

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

WPA 23277 of 2023

IN THE MATTER OF

Baidyanath Paul.

Vs.

The State of West Bengal & Ors.

For the Petitioners : **Mr. Ram Anand Agarwal, Adv.,**
Ms. Nibedita Pal, Adv.,
Mr. AnandaGopa Mukherjee, Adv.,
Ms. Sonam Ray, Adv.
Ms. N.Khatoon Adv.

For the State : **Mr. Indranil Roy, Adv.,**
Mr. Tapas Kumar Mandal Adv.,

Reserved on : **03.09.2024**

Judgment on : **04.12.2024**

Subhendu Samanta, J.

1. The petitioner had been running a Fare Price Shop as a dealer at Daspur, No. (II) Block Village & P.O Chitrapot, PS. Paschim Medinipur. The SCF&S concerned issued show cause notice on 8th February 2023 to the petitioner seeking reply to the allegations made therein, the petitioner replied to the said show cause notice on 15th February 2023.

2. The SCF&S, after hearing the petitioner on 20th March 2023 passed an order, thereby terminating the petitioner's license. The petitioner filed first appeal on 17th April 2023; DCF&S, being the first

Appellate Authority has disposed of the appeal passing an order on 13th June, 2023 upholding the order of concerned SCFS. The petitioner filed second appeal before the Director, DDP&S, but after hearing the petitioner he has disposed of the second appeal on 1st September, 2023 (impugned order) thereby affirming the order of the first appellate authority as well as the SCFS concerned.

3. Hence this writ petition.

4. Mr. Ramananda Agarwal, Learned Counsel, appearing on behalf of the petitioner submits that the procedure, as adopted by the concerned respondent authority is illegal and purposive. He submits that the alleged show cause notice is not distinct it has not mentioned which provision of law has been violated by the petitioner. He further submits that the allegation in lifting huge quantity of ration articles by the petitioner on behalf of the spurious ration card holders is not an offence of the part of the petitioner.

5. He further submits that the first appellate authority as well as the second appellate authority has not entered into the merit of this matter, but without applying his mind has passed the impugned order. He submits that the punishment for termination of license against the present petitioner is disproportionate to the alleged offence. He further argued that the specific provision of control order which was violated by the petitioner has never been disclosed or proved by the concerned authority, thus the entire proceeding is liable to be quashed.

6. He further submits that the allegation of lifting food grains against spurious DRCs was actually allowed by the concerned authority. He further submits that the offence alleged in this case was actually conducted by some officials of the Food and Supply Department who has entered name of some fake persons in concerned portal against some fake application in form 4. The act of the Government officials and the offences conducted by the Government officials has been sufficiently proved but the authority concerned has only to safeguard the officers, have made the petitioner be a scape goat. He further submits that the allegation made in the show cause notice has not been proved. He prayed for quashing of the order of termination.

7. The respondent authority used affidavit in opposition against writ petition. Learned Counsel appearing on behalf of the respondent authority submits that a team of the Food and Supply Department, Government of West Bengal has inspected the FPS of petitioner from 05.09.2022 to 08.09.2022 and also on 13.09.2022 in Daspur, II Block under Ghatal Sub Division, Paschim Medinipur. During enquiry some irregularities were detected. It was found that abnormal number of beneficiaries was inserted in the system against Form 4 in petitioner's FPS. In all cases, the members whose details have been entered in the system do not have any physical existence as verified by a full-fledged enquiry by means of physical inspection with the family members including the interactions at spot.

8. He further submits that it was proved during inspection that huge spurious DRCS are activated in different families of under FPS dealership of Baidyanath Pal (petitioner), who knew about the number of families under each DRCS within his jurisdiction lifted huge quantity of highly subsidised PDS food grains for spurious DRCs. He further submits due to illegal lifting of food grains against those spurious DRCS meant for distribution many of targeted beneficiaries State had to sustain the burden of huge loss. He submits that the proceeding initiated against the present petitioner has justifiably proved the offence. Moreover, the petitioner has allowed the opportunity of being heard by the concerned SCFS as well as by the second appellant authority concerned. There is no scope for violation of natural justice in this case. He further argued that the decision of the competent authority cannot be assailed in writ jurisdiction when no allegation is there, for violation of natural justice.

9. He further submits if the petitioner was allowed to continue with his license he will again continue the offence.

10. Heard the Learned Advocates for the parties, perused the papers along with documents and pleadings of the parties. It appears to me that the charge sheet was framed against the present petitioner. According to the report huge spurious DCCs were activated in the FRS of petitioner, who being the FRS dealer knowingly and consciously used to lift PDS food grain against those spurious DRCS illegally.

11. Affidavit- in- opposition of State respondent contained of note sheet the Government of West Bengal regarding inspection of

illegalities by DCO and Inspector FS of Ghatal, and Daspur, (II) Block under Paschim Medinipur Sub-division. For the purpose of discussion it is necessary to set out the some portion of the report of the concerned inspectors they are P-17(iii) (ix) (x)

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III. The abnormal number of beneficiaries are being inserted against From IV in a single family, are not genuine in all the cases and does not have any existence. And those beneficiaries have been entered through DEO (Ghatal block) User id (BDEO_ MDN_ W_ 2448), and DEO Daspur II block (User id-BDEO_ MDN_ W_ 2450) and verified through Inspector user id (Inspector id: BIFS_ MDN_ W_ 2448) of Ghatal block and Inspector user id (Inspector id: BIFS_ MDN_ W_ 2450) of Daspur II block.

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IX. Spurious DRCS are also being activated in the family of FPS dealer, Swadesh Ranjan Maji and Subhabrata Pal S/O FPS dealer. Sikha Pal and Knowing the fact, illegally huge quantity of food grains have been lifted against those spurious DRCs. FPS dealer Baidyanath Pal also used to draw the food grains against of those spurious DRCs.

X. It appears that the Card wise Transaction History from FPS automation portal, concerned FPS used to illegally lift the ration commodities of that spurious DRC which have been entered against From-IV. In this regards, it is pertinent to mention that FPS Dealer i.e. Swadesh Ranjan Maji (license No. 134401400073), Shikha Pal (License No. 13441116280) and Baidyanath Paul (license No. 134401300053) FPS dealer of Ghatal block & Daspur. II block

are being involved in such clandestine practice.

Gross irregularities have been detected during the period of Chandan Patra, DEO of Daspur-II, Bulusona Pal, DEO of Ghatal block and Arjun Chandra Kuili, C.I of Ghatal & Daspur block.

12. After enquiry inspecting team of the concerned Food and Supply Department Government of West Bengal as to the inferences as follows (P-26)

Inference:

i) user id, password and all credentials related to disposal of allocation form have been communicated to Hamanta Santra for Daspur-II block.

ii) Hemanta Santra is working as a Addl. DEO without having any official order.

iii) Chandan Patra, DEO of Daspur-II block had no knowledge in computer operations. Due to illiteracy in computer application concerned/1 have been depended on Hemanta Santra for form entries work. In later login id and password grossly misused to active the abnormal spurious DRC in a single family.

iv) Inspector id, password and all credentials have been shared by previous inspector of Daspur block Shyamal Chakraborty and present Inspector in charge, Arjun Chandra Kuili.

v) It appears that abnormal number of beneficiaries are being entered in Form –IV application in a single family and this application have been verified and approved. Such gross irregularities have been detected during the period of Arjun Chandra Kuili (Chief Inspector, F&S), Chndan Patra, DEO of Daspur-II, Bulusona Pal, DEO of Ghatal block.

F& S Department have provided certain facilities in Inspector login id to ensure that no genuine beneficiaries are deprived of food grains. In terms of order memo no. 2922-FS/O/Sectt/IT-09/2014(Part-ii) Dt. 31.08.2021 provision have

been provided at inspector end through which Inspector can activate any beneficiaries with or without Aadhar. An abnormal number of beneficiaries are being entered in Form-IV application of a single family in Ghatal& Daspur-II block. These are later on being verified and approved.

Then these are being activated through the mode provided in Inspector login id in terms of Order Memo No. 573-FS/O/Sectt/IT-09/2014(Pt-II), Dt.-21.02.2022. at the time of enquiry. It is revealed that those beneficiaries which have been entered against Form IV and later activated though Inspector Login id of Ratua-I block (BIFS_MLD_2212) are not genuine and does not have any existence. It seems the provisions are being grossly misused by the Arjun Chandra Kuili (Chief Inspector, F&S), Chandan Patra, DEO of Daspur-II.

The action may be taken against FPS Dealers Swadesh Ranjan Maji (License No.- 134401400073) Sikha Pal (license No. 13441116280) and Baidyanath Paul (license No. 13441116280) FPS dealer of Ghatal block and Daspur-II for violating the W.B.PDS control Order(M&C) 2013

Submitted to the Director Direcotr of DDP&S for kind perusal and consideration.

13. It appears from the report that Food and Supply has provided certain facility in the inspector login id to ensure that no genuine beneficiaries are deprived of food grains. Provisions have been provided at inspector end through which inspector can activate beneficiaries with or without Aadhar.

14. It has been detected by the inspecting team that an abnormal number of beneficiaries are being entered in Form 4 application in a single family Ghatal, Daspur, II Block. These facts were approved through proper inspection.

15. Under the above inferences, it can be construed without that names of spurious DRCs has been entered by the Inspector concerned or by the officials of the concerned Food and Supply Department in

portal by entering in Form 4 through Aadhar. It appears that by such process some spurious DRCs have been activated under the FPS of present petitioner as well as the other local FPS dealers.

16. Thus the offence for entering into non-genuine beneficiaries in the system has been done by some inspector by himself, or with his direction, or with the direction of other officials of the Government of West Bengal Food and Supply Department. It is true that the petitioner has lifted the articles/ food grains from the distributor as the number of beneficiaries were increased in the FPS.

17. During the inspection it has been proved that some of the families contained huge number of beneficiaries though they were not at all in existence. Thus, it cannot be said that the present petitioner being an FPS dealer having no authority for entering the names of take beneficiaries in the portal, has actually committed any offence, as alleged. I can understand that the department has taken specific steps against all persons concerned for such illegal activities, at the same time it has to be looked into that whether the punishment is commensurate with the offence.

18. In this case, I think it necessary to follow the findings of Hon'ble Supreme Court in that respect in **i) SR Tewari Vs. Union of India**

In **S.R. Tewari Vs. Union of India and Anr. (2013) 6 SCC 602**

the Hon'ble Supreme Court has held that:-

The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is

manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand verified.

The question of interference on the quantum of punishment has been considered by this Court in a catena of judgments and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution.

ii) United Bank of India Vs. Biswanath Bhattacharyya

In United Bank of India Vs. Biswanath Bhattacharjee (2022)

13 SCC 349 the Hon'ble Supreme Court has held that:-

The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/ Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

19. It is not out of place to mention herein that petitioner being MR dealer is duty bound to provide the ration articles in a family having a particular number of beneficiaries; the petitioner may have the knowledge regarding the correct number of family members of that

family, then also he cannot restrain the holder of ration card to distribute less articles than it appears in the e-Posh machine.

20. Respondent Authority has proceeded arbitrarily in imposing punishment to the petitioner. A FPS dealer cannot be held liable for entering name of spurious DRC's in the portal.

21. Considering the entire circumstances I made my observations very clear that perpetrating wrong knowing the same is an offence, is also an offence; but punishment for the same should not be the capital punishment. In that score, the termination of license of dealer being the highest punishment, is not desirable in this case.

22. Under the above observations the instant writ petition is disposed of. The order of termination of license of the petitioner passed by the competent authority, appears to me disproportionate with the offence, thus the same is set aside.

23. The concerned second appellate authority being Director DDP& S is directed to re-hear the matter and dispose of the same by a reasoned order whereby, the punishment commensurate with the offence except the order of termination of license, be passed according to law, within 06 weeks from the date of communication of this order by giving reasonable opportunity of being heard to the petitioner and Concerned Authority shall communicate the order to the petitioner within 02 weeks thereafter.

24. Under the above observation the instant writ petition is disposed of.

25. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)