

Form J(2)

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

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

WPA 21148 of 2023

**Kab Food Agency and Ors.
Vs.
State of West Bengal & Ors.**

For the petitioner : Mr. Ramesh Dhara
For the State : Mr. Amal Sen, AGP
Mr. Parikshit Goswami

Item No.04

Heard & Judgement on : 08.09.2023

Bibek Chaudhuri, J.

Affidavit of service be kept with the record.

Indisputably, the petitioner is a wholesaler in respect of fair price shop dealership. On 20th September, 2022 an inspection was taken out in the godown of the said wholesaler/petitioner and the following discrepancies/shortcomings were found by the inspecting team.

"1. One of the go-downs is not storage worthy as it is observed that the floor is covered with water and with following shortcomings:

- (i) Insufficient aeration
- (ii) Damp floor and walls
- (iii) Insufficient plinth height
- (iv) Premises is prone to water logging
- (v) Insufficient light

Over all the storage condition is not satisfactory;

2. Proper stacks with alley ways and gangways not maintained;

3. Quality Control exercises are not done regularly;

4. Food grains are not maintained cleanly and hygienically:

- (i) Rodent/their excreta found
- (ii) Pests breeding due to poor storage
- (iii) Excess spillage

5. Shortage /Excess of food grains of following quantum was observed taking the full physical stock of food grains into account as while comparing with book of accounts, as stock of food grains was kept together without maintaining scheme wise account:

Sl. No.	Commodities	Total shortage	Excess (in Qntt)
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		(in Qntt.)	
1.	RICE	19.64	-
2.	WHEAT	-	52.92

The petitioner was directed to submit a reply to the show cause which he filed on 11th October, 2022. In case of shortage of 19.64 quintals of rice it is stated by the wholesaler that shortage appears to 19.61 quintals and not 19.64 quintals and the allowable quantity of shortage 19.90 quintals on total delivery of quantity of 19.909.43 quintals. Therefore, the petitioner is liable to pay fine towards handling loss at the rate of 0.10 per cent. The said reply to the show cause was accepted and the Deputy Director of Rationing, Asansol passed an order directing the petitioner to pay fine of Rs.7,31,210/-.

The petitioner was finally directed to pay fine of Rs.3,05,914/-.

Being aggrieved against the said order the petitioner has preferred the instant writ petition.

The relevant portion of the order passed by the Secretary, Department of Food and Supplies, Government of West Bengal runs thus:-

"Perused the averments made by the appellant, examined all the related documents and heard submission of the applicant.

There is no doubt that there has been a gross violation of the provisions of Control Order on the part of the appellant firm so far as the issues relating to poor maintenance of the godown and storage

condition, lack of hygiene, not maintaining any quality control exercises etc. are concerned.

Regarding the issue of shortage of rice too, the contention of the appellant firm is not at all satisfactory. They have failed to justify the reasons behind such discrepancies and anomalies without any calculation of alleged handling loss. Hence, the undersigned doesn't have much scope to intervene the decision of the Director of Rationing with regard to upholding the decision of the licensing authority on imposition of fine of Rs.2,05,914/- on shortage of rice due to such reasons.

However, regarding excess of 52.92 quintals of wheat, the appellant in his written notes of submission stated that one of tagged dealer of the appellant being refused to accept the entire quota at the relevant point of time and received the remaining quota that is 52.92 quintal of wheat subsequently from the appellant and he had submitted relevant documents before the respondent authority.

In view of the above submission of the appellant the undersigned does possess a little different view. It is a fact that what has happened, should not have happened as it was the responsibility on the part of the appellant firm to bring such issue before the notice of the authority concerned. But still as it was not a case of misappropriation for misuse of PDS articles, a fine amounting to

Rs.4,75,296/- which has been imposed upon the appellant for misappropriation of wheat seems too harsh to the undersigned. So taking a considerate view towards the appellant, the undersigned decides to waive that portion of penalty for excess stock of wheat with a caution that such incident should not be happened in future.

Hence, all together the revised amount of penalty now stands at Rs.3,05,914/- (Rupees three lakh five thousand nine hundred fourteen only) as follows:

Fine for other discrepancies = Rs.1,00,000/-

Fine for shortage of rice = Rs.2,05,914/-

Total = Rs.3,05,914/-

It is, therefore, ordered that the penalty of Rs.7,31,210/- imposed by the licensing authority upon the appellant firm M/s. Kab Food Agency as per the relevant provisions of WBPUDS(M&C) Order, 2013, is revised to the tune of Rs.3,05,914/- and the same amount is hereby imposed upon the appellant firm with a direction to deposit the same within 30 days from the date of receipt of this order failing which the concerned DDR will take appropriate action for recovery of the fine."

At the risk of repetition, this Court records that the inspecting team found one of the godowns of the petitioner is not storage worthy in view of the fact that it was not well ventilated, the floor and walls

of the godowns were damp, the plinth height was insufficient, the entire premises was prone to water logging, there was insufficient light etc. It is specifically stated in the Control Order that the godown must be a well ventilated with doors and windows. The minimum plinth height is also stated. If the godown is not well ventilated the floor and walls would be damp and there may be cases of water logging. For non-maintenance of godown in proper manner as directed in the Control Order the petitioner is under obligation to pay a fine of Rs.1,00,000/-. Moreover, the Secretary, Department of Food and Supplies rightly imposed fine for shortage of rice to the tune of Rs.2,05,914/-.

Under such circumstances, I do not find any reason to interfere with the impugned order. The instant writ petition is, accordingly, **dismissed**, however, without costs.

(Bibek Chaudhuri, J.)

Suman/Srimanta, A.Rs.(Ct.)
Item No. 04.

