

Item No.129
24.11.2023
Court. No. 2
GB

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION*

W.P.A. 3028 of 2022

M/s. Deb Enterprise Partnership Firm
VS
The State of West Bengal & Ors.

*Mr. Amales Roy,
Mr. Deborshi Dhar*

...for the Petitioner.

*Mr. Hirak Barnam,
Mr. Pretom Das*

...for the State.

The writ petition has been filed by the partners of a fair price shop, known as M/s Deb Enterprise. The enterprise had been granted a FPS license. The partners intended to surrender the license on account of illness and difficulty to undertake the burdensome work of Duare Sarkar. The authority was repeatedly requested by the partners to accept such surrender.

The partners had categorically expressed their intention to discontinue working as MR dealers. In response to such application for surrender, the authority convened a hearing.

It is submitted that before any reasoned order could be communicated with regard to the fate of such intention to surrender, the partners once again applied before the authority, seeking to revoke their earlier letter of surrender. Such application for withdrawal was

rejected by a communication dated October 17, 2022 made by the Deputy Director (License) Directorate of District Distribution Procurement and Supply. It appears that the Director of the concerned directorate, had rejected the prayer for restoration of the license which had been voluntarily surrendered.

According to the Director, there was no provision for restoration of a license under the law, once the same was surrendered. There was no scope for re-consideration of the prayer.

It appears that the partners had made a specific prayer for exemption from performing the duties under the Duare Ration Programme, on the ground of illness and inability to continue with such burdensome work. The partners of M/s Deb Enterprise were present at the hearing and had submitted before the authority that they were suffering from various health related issues. It also appears that the authorities had requested them to carry out the work, till the application for surrender was processed and approved.

However, after the hearing was given, the cards of the consumers which had been tagged with M/s. Deb Enterprise were temporarily tagged with another MR dealer, Sri Raju Roy. No decision was communicated, as to the fate of the license.

Records reveal that a field enquiry was conducted on the basis of a mass petition filed by the consumers, who wanted the license to be returned to M/s. Deb

Enterprise as they were finding it difficult to obtain their rations from the person with whom their cards had been tagged.

The field enquiry conducted by the Area Inspector, Food and Supplies Alipurduar-II along with the Chief Inspector, Food and Supplies, Alipurduar, also reveals that the local persons to whom the fair price shop of the petitioner had catered, had expressed their difficulties and hardship on account of tagging of their cards with another fair price shop.

However, the Director has rejected the prayer for restoration of the license on the ground that the same had been voluntarily surrendered and there was no provision under the law which would permit restoration.

It appears that apart from temporary tagging of the cards of the consumers to whom the petitioners catered, no other steps had been taken by the authorities by creating any third party interest in respect of the said license. Secondly, no communication was given to the petitioners as to whether surrender of the license had been approved/accepted. Within a few days from the hearing which was held, the partners sought for reconsideration of their prayer for surrender and requested for restoration of the license.

Records which have been produced by Mr. Barman, learned counsel for the State, do not reveal that the application for surrender had been accepted, but only reveals that a hearing was given. As the petitioners were

not willing to continue with the work at that relevant point of time, temporary tagging of the cards were made. It also appears that the persons in the locality were suffering on account of tagging of their cards with another fair price shop and the field enquiry by the Area Inspector and the Chief Inspector, indicates the inconvenience of the people in the locality.

In my opinion, the matter requires further consideration by the Director (License) Directorate of District Distribution Procurement and Supply, Government of West Bengal, i.e., the respondent No.2 on the following issues:-

- a) Whether, in the absence of any decision with regard to the acceptance of surrender of license, such surrender had attained finality.
- b) Whether the surrender was officially processed and approved by the authority and if so, the time, date and contents of such decision.
- c) Whether temporary tagging of the cards of the consumers with another fair price shop, would prohibit restoration of license.
- d) The fate of the application withdrawing the intention to surrender, before the surrender was officially accepted.
- e) The inconvenience caused to the consumers, by tagging their cards with that of another fair price shop, as revealed the field enquiry report.

- f) Whether there was any mala fide intention on the part of the partners who had intended to surrender the license, only to avoid the liabilities of the Duare Sarkar programme, thereby causing inconvenience to the authorities in execution of the programme or whether the intention to surrender was backed by immediate hardship which was later resolved, resulting in the issuance of the subsequent letter.

The tagging appears to be only a temporary arrangement and no steps had yet been taken by the authority to cancel the license of the petitioner upon approval of the surrender and by advertising any drive for grant of license to any MR dealer.

If the authority finds that the petitioners' license can be restored as no third party right had been created or no steps had been taken with regard to approval of surrender, in that event, a sympathetic consideration should be made and the petitioners may also be put to terms if the restoration is allowed. If the authority finds that it would not be proper to restore the license, the reasons shall be assigned in the order. A hearing shall be given to the petitioner, the Area Inspector who caused the field enquiry and any other official who could throw some light on the issues framed by the Court.

A reasoned order shall be passed and communicated to all concerned. The entire exercise shall

be completed within a period of three months from the date of communication of this order. The matter will be decided on merits, independently, on the basis of the ground reality and as per the points enumerated hereinabove.

Accordingly, the writ petition is disposed of.

There will be no order as to costs.

Parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)