

05.04.2024

Ct. no.654

Sl. No.1

sn

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

W.P.A. 18942 of 2023

Nasim Akhtar
Vs.
The State of West Bengal & ors.

Mr. Phiroze Edulji
Ms. Suveni Banerjee
... for the petitioner

Mr. Sirsanya Bandopadhyay
Mr. Ritesh Ganguly
..for the State

By the present writ petition, the petitioner has preferred for withdrawal and/or setting aside of the order dated 7th June, 2023 passed by the Deputy Director of Rationing, Howrah, being the respondent no.4.

The brief fact of the case is that the petitioner has been running M.R. Dealership business having licence no. 234100400010 and FPS no. 3420 since long. On 24th January, 2023, the Rationing Officer, Howrah, along with the Inspector, Food & Supplies Department, conducted a visit to the Fair Price Shop of the petitioner. On 27th January, 2023, show-cause-cum-suspension order was passed against the petitioner by the Rationing Officer, Shibpur, Howrah, being the respondent no.5. On 1st February, 2023, the petitioner filed his show-cause and submitted all relevant documents in support of the same. The petitioner was asked to appear for personal hearing on 28th February, 2023. Subsequent thereto, the licence

of the petitioner was terminated vide order dated 23rd March, 2023. The petitioner preferred appeal before respondent no.4, Deputy Director of Rationing, Howrah, challenging the aforesaid order of termination. Upon hearing the order of termination passed by the respondent no.5, Rationing Officer, Howrah was upheld by the appellate authority vide order dated 7th June, 2023. Challenging such order, the petitioner has preferred the present writ petition.

Mr. Phiroze Edulji, learned advocate for the petitioner submits that the petitioner has been carrying on the business of FPS dealership for the last 57 years without their being any complaint alleging of irregularity in running such business. On the basis of the statements of some of the beneficiaries the show-cause-cum-suspension notice was issued against the petitioner, which ultimately led to termination of his licence. The allegations made by the beneficiaries that they have not received their allotted food-grains is out and out false statement inasmuch as the bills generated through the e-Pos machine clearly shows that such beneficiaries, upon whose statement the show-cause notice was issued, has received allotted food-grains. The petitioner though called for personal hearing before the Rationing Officer, Howrah, was not served with the enquiry report enabling the petitioner to go through the same and make response to the enquiry report. The order of termination passed is bereft of reasons. The petitioner preferred the appeal

against such order of termination passed by the Rationing Officer, Howrah and at the stage of appeal, the enquiry reports were handed over to the petitioner. The statement of beneficiaries shows that all of such statements were set up with an illegal objective to terminate the petitioner's licence. Since the enquiry report was not handed over at the initial stage, the petitioner did not get opportunity to cross-examine the witnesses, who made bald allegations against the petitioner. He seeks that the matter be remanded back to the Rationing Officer, Howrah upon giving opportunity to the petitioner to cross-examine the witnesses in order to decipher the truth.

In reply to the contentions raised on behalf of the petitioner, learned advocate for the State-respondents submits that the petitioner after being served with the enquiry report did not raise any issue in his exception challenging the statements made by the witnesses. He further indicates clause 30 of the West Bengal Urban Public Distribution System (Maintenance & Control Order) 2013 (hereinafter referred to as 'Control Order, 2013'), provides opportunity to the aggrieved to prefer the Second Appeal before the Director of Rationing, West Bengal, which has not been availed by the petitioner. He also indicates that the disputed questions of facts raised cannot be adjudicated in a writ petition. In view of the aforesaid submissions, he prays for dismissal of the writ petition.

At this stage, Mr. Edulji, learned advocate for the petitioner seeks that liberty be granted to the petitioner to prefer the Second Appeal as per provisions of the Control Order, 2013.

The order of termination passed by the Rationing Officer, Shibpur, Howrah dated 23rd March, 2023 was challenged in appeal before the Deputy Director of Rationing, West Bengal, which is the first appellate authority. The first appellate authority has upheld the order of termination passed by the Rationing Officer, Howrah.

Clause 30 of Control Order, 2013 provides as hereunder:

“30. Appeal.–(i) *A dealer being aggrieved by an order of the licensing authority passed under clause 29 of this Order may prefer an appeal to the Joint Director/Deputy Director of Rationing as 1st Appellate Authority within 30 days from the date of communication of the order of the licensing authority and the Joint Director/Deputy Director of Rationing, after giving the appellant an opportunity of being heard shall dispose of the appeal within 60 days from the date of receipt of such appeal. If the dealer still remains aggrieved by the order of the 1st Appellate Authority, he/she may prefer a second appeal before the Director of Rationing, West Bengal, as second and final Appellate Authority within 30 days from the date of communication of the order of the 1st Appellate Authority and the Director of Rationing after giving the appellant an opportunity of being heard shall dispose of the appeal within 60 days from the date of receipt of such second appeal.*

(ii) x x x ”

As per the aforesaid provisions, if the dealer still remains aggrieved by the order of the first appellate authority he/she may prefer a Second Appeal before the Director of Rationing, West Bengal as second and final appellate authority within 30 days from the date of communication of the order of the first appellate authority.

In view of such provisions, the petitioner is granted liberty to prefer Second Appeal before the Director of Rationing, West Bengal, being the respondent no.3 within a period of 30 days from date of this order. Since clause 30 of Control Order, 2013 prescribes a period of limitation, in the event, the appeal is filed by the petitioner within 30 days from the date of this order, the Second appellate authority is requested to consider such appeal to be within the period of limitation prescribed by the statute. The Second appellate authority may also take evidence on the facts, if required, for disposal of the appeal.

With the above directions, this writ petition being **WPA 18942 of 2023** stands disposed of along with all connected applications, if any.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

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

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)