

02.04.2024
Ct. 654
Sl.no.9
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 6001 of 2024

**Bimal Chandra Hazra
-Vs-
The State of West Bengal & Ors.**

Mr. Anjan Bhattacharya,
Mr. Partha Sarathi Mondal
... for the petitioner
Mr. Sirsanya Bandopadhyay,
Mr. Ritesh Kr. Ganguly,
... for the State-respondents

By the present writ petition, the petitioner has sought for recession, cancellation, setting aside and/or quashing of the show-cause notice under memo no. 54/SC/FS/KDP/24 and order of suspension of the FPS dealership licence of the petitioner under memo no. 55/SC/FS/KDP/24 of respondent no.5, Sub-divisional Controller of Food & Supplies, Kakdwip, 24 Parganas (South).

On the prayer of the learned advocate for the petitioner, leave is granted to file supplementary affidavit.

Supplementary affidavit filed on behalf of the petitioner is taken on record.

The fact of the case, in nutshell, is that the petitioner is a FPS dealer having FPS Code no. WB 3431080248 at Dhospaara, under Sumoti Nagar Gram

Panchayat, Sagar Development Block, South 24 Parganas. On inspection by the concerned authority, certain alleged discrepancies and illegality were noticed. The petitioner suffered from ailments due to the cerebral attack and could not look after his business for some time. During such time the said business was maintained by one of his relative which resulted in alleged discrepancies. On 30th January, 2024, notice was issued to the petitioner by the respondent no.5, asking the petitioner to file show-cause within seven days from the date of receipt of such notice as to why suitable action shall not be taken against him. However, on the self-same date, FPS dealership licence of the petitioner was also put under suspension and on the subsequent date, i.e. on 31st January, 2024, tagging - de-tagging order was passed without waiting for the period of seven days provided to the petitioner to submit his show-cause. By a letter dated 1st February, 2024, the petitioner was asked to hand-over the e-Pos machine and the residual stocks. Being aggrieved by such action on the part of the said authorities, the petitioner has preferred the present writ petition challenging the show-cause notice and the order of suspension.

Mr. Anjan Bhattacharya, learned advocate for the petitioner submits that though the petitioner was asked to submit show-cause within seven days but before expiry of such period the FPS dealership licence of the

petitioner was put on suspension and subsequent thereto tagging - de-tagging order has been passed, which is arbitrary and illegal on the face of it. The alleged discrepancies and illegality, if any, in conducting the business occurred for the reason that during such period the business was carried by one of the relative of the petitioner due to his physical ailments. During the pendency of the writ petition the order of penalty has been passed on 28th March, 2024. He files a copy of such order, which is taken on record. He seeks for appropriate order for cancellation and/or quashing of the show-cause notice and order of suspension of FPS dealership licence of the petitioner.

In reply to the contentions raised on behalf of the petitioner, learned advocate for the State-respondents submits that as per Clause 24 of the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 (hereinafter referred to as the 'Control Order, 2013'), the Sub-divisional Controller, Food & Supplies, after issuance of show-cause notice can also place the said dealership licence under suspension till the proceeding is disposed of by him and during such suspension the concerned ration card holders shall be tagged temporarily with the neighboring dealer for uninterrupted supply of public distribution commodities. As per the aforesaid provisions, the entire proceedings is to be concluded within sixty days from the date of issuance of the show-cause notice. The

order passed by the Sub-divisional Controller, Food & Supplies is appealable under Section 25 of the Control Order, 2013. In view of the above, he seeks for dismissal of the writ petition.

Having heard the learned advocates for the respective parties, following issue has fallen for consideration as to whether the Sub-divisional Controller, Food & Supplies, Kakdwip, 24 Parganas (South), being respondent no.5 was justified in suspending the FPS dealership licence of the petitioner prior to expiry of period of seven days provided to the petitioner to file his show-cause.

Admittedly, the show-cause notice was issued to the petitioner on 30th January, 2024 directing him to show-cause in writing within seven days from the date of receipt of notice as to why suitable action will not be taken against him in terms of para 24 of the Control Order, 2013. On 30th January, 2024, i.e. on the date of issuance of the show-cause notice, the FPS dealership licence of the petitioner was put under suspension since irregularities were found during inspection which are spelt out in the order of suspension (Annexure P1 at page 13 of the writ petition).

In his show-cause dated 7th February, 2024 the petitioner has accepted of such irregularities in the business. The petitioner by way of supplementary affidavit has tried to make out a case that due to physical ailments such irregularities have resulted. Be

that as it may, the discharge summary at page no.5 of the supplementary affidavit shows that he has been discharged on the same date itself. Thus the ground of physical ailments does not hold good.

Now, the question which crops up is whether the Sub-divisional Controller, Food & Supplies, the respondent no.5 had the authority under Control Order, 2013 to put the licence of the petitioner under suspension prior to expiry of period seven days as provided to the petitioner for filing show-cause.

In order to appreciate the aforesaid issue, it would be apposite to refer Clause 24 of the Control Order, 2013, which reads hereunder:-

“24. Power to take action against a licensee for committing irregularities.- (i) If a licensee or his/her agent or any other person acting on his/her behalf contravenes any of the provisions of this Order or any of the regulations made thereunder or any of the conditions of his/her licence, or any discrepancy of stocks or in the weighment device is detected, the Sub-divisional Controller, Food & Supplies, shall issue a notice to the concerned Dealer asking for explanation in writing for such contravention & discrepancy and may also place the dealership under suspension till the disposal of the proceedings by the Sub-divisional Controller, Food & Supplies. In case of suspension, the concerned ration card holders shall be tagged temporality with the neighboring Dealer for uninterrupted supply of public distribution commodities.

(ii) The licensing authority after giving the licensee an opportunity of being heard and after recording the reasons thereof, may terminate the licence or may reduce the volume of business through reduction

of tagged ration cards and/or impose fine according to the gravity of the offence as annexed in Schedule A.

In case of imposition of fine the licensee shall have to deposit the fine with the Sub-divisional Controller, Food & Supplies through Treasury Challan in TR Form No.7 under the Head of the Account as prescribed by the Government.

Entire proceedings shall be completed within 60 days from the date of issue of the show-cause notice.”

Upon bare reading of the aforesaid provisions, it is manifest that if a licensee or his/her agent or any other person acting on his/her behalf contravenes any of the provisions of this Order or any of the regulations made thereunder or any of the conditions of his/her licence, or any discrepancy of stocks or in the weighment device is detected, the Sub-divisional Controller, Food & Supplies, shall issue a notice to the concerned Dealer asking for explanation in writing for such contravention & discrepancy and may also place the dealership under suspension till the disposal of the proceedings by the Sub-divisional Controller, Food & Supplies. Therefore, it is quite clear from the aforesaid provisions that the respondent no.5, Sub-divisional Controller, Food & Supplies, in the intervening period between the issuance of show-cause notice and final disposal of the proceedings had the authority to put the dealership licence of the petitioner under suspension till the disposal of the proceedings. The period of seven days for filing the show-cause in writing is an opportunity to file the explanation by petitioner which is

to be considered finally while disposing of the proceedings. The provision nowhere provides that such suspension can be made only after expiry of period of seven days to file show-cause. Therefore, the arguments on behalf of the petitioner in this regard fall short of merit. It is pertinent to note that the petitioner has filed his written reply before the concerned authority on 7th February, 2024. From the penalty order dated 28th March, 2024, placed before this Court by the learned advocate for the petitioner, it is found that the written reply filed by the petitioner vide docket no. 34 has been considered by the concerned authorities.

In light of above discussion, the writ petition falls short of merit.

Accordingly, the writ petition being **W.P.A. 6001 of 2024** stands dismissed.

All connected applications, if any, stand dismissed.

Interim order, if any, stands vacated.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(**Bivas Pattanayak, J.**)