

27.11.2024
SL No.18
Court No.24
Ali

WPA 27144 of 2024

**Krishna Prasanna Das
Versus
The State of West Bengal & Ors.**

Mr. Debabrata Saha Roy, Sr. Advocate,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das

.....for the petitioner.

Mr. Swapan Kr. Datta, Sr. Advocate,
Mr. Dipankar Das Gupta

.....for the State.

The petitioner is a FPS Dealer carrying business of distributing ration articles to the ration card holders. The respondent authority has conducted an enquiry at his ration shop on 7th August, 2024. After such enquiry a show cause notice was issued against the petitioner on 14th of August, 2024. On the same day a notice of personal hearing was served upon the petitioner. Subsequently, on 23rd of October, 2024 an order of imposing penalty upon the present petitioner in respect of huge amount of fine was passed by the concerned authority.

Being aggrieved by and dissatisfied with the said order as well as the proceeding initiated by the respondent authority the instant writ petition has been preferred.

Mr. Debabrata Saha Roy, learned counsel appearing on behalf of the petitioner submits that after repealing the West Bengal Public Distribution System (Maintenance & Control) Order, 2013, new Control Order was introduced on 1st of August, 2024. The earlier Control Order 2013 has been repealed. He submits that the show cause notice was served upon the petitioner on 7th of August, 2024 mentioning the repealed Provisions of Control Order of 2013. The notice of personal hearing also indicated the repealed Provisions of Control Order 2013, but when the impugned order of punishment was passed it mentioned the new Control Order of 2024. He submits that the Control Order which was already been repealed on the basis of which the show cause notice was served, i.e., tantamount to be nonest in the eye of law. He further argued that no punishment can be passed on the basis of such show cause notice on the strength of the repealed Control order.

In support of his contentions, he cited the repealing provisions i.e. Clause 68 of West Bengal Public Distribution System (Maintenance & Control) Order, 2024.

Mr. Saha Roy further submits that there are several discrepancies in the impugned order imposing punishment so the order need be quashed.

In support of his contentions, he cited decisions of Hon'ble Apex Court passed in **A.C. Jose Versus Sivan Pillai and Others** reported in (1984) 2 SCC 656

“38. Lastly, it was argued by the counsel for the respondents that the appellant would be stopped from challenging the mechanical process because he did not oppose the introduction of this process although he was present in the meeting personally or through his agent. This argument is wholly untenable because when we are considering a constitutional or statutory provision there can be no estoppels against a statute and whether or not the appellant agreed or participated in the meeting which was held before introduction of the voting machines, if such a process is not permissible or authorized by law he cannot be stopped from challenging the same”.

In K.K. Parmar and Other Versus H.C. Of Gujarat Through Registrar and Others reported in (2006) 5 SCC 789, Hon'ble Supreme court has held:-

“24. Whereas 60 marks were fixed for the written test and 20 marks for the oral, no mark whatsoever was allotted towards past performance. An endeavour has been made by the learned counsel for the respondents to contend that as the appellants were aware that no marks had been allotted in regard to the past performance but despite the same, they, having taken part in the examination, were stopped and precluded from questioning the same. We do not agree”.

Mr. Swapan Kr. Datta, learned counsel appearing on behalf of the State authority submits

that the writ petition is not maintainable as the writ petition has disclosed imposition of fine of Rs.7,00,000/- actually it is not such but it is about Rs.23,00,000/-. He further submits that by way of supplementary affidavit the error in the writ petition cannot be corrected.

Mr. Datta further argued that by the repealed provision it has been specifically stated that any action taken in pursuance of the Control Order 2013 may be carried or continued by virtue of the relevant provisions of Control Order 2024.

Mr. Datta further argued that the impugned order of punishment specifically depicted the clear undertaking and declaration/admission of the petitioner for shortage of stock of PDS commodities in his shop room. When the admission has been made at the time of hearing by the petitioner himself the chance of violation of natural justice cannot be construed. He further argued that there is a specific provision of filing appeal before the concerned authority against the order of suspension; the writ court shall not entertain the writ petition on the attending facts that the present petitioner is a habitual offence.

Having heard the learned counsel for the parties; it appears to me that the petitioner has filed a writ petition containing, *inter alia*, that the

respondent authority has imposed fine upon him by impugned order amounting to Rs. 7,00,000/-. However, by filing supplementary affidavit they have stated that the said amount would be Rs.22,90,689/-. The matter is in respect of an impugned order of punishment which itself filed before this Court. So, at this juncture, I should not be confined in the wrong entry of the amount of fine in the instant writ petition. Admitted errors not touching the merit cannot be turned as fault.

The issue involved in the instant writ petition is that whether the service of show cause notice mentioning a wrong provisions of law/repeal provisions of law and the proceeding thereof which culminated to an order of imposition of fine can be allowed to be continued.

It is true that when show cause notice was served (14.08.2024) the WBPDS (M & C) Order, 2013 has already been repealed and its placed WBPDS (M & C) Order, 2024 has been introduced. However, the notice of personal hearing also mentioned the WBPDS (M & C) Order, 2013. But while imposing punishment the authority concerned has imposed the punishment in terms of Clause 45/46 of WBPDS (M & C) Order, 2024. The respondent authority has also handed over a copy of Corrigendum dated 27th August, 2024, wherein it

has been mentioned that the Control Order was wrongly mentioned in the show cause notice. The law has been specifically discussed by the Hon'ble Supreme Court in **A.C. Jose (supra)** as well as **K.K. Parmar (supra)** on the principle that there is no estoppel against the statute. It is the ratio of the decision of the Supreme Court that though a party has participated in a proceeding but the said party cannot be debarred to challenge the statute in the latter proceeding.

It is true that the show cause notice was served upon the petitioner on the basis of a repealed Control Order. The jurisdiction of this writ court to entertain a writ petitioner is only on the principle of whether the petitioner has been deprived by the arbitrary/biased action of the respondent authority. The term of violation of principle of natural justice as pleaded by the petitioner, can be construed and stretched to the limit of sky. To understand and determine the true purport of the meaning of violation of natural justice, it has to be understood that whether the petitioner has been at all deprived or prejudiced by the alleged act and action of the concerned authority. In this particular case the show cause notice was issued upon the petitioner on the basis of a wrong/repealed Control Order.

However, the petitioner was well aware about the merit, fate and facts of the show cause notice. It further appears to me that the service of show cause notice by mentioning the repeal provisions of Control Order has not at all confused, deprived or prejudiced the present petitioner. Furthermore, the impugned order of imposition of punishment itself depicted that the petitioner has admitted before the authority regarding some shortage of stock. Thus, it cannot be said in this case that, the principle of natural justice has been violated by issuing a show cause notice wherein a clause of repeal Control Order has been mentioned.

Considering the above aspects, I think it necessary not to interfere, at this stage, with the impugned proceeding which initiated by the concerned respondent authority. There are some factual differences. The petitioner has every opportunity according to the Control Order to challenge the order of punishment as imposed upon him by preferring a specific appeal before the D.C. F&S concerned.

At this juncture, I find no justification to entertain the instant writ petition.

The delay, if any, in filing the appeal would be condoned, if petitioner approaches the concerned

appellate authority within four weeks from the date of passing of this order.

Under the above observations, the instant writ petitioner is disposed of.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)