

30.03.2023
Court No.12
S/L. No. 8
Sourav/
Suvayan

**FMA 1265 of 2022
With
CAN 1 of 2022**

**Dalgobinda Deoghoria
Vs.
State of West Bengal**

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

... for the appellant.

*Mr. Susovan Sengupta
Mr. Subir Pal*

... for the State.

Heard Mr. Agarwala, learned Counsel for the appellant and Mr. Sengupta, learned Counsel for the State.

The appellant is a fair price shop owner. He was found to be absent on 04.07.2019 during visit by the Area Inspector (F & S), Bankura II.

In view of such fact, the area inspector sealed the shop as the fair price shop was closed on the aforesaid date without prior intimation to the concerned authority. Thereafter, the Sub-Divisional Controller (F & S) issued a show-cause notice dated 05.07.2019 to the appellant and also directed suspension of his dealership, *inter alia*, on the ground that the shop of the appellant was closed without prior intimation on 04.07.2019 and that the appellant had not furnished weekly or monthly distribution

report/returns for the period January, 2019 to June, 2019 notwithstanding the fact that food grains had been allotted to the appellant as a fair price shop dealer during that period.

The appellant filed reply to the show-cause. the Sub-Divisional Controller (F & S) heard the appellant and passed order terminating the fair price shop dealership of the appellant on the ground that the appellant had violated the provisions of West Bengal Public Distribution System (Maintenance and Control) Order, 2013 (2013, Control Order, for short).

The appellant was obliged to prefer appeal before the District Controller (F & S) impugning the order passed by Sub-Divisional Controller (F & S). The District Controller (F & S) in the first appeal confirmed the order passed by Sub-Divisional Controller (F & S) on the ground of following charges:

- 1. "Sale Register was not authenticated by the competent authority on and after 02/05/2019.**
- 2. Consistently Ration card category and cash memo nos are not mentioned against every transaction recorded in the sale register on and after 05/06/2019.**
- 3. On some dates the quantity of foodgrains sold was not recorded against every transaction.**
- 4. The cash memo book was not authenticated by the competent authority between 17/05/19 to 23/06/19.**

5. Cash memos are not issue as per provision of 19(10) of WBPDS (M&C) Order 2013.”

The appellant was further obliged to prefer second appeal before the Director, Directorate of District Distribution, Procurement and Supply. The second appellate authority also relied on the five charges taken into consideration by the first appellate authority and dismissed the appeal filed by the appellant confirming the order of the first appellate authority.

Mr. Agarwala, learned Counsel for the appellant submits that in absence of particulars of charges in the show-cause notice, the action of the original authority, i.e., Sub-Divisional Controller (F & S), first appellate authority i.e., District Controller (F & S) and second appellate authority i.e., the Director, Directorate of District Distribution, Procurement and Supply Department of Food and Supply is violative of principles of natural justice. It is also submitted by Mr. Agarwala, learned Counsel for the appellant that the order of termination of the dealership of the appellant is also disproportionate to the charge and very much harsh affecting the livelihood of the appellant.

Per contra, Mr. Sengupta, learned Counsel for the State submits that the materials in five heads

taken into consideration by both the first appellate authority and second appellate authority are part of the charge in the show-cause notice and even if it is held to be not the part of the charge. The appropriate authority of the State has the jurisdiction and power to initiate such proceeding on proper charge.

Having heard learned Counsel for the parties at length and having perused the impugned order passed by the Hon'ble Single Judge, show-cause notice at Annexure P-2, order passed by Sub-Divisional Controller (F & S) at Annexure P-8, order passed by the first appellate authority, i.e., District Controller at Annexure P-9 and the order passed by the second appellate authority, i.e., the Director, Directorate of District Distribution, Procurement and Supply Department, Food and Supply at Annexure P-13, we are of the view that the show-cause notice vide Annexure P-2 dated 05.07.2019 details two charges, i.e., closure of fair price shop of the appellant on 04.07.2019 and failure on the part of the appellant to submit weekly or monthly distribution report or return to the A.I (F & S), Bankura II Block for the period from the month of January, 2019 to June, 2019. So far as other two charges in P-2 are concerned, they are repetition of the aforesaid two charges, we have mentioned supra.

We, however, find that first appellate authority and second appellate authority have taken note of five charges out of which three charges are grave in nature according to Mr. Sengupta, learned Counsel for the State.

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 notice. Straying away from the show-cause notice by any of the authority amounts to gross violation of the principles of natural justice inasmuch as the delinquent does not get an opportunity to rebut the charge by leading requisite evidence.

In the present case, the finding of the appellate authorities concerned has been reached on the basis of the five charges extracted (Supra). Those charges are not at all in sync with the show-cause notice issued vide Annexure P-2. All the charges relied on by the appellate authorities concerned are grossly beyond the scope of show-cause notice vide annexure P-2.

In view of such fat, we are of the view that there has been gross violation of the principles of natural justice in arriving at the conclusion by the authority concerned so far as termination of fair price shop dealership of the appellant is concerned and accordingly the order passed by the authority

concerned in Annexures P-8, P-9 and P-13 are set aside. Consequently, order passed by the Hon'ble Single Judge is also set aside.

Accordingly, the appeal being **FMA 1265 of 2022** and the interim application being **CAN 1 of 2022** are disposed of.

The dealership of the appellant be restored within a period of 15 days from today.

Before parting with the order, we feel persuaded to observe here that if there is any gross violation of the provisions of 2013, Control Order by the appellant, the appropriate authority may proceed in accordance with law by framing proper charge/charges.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)