

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

MAT 1329 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

The State of West Bengal and others
Vs.
Khadya Bhandar and others

For the appellants : Mr. Nilotpal Chatterjee,
Mr. Amrita Lal Chatterjee

For the respondents : Mr. Saptansu Basu, Ld. Sr. Adv.,
Mr. Ramesh Dhara,
Mr. Gourav Banerji

Heard on : 04.09.2025

Judgment on : 04.09.2025

Sabyasachi Bhattacharyya, J.:-

Re: CAN 1 of 2025

1. Heard learned counsel for the parties.
2. In view of sufficient explanation for the delay of about eight days being furnished, CAN 1 of 2025 is allowed, thereby condoning the delay in preferring MAT 1329 of 2025.
3. There will be no order as to costs.

Re: MAT 1329 of 2025 and CAN 2 of 2025

4. In view of the extreme urgency pleaded by the appellants, the application for stay is taken up for hearing. Since we find from the tenor of the arguments made by learned counsel at length that in effect, the issues involved in the appeal itself have been urged, we dispose of the appeal along with the application.
5. Learned counsel appearing for the State submits that the impugned order suffers from patent legal error on several counts. It is submitted that the learned Single Judge placed reliance on a cited judgment to come to his findings, which was rendered in the context of the 2013 Control Order, which did not have a provision similar to Rule 50(2) of the 2024 Control Order, which permits the authorities to extend the time of disposal of a proceeding for termination of licence beyond sixty days up to a limit of ninety days, subject to recording reasons.
6. Learned counsel further contends that the premise of the impugned order was also that the action of the respondent authorities in issuing the impugned show cause notice, coupled with suspension, was allegedly *mala fide* and illegal. Learned counsel submits that there is no basis for such finding.

7. Learned counsel places reliance on the provisions of Sub-Clause (2) of Clause 50 of the Control Order, 2024, which provides that all the proceedings initiated under the said Chapter shall be disposed of by the licensing authority within sixty days of the date of inspection or visit. However, the case shall be disposed of within ninety days of the date of inspection or visit in special circumstances and reasons for such delay shall be recorded in writing.
8. Learned counsel for the State/appellants next contends that the subsequent show cause notice dated June 17, 2025 is merely a modification of the first show cause notice dated April 23, 2025.
9. From the language of the second show cause notice, it is evident that it is in continuation and partial modification of the earlier one. Learned counsel further points out that the only change effected in the second show cause notice (modified show cause notice) is that whereas in the third last paragraph of the earlier notice, the Control Order of 2013 had been erroneously mentioned, the said mistake was rectified in the subsequent show cause notice.
10. It is also argued that the first show cause notice all through refers to the Control Order of 2024, barring a single instance where the 2013 Control Order was erroneously mentioned, and, as such, was otherwise valid in the eye of law.
11. Learned counsel contends that by way of the second show cause notice dated June 17, 2025, the earlier one was only sought to be

modified and the latter cannot be construed to be a fresh show cause notice.

12. Learned counsel for the appellants places reliance on the judgment of *Sukhwinder Pal Bipan Kumar and others vs. State of Punjab and others*, reported at (1982) 1 SCC 31, where it was held in connection with a similar statute that 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 Supreme Court further held that 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.
13. Learned counsel submits that in the present case, the appellants are placed on a better footing than in the case involved in the cited judgment inasmuch as Clause 50(2) specifically provides that upon giving reasons, which can only be given at the stage of final disposal of the proceeding originating from the show cause notice, the time limit of sixty days for disposal can be extended up to ninety days.
14. Learned senior counsel appearing for the respondents submits that the subsequent notice, although captioned to be a “modified” show cause notice, affords a fresh opportunity for filing reply, thereby seeking to extend the stipulation of sixty days *de hors* the law.

15. It is further pointed out that the hearing in terms of the earlier show cause notice dated April 23, 2025 was concluded on June 10, 2024. As such, there was no scope of further opportunity being given to the respondents to give another reply to the subsequent show cause notice.
16. We find from the impugned order that the learned Single Judge proceeded on the premise that the proceedings initiated by the first show cause notice was to be concluded within sixty days from the date of the inspection.
17. However, the learned Single Judge also considered the effect of Clause 50(2), which was quoted in the impugned order.
18. By itself, the non-completion of the proceeding within sixty days cannot vitiate the notice and perhaps could not have furnished a valid ground for staying the impugned notice, particularly keeping in view the social context, having larger ramifications for the greater interests of the community at large, since the matter relates to an MR dealership which is an integral part of the public distribution network of essential commodities.
19. However, we find from the subsequent show cause notice dated June 17, 2025 that in the same, a fresh opportunity to give reply within June 23, 2025 was given.

20. *Prima facie*, if the second show cause notice was merely intended to be a modification of the earlier notice, there could not be any possible opportunity for giving a further reply after the hearing was already concluded on June 10, 2024, that is, even prior to issuance of the subsequent show cause notice dated June 17, 2025.
21. The appellants have taken a further point, in a bid to justify the opportunity in the second notice for filing of reply, that the respondents have raised an issue that the consent given by the respondents in the hearing dated June 10, 2024, to the extent that the error in quoting the 2013 Control Order in the show cause notice dated April 23, 2025 was given a go-bye, was tainted by coercion and was sought to be challenged by a subsequent letter by the respondents, disputing such consent having been given by them at all.
22. At this juncture, it would be premature for us to go into the merits or veracity of such allegation of the respondents or the defence of the appellants against the same. However, even if such a dispute was raised by the respondents to the effect that they had never conceded to the discrepancy of the year of the Control Order, the same *ipso facto* does not justify the issuance of a fresh notice or a fresh opportunity being given for filing a further reply after the hearing on the first notice was concluded.

23. It was for the appellant-authorities to deal with the objections raised by the respondents while disposing of the proceedings initiated in terms of the original show cause notice dated April 23, 2025, if necessary dealing adequately with the allegation of the signature of the respondents being taken by force. However, merely because such objection was raised by the respondents does not give the power to the authorities to issue a fresh show cause notice, granting a fresh opportunity of reply to the respondents, which *prima facie* belies the contention of the appellants authorities that the subsequent notice was merely in the nature of an innocuous modification of the earlier one. The fresh time-line for filing reply would, in effect, extend the outer limit of sixty days within which the proceeding was to be concluded on the basis of the original show cause notice.
24. We are also conscious that we are taking up an appeal against an ad interim order and even the writ court has not yet disposed of the writ petition but merely directed affidavits. Thus, we make it abundantly clear that the observations made above are only of a *prima facie* nature, being tentative, and shall not influence the learned Single Judge while disposing of the writ petition in any manner whatsoever, adverse to the interest and contentions of either of the parties.
25. However, in view of the above discussions, we find sufficient reasons for the impugned order of stay having been granted by the learned

Single Judge, since an arguable case has been made out by the writ petitioners/respondents for hearing the writ petition on merits.

26. Moreover, in an intra-court appeal, unless there is a palpable perversity or error of law going to the root of the matter, there is normally no interference by the Appellate Bench. Keeping such test in mind, we find that such high yardstick has not been met by the appellants in the present case. Accordingly, there is no scope of interference in the appeal.
27. Hence, MAT 1329 of 2025 along with CAN 2 of 2025 are dismissed on contest without any order as to costs.
28. In view of the serious nature of the allegations levelled against the respondents and keeping in view the element of public interest involved, we request the learned Single Judge to make endeavour to dispose of the writ petition as early as the business of the learned Single Judge permits.
29. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)