

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/22630/2019

Proiz Nashir
-Vs-
State of West Bengal & Ors.

For the Petitioner: Mr. Sagar Bandyopadhyay, Adv.,
Ms. Soma Kar Ghosh, Adv.

For the State: Mr. Amitesh Banerjee, Adv.,
Mrs. Ipsita Banerjee, Adv.

Heard on: 27 July, 2023.

Judgment on: 14 August, 2023.

BIBEK CHAUDHURI, J. : –

1. This instant writ petition is filed by one Proiz Nashir, the owner of a Fair Price Shop and a dealer and distributor of Superfine Kerosene Oil (S.K. Oil) praying for issuing a writ of Mandamus commanding the respondents to forbear themselves from giving any effect to the show-cause-cum-suspension orders terminating the license of the petitioner and cancelling or rescinding the same.

2. It is the case of the petitioner that he was appointed as Modified Ration Dealer (Now known as Fair Price Shop owner) in 1996. The petitioner was also granted license to act as a dealer under the West Bengal Kerosene Control Order, 1968 to distribute Superfine Kerosene Oil

(S. K. Oil) under the Public Distribution System (PDS). The petitioner states that after coming into force of the West Bengal Public Distribution System (Maintenance & Control) Order, 2003, the petitioner was granted Fair Price Shop License and after the repeal of the said 2003 Control Order by the West Bengal Public Distribution System (Maintenance & Control) Order, 2013, the petitioner was granted a fresh license under the said 2013 Control Order.

3. The petitioner alleges that on 1st December 2018, in the course of the distribution of ration commodities, there was a commotion due to inter-se disputes between one Buli Khatoon and the petitioner. In such commotion an oil drum containing about 150 liters of Kerosene was toppled and the registers and other important documents were also taken away by some miscreants taking advantage of the said commotion. The petitioner reported such an incident to the Officer-in-Charge, Harishchandrapur P.S., by a complaint dated 01.12.2018. The dispute between the petitioner and the said Buli Khatoon was mutually settled in the presence of local people and an "Aposhnama" duly signed by the above persons was also submitted to the Police authorities.

4. The petitioner states that he was not feeling well and decided to visit a doctor for a medical check-up on 04.12.2018 and accordingly he visited the Doctor's chamber and could not open the said shop on that date. On 04.12.2018, on an enquiry by the Area Inspector, Food and Supplies Department, it was stated in the report that the shop of the petitioner was closed during the said inspection and at the time of

enquiry, the local people informed that on 01.12.2018 evening the petitioner distributed S. K. Oil to the customer and in the presence of many customers, the petitioner behaved roughly with one of the customers and consequently, the petitioner was locked at his godown by the customer and after sometime, the police of Harishchandrapur P.S. rescued the dealer. Therefore, upon enquiry, the following conclusion was reached:

- (i) At the time of enquiry on 04.12.2018, the shop was closed.
- (ii) The dealer opened his shop thrice a week, on Thursday, Friday and Saturday.
- (iii) The dealer (petitioner) behaved very roughly with the customers.
- (iv) The dealer delivers less quantity of food grains to his customers.

5. On 06.12.2018 the petitioner was served with two separate show cause Notice-cum Suspension orders issued by the Sub-divisional Controller, Food & Supplies, Chanchal where it appeared that the Sub-Divisional Controller placed both the dealerships of the petitioner under suspension and asked the petitioner to show cause within seven days of receipt of the said orders in respect of both the dealerships containing same allegations. The petitioner alleges that in none of the said show-cause-cum-suspension orders, both dated 05.12.2018, any penal action against the petitioner was proposed. Moreover, the petitioner alleged that the Sub-Divisional Controller purportedly relied upon an inspection report of the Area Inspector, Food & Supplies, Harishchandrapur. However, no copy of such inspection report was forwarded to the petitioner along with

any of the said two show cause cum suspension orders. It further appears that the Sub-divisional Controller had sought to act under two different control orders governing the said two dealerships of the petitioner.

6. The petitioner contends that the allegations in the enquiry report of the Area Inspector are vague and devoid of any particulars. It was not disclosed when the shop was sought to be inspected by the Area Inspector on 04.12.2018, which does not justify the allegation that the shop was closed during opening hours. No details about the customers and of any complaint have been given in order to allege that the behaviour of the petitioner towards his customers was rough and that he distributes less quantity of food grains or S.K. Oil to the beneficiaries. He also contends that the allegation that he opens his shop only thrice a week is equally vague.

7. The Learned Advocate for the petitioner argues that there was no material available to the Sub-Divisional Controller on 05.12.2018 based on which he formed a prima-facie opinion that the petitioner had violated any provision of the West Bengal Public Distribution System(Maintenance & Control) Order, 2013 and the amended West Bengal Kerosene Control Order, 1968 and that he has acted mechanically. Clause 18 of Part III of the Control Order, 2013 mentions that the distribution hours of food grains are in between 7.30 A.M. and 11.30 A.M. in the morning and between 4.00 P.M. and 6.00 P.M. in the evening subject to the availability of ration articles in stock, but no such timing has been provided under that West Bengal Kerosene Control Order 1968. The only

requirement of S.K. Oil dealership is to distribute S.K. Oil amongst the beneficiaries till the exhaustion of the stock and till the next allotment of S.K. Oil, a dealer is not required to keep his shop open on a daily basis even after the exhaustion of his stock from the previous allotment.

8. On 17.12.2018, the petitioner received a hearing notice asking him to appear before the Sub-Divisional Controller for a personal hearing in connection with the show cause notice dated 05.12.2018 along with all the relevant documents and it was mentioned in the hearing that the reply of the petitioner to the notice was unsatisfactory. In the hearing, the petitioner contended that despite his best efforts he could not recover the stolen documents which were taken from his shop during the altercation and that all disputes with the said Buli Khatoon were settled pursuant to the signing of the "Aposhnama". They contend that the Sub-Divisional Controller arrived at the conclusion that the reply of the petitioner was unsatisfactory even before giving him a personal hearing and that itself is a violation of the principles of natural justice.

9. It is contended by the Learned advocate for the petitioner that he received two termination orders, Memo nos. 491 and 492, both dated 31.12.2018, in spite of the Food and Supply Department not being able to prove any of the charges levied against the petitioner, on the basis of the evidence, either documentary or oral and no witness was examined and no document was tendered as evidence. However, he appealed before the District Controller, Food and Supplies, Malda on 30.01.2019 against the termination orders. The petitioner argues that that there was no question

of preferring any statutory appeal against the impugned order of termination, as both the orders were non-speaking orders and were in gross violation of the principle of Natural Justice and no appeal could have been filed before the District Controller against the order of the Sub-Divisional Controller terminating the S.K. Oil dealership of the petitioner. However, the District Controller, on the basis of the purported appeal of the petitioner, by a notice dated 12.02.2019 asked the petitioner to appear before him for a personal hearing on 20.02.2019 and he appeared for the same. Subsequently, the petitioner was served with the order passed by the District Controller, Food & Supply, Malda, by a forwarding Memo No. 803/DCFS/MR/19 dated 26.03.2019, where the District Controller proceeded in the matter upon treating the appeal of the petitioner as an appeal under Clause 25 of the Control Order of 2013.

10. The petitioner contends that the District Controller approved the order passed by the Sub-Divisional Controller upon holding the petitioner guilty for some charges to which the petitioner was never charged in the show cause notice. The District Controller took into account some extraneous materials and had gone beyond the scope and purview of the show cause notice and the appeal filed by the petitioner. The District Controller also specifically relied on the purported inspection report of the Area Inspector, the copy of which was never supplied to the petitioner even at the time of hearing of the appeal. He, therefore, argues that the non-supply of alleged inspection report and non-proposal of any penal action in the show-cause notices caused serious prejudice to the interest

of the petitioner as he was neither made aware of the contents of the inspection report as ultimately relied upon by the respondents nor he had the scope of giving proper reply and taking a proper step in the matter.

11. Based on the enquiry report by the Area Inspector, the respondents argue that the petitioner is in violation of Clause 18 and Clause 19(8) of the WBPDS Control Order, 2013. The Sub-Divisional Controller after affirming the findings of the Area Inspector held that the petitioner has violated Clause 6(B)(IV) of the Kerosene Control Order, 1968 and subsequently cancelled his license. The District Controller, Food and Supplies in the Order dated 26.03.2019 held that as some important books of accounts have been taken by the crowd, this violates Clause 19(12) of WBPDS (M&C) Order, 2013 and also that the charges levied against the petitioner were true. Therefore, he upheld the termination order. On the contention of the petitioner that the appeal of the petitioner was treated as an appeal under Clause 25 of the WBPDS (M&C) Order, the respondents contend that the petitioners indeed has filed the appeal under Clause 25 of the WBPDS (M&C) Order and the amended Section 9(i) of the WB Kerosene Control Order 1968. Moreover, the petitioner was entitled to appeal within a period of 30 days from the receipt of the same which the petitioner chose not to do.

12. The learned Advocate for the petitioner in course of his argument draws my attention at the outset to the show cause-cum-suspension notice dated 5th December, 2018 issued by the Sub-Divisional Controller,

Food & Supply, Chanchal. Notice to show-cause consists of the following grounds:-

- (i) During the inspection hours fair price shop run by the petitioner was closed, despite being opening hours.
- (ii) Behavior of the dealer towards customers is very rough.
- (iii) The petitioner opened his shop for only three days in a week.
- (iv) The beneficiaries made a complaint against the petitioner that he used to distribute less quantity of food grains to the consumers.

13. The above acts were done by the petitioner in violation of clause 18 and 19(B) under the WBPDS (Maintenance and Control) Order 2013. The petitioner was directed to show cause as to why appropriate action shall not be taken against him for being in violation of clause 18 and 19(B) of the Control Order of 2013 within seven days from the receipt of the order.

14. It is submitted by the learned Advocate for the petitioner that in the show-cause notice the Sub-Divisional Controller did not mention the name of any witness or beneficiary who made complaint against the petitioner alleging rough behavior and distribution of less quantity of food grains to the customers.

15. The learned Advocate for the petitioner then takes me to the reply to the show cause notice submitted by the petitioner wherein he stated that on 4th December, 2018 he closed this fair price shop in order to visit a medical practitioner for treatment on 4th December, 2018 as at about 7 am he suddenly fell ill. All these allegations were denied by the petitioner.

The Sub-Divisional Controller, Food & Supply, Chanchal had gone through the reply submitted by the petitioner to the show cause notice and found the reply to be unsatisfactory and thereafter required him for personal hearing. Finally, the Sub-Divisional Controller passed an order holding, inter alia, that the petitioner grossly failed under Clause 18 and 19(B) of the WBPDS (Maintenance and Control) Order, 2013 with subsequent amendment and conditions as laid down in the license issued to him and therefore, his license was cancelled. Consequently his dealership was also terminated. It is further argued by the learned Advocate for the petitioner that on 3rd December, 2018 the petitioner made a complaint before the Inspector-in-Charge, Harishchandrapur P.S stating, inter alia, that on 1st December, 2018 in the evening when he was distributing the ration commodities, some agitating people trespassed into his shop and toppled the drum containing Kerosene oil snatch away some essential registers etc from the shop.

16. It was submitted by the learned Advocate for the petitioner that he made a statutory appeal before the District Controller Food & Supply Department, Malda. He was directed to appear personally to take part in the hearing of the appeal on 20th February, 2019. Finally the District Controller passed an order holding, inter alia, that the petitioner deliberately failed to inform the matter to the authority concerned. The petitioner could not produce any books of accounts during hearing before him or before the Sub-Divisional Controller, though the authority concurred with the views of the Sub-Divisional Controller.

17. Mr. Bandyopadhyay, learned Advocate for the petitioner at the outset submits referring to the show cause notice that the show cause notice contains charge on four counts and the charges are vague and are elucidated by the statement of particulars or in any other manner. In support of his contention he refers to a judgment of the Hon'ble Supreme Court in the case of **Transport Commissioner, Madras-5 vs. A. Radha Krishna Morthy** reported in **(1995) 1 SCC 332** where it is held in paragraph 9 of the said judgment that a reading of charges would show that they are not specific and clear. They do not point out clearly the precise charges against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature. Thus, the Hon'ble Supreme Court held that in view of the vagueness of the charge the respondent cannot be punished. Coming to the instant case, it is submitted by the learned Advocate for the petitioner that the Area Inspector visited the fair price shop on 4th December, 2018. According to the report of the Food & Supply Department, some beneficiary made allegations against the petitioner that he behaved with them in a rude manner. He used to open his shop for only three days in a week and he used to give less quantity of food grains to the beneficiaries. Surprisingly enough, neither in the report of the Food Inspector nor in the show cause notice nor and the order passed by the Sub Divisional Controller and the District Controller, names of any one of such beneficiaries who made such

allegation was disclosed. In **Sk. Mansur Haque vs. State of West Bengal & Ors., WP No.17111(W) of 2006** a Co-ordinate Bench of this Court decided on 28th July, 2009 was pleased to hold that once the Sub-Divisional Controller decided to rely on the complaint or enquiry report, both of which were admittedly prepared behind the petitioner's back, the Sub-Divisional Controller incurred the obligation to supply the petitioner copies thereof giving him reasonable opportunity to deal with the condition thereof. by not supplying copies of this materials, the Sub-Divisional Controller denied the petitioner reasonable opportunity of defend himself. In the instant case also the petitioner was not supplied with the enquiry report submitted by the Food Inspector in order to defend himself. Thus Sub-Divisional Controller followed absolutely unfair procedure.

18. On the vagueness of charge, the learned Advocate for the petitioner also refers to the decision of **Anant R. Kulkarni vs. Y.P Education Society & Ors.** reported in **(2013) 6 SCC 515** and **Oryx Fisheries Private Limited vs. Union of India & Ors.** reported in **(2010) 13 SCC 427.**

19. Learned Advocate on behalf of the State Respondent, on the other hand submits that a dealer of fair price shop is only an agent for distribution of scheduled commodities under the Public Distribution System. Such licensee being only an agent for the principal i.e., the government, with fixed rate of commission on the amount of allocation of essential commodities and their distribution by weight. The public

distribution system has been envisaged by the government only to hold poor and needy. It is honest tax payers money which is used to subsidise the price of such essential commodities so that they come within the reach of poor and needy and they are able to feed themselves and their family in a respectable fashion and are not led to mendicancy and starvation. The principal remaining the State Government and the licensee being the agent, the principle is entitled to take away the license in case of irregularity in distribution. Of course there should exist valid reasons for taking away of such license and some opportunity of hearing is required to be given to the agent in case of complaint being received against him. However, there is not Fundamental Rights nor any Constitutional Right for such licensee akin to Article 311 of the Constitution of India. Even in case of government servants protected under Article 311 of the Constitution of India, the degree of proof required for establishment of deed is that of preponderance of probability. In the instant case it is proved that the petitioner failed to produce the relevant registers and books of documents before the Sub-Divisional Controller and District Controller which he was duty bound to maintain. The non-production of the said documents attract some specific provisions of the Control Rule of 2013. Therefore this Court does not find any reason to interfere with the impugned order passed by the District Controller.

20. It is also argued by the learned Advocate for the petitioner against the order passed by the District Controller, that the petitioner had the remedy to prefer an appeal before the higher authority when alternative

efficacious relief is available in the statute, the instant writ application is not maintainable.

21. Having heard the learned Advocate for the parties and on perusal of the materials on record this Court records that the fair price shop dealer is under obligation to act in accordance with the provisions contained in WBPDS (Maintenance and Control) Order, 2013. The Control Order framed by the State Government is in the nature of statute laying down detailed procedure for running business of fair price shop. It also contains the provisions of taking disciplinary action against a licensee for non-compliance of any of the provisions of the Control Order and give punishment up to the level including the termination of license. It is established law that in judicial/quasi-judicial/administrative order which prejudicially affect any party or has adverse civil consequences for that party. It must be supported by cogent reason this is one of the basic limbs of natural justice. The writ petitioner has challenged the order of the District Controller who affirm the order of termination passed by the Sub-Divisional Controller against the writ petitioner. I am in conformity with the submission made by the learned Advocate for the petitioner that the show cause notice as well as the impugned orders are void of any material finding as to whether there was any specific complaint that the behaviour of the petitioner was very rough or that he used to distribute less quantity of food grains to the beneficiaries. On perusal of the record this Court does not find any evidence in support of the allegation that the petitioner used to behave with the beneficiary roughly or that he distributed the

food grains in less quantity etc. There is also no evidence that he used to open his shop for three days in a week. Only evidence against the petitioner is that the petitioner closed his shop on 4th December, 2018 when the Food Inspector visited his shop and he failed to produce registers and books of accounts.

22. The petitioner has offered an explanation to the effect that on 1st December, 2018 there was a commotion in his shop and some people toppled kerosene oil and snatch away some registers and books of accounts. Regarding the theft of registers and books of accounts he lodged a complaint in the local police station on 3rd December, 2018, i.e., prior to inspection of his shop. The Sub-Divisional Controller and the District Controller failed to consider those documents submitted by the petitioner in course of personal hearing.

23. For the reasons stated above, I am of the view that the impugned order dated 26th March, 2019 passed by the District Controller, Food and Supply, Malda affirming the order passed by the Sub-Divisional Controller, Food and Supply Department, Chanchal on 3rd December, 2018 terminating the license of the petitioner should be quashed and set aside.

24. The Sub-Divisional Controller is directed to re hear the case against the petitioner on two counts:-

(a) That the fair price shop was closed on 4th December, 2018.

(b) That the petitioner failed to produce the relevant registers and documents when those were called for.

The hearing shall be completed within 60 days from the date of communication of the order by passing an appropriate order in accordance with the relevant provisions of WBPDS (Maintenance and Control) Order, 2013.

(Bibek Chaudhuri, J.)