance of all necessary formalities.

(Amrita Sinha, J.)