

Form J(2)

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

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

WPA 18753 of 2023

**Hemlata Khatri
Vs.
The State of West Bengal & Ors.**

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharya
Mr. Subhankar Das
..for the petitioner

Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag
..for the State

Item No.04

Heard & Judgment on: 09.08.2023

Bibek Chaudhuri, J.

The petitioner was an agent of kerosene appointed under the provision of WB Kerosene Control Order, 1968. The petitioner was served with a show cause notice dated 2nd February, 2023 issued by the Director of Consumer Goods. Simultaneously, she was suspended

from her agency. The petitioner submitted reply to the show cause and on 30th March, 2023 the Director of Consumer Goods passed an order against the proprietorship business of the petitioner namely M/s. Sumitra Traders as superior kerosene oil agent reducing her agency by 50 per cent. With this suspension order was withdrawn by the Director of Consumer Goods. The petitioner preferred an appeal against the said order passed by the Director, Consumer Goods before the Secretary, Department of Food & Supplies, Government of West Bengal. The Department of Food & Supplies not only confined his appellate jurisdiction to the show cause notice and the case made out by the petitioner before the Director of Consumer Goods, he also considered a new fact in appeal to the effect that the petitioner has been running business by some other person and the said business was not run by her. It was observed by the Secretary, Department of Food and Supplies, Government of West Bengal that the petitioner deserves an order of termination and remanded back the said appeal to the Director, Consumer Goods to reconsider the case of the petitioner "in the light of the observation made hereinabove by the undersigned in this order." This order is under challenge in the instant writ petition.

It is submitted by the learned advocate for the petitioner as the first leg of submission that in accordance with the statutory provision

against the order passed by the Consumer Goods the Secretary is the appellate authority. When the Secretary has remanded back the case of the petitioner in appeal with specific observation that the petitioner is liable to be terminated and secondly the Director is directed to decide the case afresh taking into consideration the observation made by the Secretary in the appeal order, the Director will have no other alternative but to pass an order of termination. Now, if the petitioner wants to file an appeal against the said order, she will have to file appeal before the Secretary who has already decided the case.

Secondly, it is submitted by the learned advocate for the petitioner that if the petitioner did not file any appeal, his agency could have been retained. Due to filing of the appeal there is serious apprehension that his agency may be terminated. Thirdly, it is submitted by the learned advocate for the petitioner with reference to a decision of the Hon'ble Supreme Court in **Om Kumar versus Union of India** reported in **(2001) 2 SCC 386** that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority to decide and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as *Wednesbury principles*.

Thus, it is held by the Hon'ble Supreme Court that the Appellate Forum is within the jurisdiction to consider the proportionality of the punishment given by the disciplinary authority. He cannot enhance the punishment.

On the other hand, it is submitted by Mr. Bandopadhyay, learned advocate for the State respondents that the instant writ petition can be disposed of with the observation directing the Director of Consumer Goods to treat the directional observation of the Secretary, Food and Supplies Department as a tentative observation and he may not be influenced by such observation on the question as to whether the Appellate Authority can enhance punishment. In a disciplinary proceeding, Mr. Bandopadhyay refers to a decision in the case of **Union of India and Ors. versus M. A. Jaleel Khan** reported in **1999 SCC (L&S) 637**. In paragraph 6 of the said judgment the Hon'ble Supreme Court observed as follows:-

"The disciplinary authority, after taking into consideration the facts and circumstances concerning the charge, has imposed the punishment as noticed above. The appellate authority in the appeal filed by the respondent has issued notice for enhancing the punishment. No doubt the appellate authority has jurisdiction to issue such a notice but the question is whether the facts and circumstances of the case warrant such enhancement of the punishment."

The said principle is laid down by this Court in **Nikhil Matobbar versus State of West Bengal** reported in **2013 (11) CHN 299** and **Md. Ali Mortaza versus WBSEDCL in WP 4068 (W) of 2013** decided on 23rd February, 2015.

Having heard the learned advocates for the parties and on careful perusal of the entire materials on record it is ascertained that the Secretary, Food & Supplies Department did not issue any notice to the petitioner before enhancement of punishment. Under such circumstances, the observation made by the Secretary, Food & Supplies Department in the statutory appeal cannot sustain.

The instant writ petition is, therefore, **disposed of** directing the Director, Consumer Goods to decide the case afresh without being influenced in any way by the observation made by the Secretary, Food & Supplies Department. He is also directed not to consider the subsequent or new fact, which was considered by the Secretary regarding running of business by some other person.

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

(Bibek Chaudhuri, J.)

