

**In The High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side  
(Via Video Conference)**

**W.P.A 50 of 2022**

**Bangaon Central Co-operative Marketing  
Society Ltd. & Anr.  
-versus  
State of West Bengal & Ors.**

**Mr. Debabrata Saha Roy,  
Mr. Pingal Bhattacharyya,  
Mr. Subhankar Das,  
Mr. Neil Basu.**

**...For the Petitioner.**

**Mr. Susovan Sengupta,  
Mr. Subir Paul.**

**...For the State.**

The petitioner No.1 is a registered Co-operative Society and the petitioner No.2 claims to have been appointed as Special Officer of the Society by the Government of West Bengal, Cooperation Department.

The petitioner No.1 was functioning as MR Distributor. A show cause notice was issued to the petitioner No.1 on 20<sup>th</sup> September, 2017 wherein as many as eight irregularities were mentioned.

In the show cause notice it was indicated that a vigilance squad led by the District Controller, Food & Supplies, North 24-Parganas visited the premises of the MR Distributor and conducted inspection.

During inspection the following irregularities were detected:-

1. Board indicating stock position was not found.
2. Rate board was not found.
3. Books of Accounts were maintained category-wise but not in separate registers. These registers were seized against a seizure list.
4. Stocks of Rice and Wheat were stored in the same shed.
5. The go-downs were not maintained in hygienic manner.
6. Stack of PDS commodities under different schemes were maintained commodity-wise, instead of scheme-wise.
7. The physical verification of the stocks of PDS commodities lying in the go-downs was done by means of peripheral counting of bags commodity-wise taken altogether and the following discrepancies in stocks were detected:
  - i) Rice – 3,290 bags (shortage)
  - ii) Wheat – 100 bags (shortage)
  - iii) Atta – 1,436 bags (shortage)
8. Actual weighment of stocks could not be done due to paucity of space and unavailability of labour.

The District Controller was *prima facie* of the opinion that the petitioner No.1 violated the provisions of Clauses 29(1)(b), 29(1)(c), 29(3), 29(5), 29(8), 29(9) and 29(11) of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013.

The petitioner No.1 was directed to show cause as to why suitable action as per Clause 31 of the Control Order will not be taken against the licensee for contravention of law. The petitioner No.1 duly submitted the reply to the show cause.

By an order dated 16<sup>th</sup> November, 2017, the District Controller, Food & Supplies, North 24-Parganas considered the reply submitted by the petitioner No.1 against the show cause and also gave personal hearing to the representative of the petitioner and decided that the MR Dealership license of the petitioner be terminated.

The petitioner preferred an appeal against the order of the District Controller. The said appeal was disposed of by the Director, DDP & S by an order dated 18<sup>th</sup> January, 2018. The first Appellate Authority affirmed the order which was passed by the District Controller.

The petitioner preferred a second appeal and by order dated 20<sup>th</sup> August, 2018 the Principal Secretary, Food & Supplies Department & Commissioner, Food, Government of West Bengal rejected the appeal preferred by the petitioner.

The petitioner being aggrieved by the same has approached this Court by filing the present writ petition.

The principal argument of the petitioner is that the order passed by the second appellate authority is a cryptic one. The petitioner raised several grounds in the appeal preferred before both the first and second appellate authorities. The second appellate authority by only one line order has rejected the appeal preferred by the petitioner.

It has also been submitted that the impugned order though was passed on 20<sup>th</sup> August, 2018 but the

same was communicated to the petitioner long after the said date.

The second appellate authority did not apply its mind to the several grounds which was put forth by the petitioner in the second appeal.

The petitioner prays for a direction upon the second appellate authority to reconsider the appeal preferred by the petitioner by giving a further opportunity of hearing and to pass a fresh reasoned order.

I have heard the submissions made on behalf of the petitioner and perused the documents which have been annexed to the writ petition.

The show cause notice issued to the petitioner mentions eight irregularities. The disciplinary authority in the order dated 16<sup>th</sup> November, 2017 mentions that the representative of the petitioner admitted the lapses with regard to not maintaining separate category-wise registers, not stacking the PDS commodities scheme-wise and the unhygienic condition of the go-downs.

With regard to the discrepancies in stocks, the representative of the petitioner intimated that as the validity of DO expired, the quantity of rice against the said DO was shown as delivered, but actual physical lifting of the bags of rice was completed by the MR Distributor later on, due to which the shortage in physical balance against the book balance was detected at the time of inspection.

The representative of the petitioner produced copies of gate passes issued by the Godown-in-charge

to corroborate his claims but he could not explain the shortage of 35 bags of rice.

The said authority found that though there was shortage of 100 bags of wheat against the book balance but the alibi of the petitioner was that the bags of atta were found short during inspection as the same had been delivered in advance. No explanation or reason was put forward for such advance delivery without any of order from the office of the SCF&S, Bongaon.

The actual weighment of stocks could not be done at the time of inspection due to paucity of space and failure of MR distributor to arrange for the required number of labourers. Physical verification of the stocks of PDS commodities lying in the godown was done by peripheral counting of bags commodity-wise taken together in the presence of the godown keeper and the staff of the petitioner Cooperative.

No justification was given by the representative of the petitioner for the shortfall of 35 bags of rice, 100 bags of wheat and 1436 bags of atta.

The disciplinary authority found that the petitioner indulged in malpractice as huge quantum of stocks were detected short and such lapses on the part of the petitioner was in contravention of the provisions of the Control Order 2013 and the conditions of license.

The disciplinary authority concluded that the lapses on the part of the petitioner constituted high degree of offence which cannot happen without consent and approval of the management authority, i.e., the Cooperative Society.

The District Controller terminated the MR Distributorship license of the petitioner.

The appeal which was preferred by the petitioner against the order of the District Controller contained several grounds.

In the said appeal it was mentioned that the staff of the petitioner signed the chart of physical verification which was conducted by the staff of the respondent authority on the spot.

The petitioner admitted that there was heavy congestion in the godown because huge stock was allotted and the officers could not enter the godown and recorded the number of bags only on estimation.

One of the grounds taken by the petitioner is that weighment of each bag is mandatory under the Statute which the officers did not do. In the said appeal the petitioner also mentioned that 100 percent weighment of each commodity was not made despite offer of making available the labour and the scale to the officers. The appeal also mentioned that the officers did not avail the facility of providing labour for the purpose of actual weighment of stocks. On the basis of eye-estimation the weighment ought not to have been relied upon. The authority prepared the physical verification on the basis of standard weight of bags.

It has further been submitted that the penalty imposed upon the petitioner is highly disproportionate. Several families are dependent upon the Cooperative Society and if the license is terminated then the families will suffer irreparably.

The appeal of the petitioner was considered by the Director, Directorate of District Distribution, Procurement and Supplies. Opportunity was given to the legal representative of the petitioner to place the appeal.

By an order dated 18<sup>th</sup> January, 2018 the first appeal stood rejected. The Director took into consideration the submission of the learned advocate that 100 percent weighment was not made, stocks were verified by means of peripheral counting, show-cause notice and the physical verification report do not tally with regard to the quantity of atta that is mentioned at the time of inspection, delivery was continuing and the delivered stock could not be recorded as the books of accounts were seized by the vigilance squad, calculation of atta was erroneous and the same would be evident from the challans issued by the flour mill.

The Director, i.e., the first appellate authority, conducted the hearing of the appeal in presence of the District Controller, Food and Supplies. The District Controller categorically stated that in spite of being requested by the vigilance squad weighment could not be done during physical verification due to paucity of space and also of labourers.

The first appellate authority also considered the submission with regard to the mismatch between the show-cause notice and the order-sheet regarding the shortage of stocks. The representative of the petitioner could not produce any gate-pass regarding lifting of the bags of rice. It was recorded that the inspection was conducted in presence of the godown keeper and other staff members of the distributor. The bags allotted and kept in the godown were meticulously counted and

physical verification chart prepared by the team was duly signed by the staff of the distributor. Physical verification report reflects the quantum of stock which was physically found in the godown at the time of inspection. Physical verification chart of atta was made in a separate sheet.

The Director was of the opinion that although weighment of stocks during physical verification is desirable but not mandatory on the part of the inspecting team. The Director also noted that the distributor could not arrange the facilities to conduct weighment of stocks in spite of demand being made by the vigilance squad. The inspection team followed the guidelines mentioned in GO No. 3971-FS dated 2<sup>nd</sup> December, 2016, Custom Milled Rice at the time of weighment of stocks.

Photocopy of the gate-passes which were relied upon by the petitioner were also considered by the Director and he was of the opinion that the same cannot be treated as proof of weight. The challans relied upon by the petitioner were also taken into consideration.

The Director was of the opinion that the distributor could not produce separate DO for the stock and it was highly irregular on the part of the distributor to enter any stock in the books of accounts before actual receipt or delivery.

The Director recorded that the learned advocate did not raise any voice against the charges brought against the distributor other than shortage of food-grains and physical verification and thus admitted the other charges brought against the distributor.

The Director was of the opinion that causing huge shortage of stock in physical balance compared to book balance, as conducted in the godown premises of the distributor, tantamount to a serious offence on the part of the distributor and the distributor failed to explain satisfactorily as to why and how such shortage occurred. He expressed his concern by mentioning that most of the stock of food-grains was meant for poor families under NFSA and RKSY. The Director was convinced that the distributor contravened the provisions of the Control Order 2013 and the conditions of license.

Being aggrieved by the order passed by the first appellate authority, the petitioner preferred second appeal before the Principal Secretary. The petitioner highlighted several grounds in the said second appeal. The grounds mentioned in the first appeal and the second appeal are nearly the same.

One of the grounds mentioned in the second appeal is that the respondent failed to consider the judgment cited by the learned advocate for the appellant. The order of the Director does not mention about any judgment being relied upon by the learned advocate at the time of hearing. Neither has any judgment been relied upon by the petitioner at the time of hearing of the matter today.

In the second appeal also the petitioner relied upon the provision of mandatory requirement of weighing the stocks physically for ascertaining its weight.

The Principal Secretary considered the second appeal preferred by the petitioner and was of the opinion that undoubtedly there were anomalies in stock of PDS commodities and the same was detected during spot inspection. The Principal Secretary was of the opinion that no plausible reason has been found to interfere with the decision of the first appellate authority and upheld the order of termination which has been passed.

The petitioner is aggrieved as the Principal Secretary did not mention any new reason for affirming the order passed by the first appellate authority. According to the petitioner the second appellate authority ought to have given detailed reasons for upholding the order of the first appellate authority.

It has been submitted that the petitioner has taken as many as twenty six grounds in the second appeal but the second appellate authority disposed of the appeal by a single line order upholding the order of the first appellate authority.

According to the petitioner non-disclosing of reason in the impugned order renders the same bad in law and liable to be set aside.

I am not convinced with the said argument of the petitioner. It appears from the order passed by the disciplinary authority and the first appellate authority that there are detailed reasons given for passing the order of termination. There are several factual aspects involved in the matter which have been taken into consideration by the disciplinary as well as the first appellate authority. It is not necessary for the second appellate authority to give further reasons over and

above the reasons which have already been mentioned by the disciplinary as well as the first appellate authority in support of the order of termination. It is only when the disciplinary authority disagrees with the order passed by the earlier two authorities, that there is requirement for giving fresh reasons. It is not necessary for each and every authority to go on multiplying reasons in support of the order of penalty.

The petitioner at all the stages of the proceeding was given a fair opportunity to defend itself. Opportunity of hearing was given to the representative of the petitioner in all the stages.

Judicial review under Article 226 of the Constitution is limited only to the extent of examining whether there was any procedural infirmity at the time of conducting the disciplinary proceeding. In the absence of any proof to show that the departmental proceeding suffers from any procedural lapse or there has been any violation of the principle of natural justice causing prejudice to the petitioner, there is no reason to interfere.

It does not appear that there has been any violation or lapse on the part of the respondent authorities in conducting the proceeding resulting in the order of termination.

It appears from record that there are enough evidences against the petitioner in support of the order of penalty that has been imposed.

The act on the part of the respondent authority to communicate the impugned order to the petitioner at a delayed date cannot however be supported by the Court

and is strictly deprecated. The authority ought to have communicated the petitioner the reasoned order immediately after the same was passed so that the aggrieved party may approach Court for redressal. Delayed communication of the reasoned order cannot be a ground to set aside the impugned order which has been passed upon consideration of evidence and upon observation of the principle of natural justice.

It is settled law that the High Court under Article 226 of the Constitution does not act as an appellate authority. Power of the Court is confined to correct an error of law or procedural error, if any, resulting in any manifest miscarriage of justice or violation of the principles of natural justice. The Court cannot act as a court of appeal and re-appreciate the evidence.

As regards the submission of the petitioner that the punishment imposed is disproportionate, the same is not open for scrutiny by the Court. It is for the authority to decide the quantum of penalty. Only if the punishment imposed shocks the conscience of the Court, the same may be interfered with. Moreover interference with the order of punishment cannot be made in a casual manner or for any flimsy reasons. Any misplaced sympathy would cause more harm to the society at large, than any good to the terminated licensee.

The case at hand is not one of such cases warranting interference. The Court is not inclined to interfere in this matter. The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

**( Amrita Sinha, J.)**