

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 5240 of 2015

**Md. Abdus Samad Fakir
Vs.
The State of West Bengal & Ors.**

Mr. Debabrata Saha Roy
Mr. Neil Basu
Mr. Sankha Biswas
..for the petitioner

Item No.47.

Heard & Judgment on: 13.07.2023

Bibek Chaudhuri, J.

In the instant writ petition the respondents are not represented by the learned counsel for the State.

The instant writ petition was filed in the year 2009 in the Original Side of this Court. Subsequently, in the year 2015 it was detected that the writ petition is to be heard by the Appellate Side of this Court and accordingly, the writ petition is registered in the Appellate Jurisdiction being new number and registration year of

2015. However, in the instant writ petition we shall deal with the facts starting from 2009 or even prior to that.

By an agreement dated 19th June, 1989/27th June, 1989 the petitioner was granted along with M.R. distributorship for the centre of Magrahat under Diamond Harbour Sub-Division in the district of South 24 Parganas. It is clear from the order dated 19th June, 1989 issued by the Sub-Divisional Controller, Diamond Harbour, South 24 Parganas that the petitioner was granted licence of MR Distributorship on the basis of his having a godown situated at Mouza Bilandapur, plot No. 163, Khatian No. 639. Subsequently, in or about 2004 the petitioner made an application for temporary approval of another godown situated at plot No. 941/2251, 941/2252 of Khatian No. 944 in Mouza Magrahat and temporary approval was accorded by the Sub-Divisional Controller on 8th March, 2004 for using the said godown temporarily to store M.R. articles. Again temporary approval was granted by the same authority vide letter dated 9th August, 2005 in respect of third godown of the petitioner situated at plot No. 206, Khatian No. 785, J.L. No. 150 of Mouza Bilandapur under Magrahat P.S. The petitioner was running his distributorship business from the above mentioned three godowns. On 30th July, 2007 the petitioner was directed to show cause on the basis of a report of the Area Inspector, Food and Supplies Department who during inspection found

shortage of foodgrains in the godown of the petitioner. It was, however, not mentioned that each of the above mentioned three godowns, shortage of foodgrains was found. The petitioners submitted a reply to the said show cause notice on 31st July, 2007 stating, inter alia, at the time of inspection he was not present in his shop. His employee repeatedly requested the Inspecting Team to inspect the third godown but the Enforcement Team of officers did not pay any heed to it and without inspecting the third godown submitted a report stating shortage of wheat amounting to 130 quintals and 29 Kgs and shortage of rice measuring 78 quintals 55 kgs and 300 grams from the possession of the petitioner. The Sub-Divisional Controller, Food & Supplies Department considered the reply to the show cause notice and passed an order of suspension of distributorship of the petitioner on 2nd August, 2007.

The petitioner challenged the said order by filing a writ petition being W.P. 24027 (W) of 2007. The said writ petition was disposed of by an order dated 27th November, 2007 by a Co-ordinate Bench of this Court. It was held, inter alia, -

"On the basis of the above facts and circumstances and in view of the observations made with regard to the point of law involved in this writ application, I find that the impugned order of suspension dated August 23, 2007 passed by the respondent No.5 is liable to be

set aside. As such, the same stands quashed. The respondent authority is directed to resume the supply of the M.R. cereals to the M.R. Distributorship of the petitioner forthwith. However, this will not prevent the respondent authority to conclude the proceeding initiated against the petitioner in accordance with law expeditiously.”

It appears from the documents annexed with the instant writ petition that distributorship of the petitioner was restored and beneficiaries were again tagged with the petitioner’s distributorship. In view of the order passed in the above mentioned writ petition the petitioner was directed to appear before the District Controller, Food & Supplies on 3rd January, 2008 at 3 P.M. Hearing was conducted as per the order passed in the above mentioned writ petition and the District Controller passed an order dated 21st October, 2008 declaring termination of the distributorship of the petitioner. This led the petitioner again to file a writ petition bearing No. WP 26912 (W) of 2008. A Co-ordinate Bench of this Court disposed of the said writ petition with the following order.

“For these reasons, I dispose of the writ petition ordering as follows. The impugned decision dated October 21st, 2008 is hereby set aside. If the petitioner demands copy of any document on which the department intends to rely, then the sub-divisional controller shall examine the question and give appropriate decision, and if copy of the

documents is to be supplied, then it shall be supplied, but if only inspection can be given, then inspection thereof shall be given, and the petitioner shall be given an opportunity to submit additional reply. After examining the explanation and recording his views in terms of provisions of para 26, the sub-divisional controller shall forward the entire matter to the district controller, who shall give reasoned decision in the proceedings after giving a reasonable opportunity of hearing to the petitioner and the representative of the department. All steps taken so far on the basis of the impugned decision shall abide by the fresh decision. There shall be no order for costs."

As per the order passed by the Court in WP No. 26912 (W) of 2008 the petitioner was served with a copy of the report submitted by the Food Inspector.

It is pointed out by Mr. Saha Roy, learned advocate for the petitioner that it appears from the said report that on 24th July, 2007 at about 4 P.M. the Inspector, Food & Supplies Department along with the team of police officers attached to Enforcement Branch inspected the godowns of the petitioner. They also examined the relevant stock register, cash memos and other documents. The Inspecting Team found shortage of stock of wheat and rice. Thereafter one police officer attached to Enforcement Branch took possession of all the relevant registers without conducting any search and seizure as

contemplated in Section 100 of the Code of Criminal Procedure. It is further submitted by Mr. Saha Roy, learned advocate for the petitioner WBPDS (Maintenance and Control Order), 2003 made it mandatory for the Inspecting Team of Food & Supplies Department to conduct search and seizure in the godown maintained by distributor, wholesaler or as the case may be in compliance with Section 100 of the Code of Criminal Procedure.

Sub-Section 4 of Section 100 of the Code of Criminal Procedure is very relevant in the instant case and the same is reproduced below:-

"4. Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do."

From the documents supplied to the petitioner on the basis of order passed in writ petition No. 26912 (W) of 2008 it is absolutely clear that the mandatory provision of Section 100 of the Code of Criminal Procedure was not at all followed at the time of inspection of two godowns of the petitioner. The petitioner also submitted a prayer

for restoration of his M.R. distributorship by a letter dated 15th June, 2009 addressed to the Sub-Divisional Controller, Food & Supplies where he reiterated that the Inspecting Team did not inspect his third godown. The District Controller (F & S), South 24 Parganas heard his case and terminated the licence of the petitioner on the following grounds:-

“Legally speaking the inspecting team could not take into consideration any stock of foodgrains stored by the licensee (herein the petitioner) in any other godown other than the licensed premises. It has already been mentioned that in the licence issued on 19.12.2005 there is mention of only one godown at Mouza-Bilandapur, plot No. 163, Khatian No. 639. While detecting excess shortage of foodgrains on 24.07.2007 the inspecting team acted without four walls of law by not taking into consideration the stock of foodgrains allegedly stored by the petitioner beyond the licensed premises.”

Surprisingly enough, the District Controller in his order dated 14th September, 2009 failed to appreciate and consider that it is the Sub-Divisional Controller who is a departmental officer under him granted temporary approval of two godowns beside the godown mentioned in the order of licence situated at Mouza Bilandapur. The

said two orders of temporary approval of two godowns were not set aside or withdrawn by the Administrative Authority.

The impugned order dated 14th September, 2009 is absolutely silent about the need of compliance of Section 100 of the Code of Criminal Procedure. This Court in **Arun Agarwal versus the State of West Bengal and Ors., W.P. No. 1299 of 2009** decided on 29th April, 2010 was pleased to hold that compliance of Section 100 of the Code of Criminal Procedure relating to search and seizure is mandatory at the time of conducting search in the godown of the distributor, wholesaler or dealer of the officials of Food & Supplies Department in view of Section 25(2) of 2003 Control Order. The same view was reiterated by another Co-ordinate Bench in **W.P. No.329 of 2011: Samir Sadhukhan versus the State of West Bengal & Ors.** decided on 13th December, 2011.

It is contended by Mr. Saha Roy placing reliance of a Supreme Court decision in the case of **Chairman-cum-Managing Director, Coal India Limited & Ors. Vs. Ananta Saha and Others** reported in **(2011)5 SCC 142** that if initial action is not in consonance with law, subsequent proceeding would not sanctify the same. In the instant case when inspection of the godown of the petitioner and search and seizure were not made as per the provision of Clause 25(2) of the Control Order of 2003, all subsequent acts including

impugned order of termination is illegal and liable to be set aside. This principle is applicable not only to the judicial and quasi-judicial proceeding but also equally to the administrative order.

The impugned administrative order is based on the inspection report dated 24th July, 2007. The inspection report suffers from gross illegality for non-compliance of Section 100 of the Code of Criminal Procedure. Moreover, the District Controller failed to appreciate that the competent officer under his department granted approval of maintaining two more godowns by the petitioner temporarily. The petitioner is still running his business under order of this Court storing food materials in all the three godowns. If all the three godowns were not inspected, there cannot be a conclusive picture as to the shortage of food materials in the stock of the petitioner on 24th July, 2007.

In view of what has been stated above, this Court finds the impugned order dated 14th September, 2009 illegal and *mala fide* and, accordingly, the said order is quashed.

The instant writ petition is, accordingly, allowed.

(Bibek Chaudhuri, J.)

