

9.9. 2024
item No. 20
n.b.
ct. no. 24

WPA 21327 of 2024

Sanjoy Kumar Ghosh

Vs.

Sadhan Dutta & Ors.

Mr. Dyutiman Banerjee,
Mr. Md. Giasuddin,
Mr. Vishal Mallick

..... for the petitioner.

Ms. Sonali Das,
Mr. Tanmoy Khan

..... the respondent nos. 6 & 7.

Sk. Md. Galib,
Ms. Sujata Mukherjee,

..... for the State.

Petitioner is the MR distributor under the State of West Bengal under the provisions of the West Bengal Public Distribution System Maintenance Control Order, 2013. He running his distributorship business at village Kushpata and Konnagar at Ghatal City, Paschim Meidnipur. It is the case of the petitioner that one show-cause-cum-suspension notice was served upon the present petitioner after an inspection conducted by the authority on December 23, 2023. In the show-cause-cum-suspension notice, the authority concerned is of the opinion that there is huge discrepancy in respect of PDS in the said business. By such show-cause notice dated January 2, 2024, the business of the petitioner was suspended. He was directed to reply the show-cause notice. He submitted a representation/reply and after hearing the same, the concerned authority has passed an

order directing the present petitioner to deposit economic cost of defalcated PDS amounting to Rs.2,14,13,794/-. He was directed to submit a fine within three months with some instalments. The order was passed on February 20, 2024. Against the said order, an appeal was preferred before the Director, DDP&S on April 1, 2024. It is the case of the present petitioner that the appellate authority has not taken any decision in respect of appeal, but the concerned authority has issued an order of termination on 19.6.2024. He further pointed out that the concerned authority has again lodged a complaint with the O.C., Ghatal P.S. against the present petitioner, which was registered as Ghatal P.S. case No.262 of 2024. It is the case of the petitioner that till the disposal of the appeal, the order of termination passed by the concerned authority dated 19.6.2024 as well as the complaint and the FIR lodged by the concerned authority is illegal in the eye of law. The petitioner filed this writ petition with a prayer for direction upon the concerned authority to quash the FIR as well as the order of termination passed by the concerned authority.

Learned advocate appearing on behalf of the State authority submits that the present petitioner has categorically admitted his guilt of mis-appropriation of huge amount of PDS in the writ petition as well as in the reply to the show-cause. However, an allegation was leveled in the reply that his brother and the son of the

brother have conducted such illegal activity without his knowledge.

Mr. Galib, learned counsel appearing on behalf of the State further pointed out that the specific undertaking of the present petitioner is at page 33 of the writ petition wherein he has admitted that there are some defalcation of PDS articles and he is ready to deposit the fine amount within six months.

Mr. Galib, learned counsel further argued that the action conducted by the State authority is not at all illegal. The order of suspension and direction to submit the fine is purely as an interim measures, but the final order was passed by the concerned authority terminating the license of the petitioner on 19.6.2024. He further submits that the District Controller, Food & Supply has passed the impugned order as per the instruction of the appellate authority.

Mr. Galib, further argued that according to the provision of law as there is violation under the Essential Commodities Act, the authority concerned is empowered to lodge FIR for the offences enumerated under Section 7 of the Essential Commodities Act. He also pointed out the criminal case can be very well filed for the recovery of the huge amount public money.

Learned advocate appearing on behalf of the private respondent nos. 6 & 7 submits that the present respondents were falsely implicated in the instant matter.

They are completely innocent. However, the learned counsel for the respondent nos. 6 & 7 has also pointed out that the statement of the petitioner before the authority concerned wherein he has been specifically admitted that there is not document to show that is brother and the son of his brother was connected in the said business or he also admitted that the D.O. was issued in the name and under signature of the present petitioner.

Learned counsel for the private respondents specifically submitted that the present petitioner has falsely intruded in the proceeding in a *mala fide* manner.

Heard the advocate for the parties and perused the entire writ petition as well as the annexures thereof. It is true that the petitioner was served with a show-cause-cum-suspension notice by the authority.. For such show-cause, the petitioner has admitted that there was a huge defalcation of PDS materials in his business. It is also perused that during enquiry, he undertakes that he will deposit the cost of the entire defalcated PDS articles within six months. However, his prayer was considered by the concerned authority and has given three months time to deposit the economic cost of the defalcated PDS materials.

Being aggrieved by the said order dated February 20, 2024, the petitioner has preferred an appeal on April 1, 2024. The appeal is yet to be disposed of by the authority. It is true that the concerned District Controller

has proceeded to issue an order of termination till the disposal of the statutory appeal. It is the ground of the District Controller that by passing the impugned order he has received an instruction from the higher authority to conclude the first proceeding. It appears to me that the authority concerned has not acted to proceed for disposal of the statutory appeal preferred by the petitioner on April 1, 2024, but the appellate authority directed the District Controller to conclude the first proceeding in accordance with law. The first proceeding is to recover of money regarding the defalcated PDS, is under challenge before the appellate authority. It is immaterial whether the petitioner has admitted his guilt before the authority concerned regarding the payment of money of defalcated PDS articles or not, but the appeal filed by the present petitioner has to be disposed of. However, it appears to me that the concerned authority on 19.6.2024 has passed the order of termination of license. The present petitioner has every opportunity to challenge the order of termination.

In considering the filing of FIR, it appears to me that the FIR has lodged by the S.I. of Food and Supply with the OC. Ghatal P.S. by written complaint on 26.7.2024, according to the provisions of Section 7 of the Essential Commodities Act, for the violation of an order made under Section 3 of the E.C. Act, the authority concerned may lodge complaint against the police authority. However, in

considering the facts and circumstances of the case, it appears to me that in pursuance to the said complaint, the police authority has initiated an FIR being, FIR no.262 of 2024 dated 8.7.2024 under Sections 403/406/409/420 of IPC. The entire complaint is based upon the defalcation of public money amounting to Rs.2,14,13794/-. The entire merit of the petition of complaint is under challenge before a statutory appropriate authority. So, at this juncture, the proceeding of the criminal case being, FIR 262 of 2024 dated 8.7.2024 initiated by the Ghatal P.S. is required to stalled till disposal of the appeal preferred by the present petitioner before the Director DDP&S, Food & Supply.

Under the above observation, I am of the clear view that the initiation of FIR by the concerned authority is not illegal in the eye of law. But considering the present facts and circumstances of the case, it would be inappropriate for the police authority not to conduct further investigation on matter, which is under sub-judice before the concerned appellate Authority.

With the above observation, the appellate authority being the Director of DDP&S, Food & Supply Department is directed to dispose of the appeal within four weeks from the date of communication of this order after giving the reasonable opportunity of hearing to the petitioner. Till then, the further proceeding and the investigation in

respect of Ghatal P.S. Case No.262 of 2024 dated 8.7.2024 under Sections 403/406/403/420 IPC be stalled.

The police authority is at liberty to proceed with the investigation after the disposal of the appeal

Under the above observation, the instant writ petition is dispose of.

The appellate authority is directed to inform the order to the petitioner within two weeks after taking such decision.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)