

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

BEFORE:-

THE HON'BLE JUSTICE RAJASEKHAR MANTHA
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA

F. M. A. No. 559 of 2018

BONGAON CENTRAL CO-OPERATIVE MARKETING SOCIETY LIMITED
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS

Mr. Srijib Chakraborty
Mr. Aditya Mondal

...for the appellant.

Mr. Susovan Sengupta

... for the respondents,

Hearing Concluded On : 01.09.2023

Judgment On : 06.09.2023

Rajasekhar Mantha, J.

1. The appellant is a Cooperative Marketing Society registered under the West Bengal Cooperative Societies Act, 2006. It was a licensed distributor of modified ration goods, otherwise known as M.R. Dealer/Distributor. It is aggrieved by an order dated 10th August 2015 passed by the Principal Secretary, Food and Supply Department, Government of West Bengal. By the said order the second appeal of the appellant against cancellation of its M.R. distributorship was rejected.

FACTS OF THE CASE

2. Pursuant to the information received, a team of inspecting staff headed by the SC and F&S, Bongaon, North 24 Parganas, West Bengal visited the appellant's godown on 22nd April 2013 at about noon. The godown was found closed. It was voluntarily opened by an employee of the appellant. Upon a search conducted in terms of the West Bengal Urban Public Distribution System (Maintenance and Control) Order 2003 (hereinafter referred to as 'Control Order of 2003'), a shortage of 632.85 quintals of rice was detected. Upon intimation to the SDO, Bongaon, and the District Controller, North 24 Parganas, an explanation was sought from the appellant.
3. On the same day, at about 7:30 p.m. the SDO, Bongaon received further information that the appellant was trying to replenish the missing stock with the help of a local rice mill (Chakraborty Brothers Rice Mill). The SDO, along with the F&S team and the police reached the godown at about 9:00 p.m. The State officials found a truck from the nearby rice mill, unauthorisedly present inside the godown premises. None of the officials of the appellant were present or could be contacted. The godown was sealed in the presence of the police and two witnesses at about 10:40 p.m.
4. On the next day at about 2:20 p.m. when the godown was opened in the presence of the District Controller, F&S and other local staff, SDO, police, and the officials of the appellant, the said empty truck of the local rice mill was found inside the distributor's premises. The entry of

the truck was admittedly unauthorized. After further inspection, it was found that as opposed to one stack of rice detected on the earlier day during the search, a second stack of approximately 1001 bags of rice and other food stock was found in godown No. 2. No satisfactory explanation came from the officials of the appellant. Upon inspection being conducted, the missing stack from the earlier day was found to have been surreptitiously replenished. The truck was seized by the police for unauthorized presence and trespass into the godown.

5. The entire proceeding of the search, conducted on 22nd and 23rd April 2013, was done in the presence of 12 persons, i.e. officials of the F&S, the officials of the appellants, and the police.
6. A show-cause notice was issued to the appellant on 23rd April 2013 as to why disciplinary action should not be taken in terms of the provisions of the said Control Order 2003. The Sub-Divisional Controller, vide communication dated 22nd April 2013 recommended suspension of the appellant's distributorship.
7. In the reply dated 26th April 2013, the appellant denied the allegation but did not allege violation of Section 22 (3) of the Control Order of 2003.
8. A personal hearing was given to the appellant on 21st May 2013. By an order dated 4th June 2013 the District Controller, F&S, North 24 Parganas, cancelled the distributorship of the appellant.
9. The petitioner had prior thereto challenged the suspension and showcause in WP 14802 (W) of 2013. The said writ petition was

withdrawn since the final order was passed and a statutory appeal was available against the order of cancellation.

10. A second writ petition, WP No. 30947 (W) of 2013 was thereafter filed when the vacancy of the cancelled distributorship was proposed to be advertised for being filled up. The said writ petition was disposed of by the order dated 4th December 2013 by a Single Bench directing that till such time the writ petitioner's appeal is disposed of and order thereupon, is communicated to him, the vacancy shall not be declared. The statutory appeal of the appellant was rejected by the order dated 12th February 2014.
11. A third writ petition, WP No. 9556 (W) of 2014 was filed challenging the order of the First Appellate Authority since it did not specifically deal with the grounds urged by the appellant. The said order dated 12th February 2014 was set aside by the Single Bench. The matter was directed to be considered afresh by the Director, DDP&S by this Court. By order dated 3rd September 2014, the Director DDP&S upheld the order of termination dated 4th June 2013 passed by the District Controller.
12. A fourth writ petition WP No. 28431 (W) of 2014 was filed challenging the said order dated 3rd September 2014 passed by the Director, DDP&S. The said writ petition was disposed of by order dated 24th November 2014 where the Court found no jurisdictional error. The appellant was, however, allowed to take the matter in a second appeal before the Principal Secretary, Food and Supply Department, Government of West Bengal. The Principal Secretary, after due

consideration of all grounds urged by the appellant by order dated 18th August 2015, dismissed the said second appeal and upheld the order passed by the Director, DDP&S.

13. The fifth writ petition no. 265 (W) of 2016 was thereafter filed against the order of the Principal Secretary. An affidavit was filed by the State and the petitioner filed a reply. The writ petition was disposed of by the impugned order dated 9th November 2017.

THE DECISION OF THE LEARNED SINGLE BENCH

14. The learned Single Judge found that the earlier argument of infraction of paragraph 25 (2) of the West Bengal Urban Public Distribution System (Maintenance and Control) Order 2013 and the requirement of the compliance of Section 100 of the Cr.PC had not been urged by the appellant at any point of time in any of the four writ petitions filed by him. It was, therefore, held that the appellant was not entitled to raise the same for the first time in the fifth writ petition. The writ petition was dismissed on the said ground.

ARGUMENTS OF THE APPELLANTS

15. Mr. Srijib Chakraborty, learned counsel for the appellant would argue placing a portion of the appeal in the proceedings before the authorities, that it was specifically pleaded by the appellant that the search was not conducted in the presence of two witnesses. According to Mr. Chakraborty, the learned Single Judge, therefore committed an error in holding that the point was not urged. He pressed for the remand back to the Principal Secretary for consideration afresh.

Reliance is placed on the decision of a Single Bench of this Court in the case of **Arun Agarwal v. State of West Bengal and others** reported in **2010 SCC Online Cal 1346**, that was affirmed by a Division Bench of this Court, on the proposition that compliance of Section 100 of the Cr.PC is mandatory under Para 25(2) of the Control Order of 2003.

16. Mr. Chakraborty further argued that the respondents proceeded in strange haste after the search, in issuing show-cause notice within three days. There was no opinion formed in terms of paragraph 25(b)(c) of the Control Order of 2003. The termination order was passed during the pendency of the writ petition. The undue haste shown by the respondents is by itself an indication of mala fides.
17. The complaint lodged by the respondents with the Police resulted in an F.I.R. under sections 406 and 407 of the IPC against the appellant as well as M/s Chakraborty Brothers Rice Mill. The complaint was registered in April 2018, and investigation into the same has not been completed till date.
18. Mr. Chakraborty has placed reliance on the following decisions :-
 - a) A decision of a Single Bench of this Court in the case of **Samir Sadhukhan v. State of West Bengal and Ors.** reported in **2011 SCC OnLine Cal 5575**, paragraph 7-9 thereof.
 - b) The case of **Nitya Gopal Roy and others v. State of West Bengal**, Judgment dated 31st January 2017 delivered in **WP 29023(W) of 2014**.
 - c) The decision of **Oryx Fisheries Pvt. Ltd. v. UOI and Others** reported in **(2010) 13 SCC 427**, at paragraphs 24 and 26 thereof.

- d) The case of ***N. Nagendra Rao & Co. v. State of A.P.*** reported in **(1994) 6 SCC 205**, at paragraph 27 thereof.
- e) The case of ***P. T. Rajan v. T. P. M. Sahir and others*** reported in **(2003) 8 SCC 498**, particularly paragraphs 45 and 53.
- f) The Division Bench decision of ***State of West Bengal v. Arun Agarwal*** dated 21st January 2011 in **A.P.O No. 247 of 2010**.

ARGUMENTS OF THE STATE

19. Mr. Sengupta argued that the ***Arun Agarwal (Supra)*** decision cannot be applied as in the said case the Court was concerned with a seizure. In the instant case, there was only a search and no seizure was there.

THE COURT'S ANALYSIS AND FINDINGS

20. This Court has carefully heard the arguments of Mr. Chakraborty and Mr. Sengupta for the State.
21. For the purpose of our decision it is necessary to set out paragraph 20(2) and (3) of the Control Order 2003 (applicable to Rural areas).

“2) If during the course of inspection, the inspecting official is of the opinion that the books of accounts which are required to be brought to the office for examination or there is any discrepancy of stock of public distribution commodities, the said inspecting official may seize the stocks and books of accounts or the weighing devices for verification.

3) In the even of seizure of stock or books of accounts or weighing devices, the inspecting official shall follow the provision as contained in section 100 of the Code of Criminal procedure, 1973 (2 of 1974).

Notwithstanding anything contained in this Order, an official duly authorised by the State Government, may summon the dealer for production of documents and stocks of public distribution commodities and the weighing devices at any time if

such verification appears to be necessary in the interest of public.”

22. Discussing various parts of the decision of a Single Bench in that case, the Division Bench in the **Arun Agarwal (Supra)** decision went on to hold as follows:-

“The Hon’ble Single Judge after analyzing the decisions and paragraph 25(2) of the said Control order and in the backdrop of Article 14 of the Constitution of India opined that so far as the provisions of paragraph 25(2) of the West Bengal Urban Public distribution System (Maintenance and Control) Order 2003 is concerned, the same is mandatory and it must be strictly observed.”

23. It is clear and evident from the observation of the Division Bench judgment in **Arun Agarwal (supra)** that the search and seizure was found to have been vitiated in the peculiar facts of the case, where the department, all by itself, conducted the raid, prepared and signed the search list, and even initiated the proceedings. There was a clear violation of Article 14 of the Constitution according to the Court. The Division Bench however in so many words did not find an infraction of Section 100 of the Cr.PC. The said decision was rendered in the context of the Control Order of 2003, for Urban areas. The language of the Urban areas Control Order of 2003 is quite different from the Rural areas Control Order of 2003.

24. However, in paragraphs 30, 31, 32, and 33 of **Arun Agarwal (supra)**, the Coordinate Bench also found that whether the search and seizure was done correctly or not, would depend on the facts and circumstances of each case.

“30. In the instant case, this Court notices that under the provisions of para 25(2), it has been specifically laid down that the provisions contained in section 100 Cr. PC relating to search and seizure shall, so far as may be apply to searches and seizures under this paragraph. In the background of such a provision having been provided read with the judgments referred

to above, this Court is of the view that in order to test as to whether para 25(2) is mandatory or directory, an aspect, be considered and that is, the application and insertion of the word “shall” just before the words “so far as may be”, para 25(2) reads as follows:

“25(2). The provisions as contained in section 100 of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall, so far as may be, apply to searches and seizures under this paragraph”. (Quoted)

31. To come to a conclusion as to whether a provision is mandatory or directory, the word “shall” or “may” may not always be a guiding factor but they have to be considered in the context and purpose for which such a provision has been made and the Courts must see the purpose behind inserting such words.

32. In the opinion of this Court, the purpose for which such a provision like para 25(2) of the Control Order of 2003 was made was in the context of keeping in mind that arbitrary actions of the State should not be encouraged. A Division Bench of this Court has gone a step further while interpreting a provision as to whether it is mandatory or directory by keeping in mind that the guiding factor should be also the beneficial purpose for whom the Rule is made. This was considered by a Judgment delivered by a Division Bench of this Court in WPCT No. 210 of 2008 on 19.8.2009. A photocopy of the said judgment was produced by the learned Counsel for the petitioner during arguments. The relevant portions thereof are quoted below:

“Having regard to the language used in the said Index No. 1033, the regulation, the issue now is required to be considered whether that provision is a mandatory provision or directory provision. To test a provision whether mandatory or directory, the use of the word ‘shall’ or ‘may’ is not a guiding factor, but the main guiding factor is context and purpose for which the provision has been made and the beneficial purpose for whom it is made. By a Constitution Bench judgment passed in the case *Collector of Monghyr v. Keshav Prasad Goenka*, reported in AIR 1962 SC 1694, in paragraph 12, the Court identified the legal position by holding to this effect “it is needless to add that the employment of the auxiliary verb “shall” is inconclusive and similarly the mere absence of the imperative is not conclusive either. The question whether any requirement is mandatory or directory has to be decided not merely on the basis of any specific provision which for instance, sets out the consequences of the omission to observe the requirement, but on the purpose for which the requirement has been enacted, particularly in the context of the other provisions of the Act and the general scheme thereof. It would, inter alia, depend on whether the requirement is insisted on as a protection for the safeguarding of the right of liberty of person or of property which the action might involve.” In the case *Mannalal Khetan v. Kedar Nath Khetan*, reported in AIR 1977 SC 536, a judgment of three-Judges Bench, the Court held “negative, prohibitory and exclusive words are indicative of the legislative intent when the statute is mandatory. Negative words are clearly prohibitory and are ordinarily used as a

legislative device to make a statutory provision imperative-Non-compliance of provision even if not provides any offence, the provision of such test cannot be said as directory.” (Quoted)

33. *From the aforementioned judgments and read with the observations made by this Court above, this Court considers that the very purpose to insert para 25(2) was to ensure reasonableness and non-arbitrariness during the course of search and seizure and therefore, it is a provision that is beneficial not only to the State but also to the person who is being searched as it seeks to enforce the provisions of Article 14 of the Constitution of India rendering an arbitrary action illegal. In the background of Article 14 of the Constitution of India, read with the observations made by the Division Bench and also by the Supreme Court in the case of Ram Deen Maurya referred to above, this Court comes into conclusion that so far as the provisions of para 25(2) of West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2003 is concerned, the same is mandatory and it must be strictly observed:”*

25. A plain reading of the above observations of the Coordinate Bench would indicate that one has to bear in mind the expression “so far as may be” in paragraph 25(2) of the Control Order of 2003 in the application under Section 100 of the Cr.PC.

26. This Court is, therefore, of the clear view that infraction of Section 100 of the Cr.PC in every case of search and seizure, would not ipso facto invalidate the proceedings under the Control Order of 2003. This finding is supported by the dicta of various decisions of the Supreme Court under Section 100 of the Cr.PC itself. The language and text of the paragraph 20(2) and (3) of the Rural Control Order of 2003 is quite different. Infat section 100 of the C. P.C. is not applicable to a search under the Rural Control Order of 2003.

27. In paragraphs 9, 10, and 12 of the case of ***State of Maharastra Vs. Natwarlal Damodardas Soni*** reported in (1980) 4 SCC 669, the Supreme Court held as follows:-

“9. *Taking the first contention first, it may be observed that the police had powers under the Code of Criminal Procedure to search and seize this gold if they had reason to believe that a cognizable offence had been committed*

in respect thereof. Assuming arguendo, that the search was illegal, then also, it will not affect the validity of the seizure and further investigation by the Customs Authorities or the validity of the trial which followed on the complaint of the Assistant Collector of Customs.

10. *In Radhakishan v. State of U.P. [AIR 1963 SC 822 : 1963 Supp 1 SCR 408, 411, 412 : (1963) 1 Cri LJ 809] the appellant was a postman. He and his father were living in the same house. Certain undelivered postal articles were recovered from an almirah in the house, the key of which was produced by the father. The appellant, Radhakishan was tried and convicted of an offence under Section 52 of the Post Offices Act, for secreting postal articles. One of the contentions raised on behalf of the appellant was that the search and seizure was illegal inasmuch as it was in contravention of the provisions of Sections 103 and 165 of the Code of Criminal Procedure.*

“So far as the alleged illegality of the search is concerned, it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of Sections 103 and 165 of the Code of Criminal Procedure, are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues.”

These observations apply to the instant case.

12. *In State of Kerala v. Allasserry Mohammed [(1978) 2 SCC 386, 395 : 1978 SCC (Cri) 198 : AIR 1978 SC 933] question arose, whether the failure on the part of the Food Inspector to comply strictly with the statutory provisions, would vitiate the trial and conviction of the respondent? This Court answered this question in the negative, and referred with approval to the decision, dated July 6, 1976, in W.T. Stone, Warden, 74-1055 v. Lloyd Charles Powell and Charles L. Wolff, Jr., Warden, 74-1222 v. David L. Rice [(1976) USSC Bulletin, Vol. 2, B4840] , wherein the Supreme Court of the United States of America made a clear departure from its previous decision in the application of the exclusionary rule of evidence. The prosecution in those cases relied upon the evidence of search and seizure, which were said to be unconstitutional and unlawful. Mr Justice Powell, who delivered the leading majority judgment, made these pertinent observations: (see SCC p. 395, para 12)*

“Upon examination, we conclude, in light of the nature and purpose of the Fourth Amendment exclusionary rule, that this view is unjustified. We hold, therefore, that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a State prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial.”

28. In **Pooran Mal v. Director of Inspection (Investigation) New Delhi and Others** reported in (1974) 1 SCC 345, it was once again held as follows:-

“24. So far as India is concerned its law of evidence is modelled on the rules of evidence which prevailed in English Law, and Courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. In Barindra Kumar Ghose v. Emperor [ILR 37 Cal 467 : 7 1C 359] the learned Chief Justice Sir Lawrence Jenkins says at p. 500:

“Mr Das has attacked the searches and has urged that, even if there was jurisdiction to direct the issue of search warrants, as I hold there was, still the provisions of the Criminal Procedure Code have been completely disregarded. On this assumption he has contended that the evidence discovered by the searches is not admissible, but to this view I cannot accede. For, without in any way countenancing disregard of the provisions prescribed by the Code, I hold that what would otherwise be relevant does not become irrelevant because it was discovered in the course of a search in which those provisions were disregarded. As Jimutavahana with his shrewd common sense observes — “a fact cannot be altered by 100 texts,” and as his commentator quaintly remarks: “If a Brahmana be slain, the precept ‘slay not a Brahmana’ does not annul the murder”. But the absence of the precautions designed by the Legislature lends support to the argument that the alleged discovery should be carefully scrutinized.”

In Emperor v. Allahdad Khan [ILR 35 All 358 : 19 1C 332] the Superintendent of Police and a Sub-Inspector searched the house of a person suspected of being in illicit possession of excisable articles and such articles were found in the house searched. It was held that the conviction of the owner of the house under Section 63 of the United Provinces Excise Act, 1910, was not rendered invalid by the fact that no warrant had been issued for the search, although it was presumably the intention of the Legislature that in a case under Section 63, where it was necessary to search a house, a search warrant should be obtained beforehand. In Kuruma v. Queen [1955 AC 197] where the Privy Council had to consider the English Law of Evidence in its application to Eastern Africa, Their Lordships propounded the rule thus:

“The test to be applied, both in civil and in criminal cases, in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the Court is not concerned with how it was obtained.”

Some American cases were also cited before the Privy Council. Their Lordships observed at p. 204 thus:

“Certain decisions of the Supreme Court of the United States of America were also cited in argument. Their Lordships do not think it necessary to examine them in detail. Suffice it to

*say that there appears to be considerable difference of opinion among the judges both in the State and Federal Courts as to whether, or not the rejection of evidence obtained by illegal means depends on certain articles in the American Constitution. At any rate, in *Olmstead v. United States* (1928) 277 U.S. 438, the majority of the Supreme Court were clearly of opinion that the common law did not reject relevant evidence on that ground."*

*In Kuruma case, Kuruma was searched by two police officers who were not authorised under the law to carry out a search and, in the search, some ammunition was found in the unlawful possession of Kuruma. The question was whether the evidence with regard to the finding of the ammunition on the person of Kuruma could be shut out on the ground that the evidence had been obtained by an unlawful search. It was held it could not be so shut out because the finding of ammunition was a relevant piece of evidence on a charge for unlawful possession. In a later case before the Privy Council in *Herman King v. Queen* [(1969) 1 AC 304] which came on appeal from a Court of Appeal of Jamaica, the law as laid down in Kuruma case was applied although the Jamaican Constitution guaranteed the constitutional right against search and seizure in the following provision of the Jamaica (Constitution) Order in Council 1962, Sch. 2, Section 19:*

"(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises. (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Section to the extent that the law in question makes provision which is reasonably required for the purpose of preventing or detecting crime...."

*In other words search and seizure for the purposes of preventing or detecting crime reasonably enforced was not inconsistent with the constitutional guarantee against search and seizure. It was held in that case that the search of the appellant by a Police Officer was not justified by the warrant nor was it open to the Officer to search the person of the appellant without taking him before a Justice of the Peace. Nevertheless it was held that the Court had a discretion to admit the evidence obtained as a result of the illegal search and the constitutional protection against search of person or property without consent did not take away the discretion of the Court. Following *Kuruma v. Queen* the Court held that it was open to the Court not to admit the evidence against the accused if the Court was of the view that the evidence had been obtained by conduct of which the prosecution ought not to take advantage. But that was not a rule of evidence but a rule of prudence and fair play. It would thus be seen that in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out."*

29. The aforesaid dicta confirms that violation of Section 100 of the Cr.PC would not ipso facto invalidate the process of any search and seizure conducted by the authorities. The evidence gathered during search and seizure can still be examined by a Court or authority to ascertain its weight and value.
30. In the ***Arun Agarwal (Supra)*** case, there was actual seizure of books of accounts, FP Shop, and Distributorship at the very inception of the proceedings. In the case at hand, search on the first day and that of the second day were uniformly conducted by only officials of the F&S department. For the inspection conducted on 22nd April 2013, the premises was voluntarily opened by the employee of the appellant. The second inspection on the first day and the one on the second day which may have involved seizure of a stock register, was conducted by twelve persons including the officials of the appellant, the local SDO and the police personnel. The facts and circumstances of the instant case are, therefore, substantially different from the facts of the ***Arun Agarwal (Supra)*** case. The Urban Control Order of 2003 was applied and considered in the said case. In the case at hand, we are concerned with the Rural Control order of 2003. There is yet another special unique distinguishing factor in the present case. The stock register was not found or seized from the godown. It was produced by the officials of the appellant and then seized.
31. It is now well settled that a case is an authority for the proposition of law enunciated in the peculiar facts of the said case. Reference in this

regard is made to the case of **Arasmeta Captive Power Co. (P) Ltd. v. Lafarge India (P) Ltd.** reported in **(2013) 15 SCC 414**.

“32. In *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213] it has been stated (SCC p. 221, para 18) that the ratio of any decision must be understood in the background of the facts of that case. Relying on *Quinn v. Leathem* [1901 AC 495 (HL)] it has been held that the case is only an authority for what it actually decides, and not what logically follows from it.

33. Lord Halsbury in *Quinn* [1901 AC 495 (HL)] has ruled thus : (AC p. 506)

“... there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

(emphasis supplied)

34. In *Krishena Kumar v. Union of India* [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] the Constitution Bench, while dealing with the concept of ratio decidendi, has referred to *Caledonian Railway Co. v. Walker's Trustees* [(1882) LR 7 AC 259 : (1881-85) All ER Rep 592 : 46 LT 826 (HL)] and *Quinn* [1901 AC 495 (HL)] and the observations made by Sir Frederick Pollock and thereafter proceeded to state as follows : (*Krishena Kumar* case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] , SCC pp. 226-27, para 20)

“20. ... The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or Judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th Edn., Vol. 26, para 573):

‘The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when

it is clear ... it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi."

(emphasis supplied)

35. *In State of Orissa v. Mohd. Illiyas* [(2006) 1 SCC 275 : 2006 SCC (L&S) 122] it has been stated thus : (SCC p. 282, para 12)

"12. ... According to the well-settled theory of precedents, every decision contains three basic postulates : (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment."

36. *In Islamic Academy of Education v. State of Karnataka* [(2003) 6 SCC 697] the Court has made the following observations : (SCC p. 719, para 2)

"2. ... The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment."

(emphasis supplied)

37. *The said authorities have been relied upon in Natural Resources Allocation, In re, Special Reference No. 1 of 2012* [(2012) 10 SCC 1] , SCC p. 68, para 73.

38. *At this stage, we may also profitably refer to another principle which is of assistance to understand and appreciate the ratio decidendi of a judgment. The judgments rendered by a court are not to be read as statutes. In Union of India v. Amrit Lal Manchanda* [(2004) 3 SCC 75 : 2004 SCC (Cri) 662] it has been stated that : (SCC p. 83, para 15)

"15. ... Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. [The] observations must be read in the context in which they appear to have been stated. ... To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

39. In *Som Mittal v. State of Karnataka* [(2008) 3 SCC 574 : (2008) 2 SCC (Cri) 1 : (2008) 1 SCC (L&S) 910] it has been observed that : (SCC p. 581, para 9)

“9. ... Judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a Judge uses a phrase or expression with the intention of emphasising a point or accentuating a principle or even by way of a flourish of writing style. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation.”

32. For that matter, even in the **Arun Agarwal (Supra)** decision, the Coordinate Bench itself said that it would depend on each case, as to whether the infraction of section 100 of Cr.PC would invalidate the proceedings under paragraph 25(2) Control Order of 2003.
33. The arguments of counsel for the appellant that the statute prescribes a 15-day time period after search and seizure (for issuance of show cause); the respondents could have passed an order of suspension instead of cancellation; no opinion was formed in terms of para 26 of the Control Order are casual. These deviations and infractions are not serious or justiciable. The appellant had not been able to show any prejudice caused.
34. It is now a well-settled principle of Administrative Law that not every infraction of procedure or principle of natural justice would vitiate a proceeding. It has to be seen as to whether any serious prejudice has been demonstrated or is actually caused to a party and must be found by the Court. Reference is made to the decision of the Hon'ble Supreme Court in the case of **State Bank of Patiyala and Orsv. S. K. Sharma** reported in **(1996) 3 SCC 364**. At paragraph 33(3) of the said decision, it was held as follows:-

“33(3) *In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.”*

35. Equally unacceptable is the argument of Mr. Chakraborty that the petitioner was found guilty of replenishment of the shortage of stock whereas the show cause issued to him was for the actual shortage.
36. The appellant has nowhere stated in his representation that he has not understood or appreciated the nature of the charge against him. The replenishment of stock had been undertaken by the appellant only to fill up the shortage and extinguish the evidence of the said shortage.
37. The arguments advanced by the appellant once again do not satisfy the test of prejudice as laid down by the Supreme Court in the case of **S.K.Sharma (Supra)**, where it was held as follows:

“33. *We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):*

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/ departmental enquiry in violation of the rules/regulations/ statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] . The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between “no opportunity” and no adequate opportunity, i.e., between “no notice”/“no hearing” and “no fair hearing”. (a) In the case of former, the order passed would undoubtedly be invalid (one may call it ‘void’ or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

38. On the last day of arguments, Mr. Chakraborty indicated for the first time that it is the Control Order of 2003 applicable to non-urban rural areas, that should be applied in the facts of the case and not paragraph 25(2) referred to in the **Arun Agarwal (Supra)** decision. In the said decision, the Co-ordinate Bench was considering the Urban Control Order of 2003.
39. It could, therefore, be inferred that the **Arun Agarwal (Supra)** decision of the Co-ordinate Bench. The **Nitya Gopal Roy (Supra)** decision and **Samir Sadhukhan (Supra)** decision would have no manner of application to the non-urban Control Order of 2003.
40. Paragraph 25(2)(3) of the Urban Control Order substantially differs from the Non-Urban Control Order of 2003. The Rural Control Order obtains a non-obstante clause. The requirement of Section 100(4) of the Cr.P.C. is mandated only in the case of seizure. The non-obstante clause could also be applied in the instant case as the stock register was not found in the godown and produced by the officials of the appellants.
41. In the instant case, while the search was conducted in the presence of the godown-keeper of the appellants, on the 22nd of April 2013, the seizure was effected on the next day, i.e. on the 23rd of April, 2013. Admittedly there were at least three officials of the Gopalnagar Police Station, North 24 Parganas. The Police are neither connected with the respondents nor the appellant. The procedure adopted by the respondents are not in violation of the mandate insofar as the Rural Control Order of 2003 is concerned.

42. It can also be inferred that in terms of the proviso to Paragraph 20 of the Non-Urban Control Order set out herein above, the appellant could be deemed to have voluntarily furnished the books of accounts of their stocks. Such books of account were admittedly produced by the appellant themselves since they were contrary to rules not maintained in godown. The proviso to paragraph 20, therefore, by itself carves out an exception to the application of section 100 in certain cases.
43. Applying the dicta of the **S.K. Sharma (Supra)** decision of the Supreme Court, the appellants have failed to demonstrate any prejudice caused since admittedly the proceeding complained of in the instant appeal is a civil quasi-judicial proceeding.
44. In **Samir Sadhukhan (Supra)** and **Nityagopal Roy decision (Supra)** relied upon by Mr. Chakraborty, were rendered under the Urban Control Order, 2003. The Ld. Single Benches in the said cases did not have occasion to apply the prejudice theory as laid down in the **S.K.Sharma (Supra)** decision.
45. In the **Oryx fisheries case (Supra)**, at paragraphs 24 to 26, the Hon'ble Supreme Court has held that a quasi-judicial authority is required to act fairly and give a reasonable opportunity to the accused to object to the charges against him. For the said purpose the accused should know what exactly charges against him. In the instant case it is seen that at no point in time, the appellant stated before any of the authorities it had not understood the nature of the charge against him. The said decision has, therefore, no application in the facts of the case.

46. The ***P.T. Rajan decision (Supra)*** would in fact lend support to the conclusion of this Court that as to whether a provision is mandatory or directory, would depend on the object and purpose with which such provision seeks to achieve.
47. In the said case, the question was whether Section 62 and 23 (3) of the representation of the People's Act and the Registration of Electors Rule of 1960. In the said case, the Elector's Rules of 1960 were held not to be mandatory. The Court, therefore, also did not find any prejudice to the appellant therein for the alleged infraction of the Election Rules by the Electoral Authorities.
48. This Court is of the clear view that the violation of paragraph 20 (2) or (3), if at all found sustainable, could not have prejudiced the appellant. The expression '*shall*' in paragraph 20 (3) of the Rural Control Order, in view of the dicta in the ***P.T. Rajan decision (Supra)*** must, in the opinion of the Court, essentially be read as '*may*'. As has already been discussed hereinabove, not every infraction of Section 100(4) would ipso facto render any evidence found, upon search and seizure, of no value. The evidentiary and probative value can still be weighed by the Court.
49. ***N. Nagendra Rao decision (Supra)*** would have no manner of application to the facts of the case since the Supreme Court was considering the case of immunity of the Government for negligence and misfeasance of its officers in the discharge of their duties. In the said case negligence was already established in a proceeding under the

Essential Commodities Act where the appellant was charged with hording a black marketing.

50. Another way of looking at the issue is from the standpoint of administrative law and quasi-judicial proceedings. It is now well settled that the strict rules of evidence and the provisions of the Cr.PC do not apply to administrative or quasi-judicial proceedings. It is only the principles that apply. What is vital is the exclusion of arbitrariness and the compliance of the principles of natural justice. The appellant has not demonstrated any arbitrariness or perversity, apart from claiming violation of Section 100 (4) of the Cr.PC. He has not brought on record any evidence, contrary to the finding of the authority. There is no prejudice demonstrated even assuming there was actual infraction of paragraph 20(2) and (3) of the Rural Control Order of 2003.

51. This Court does not find any illegality, arbitrariness, or unreasonableness in the proceedings conducted by the respondents, against the appellants. The conclusion is neither perverse nor de hors the facts available before the authority. There is no violation of the principles of natural justice in the impugned order.

Conclusion

52. Hence this Court is of the view that the challenge to the proceedings conducted by the respondents, against the appellant cannot be sustained.

53. The order dated 10th August 2015 passed by the Principal Secretary, Food and Supply, Government of West Bengal, and the entire

proceedings against the petitioner are valid and sustainable and call for no interference.

54. FMA 559 of 2018 shall stand dismissed. There shall however be no order as to costs.

55. In view of the above, all pending interim (CAN) applications, if any, shall stand automatically dismissed.

56. Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Rajasekhar Mantha, J.)

I agree.

(Supratim Bhattacharya, J.)