

16.11.2022
Court No.12
S/L. No.08
Suvayan

FMA 744 of 2021

**The State of West Bengal & Anr.
Vs.
West Bengal M. R. Dealers' Association & Ors.**

Mr. Sushovan Sengupta
Mr. S. Bandopadhyay
Mr. A. K. Nag

...for the appellants.

Mr. Ram Anand Agarwala
Ms. Nibedita Pal
Mr. Ananda Gopal Mukherjee
Ms. Sonam Ray

...for the respondent No. 1.

Heard Mr. Sushovan Sengupta, learned Counsel for the appellants and Mr. Ram Anand Agarwala, learned Counsel for the respondent No. 1.

The appeal was filed against the order passed by Hon'ble Single Judge Bench in WP 33258 (W) of 2013.

The aforesaid writ petition was filed by the present respondents challenging the provisions of the West Bengal Public Distribution System, Control Order 2013 (2013 Control Order for short). On the grounds *inter alia* thus:

- i) 2013 Control Order being a piece of delegated legislation does not enjoy the immunity as a statute and is vulnerable as the entire filed in this regard is occupied by the Central Government.
- ii) The said impugned Control Order is beyond delegated power as prior

concurrence of the Central Government was not obtained by the State Government in compliance with the Notification, GSR 800 dated June 9, 1978 issued by the Department of Food, Ministry of Agriculture, Government of India.

- iii) The impugned Control Order is beyond legislative competence of the State Government as many provisions are contrary to and inconsistent with the provisions of the Central Control Order of 2001 and in excess of delegated power under Paragraph 7 read with Paragraph 5 of the Central Control order, 2001.
- iv) Paragraphs 6, 9, 16, 17, 18 etc. of the impugned Control Order is beyond the delegated power of the State Government.

Having heard the learned Counsel for the both the parties, by a well discussed judgment Hon'ble Single Bench held that the 2013 Control Order except as the provisions incorporated in Paragraphs 2(e), 6, 34, 36, 37 and imposition fine in Paragraphs 31(c) and Paragraph 2(c) of the 2013 Control Order are struck down as ultra vires of Central Control Order 2001 being beyond the delegated power of the State Government.

It is fairly submitted at the Bar that though appeal was filed by the State Government, in course of pendency of the appeal relevant amendments in the 2013 Control Order in pursuance of the impugned judgment passed by Hon'ble Single Judge has already been carried out.

In view of such position, nothing remains to be decided in this appeal.

Accordingly, the appeal being FMA 744 of 2021 is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)