

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri
WPA 3809 of 2023**

**Bazlur Rahaman
Vs.
The State of West Bengal & Ors.**

**For the petitioner : Mr. Ram Anand Agarwal,
Ms. Nibedita Pal,
Mr. Anand Gopal Mukherjee,
Ms. Sonam Ray**

Judgement on : 04.09.2023.

Bibek Chaudhuri, J.

Affidavit of service be kept with the record.

The petitioner was a dealer of fair price shop as well as dealer of supply of kerosene at Village Baraya within Police Station Tehatta in the District of Nadia.

On 28th August, 2017, the Sub-Divisional Controller, Food Inspector and other Officers visited the ration shop of the petitioner at about 4:10 p.m. and found certain anomalies as well as non-compliance of various directions contained in Rule 19 of WBPDS (Maintenance and Control) Order, 2013 [hereinafter stated to be

2013, Control Order for short] and served an order of suspension on the following irregularities:-

- 1) That the notice board in your shop does not contain date, Registration position, Opening balance of the available commodities, Scale of distribution and retail price of each commodities.
- 2) That opening and closing hour of the shop was not properly written.
- 3) There was no existence of complain book in your FPS.
- 4) That stock cum rate cum scale board was not displayed properly and conspicuously.
- 5) That sample boxes of all commodities were not displayed properly and conspicuously on the sales counter.
- 6) That no certified register i.e. Ration card register, Daily stock register, Daily sales registers, Indent registers, Non-drawal register were not found in your shop at the time of inspection.
- 7) That register of blank cash memo books is not available in your shop.
- 8) There was no Annapurna list displayed in your FPS.
- 9) That cash memo books properly certified by the FPS officials are not available in your FPS.

- 10) That during inspection 131 bags rice, 153 bags wheat and 75 bags atta are available in your shop.

The petitioner was asked to submit a reply within a stipulated period. The petitioner submitted his reply on 23rd October, 2017 to the said show-cause stating, *inter alia*, that dealership of kerosene oil of the petitioner was tagged with Nagar Co-operative Society. On the particular week, when inspection was held, the kerosene oil Distributor did not supply any kerosene to the petitioner. On the contrary, the adjacent fair price shop holders and kerosene dealers got requisite supply of kerosene oil and it was distributed to the beneficiaries tagged with the said dealers. As the consumers attached to the shop of the petitioner did not get supply of kerosene oil on the particular date, they became agitated and did not allow the petitioner to open his fair price shop. They also broke open the padlock the fair price shop and conducted a search as to whether the petitioner actually received kerosene oil or not. They also ransacked the shop and tore relevant registers and documents which are necessary to run fair price shop.

Cardholders declare that they would allow the petitioner to open fair price shop only on the date when he would receive supply of kerosene oil from the distributor for sale.

It is contended on behalf of the petitioner that the Sub-Divisional Controller, Food & Supplies Department did not conduct any inquiry on the complaint lodged by the petitioner before him. He also did not examine any cardholder or beneficiary to ascertain the fact as to whether the shop of the petitioner was ransacked, whether relevant registers were torn and whether the beneficiaries did not allow him to open the shop without distribution of kerosene oil to them. On the basis of the points recorded above mentioned in the show cause notice a charge sheet was framed and he was terminated with immediate effect from his distributorship. The said order was assailed by the First and Second Appellate Authority. Subsequently, the petitioner filed a writ petition being WPA 23878 of 2008 which was disposed of by a Co-ordinate Bench on 19th December, 2022 directing the Secretary, Food & Supplies Department to consider the case of the petitioner within a period of six weeks and pass an appropriate order in accordance with law after giving him an opportunity of hearing. The petitioner was represented by his learned advocates. However, the Secretary affirmed the order passed by the Sub-Divisional Controller followed by the District Controller and Director of Food & Supplies. It is submitted by the learned advocate for the petitioner that in the instant case while deciding a show cause notice or a charge sheet the Sub-Divisional Controller, District Controller,

Director of Food & Supplies and the Departmental Secretary acted in quasi judicial capacity. Inquiry of a disciplinary proceeding envisages that the basic canons of natural justice would be followed. The Inquiry Authority must be fair and impartial and the case of the parties shall be considered judiciously without any semblance and arbitrariness.

From the decision taken by the District Controller it is found that the District Controller added a fresh ground against the petitioner that he failed to produce the stock of essential commodities though there was no such allegation labeled against him in the inspection report prepared by the Sub-Divisional Controller, on the basis of which charge was framed. It is the duty of the disciplinary authority to find out as to whether on 13th October, 2017 the beneficiaries attached with the said fair price shop ransacked the shop, destroyed the books of accounts, cash memos and other registers and did not allow the petitioner to open the shop as they were not supplied with kerosene oil. It is the specific averment/defence taken by the accused that was not attempted to be considered by the respondent authorities. In view of the reply to the show cause it was the duty of the Inquiry Authority to consider the truthfulness of the report submitted by the petitioner in reply to the show cause. The respondent authority did not take any step to consider the report submitted by the petitioner in reply to the

show cause. It is needless to say that in a disciplinary proceeding the delinquent is under no obligation to prove his innocence. It is the duty of the Inquiry Authority to consider the charge as well as the defence submitted by the petitioner. The petitioner's defence was not considered by any of the authorities of the State Government.

In this regard Mr. Agarwala, learned advocate for the petitioner refers to an unreported decision of this Court passed by the Division Bench in **FMA 1265 of 2022, Dalgobinda Deoghoria versus the State of West Bengal**, decided on **30th March, 2022**. In the aforesaid judgment the Division Bench considered the charges labeled against the petitioner and observed as follows:-

"In our view, any enquiry by any authority be the Original, first appellate authority or second appellate Authority should confine the enquiry to the charges made in the show-cause. Straying away from the show-cause notice by any of the authority amounts to gross violation of the principles of natural justice inasmuch as delinquent does not get an opportunity to rebut the charge by leading requisite evidence."

In the instant case, though delinquent was presently heard, he was not offered to adduce any evidence to rebut the charges labeled against him. Moreover, the District Controller framed additional

charge of misappropriation of ration articles without verifying stock registers or other documents only on surmise and conjectures.

In view of what has been stated above and relying on the decision of the Division Bench (supra) this Court is of the view that there has been gross violation of the principles of natural justice in arriving at conclusion by the authority punishing the petitioner with the ultimate punishment of termination. For the reasons stated above, the impugned order passed by the Secretary, Department of Food & Supplies is set aside.

For improper maintenance of notice board, closing of shop, absence of complaint book, maintaining samples of all commodities, non-production of registers etc. the jurisdictional Sub-Divisional Controller, Food & Supplies Department shall consider as to whether some other penalty in the form of reduction of volume of beneficiaries etc. should be the appropriate and sufficient punishment imposed upon the petitioner specially under the fact that the petitioner was not given opportunity to prove that his shop was ransacked and he was not allowed to open the said shop on 13th October, 2017 by the beneficiaries for want of kerosene oil.

The order of the Secretary and all earlier orders passed by the Sub-Divisional Controller, Food & Supplies Department, District

Controller and Director, DDP & S are set aside. Entire action shall be concluded within 45 days from the date of this order.

With the above direction, the instant writ petition is **disposed of.**

(Bibek Chaudhuri, J.)

***Mithun/Suman
A.R. (Ct).
Sl No.11.***