

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Biswaroop Chowdhury

***M.A.T. 1126 of 2024
(CAN 1 of 2024)***

Indranil Dey & Ors.

-Vs-

State of West Bengal & Ors.

For the Appellant : Mr. Debabrata Saha Roy, Adv.,
Mr. Pingal Bhattacharyya, Adv.,
Mr. Neil Basu, Adv.,
Mr. Sankha Biswas, Adv.

For the State : Mr. Suman Sengupta, Sr. Govt. Adv.,
Mr. Parikshit Goswami, Adv.

Heard on : 18.07.2024

Judgment on : 18.07.2024

Joymalya Bagchi, J. :-

1. Appellants/writ petitioners had instituted the writ petition praying for the following reliefs:-

a) Grant leave to the petitioners to move this instant writ petition in representative capacity under the provisions of Order 1, Rule 8 of the

Civil Procedure Code, 1908 read with Rule 12 of the Rules framed by this Hon'ble Court relating to the applications under Article 226 of the Constitution of India.

b) A Writ in the nature of Mandamus commanding the respondents each one of them their servants and/assigns not to give any effect or further effect to the instruction contained in the minutes of the monthly review meeting dated 22.04.2024 so far mandatory use of integrated weighing devices with effect from 08.06.2024 issued by the Principal Secretary, Government of West Bengal, F & S Department, forthwith;

c) A Writ in the nature of Mandamus commanding the respondents each one of them their servants and/assigns to release and/disburse the proportionate additional margin for operation, running and incentive for integration of e-Pos with e-weighing scale and delivery of food grains through integrated weighing scale on and from 01.04.2019 in terms of the Food Security (Assistance to State Governments) Rules, 2015, forthwith;

d) A Writ in the nature of Mandamus commanding the respondents each one of them their servants and/assigns not to force the Fair Price Shop owners for integration of e-Pos with e-weighing scale and delivery of food grains through integrated weighing scale till the additional margin and arrear thereto with effect from 01.04.2019 in

terms of the Food Security (Assistance to State Governments) Rules, 2015, is being paid forthwith;

e) A Writ in the nature of Certiorari do issue directing the respondents to transmit the entire records of the case forming the basis of withholding of proportionate additional margin for operation, running and incentive for integration of e-Pos with e-weighing scale and delivery of food grains through integrated weighing scale on and from 01.04.2019 in terms of the Food Security (Assistance to State Governments) Rules, 2015, to this Hon'ble Court and to certify them and on being so certified, quash the same so that conscionable justice may be administered to the parties;

f) A Writ in the nature of prohibition do issue prohibiting the respondents from giving any effect or further effect to the instruction contained in the minutes of the monthly review meeting dated 22.04.2024 so far mandatory use of integrated weighing devices with effect from 08.06.2024 issued by the Principal Secretary, Government of West Bengal, F & S Department in any manner whatsoever;

g) Rule NISI in terms of prayer (a), (b), (c), (d) (e) and (f) as above;

h) An order do issue restraining the respondents from taking any coercive action against the petitioners for not mandatorily using the weighing devices prior to release of the additional rebate being

provided by the Central Government under the Food Security Rules, 2015 in any manner whatsoever;

i) An order do issue directing the respondents to immediately disburse the proportionate additional margin for operation, running and incentive of use of point of sale device and weighing scale;

j) Ad-interim order in terms of prayer (h) & (i) as above;

k) And to pass such further order or orders as to your Lordships may deem fit and proper.

2. After hearing the parties, Hon'ble Single Bench was of the view that the appellants/writ petitioners have not made out a case to file the writ petition in representative capacity and the reliefs as prayed for did not merit an interim order.

3. Aggrieved by the impugned order, the appellants/writ petitioners are before us.

4. Writ petitioner No.3 is a Society (Adarsha Samabay Bhandar Ltd.) of fair price dealers while appellants/writ petitioner Nos.1 and 2 are individual fair price dealers.

5. By a notification issued under the National Food Security Act, 2013 (*hereinafter referred to as the Act of 2013*), the Central Government framed the Food security assistance to State Government Rules, 2015 (*hereinafter referred to as the Rules of 2015*) wherein it was, inter alia, provided that the Central Government shall provide allocated food grains under Targeted Public Distribution System from Central Pool to the State

Government and the State Government in turn shall ensure delivery of the food grains from designated depots to the fair price shops and shall also ensure the food grains are supplied by Fair Price Shops to entitled persons and households.

6. To ensure smooth and exact supply of food grains to entitled persons from fair price shops, 'point of sale device' to be installed and operated at fair price shops.

7. In order to incentivise this process, Rule 7 of the Rules of 2015 provided additional margin of Rs.17/- per quintal (subsequently enhanced to Rs.25/- per quintal) to the fair price shop dealers towards cost of purchase, operation and maintenance of the point of sale device, its running expenses and incentive for its use.

8. It is the grievance of the appellants/writ petitioners neither the appellants/writ petitioners nor other fair price shop dealers throughout the State of West Bengal are receiving the proportionate additional margin for the use of point of sale device at the fair price shops.

9. Accordingly the appellants/writ petitioners approached this Court seeking leave to institute the writ proceeding in representative capacity.

10. Hon'ble Single Judge, inter alia, held no permission had been sought for moving the writ petition in representative capacity and even otherwise nothing was placed on record to show the other fair price shop owners are affected by the conduct of the respondent authorities. So the

Hon'ble Single Judge declined to grant leave to institute the proceeding in representative capacity as well as interim relief.

11. In light of the nature of dispute, this Court directed the respondent authorities to submit an affidavit whether the fair price shop owners are receiving the additional margin under the Rules of 2015.

12. Affidavit is placed on record. In the affidavit it is, inter alia, stated as per Rule 7(6)(b) the State Government has selected a system integrator for purchase, installation and maintenance for point of sale device at an amount of Rs.12/- per quintal which ought to be deducted from the additional margin envisaged under the said Rule. However, there is no averment in the affidavit whether even the reduced margin has been disbursed to the fair price shop owners or not. On the other hand, a wholly irrelevant plea that the dealers are receiving Rs.25/- per quintal under Order No.3078-FS/Sectt./Food/4M-11/2021 dated 08.09.2021 for doorstep delivery of food grains has been annexed. This additional margin for doorstep delivery is independent of the right of the dealers to claim additional margin for point of sale device under the Rules of 2015.

13. Accordingly, we are of the considered view the materials on record show that the appellants/writ petitioners have canvassed a grievance of non-grant of additional margin under Rule 7 of Rules of 2015 to fair shop owners in which all of them have communality of interest.

14. In prayer (a) of the writ petition the appellants/writ petitioners had sought for leave to file the proceeding in representative capacity.

15. Under such circumstances, we are of the view the findings of the Hon'ble Single Bench with regard to absence of communality of interest in the matter is unsustainable and the order to the extent it declines permission to appellants/writ petitioners to institute the proceeding in representative capacity is set aside. Hon'ble Single Bench shall permit the appellants/writ petitioners to institute the proceeding in representative capacity as per law.

16. With regard to denial of relief at the interim stage, we have examined the final reliefs sought for in the writ petition. We agree with the Hon'ble Single Bench that the issues require to be decided upon exchange of affidavits and we choose not to interfere with that portion of the order.

17. The appeal is allowed to the aforesaid extent.

18. In view of disposal of the appeal, connected application being CAN 1 of 2024 is also disposed of.

19. There shall be no order as to costs.

20. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Biswaroop Chowdhury, J.)

(Joymalya Bagchi, J.)

