

20.12.2024
Court No.13
Item No.2
AP

**MAT 2135 of 2024
With
CAN1 of 2024**

**State of West Bengal and Ors.
Vs.
Shyam Sundar Agarwala**

Mr. Nelotpal Chatterjee
Mr. Amritlal Chatterjee

... For the Appellants/State.

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

... For the Respondent/Writ Petitioner.

1. The appeal is directed against an interim order dated 28th October, 2024 passed by a Single Bench of this Court in WPA 26477 of 2024 (Shyam Sundar Agarwala Vs. State of West Bengal & Ors.).

2. By the impugned order, an order of suspension dated 21st October, 2024, of the petitioner's license as FPS dealer, has been stayed.

3. By the said order dated 21st October, 2024, which was impugned in the writ petition, the writ petitioner was charged with violation of Sub-clause (V) of Clause 45 and Sub-clause 2 of Clause 43 under Chapter 9 of the West Bengal Targeted Public Distribution System (M&C) Order dated 2024 (Control Order).

4. In addition thereto it appears to this Court that the writ petitioner was also charged with offences under

Clause (ii) and (iii) of Clause 46 i.e. siphoning of PD Commodities and misappropriation. The said charge must be understood on a plain reading of the order as a whole.

5. The two grounds of challenge urged in the writ petition before the Single Bench were that in an earlier proceeding relating to the complaint of the same beneficiary namely one Pramod Kumar Yadav, the writ petitioner was issued a show cause notice on 26th September, 2024.

6. The writ petitioner submitted a reply on 27th September, 2024 claiming that he had no knowledge of the ONORC scheme under the NFS Act, 2013. He also claimed that he has no knowledge of the procedure of e-KYC verification of a beneficiary's credentials. The writ petitioner, however, admitted to the charge that the said Pramod Kumar Yadav was not allowed to link his Aadhaar Card with the Ration Card number. He also admitted to the second charge that he did not supply FPS commodities to the said Pramod Kumar Yadav. The writ petitioner paid the fine of Rs. 35,000/- and considered the chapter closed.

7. In course of further investigation into the complaint of the beneficiary, Pramod Kumar Yadav, the appellants found that the Aadhaar Card of the Pramod Kumar Yadav was linked to one deactivated Ration Card

beneficiary namely Ratna Pal and he has been regularly misappropriating ration commodities in the name of the said deactivated beneficiaries. The mobile number linked to the DRC of Ratna Pal was that of the FPS dealer himself namely Shyam Sundar Agarwala.

8. In course of hearing of the State produced as many as 75 beneficiaries linked to the mobile number of the dealer and his agent.

9. The impugned show cause notice dated 21st October, 2024 was challenged in that the writ petitioner was being proceeded, for the second time in respect of the self-same charge as the earlier one dated 27th September, 2024 and hence the principle of double jeopardy is attracted.

10. The second ground urged by the writ petitioner/respondent was that there was no show cause issued before issuance of the order of suspension dated 21st October, 2024.

11. Mr. Nelotpal Chatterjee, learned counsel for the appellants has placed Clause 46 of the West Bengal Targeted Public Distribution System (Maintenance and Control) Order of 2024 and has argued that the appellants have a right to suspend a FPS dealer even without issuance of show cause notice upon prima facie finding of violation of the provisions of the Control Order.

12. This Court has carefully considered the Clause 46, which is set out hereinbelow:-

“46. Punishment for Black marketing, misappropriation or siphoning off etc. of public distribution commodities by Dealer. –

If a Dealer has committed an offence of-

- (i) black marketing, or
- (ii) misappropriation, or
- (iii) siphoning off,

of public distribution commodities, the licensing authority may suspend his license immediately and after giving him an opportunity of being heard, if found guilty of such offence, and may, by passing a reasoned order in writing, impose a punishment of either fine, or reduction of the volume of business according to the gravity of the offence, or termination of his license, as per the offences specified in **Part I of Schedule C.**

Explanation I. - Keeping public distribution commodities in a godown other than the godown registered with the licensing authority or shortage of stock may be regarded as misappropriation of public distribution commodities and the Dealer shall be liable for the penalty under this clause.

Explanation II. – Selling the public distribution commodity on the price higher than the price fixed by the Government shall be regarded as black marketing and the Dealer shall be liable for the penalty as per this clause.

Explanation III – Transferring or selling the public distribution commodity to any unauthorized person or entity shall be regarded as siphoning and the Dealer shall be liable for the penalty as per this clause.”

13. A plain reading of Clause 46 would indicate that the power of suspension can be invoked by the appellants without issuance of any show cause notice. A suspension of an FPS dealer cannot amount to a penalty

per se. It is intended to facilitate a transparent inquiry by the State. If, upon completion of the enquiry within the permitted time of six months, (specified in the schedule to the Control Order), the appellants find that the charges against the FPS dealer are substantiated, then a show cause is issued to them before imposition of punishment.

14. Mr. Nelotpal Chatterjee has relied upon a decision of the Supreme Court in the case of ***Sukhwinder Pal Bipan Kumar and Ors. Vs. State of Punjab and Ors.*** reported in ***(1982) 1 SCC 31*** particularly paragraph 9, 10 & 11, which is set out hereinbelow.

“9. The power of suspension conferred by the second proviso to sub-clause (1) of clause 11 of the Order is by way of an interim measure, pending the holding of an inquiry as to whether there is any breach which must result in cancellation of the licence. It is true that the suspension of licence is a drastic measure, if taken without affording to the dealer a reasonable opportunity of stating his case, but it is a measure of social control in the interests of the community. The power of suspension is a necessary concomitant of the power to grant a privilege or a licence. By reason of clause 3 of the Order, no dealer can engage in the business of purchase and sale of foodgrains except under and in accordance with the terms and conditions of a licence issued by the licensing authority in that behalf. The dealers are free to carry on their trade or business in foodgrains, subject to their complying with the terms and conditions of their licence and the provisions of the Order. But, if they commit a breach, they must face the consequence that their licence may be cancelled or suspended under sub-clause (1) of clause 11 of the Order. They must face the further consequence of suspension of their licence during the pendency or in contemplation of the proceedings for cancellation of the licence, if the breach is of such a nature that it must result in the cancellation of a licence. As already stated, the power of suspension is a necessary adjunct of the power to grant a licence. In view of the acute shortage of foodstuffs in the country, the Government is bound to take all effective steps to implement the provisions of the Act and the various orders issued under Section 3 thereof, from time to time. The conferral of the power of suspension of the licence of a foodgrains dealer under the second proviso to sub-clause (1) of clause 11 of the

Order during the pendency or in contemplation of the proceedings for cancellation of his licence, is an important step taken by the Government to subserve the object of the legislation and is in public interest. It cannot be said that the second proviso to sub-clause (1) of clause 11 of the Order does not satisfy the test of reasonableness. It seeks to strike a proper balance between the freedom of trade or business guaranteed under Article 19(1)(g) and the social control permitted by clause (6) of Article 19 of the Constitution. It is, therefore, difficult to hold that the second proviso to sub-clause (1) of clause 11 of the Order is of an excessive nature beyond what is required in the interests of the general public.

10. There is no warrant for the submission that the second proviso to sub-clause (1) of clause 11 of the Order confers upon the licensing authority unguided, uncontrolled and uncanalised power to suspend a licence and is, therefore, void by reason of Article 14 of the Constitution. It is urged that the impugned orders of suspension in these cases are for a period of 89 days, and the licensing authority would, as in the past, pass fresh orders of suspension *ad infinitum* completely paralysing the business of the petitioners. There is no substance in the contention that repeated orders of suspension of a licence can be passed under the second proviso in respect of the same breach. The second proviso expressly states that the licensing authority may suspend a licence for a period not exceeding 90 days. It, therefore, fixes the period of suspension. From its very terms, it is obvious that there cannot be repeated orders of suspension of a licence under the second proviso in respect of the same breach. Normally, the order of suspension under the second proviso to sub-clause (1) of clause 11 of the Order after the expiry of the period of 90 days, would automatically lapse. However, if the licensee commits another breach, after the expiry of the period of suspension, there is nothing to prevent the licensing authority to suspend his licence afresh.

11. On a fair reading of the second proviso to sub-clause (1) of clause 11 of the Order, it cannot be said that it commits to the unrestrained will of the District Food and Supplies Controller, who is the licensing authority, the power of suspension of a licence. It does not confer arbitrary and uncontrolled power because the suspension can only be for specified reasons and the second proviso lays down the circumstances or grounds on which the power may be exercised. Such guidelines are expressly and specifically stated. In the first place, the power of suspension is not exercisable unless there is a breach and the breach is of such a nature that it must entail cancellation of the licence. The substantive provision contained in sub-clause (1) of clause 11 of the Order provides for the power of cancellation or suspension, if any dealer commits any contravention of the "terms and conditions of his licence or any provision of this Order". The first proviso is in the nature of a limitation on the power contained in sub-clause (1), and there can be no cancellation or suspension of a licence unless the licensee is afforded a reasonable opportunity of stating his case. The proper function of the second proviso is to carve out an exception to the first proviso. It dispenses with the requirement of affording a

reasonable opportunity to the licensee in case of suspension of his licence during the pendency or in contemplation of the proceedings for cancellation. It must, however, be read along with the main enacting provision in sub-clause (1), and, if so construed, the power of suspension during the pendency of an inquiry cannot be exercised unless there is contravention of any of the terms and conditions of the licence or any of the provisions of the Order. Secondly, it provides for a reasonable safeguard, in that it limits the period of suspension. The period of suspension would necessarily depend upon the nature of the breach, and in no case, can it exceed 90 days. During this period, the licensing authority is expected to complete the inquiry and take a decision as to the cancellation or otherwise of the licence. Thirdly, as a check upon possible injustice that might result from an improper exercise of the power of suspension of a licence by the licensing authority under the second proviso, there is an additional safeguard to a dealer by way of an appeal to the Director, Food and Supplies, under clause 13 of the Order. This Court has repeatedly laid down that where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such highest authority will not be abused. It would, therefore, appear that the second proviso to sub-clause (1) of clause 11 of the Order furnishes sufficient guidelines for the exercise of the power of suspension of a licence during the pendency of or in contemplation of the proceedings for cancellation thereof, and it does not suffer from the vice of arbitrariness and is, therefore, not violative of Article 14 of the Constitution. On the contrary, as already indicated, it affords reasonable safeguards.”

15. Provisions that can be described as similar to Clause 46 of the Control Order, Clause 11 of the Punjab Control Order, came to be tested before the Hon’ble Supreme Court, in the aforesaid decision. The principal ground urged is similar to what has been urged by the writ petitioner in the instant case, that the writ petitioner has been suspended without being afforded an opportunity to show cause.

16. The Hon’ble Supreme Court has clearly held that suspension of FPS dealer need not be preceded by a show cause and can be done on the spot. There are

three reasons indicated by the Hon'ble Supreme Court for such suspension of an FPS license, without prior show cause:-

(a) That there are prima facie allegations against the dealer concerned.

(b) The allegation would be followed up by due enquiry by the F&S Authority.

(c) That the enquiry is required to be completed within six months.

17. This, according to the Hon'ble Supreme Court, is sufficient protection to the FPS dealer. Hence such suspension, need not be preceded by a show cause notice.

18. Mr. Debabrata Saha Roy, learned Senior Advocate appearing for the respondent/writ petitioner has placed an order of a Single Bench of this Court dated 12th December, 2024 passed in WPA 27453 of 2024 (***All Bengal Fair Price Shop Dealers' Welfare Association & Anr. Vs. The State of West Bengal & Ors.***) whereby Chapter 9 of the Control Order has been stayed as a whole.

19. The reasons advanced by the Single Bench are that there is violation of the principles of natural justice in issuing an order of suspension without affording an opportunity to the FPS dealer concerned. The Single

Bench went on further to prima facie hold that even penal provisions under Chapter 9 did not afford a reasonable opportunity of hearing to the writ petitioner.

20. This Court is constrained to observe that the Single Bench has committed error in passing the order dated 12th December, 2024 staying Chapter 9 is “per incuriam” of the decision of the Supreme Court in **Sukhwinder Pal Bipin Kumar (supra)**. The order is also wholly devoid any proper reasons. It is also violative of the dicta of the Supreme Court that the Rules framed under authority conferred by statute, can seldom be stayed at the ad-interim stage, even in the face of a challenge to the vires. The respondent writ petitioner cannot rely upon the said order.

21. This Court finds that the impugned order also does not specify any reasons. The maintainability of the writ petition itself is questionable inter alia for the following reasons:-

(a) That the charges in the impugned notice dated 21st October, 2024 are quite different from the charges in the earlier show cause notice dated 24th September, 2024. There is, therefore, no double jeopardy against the writ petitioner/respondent.

(b) There is no need for any show cause prior to issuance of an order of suspension in terms of the

dicta of the Supreme Court in the case of ***Sukhwinder Pal Bipan Kumar*** (supra).

(c) The writ petitioner in any event has a right of appeal against the impugned order of suspension of dealership under Clause 57 of the aforesaid Control Order.

(d) Prior to imposition of any penalty specified under Clause 46 of the Control Order, a show cause notice is clearly mandated thereunder.

22. Having regard to the facts and circumstances of the case, this Court is of the clear view that Clause 46 of the Control Order does not conceive of any prior notice or hearing before issuance of an order of suspension.

23. For the reasons stated above, this Court is of the clear and unequivocal view that the writ petition is premature. The order of suspension under the Control Order cannot amount to any penalty.

24. WPA 26477 of 2024 (Shyam Sundar Agarwala Vs. State of West Bengal & Ors.) is, therefore, dismissed as premature and misconceived. Consequently, all interim orders shall stand vacated.

25. It is however made clear that in the event of any penalty being imposed on the writ petitioner/respondent by the State, after the enquiry, the writ petitioner may challenge the same in accordance with law.

26. It is directed that the enquiry post suspension against the writ petitioner/respondent is completed mandatorily and positively within a period of six months as stipulated in the Schedule to the Control Order 2024.

27. With the aforesaid observation MAT 2135 of 2024 is allowed and disposed of.

28. Consequently all connected pending applications, if any, are also disposed of.

29. There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)