

Item No.1

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

09.12.2021
Ct-24

WPA 19892 of 2021
Promod Goel

v.

State of West Bengal & Ors.

Mr. Sarajit Sen
Mr. Pingal Bhattacharyya
Mr. Tapas Singha Roy
... for the petitioner.

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

The petitioner is a fair price shop dealer. He is aggrieved by the issuance of the show cause notice dated December 1, 2021 and suspension cum show-cause notice dated December 4, 2021. According to the petitioner both the notices were served upon him on December 5, 2021.

By the first show-cause notice dated December 1, 2021 the petitioner has been asked to show cause as to why legal action shall not be taken against him on account of the irregularities as mentioned in the show-cause notice.

In the subsequent suspension cum show- cause notice dated December 4, 2021 it has been mentioned that there were certain irregularities and poor

performance on his part. His fair price shop had been detected for manning during the month of November 2021. The Deputy Director of Rationing personally visited his shop and it was observed that the petitioner delivered 11.20 kgs rice to one beneficiary on December 4, 2021 having 04(four) RKS-1 DRC, while issuing the cash memo only 8 kgs rice and 12 kgs wheat was reflected therein, which is different from the actual delivered quantity. It was further mentioned that no wheat was delivered to the beneficiary at all.

The incident occurred in the presence of the Deputy Director of Rationing, Howrah and the same was reported on December 4, 2021. The conduct of the petitioner was treated as gross misappropriation of POS stock depriving the beneficiaries. It was further reported that the petitioner failed to produce the inspection book on asking by the Deputy Director of Rationing.

In view of the aforesaid irregularities the petitioner was issued an order of suspension cum show-cause notice with effect from December 4, 2021 till further orders. He was directed to reply in writing against such contravention within three days from the date of receipt of such notice.

The petitioner instead of replying to the suspension cum show-cause notice or the earlier show-cause notice has approached this Court by filing the present writ petition.

The primary allegation of the petitioner is that the suspension cum show-cause notice and the show-cause notice were issued under the provisions of West Bengal Urban Public Distribution System (Maintenance & Control) Order, 2013.

According to the petitioner the aforesaid Control Order of 2013 is no longer valid in the eye of law. The same has been repealed and is not in existence at the moment. The issuing authority of the impugned notices do not have any power to issue any notice far less a show-cause or a suspension cum show-cause notice invoking the aforesaid provision of law.

The further contention of the petitioner is that the suspension cum show-cause notice was issued relying upon the report of Arnab Ghosh, Inspector. The said report was never forwarded/served upon the petitioner. Without the report being made known to the petitioner, it is not possible for him to defend himself properly.

Prayer has been made for setting aside the aforesaid two impugned notices.

The learned advocate representing the State respondents submits that the impugned notices have been issued in accordance with the provisions of law. The power of the issuing authority flows from the provision of the Essential Commodities Act, 1955 and the various Control Orders issued by the Central Government and the State Government for controlling

the operation of the ration shops. The authority is not powerless so as not to take any action against a dishonest dealer.

It has been submitted that the Deputy Direction of Rationing was personally present at the shop and the petitioner was caught red-handed while committing such irregularities. The petitioner failed to produce the inspection book.

It has further been contended that the steps taken by the authority was in the interest of the beneficiaries. The ration card of the petitioner's fair price shop has been tagged with the nearest fair price shop.

Prayer has been made for dismissal of the writ petition.

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

It appears that there are several grave allegations against the petitioner. It is for the petitioner to meet the said allegations and to prove that he was not involved in the irregularities as mentioned in the impugned notices.

As regards the issue relating to the power of the officer who issued the impugned notice it appears that the power to issue notice flows from the Essential Commodities Act itself. The authority concerned is competent enough to take suitable action against any dealer who acts in a dishonest manner depriving the

beneficiaries. The license of the petitioner stood suspended as there are several allegations against him.

It is settled law that neither any prejudice is caused to a party nor any cause of action arise only upon issuance of a show-cause notice.

It will be open for the petitioner to reply to the show-cause notices along with all documents in his support. In the event, the petitioner requires any further document from the office of the respondent authorities then the petitioner may seek for the same from the authority concerned. If any application is made by the petitioner for supply of documents, details of which must be specified by the petitioner, then the authority concerned shall take steps to supply those documents, if available, to the petitioner at the earliest, but positively within a week from the date of making the application.

The authority concerned shall consider the reply of the petitioner without being influenced by any of the observations made hereinabove.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)