

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 11829 of 2021
M/s. Sudhir Chandra Das & Sons and anr.
Versus
The State of West Bengal & Ors.

For the petitioner : Mr. Ajay Debnath
Mr. Pradip Kar
Mr. Sujit Saha
Mr. Devranjan Das
Ms. S. Datta
.....Advocates

For the State : Mr. Susovan Sengupta
Mr. Subir Pal
.....Advocates

Heard lastly on : 01.05.2023

Judgment on : 17.10.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for quashing of the impugned orders dated 24.09.2019 and 12.04.2021 and for recalling of the termination order of distributorship licence.

2. Learned counsel appearing on behalf of the petitioners submitted as follows. The substantial questions of law to be adjudicated in the present writ petition as follows. (a) Whether the Inspection Report should not be supplied with the alleged show cause notice dated 23.03.2018. (b) Whether a person could be the Judge of its own cause. As the alleged show-cause notice dated 23.03.2018, the impugned suspension order 27.04.2018 and the impugned illegal termination letter of licence dated 21.05.2018 had been passed by the District Controller (F&S), the same were not sustainable in the eye of law. (c) Whether or not the First Appellate Order passed by Deputy director (Licence) dated 19.11.2019 was at all justified. The Appellate Authority neither gave any importance to the grounds as preferred by Appellants/petitioners nor applied any mind in respect of fact of violation of natural justice. (d) Whether the respondents had stated what mechanism under West Bengal Public Distribution System (Maintenance and Control) Order, 2013 was considered against the petitioners for imposing penalty. Even in Essential Commodities Act 1955 (Act No. 10 of 1955) no whisper was there regarding the mechanism for imposing penalty. (e) Whether not giving the investigation report for the show cause notice dated 23.03.2018 was at all valid in respect of violation of para 29 of the said Control Order 2013 (f) Whether or not the respondents had followed fairness of procedure all along right from the inspection to the termination of the licence of the petitioner. On 29.11.2016 the South 24-Paraganas, District Committee of West Bengal M.R. Distributor's Association submitted a representation to the District Controller (Food & Supply) South 24-

Parganas, the respondent no. 4 discussing in details the problems/troubles they were facing since long time as mentioned. But, till date no solution was there from the end of the State. Having failed to get any response from the State, the “South 24-Paragans District Committee” of the West Bengal M.R. Distributors’ Association sent two written representations dated 21.08.2017 and 31.08.2017 to the District Controller (Food & Supply), South 24-Paragans for reimbursement of old pending transport rebate bills. Not only that Transport Rebate from 2002 to 2011 of Rs. 53,81,236/- and April 2015 to May 2015 of Rs. 4,14,08,570/- were pending, but in that regard District Controller (F&S) also accepted the complaint and directed to the Joint Director (Supply) directorate D.D.P. & S to consider the same. The order passed in W.P. No. 9933 (W) of 2019 stated that the petitioner should allow to transfer the goods viz. rice, wheat and sugar to the newly linked M/R Distributor M/s. Radhakrishna Roy. As such, actually there was no shortage. In the case of Maneka Gandhi versus Union of India reported at (1978) 1 SCC page 1 it was observed that justice was should not only be done, but be seemed to have been done. In respect of the Appellate Order dated 13.04.2021 passed by the Secretary, Department of Food & Supply, there was no observation. Rather, it was nothing but a copy-paste of the Appellate Order of the Director, DDP & S dated 19.11.2019. Furthermore, although the appeal filed by the petitioners in the year 2019, the order was passed on 12.04.2021 and communicated to the petitioners on 13.04.2021. But, there was a mandate under paragraph 32 of the Control Order 2013 that such order should be passed within two months. In the intervening period the

business of the petitioners was stopped and/or collapsed due to issuance of impugned termination order. As such, the said mandatory sixty days specified in paragraph 32 of the Control Order 2013 was having civil consequence and as such, the said statutory period stated in paragraph No. 32 in Control Order was mandatory and not directory. In paragraph 7 of the Affidavit-in-Opposition, the respondents said these were all matter of records and anything contrary to and/or inconsistent with the record were denied and disputed in reference to paragraphs no. 1, 2, 3, 4 of the writ petition when in the paragraph no. 3 the petitioners had stated no inspection report till date had been supplied to the petitioners all other paragraphs in said Affidavit-in-Opposition were nothing but categorical denial which was nothing but nugatory. It was clear that the respondents had not considered at all the Control Order, 2013. In respect of the contents of the writ petition, the petitioners relied on the following judgments - (a) (1991) 3 SCC 38 (Union of India & Ors. Versus E.G. Nambudiri); (b) (1986) 2 SCC 769 (Comptroller and Auditor General of India, Gian Prakash, New Delhi and Another versus K.S. Jagannathan and Another; (c) (1990) 2 SCC 48 (Management of M/s. M.S. Nazzy Bharat Engineering Co. Ltd. versus State of Bihar and Others.

3. Learned counsel appearing on behalf of the State respondents submitted as follows. An inspection was conducted by a team consisting of six members (i) District Controller, Food & Supplies, South 24 Paraganas; (ii) Sub-Divisional Controller, Food & Supplies, Canning; (iii) Two inspecting staffs of District Controller, Food & Supplies, South 24 Paraganas; (iv) Two

inspecting staffs of Sub-Divisional Controller, Food & Supplies, Canning to the M.R. Distributor point M/s. Sudhir Chandra Das and Sons, MR Distributor, Post Office and Police Station – Gosaba, District – South 24 Paraganas on 14.03.2018 and at the time of inspection, several discrepancies were found. On the basis of such inspection, a show cause notice dated 23.03.2018 was issued by the Licensing authority i.e. the District Controller, South 24 Paraganas, Food & Supplies, Government of West Bengal and same was served to the writ petitioner. In the said show-cause notice, the same discrepancies were found. If one compared the irregularities incorporated in the show-cause notice dated 23.03.2018 with those irregularities incorporated in the inspection report, it was crystal clear that even if such inspection report was not served to the writ petitioner herein at the time of filing his reply against such show-cause notice, no prejudice had been caused to the writ petitioner herein since the irregularities in both the show cause notice as well as the inspection report were the same. By not supplying of such inspection report to the writ petitioner herein, there was no breach of natural justice. In other words the failure to supply such alleged enquiry report to the writ petition herein would not ipso-facto result in the proceedings being declared null and void and the order of punishment nonest and ineffective. It was for the writ petitioner herein to plead and prove that such purported non-supply of inspection report had caused prejudice and resulted in miscarriage of justice. In this case the writ petitioner was unable to satisfy the Hon'ble Court on that point. The order of termination as well as imposition of fine

could not automatically be set aside. Reliance had been placed in that regard on (2011) 2 SCC 316 paragraph 41 and (2003) 6 SCC 401. As per paragraph no. 31 i.e., the procedure for dealing with the irregularity of distributorship of the Control Order, 2013, there was clear mention of the power invested with the District Controller to issue the show-cause notice as well as the suspension order against the erring personnel like the writ petitioners herein and therefore, the District Controller being the Licensing authority as per the provisions incorporated in the Control Order, 2013, had got authority to take recourse to law as stated above. So far the point no. (d) was concerned, a reading of paragraph 32 of the Control Order, 2013 was required. Whether a statutory functionary was asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory and the paragraph 32 of the Control Order, 2013 was procedural in nature. In the provisions incorporated for Appeal i.e., paragraph 32 of the Control Order, 2013 it was stated that the Director shall, as far as practicable, dispose of the appeal within a period of 60 days from the date of receipt of the appeal after giving the person like the writ petitioner herein a reasonable opportunity of being heard and there was no negative words in the said appeal provisions and the said provisions for appeal were to be treated as procedural. A reasonable opportunity of hearing was given to the writ petitioner herein as would be evident from the order of the District Controller passed on 21.05.2018, the order/decision of the Director, District Distribution Procurement & Supply, Department of Food and Supply, Government of West Bengal dated 15.11.2019 as well as the

decision of the Secretary, Department of Food and Supply, Government of West Bengal dated 12.04.2021. All such statutory Appellate Authorities had concurred with the findings of the order/decision of the District Controller, Food and Supply, South 24 Parganas in terminating the licence of the writ petitioners as well as imposition of fine in terms of the statutory provisions and there was a reflection in the order of the authorities that there was an admission of guilt on the part of the representative of the writ petitioners herein at the time of hearing in connection with the charges incorporated in the show-cause notice. Reliance had been placed with regard to procedural provisions was held to be a directory one for which citation of (2011) 4 SCC 306 and (2003) 8 SCC 498. As per clause 31(C) of the Control Order, 2013, the District Controller, Food & Supply Department, South 24 Parganas gave the licensee i.e. the writ petitioners herein an opportunity of hearing and after hearing, the submissions being made by the representative of the writ petitioner therein and after going through the relevant records pertaining to such case, passed a reasoned order on 21.05.2018 thereby, terminated the licence of the writ petitioners herein and also imposed a fine considering the gravity of the offence and while imposing such fine, the District Controller, Food and Supply, South 24 Parganas with the approval of the concerned District Magistrate come to a figure in terms of fine amounting to Rs. 39, 00, 21, 345/- and such imposition of fine was modified by the order of the Director, District Distribution, Procurement & Supply, Department of Food & Supply, Government of West Bengal to an amount of Rs. 34,56,21,025.17 in terms of his order dated 15.11.2019 and such imposition of fine as stated

above, at the behest of the District Controller, Food & Supplies, South 24 Parganas was in conformity with the statute particularly, Clause 31(c) as well as Schedule-‘B’ of the Control Order, 2013.

4. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. It is a settled position of law that this Court cannot sit in appeal over the impugned orders and meticulously weigh the evidence and/or materials available. This Court will only exercise its jurisdiction if there is a violation of principles of natural justice or the impugned orders are absolutely perverse on the face of them.

6. The first point taken up by the petitioner on the question of violation of principles of natural justice is that proper opportunity of hearing was not given in as much as the Inspection Report was not supplied.

7. At the time of inspection the following discrepancies were allegedly found -

SL. No.	Irregularities	Violation of PDS Control order
1.	Absence of rate board and stock board in the godown of the M.R. Distributor.	Para 29 [1(b), (c)] of PDS Control Order & Licensing condition of SL. No. 5.
2.	Proper stock taking cannot be done as Stock was not in a countable position maintaining all the formalities in the godown of the M.R.	Para 29 (3) of PDS Control Order.

	Distributor.	
3.	Many rice and wheat bags had been heaped in front of gate of the godown and apparently the quality of rice of those bags was poor.	Para 29 (9) of PDS Control Order.
4.	Did not maintain door-step delivery of PDS commodities properly to his tagged dealers within the stipulated period.	Licencing condition of SL. No. 2.

8. In the show-cause notice dated 23.03.2018 issued by the District Controller, the same discrepancies were shown to have been found. In other words, not only did the show cause notice make a clear reference to the inspection, but it also incorporated everything that the Inspection Report contained. Therefore, at least on this score, the petitioner cannot claim that he suffered any prejudice for non-supply of the Inspection Report.

9. Moreover, in terms of paragraph 31 of the Control Order, the District Controller was empowered to issue the show cause as well as the suspension order against an erring distributor.

10. The expression “shall, as far as practicable, dispose of the appeal” as present in paragraph 32 of the Control Order essentially renders the provision directory and not mandatory. This is besides the fact that the said provision deals with procedural law.

11. Therefore, it cannot, by any stretch of imagination, be held that there was any violation of principles of natural justice committed by the respondent authorities in arriving at the impugned findings.

12. It would not be out of context to mention herein that the allegations levelled against the petitioners were quite serious and thus, needed to be dealt with appropriately.

13. It is neither necessary nor always practicable to set out a straight-jacket formula for arriving at a fine in all cases of departmental action. Nor does it mean that in absence of any such specific formula, no fine can be imposed. On the contrary, that the fine was imposed after taking into account the gravity of the wrong-doing, in conformity with Clause 31(c) and Schedule B of the Control Order and with the approval of the District Magistrate, appears to be a quite sound methodology. In fact, the fine was subsequently modified by the order of the Director, District Distribution.

14. In view of the above discussions, this Court finds no reason to interfere with the impugned orders.

15. Accordingly, the writ petition is dismissed, however, without any order as to costs.

16. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)