

Item No.136

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

22.03.2022
Ct-24

WPA 6844 of 2007
Baliasisha Samabay Krishi Unnayan Samity
Limited & Anr.
v.
The State of West Bengal & Ors.

Mr. Atis Kumar Biswas
Mr. Amit Singh
Ms. Jyoti Agarwal
... for the petitioners.

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

The petitioner no. 1 is a registered Agricultural Cooperative Society represented by its Secretary being the petitioner no. 2.

The petitioners are aggrieved by the order dated March 9, 2007 passed by the Sub-Divisional Controller, (F&S), Tehatta, Nadia whereby the fair price shop which the petitioners were running has been suspended with immediate effect till the final disposal of the proceeding initiated against the Society.

The petitioners are running a fair price shop as well as kerosene oil shop.

A show cause notice was issued to the Secretary of the Society on August 8, 2006 by the Sub-Divisional Controller (F & S), Tehatta, Nadia.

The show cause notice clearly mentions that on an inspection conducted it revealed that at the time of visit there were no stock book, daily sales register, log book in the fair price shop. After physical verification the actual stock which was lifted by the petitioners could not be verified, as there was no document in support of the items lifted by the petitioners. It was further detected that no cash memos were issued from serial no. 145 to 169 to the consumers though the same was written and kept both in original and duplicate memos in the cash memo book. The seizure list was supplied to the petitioner no. 2 duly signed by the District Controller (F & S), Nadia.

The petitioner no. 2 duly replied to the show cause notice on August 23, 2006. An opportunity of hearing was also given to the petitioner no. 2 and the petitioner no. 2 was directed to appear with all necessary papers in support of the case.

After the hearing was conducted a further show cause notice was issued on December 9, 2006 wherein the details of the irregularities were specifically mentioned. The petitioner no. 2 was asked to show cause within seven days as to why the matter will not be

forwarded to the higher authority for taking proper steps. The petitioner no. 2 duly replied to the show cause on December 26, 2006.

By the impugned memo dated March 9, 2007 the Sub-Divisional Controller (F&S), Tehatta, Nadia suspended the fair price shop with immediate effect as per the provisions of paragraph 21 of the West Bengal Public Distribution System (Maintenance & Control), 2003 and paragraph 9 of the West Bengal Kerosene Control Order, 1968.

According to the petitioners, the Sub-Divisional Controller (F & S), Tehatta, Nadia does not have the jurisdiction to issue the order of suspension in respect of the kerosene shop. The petitioner refers to paragraph 9 of the West Bengal Kerosene Control Order, 1968 to show that the District Magistrate is the appropriate authority to take a decision in the matter.

It has further been contended that the Sub-Divisional Controller cannot issue a single suspension order in respect of the fair price shop as well as the kerosene shop. According to the petitioners, two separate proceedings ought to have been initiated and two separate orders ought to have been passed by the appropriate authority.

It is the further case of the petitioners that at the time of preparing the seizure list, signatures of the

witnesses have not been taken. The seizure list is defective.

The petitioners pray for setting aside the impugned order dated March 9, 2007.

Learned advocate representing the State respondents opposes the prayer of the petitioner. It has been pointed out that the petitioners have virtually admitted the allegations that have been made against them.

It has been submitted that the Sub-Divisional Controller has the jurisdiction to issue order of suspension and initiate proceedings against the petitioner in accordance with the Control Order, 1968.

It has also been contended that show cause and suspension order can be issued simultaneously in respect of the Control Order of 2003 and Control Order of 1968 but the proceeding is to be initiated separately.

It has been argued that the Sub-Divisional Controller (F & S), Tehatta, Nadia, had the jurisdiction to initiate proceedings against the petitioner under both the Control Orders.

Learned advocate relies upon paragraph 3(e) of the Kerosene Control Order, 1968 where the term "District Magistrate" has been defined. It mentions that District Magistrate includes the Deputy Commissioner of a district and also includes any person not below the rank

of a Sub-Divisional Controller of Food and Supplies in the Department of Food and Supplies, Government of West Bengal, authorized by the District Magistrate or Deputy Commissioner, as the case may be, in writing to perform all or any of the functions of the District Magistrate under this Order.

It has been submitted that the Sub-Divisional Controller (F & S), Tehatta, Nadia acted in accordance with the power that was delegated to him by the District Magistrate.

It has further been submitted that the Sub-Divisional Controller (F & S), Krishnagar issued the show cause notice dated December 19, 2006 as the said authority was acting in-charge of the Sub-Divisional Controller (F & S), Tehatta, Nadia.

It appears from the submissions made on behalf of both the parties and upon perusal of the documents on record that, the writ petition was admitted by the Court and an order was passed on April 23, 2007 where direction was given for filing affidavits and the proceeding initiated by the issuance of the show cause notice was permitted to be completed by the respondents within the time specified in the Control Order. If any order is passed, the same was to be placed before the Court on the next date of hearing and no effect to be given to the same without the leave of the Court. No

order was passed staying operation of the impugned order.

The Court has not been made aware as to whether the proceeding initiated against the petitioners has been concluded or not. The license of the petitioner No.1 in respect of the fair price shop as well as the kerosene oil shop has been extended from time to time for the reasons and on grounds best known to the authority.

A proceeding cannot be permitted to remain pending for more than a decade and half. After so many years there is every possibility that evidences will be either missing or lost and it may be practically impossible for the parties to adduce evidence in support or against the charges framed. The very purpose of initiating proceedings is defeated if the same remain pending for an indefinite period. Proceeding was initiated against the petitioners in the year 2006 and it is high time that the same is required to be concluded strictly in accordance with the provisions of law.

The petitioner No.2 has already replied to the show cause notices that were issued and hearing was also taken in the year 2006/2007. For the purpose of conclusion of the proceedings a fresh hearing is required to be taken by the present Sub-Divisional Controller (F & S), Tehatta, Nadia.

As the Court, on the earlier occasion, permitted the respondent authorities to conclude the proceeding, accordingly, the Sub-Divisional Controller (F & S), Tehatta, Nadia is directed to conclude the proceeding initiated in the year 2006, strictly in accordance with law, at the earliest, but positively within a period of thirty days from the date of communication of a copy of this order.

A fresh opportunity of hearing shall be afforded to the petitioners to produce all relevant documents in their support.

The Sub-Divisional Controller shall pass a reasoned order and communicate the same to the petitioners immediately thereafter.

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.)