

**WPA 19315 of 2009
With
CAN 1 of 2010 (Old No: CAN 9520 of 2010)**

**Abdul Kuddus
Vs.
State of West Bengal & Ors.**

Mr. Timir Baran Saha

..... for the petitioner

**Mr. Saikat Chatterjee,
Mr. Suman Sengupta.**

..... for the State

1. An order of cancellation of M.R. Dealership of the writ petitioner vide memo dated 19.12.2008, passed by the Sub-Divisional Controller, Food & Supplies, Malda/respondent no. 5, and an order dated 08.12.2009 of the appellate Authority thereto, to uphold the said order of respondent no. 5 dated 19.12.2008, are under challenge in this writ petition.
2. The writ petitioner says that he obtained license as M.R Dealer under the West Bengal Rice and Paddy Control Order 1968 and also a license under the Kerosene Control Order 1968. He was appointed as a M.R. Dealer at Kadamtali of Ratua-II Block, P.S. Ratua, Dist. Malda. Since thereafter, according to the writ petitioner, he had been dealing with the business with utmost care and caution and fullest compliance with the statutory and other legal formalities.
3. The petitioner fell ill and could not run his shop for the period from 10.11.2007 to 16.01.2008. During that period the cards of

his shop were tagged with the other M.R. Dealer at Sambalpur, Malda. The petitioner again resumed business with effect from 27.08.2008. A raid was conducted at his shop at 29.08.2008 and various documents including the accounts book and other papers were seized.

4. The petitioner was served with a letter dated 24.09.2008 by the respondent no.5 to inform him that during raid on 29.08.2008, various glaring discrepancies were found with respect to storage of excess stock, than as was permitted to the writ petitioner. The supply for public distribution, towards the writ petitioner was stopped on and from 28.09.2008 and he was directed to submit a reply to the show cause notice, vide the said letter dated 24.09.2008.
5. An elaborate and extensive reply extending all the facts and circumstances was submitted by the writ petitioner to the said respondent on 21.10.2008. The writ petitioner was directed to attend hearing in a proceeding on 21.11.2008. The order dated 19.12.2008 was issued by the concerned the authority at the closure of hearing as above.
6. Mr. Saha appearing for the writ petitioner, by referring to the said impugned order, has stated that the respondent no.5 has mentioned therein regarding the alleged defalcation and/or irregularities, said to have been done by his client, while running the fair price shop. He says that though, in

the said impugned order, the respondent has mentioned about the reply submitted by the writ petitioner before it but the same has failed to consider the contentions thereof and has summarily and abruptly noted down the finding regarding its baselessness, illegality etc. Hence, he says that the reply of the writ petitioner was never considered by the concerned authority in its proper perspective and as such the impugned order 19.12.2008 is only unilateral, arbitrary and in violation of the principles of natural justice. The writ petitioner's contentions have not been taken into consideration, so far as the alleged misconduct is concerned.

- 7.** Regarding the impugned order of the appellate authority dated 08.10.2009, Mr. Saha has submitted that the same has been delivered by the appellate authority, when the impugned order of the respondent no. 5 dated 19.12.2008 was carried to the appeal. Mr. Saha has submitted regarding the appellate order dated 08.10.2009 that the same is mere reiteration of the version of the respondent no. 5 in the said order dated 19.12.2008 and no independent application of mind by the appellate authority is evident from there. Furthermore, according to Mr. Saha it is apparent that the appellate authority too has proceeded without considering the written explanation/reply to the show cause notice, submitted earlier by the writ petitioner.

8. Thus, according to the writ petitioner the impugned orders are coercive, unreasonable, arbitrary and illegal. He seeks setting aside of those orders and immediate restoration of his M.R. Dealership license by the concerned respondent.

9. Mr. Chatterjee, is representing the State respondent in this case including respondent no.4. Mr. Chatterjee is heavily relying on the order of the respondent no. 5 dated 19.12.2008. He says that adequate opportunity has been extended to the writ petitioner. He says further that in view of the grave charges against the writ petitioner as a license distributor of the commodities, and insufficiency of the explanation given by him in response to the show cause notice, the concerned authority has taken a just and proper decision in the matter. He further says that the action taken by the respondent no. 5 is duly and completely in terms of West Bengal Public Distribution System (Maintenance & Control) Order, 2003 and the subjective satisfaction of the concerned authority cannot be challenged by the writ petitioner in this proceeding under Article 226 of the Constitution of India. Mr. Chatterjee has sought that the writ petition may be summarily dismissed.

10. The grievance against the writ petitioner appears to be as follows:-

“It is found as per report that on 100% weighment at your M.R. Shop in your

presence and on scrutiny of Books of A/C's and found Excess as follows:-

K. Oil – 13 Ltrs 850 M.L.

It is found from the above excess that you are not issuing Cash Memo's to each Ration Card holders properly and correcting and also could not produced Books of A/C's for last 1 (one) year full.

FURTHER appear's that you have refused Kerosene Oil to the I.R.C holder who's name appears in the I.R.C. Register. On examination of the scrutiny report of K. Oil (Cash Memo, Sale Register and I.R.C. Register) in cash Memo's with R.C. Register has taken place fictitious cash memo's has been issued and short delivery of K.Oil has been made (details enclosed in separate sheet) & thereby misappropriated K. Oil's.

HENCE you are violated condition No.8 and 10 Licensing under West Bengal Kerosene Control order 1968 as amended on 2003."

11. A letter seeking reply from the writ petitioner was issued on 24.09.2008. The writ petitioner replied vide letter dated 21.10.2008. The writ petitioner has elaborately stated about the amount of stock he possessed and the finding of the inspection team regarding the stock possessed by him. He has pointed out that the physical verification of the stock would not have been properly done due to non-availability of the adequate weighment machineries. On perusal of the reply as above of the writ petitioner, it appears that he has challenged the finding of the inspection team and the reason for his challenging the finding has been elaborately dealt with in his said reply.

12. Unfortunately the reply to the show cause notice, as above by the writ petitioner has not been considered by the concerned respondent authority while delivering its order dated 19.12.2008. The authority has recorded that the reply given by the writ petitioner “*was found baseless, illogical and far from satisfaction of the unsigned.*” However, the reason for the finding as above by the said respondent authority, is absent. The order dated 19.12.2008 of the respondent no. 5 is thus *ex facie* without reason and based on unilateral consideration of report of inspection without dealing with the objection of the writ petitioner as regards each and every allegations made against him.

13. The appellate authority’s order is also not liberated from the flaw of being not reasoned. The same appears to be mere a mirror image of the order of the respondent no. 5 dated 19.12.2008. It is needless to mention that reasons given in an order are the foundation of a proper and good order and unreasoned order shall never be free from arbitrariness. Since the Court of equity is duty bound to assess if the process of decision making by the concerned authority is just and proper, being free from any vices of malice, malafide or arbitrariness, in this case, this Court is compelled to find the said two orders of respective authorities dated 19.12.2008 and 08.10.2009 to be not in compliance with the said legal principles. On this, Court finds

support from the following judgments of the Hon'ble Supreme Court, when on each and every occasion, the said Court has emphasised the importance of an order to be reasoned, in the following words:-

In the case of **Ms. Y vs. State of Rajasthan** reported in **(2022) 9 SCC 269**, the Hon'ble Supreme Court held that:-

“Reasoning is the lifeblood of the judicial system. That every order must be reasoned is one of the fundamental tenets of our system. An unreasoned order suffers the vice of arbitrariness.”

In the case of **Vishnu Dev Sharma vs. State of U.P.**, reported in **(2008) 3 SCC 172**, the Hon'ble Supreme Court held that:-

“Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.”

In the case of **State of Rajasthan vs. Sohan Lal**, reported in **(2004) 5 SCC 573**, the Hon'ble Supreme Court held that:-

“The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice.”

In the case of ***State of Orissa vs. Dhaniram Luhar***, reported in **(2004) 5 SCC 568**, the Hon'ble Supreme Court held that:-

“Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief in its order, indicative of an application of its mind; all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable.”

In the case of ***Raj Kishore Jha vs. State of Bihar***, reported **(2003) 11 SCC 519**, the Hon'ble Supreme Court held that:-

“Reason is the heartbeat of every conclusion, and without the same it becomes lifeless

As against the touchstone of arbitrariness and illegality the orders of the respondent authority would not have sanctity in the law.

- 14.** On the discussion as above this writ petition is eligible to be allowed.
- 15.** Writ petitioner no. WPA 19315 of 2009 is allowed. The impugned orders 19.12.2008 and 08.10.2009 are set aside.
- 16.** The respondent no. 5 is directed to immediately resume the license of the writ petitioner, regarding M.R. Dealership and also the Kerosene Dealership. With the directions as above, the writ petition is disposed of.

(Rai Chattopadhyay, J.)