

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

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

**IN THE MATTER OF
WPA 24522 of 2024**

Md. Asraful Islam.

Vs.

The State of West Bengal & Ors.

**For the Petitioner : Mr. Debabrata Saha Roy, Sr. Adv.,
Mr. R.A Agarwal, Adv.
Mr. Ananda Gopal Mukherjee, Adv.**

**For the State : Mr. Sirsanya Bandopadhyay, Adv.,
Mr. Ritesh Kr. Ganguly Adv.**

Reserved on : 25.08.2025

Judgment on : 26.09.2025

Subhendu Samanta, J.

1. Petitioner has been running a fair price shop dealership by the strength of license issued by the concerned Sub-Divisional Controller, Food and Supply, under the Provisions of West Bengal Public Distribution System, (Maintenance & Control Order), 2013. His shop-cum godown was inspected on 25.06.2024. Next day one show cause notice was served upon him on 26th June 2024. He replied said show cause notice on 4th July, 2024, he was given a personal hearing on 12th July, 2024 after the said personal hearing vide an order dated 30th July, 2024,

Sub-Divisional Controller, Food & Supply imposed a penalty of Rs.-7,85,61,044/- in exercise of power conferred u/s 24A (2) of West Bengal, WBPDS, M&C Order 13. Petitioner was directed to deposit the said amount within 07 days from the date of the receipt of the order. Petitioner was aggrieved and preferred an appeal before the appellate authority after receiving the appeal the concerned Appellate Authority being District Collector, Food and Supply, had issued for personal hearing notice, the personal hearing was held on 11th September, 2024. After hearing, the appellate authority has passed an order on 17th September, 2024, thereby affirmed the order of imposition of punishment by the concerned SCF&S and directed the petitioner to deposit penalty amount within 10 days from the date of receipt of this order. On the next day i.e. on 18th September, 2024, Sub-Divisional Controller, Food & Supply, Malda Sadar, has issued the order of suspension.

2. Challenging the order passed by the Concerned Authority, as well as procedure adopted by the authority concern. The instant writ petition has been preferred.

3. Mr. Debabrata Saha Ray, Learned Senior Counsel, appearing on behalf of the petitioner submits that the procedure adopted by the Concerned authorities are mala fide and illegal. Prior to issuance of show cause the authority concerned also issued one show cause upon the petitioner on 12th February, 2024 on the basis of selfsame allegations, on the basis of such show cause notice the petitioner filed a reply and one hearing was conducted on 17th March, 2024 thereafter, the respondent authority did not pass any order but they again issue impugned show cause notice.
4. He submits that authority once initiated a proceeding by issuing show cause, they must have completed the proceeding by passing an order. In this case without passing reasonable order, the concern authority has again started similar proceeding by issuance of show case on similar allegations.
5. Mr. Saha Ray, further argued that the ground for show cause clearly identical. He further submits that during the course of inspection the inspectors has found 4.37610 quintals of rice grain found short in the FPS godown of the petitioner but it would be revealed from the

inspection report itself, that measurement was taken by only eye estimation. He further submits that according to the provisions of law the measurement has to be made particularly by weightment scale. He submits that petitioner has arranged labour and weightment scale for proper measurement but the inspectors only taken the measurement through eye estimation. He further submits that it has alleged in the show cause that about 269 presently deactivate cards were tagged with the FPS of the petitioner, during the inspection by the Concerned Authority, it appeared that concern family members could not recognised deactivate card holders who are listed in their family as per data base. They have also stated they never lifted food grains against those cards.

6. Mr. Saha Ray submits that the petitioner being a dealer had no role to deactivate or activate cards in the system. He further submits scope of activation and deactivation of cards is with officers of the department who can only active new card or deactivate any card from FPS of a dealer. He further argued that inspector though have stated that they enquired the matter from the family

members of those deactivated card holders but petitioner was not given any opportunity to cross-examine the family members. He further submits by such way valuable right of natural justice of the petitioner has been violated and the authority concerned has acted illegally and mala fide to punish petitioner without any reasonable grounds.

7. Mr. Saha Ray further argued that the appellate authority without following the proper procedure has affirmed the order passed by the concerned Sub-Divisional Controller, Food & Supply and directed to deposit huge amount of money within 10 days from the date of passing of this order.
8. Mr. Saha Ray further argued it would be with surprising to note, though District Controller, Food & Supply, Malda, being the appellate authority, has passed the order in appeal on 17th September, 2024 and allowed the petitioner to deposit the fine amount within 10 days from the receipt of this order but the concerned authority, Sub-Divisional Controller, Food & Supply was proactive and illegally issued the order of suspension on the next day i.e. on 18th September, 2024.

9. Mr. Saha Ray submits that the intention of respondent authority can be very well presumed that by any way they shall suspend the petitioner. Mr. Saha Ray, further argued that show cause notice has disclosed about a complaint of one Smayun Mian but no copy of such complaint was handed over to the petitioner to contradict the same by such way the valuable right of the petitioner for fair trial and fair hearing has been jeopardised thereby the respondent authority has violated the principle of natural justice; he prayed for entire proceeding including the order passed by the authority be quashed.

10. Mr. Sirsanya Bandapadhyay Learned Senior standing counsel, appearing on behalf of the State Authority submits that reputation of the petitioner was not good. He has committed many illegalities including black marketing. The activities of the petitioner impeded smooth functioning Duare Ration Scheme in by the concerned area in the year 2022. Petitioner paid fine amount of Rs.-20,000/- for not performing Duare Ration properly. Subsequently, several complaint were received against him for not performing Duare Ration, upon

inspection other findings like misappropriation of food grains, black marketing, taking no action regarding unrecognised ration cards, misappropriating surplus ration revived on- account of fictional beneficiaries for long 07 years etc came into light for which petitioner could not provide any satisfactory explanations.

11. Mr. Bandopadhyay submits that the concern authority after considering entire aspect and after giving reasonable opportunity of being heard imposed the fine for the offence committed by the petitioner. He further submits that during the inspection at the shop-cum-godown of the petitioner it appears petitioner has a large amount of stock in his godown and in the absence of sufficient numbers labours despite notice percentage weighment like 10% was done in consultation with the petitioner in accordance with the mandate of memo dated 18th May, 2022. Mr. Bandopadhyay further submits that as per the said mandate half number of bags which was weighted was chosen by the petitioner and remaining half was chosen by inspection team. Based on average weigh found after 10% weighment of available stock average weigh per bag or 49.89 KG. After making calculation on

the basis of 10% wieghment physical stock a total shortage of 04 quintals 37 KG 610 Grams of rice grain was found less in entire stock. Counting of bags was made very catiously in presence with consent of the petitioner.

12. Mr. Bandapahyay further submits that the physical verification was done for the best possible way chart best of percentage weigh each and every weighment at the was counter signed by the petitioner. Mr. Bandapadhyay further argued that the petitioner on query has not placed any cogent document regarding delivery of ration articles to the families of presently deactivated cards. He always tried to evade the question put before him. He also could not place any register or slips for providing ration articles to the presently deactivated cards.

13. Mr. Bandapadhyay, further argued that it has been proved before the concerned SCFS as well as before the appellate authority that the petitioner has committed an offence of misappropriation of huge quantity of food grains meant for public distribution against spurious ration cards since 2015, onwards, they are currently deactivated. He further submits that the huge quantity of

ration articles were regularly placed on the stock of the petitioner. Petitioner was well aware about the fact but he has not made any representation to the authority that how such huge amount of ration articles were tagged with him. He further submits that the appellate authority as well as the concern SCF&S has correctly passed the order so it cannot be challenged before this court. Mr. Bandapadhyay further argued that a writ court is not a court of appeal against an order of the respondent authority, the writ court can only verifying whether any fundamental right of the petitioner was infringed in dealing with the said transfer or there has been any violation of principles of natural justice.

14. Mr. Bandapadhyay, in support of his contention has placed decision of Hon'ble Apex Court passed in **BC Chaturbedi Vs. Union of India and Ors.** reported in **(1995) 6 SCC 749.**
15. Mr. Saha Ray in reply has submitted that the activation and deactivation of ration cards are not the duty of the dealer. He further pointed out that the Hon'ble Single Bench of this Court in **M/s. Traders and Ors. Vs. State of West Bengal and Ors.** has clearly laid

down the principle that 100% weighment has to be done before calculating at the time of inspection.

16. Mr. Saha Ray has also placed a decision of Hon'ble Apex Court passed in **Mohinder Singh Gill and Anr. Vs. The Chief Election Commissioner, New Delhi and Ors.** reported in **(1978) 1 SCC 405.**

17. Mr. Saha Ray, argued on the above judgment the Hon'ble apex Court has set out a rule that the respondent authority cannot be allowed to strengthen reason order by filing affidavit-in-opposition otherwise when it would appear before Court for decide the issue, the illegal act of the authority may be validate by additional grounds.

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by

the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

18. Mr. Saha Ray has also placed on record the decision of this court passed in **Baidyanath Pal Vs. State of West Bengal** in WPA 2377 of 2023, wherein this Court in the same set of allegation has observed that FPS dealer cannot be liable for entering name of spurious DRC's in the portal.

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.

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.

19. Having heard the Learned Counsel for the parties and also considering the relevant consideration of Hon'ble Apex Court it appears to me that in deciding the issue of justifiability of the proceedings and orders passed by State instrumentalities, it is beneficial for this court to set out the direction of Hon'ble Apex Court at paragraph 12 of **BC Chaturbedi (supra)**

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is

conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. 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 inquiry 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.

20. In view of the decision of Hon'ble Apex Court it appears that the writ court while deciding the justifiability of an action of State Authority must not act as an Appellate Authority. It further specifically clarified by the Hon'ble Apex Court that judicial review under Article 226 of Constitution of India by High Court does not mean or in consonance with appellate power of a court. The confidence and finding of the respondent authority has to be taken care of as it is clarified that the court may only interfered with the decision of the authority if the decision are inconsistency with the rule of principles natural justice or in violation of prescribing the mode of enquiry or if there is a violation of fundamental right.
21. To justify the claim of the writ petitioner in the order and proceeding initiated by the Concerned Authorities whether violative to the principles of natural justice; I perused show cause notice issued by the concerned

respondent authority on 26th June, 2024. The show cause notice has mentioned about a complaint one Samaun Mian. Before this court the petitioner has alleged no copy of such complaint was handed over to the petitioner. However, it appears that though the petitioner has replied to the show cause and also filed an appeal against the order passed by the SCF&S, nowhere in any pleadings he has stated about the non-supply of complaint. During his personal hearing, he also not stated about the non-supply of complaint of one Samaun Mian. It appears that this is for the first time the petitioner alleges regarding non-supply of the complaint before this court, it further appears that the show cause notice issued in terms of physical inspection at the godown of the petitioner conducted on 25th June, 2024. Moreover, the complaint was not taken care by respondent authorities, but they have issued show cause on the basis of enquiry held at the godown of petitioner on 25th June, 2024, they have also enquired regarding 269 number of recently deactivated cards holders and their families. It further appears that the concerned enquiry officers has enquired the family members of the

deactivated card holders, the family members has specifically stated that they could not recognise the deactivate card holders. They also not lifted food grains against those cards. During the hearing when this question was put to the petitioner by enquiring officer, petitioner replied that all the family members 269 deactivated cards holders are stating false.

22. The petitioner has also argued that he has not given opportunity to cross examine family members of presently deactivated cardholders; it appears that petitioner blatantly denied statements of family members 269 deactivated cards to be false, but during enquiry he could not produce any single document to show that he has distributed ration article to 269 presently deactivated card holders since 2015 to 2022.

23. In my view the allegation levelled against the petitioner is very much clear in the show cause notice and he has made his reply/ defence against the allegations made against him and he has also filed an appeal, in all the cases petitioner was given sufficient opportunity being heard and his submission was sufficiently recorded. He has sufficiently ordered to make his defence against show

cause notice or filing appeal against the order passed by SCF&S.

24. Under the above aspect, I find that there is no such violation of principles of natural justice in the present case. Hence the argument on behalf of the petitioner that there are violation of principles of natural justice appears to me not proper or justifiable.

25. Another point which the petitioner time and again argued that the petitioner being a dealer had no scope to activate or deactivate any ration card at the FPS of the petitioner. Thus the allegation for inclusion of huge number of DRC's in the FPS of petitioner cannot be levelled against the petitioner. I have gone through the decision of this court passed in **Baidyanath Vs. State of West Bengal** 2377 of 2023, wherein it appears that in the **Baidyanath (supra)** there are sufficient evidence before this court regarding the illegality of inclusion of huge number of spurious DRCS by data entry operators of concerned Block and there are sufficient materials before this court to hold that huge number spurious DRCS has been entered by the inspector concerned and by the official of the concerned Food and Supply Department.

Moreover, it further appears that the present petitioner being a dealer can very well ascertained the fact that huge DRC's are activated in his FPS, in spite of such knowledge he accepted the huge quantity of food grains in respect of the spurious DRCS since the year 2015 to 2022. It is finding of the authority that the petitioner has intentionally accepted huge ration articles by which he has misappropriated the same. It has been observed by the authority that the petitioner has committed an offence of misappropriation of huge quantity of food grains meant that public distribution. It further appears that the decision of the authority is on the basis of the evidence on record authority concerned has taken a view on the basis of available evidences. Submission that, evidences can be construed otherwise, may be a merit in an appeal. In deciding writ petition under Article 226 of the Constitution of India, this court cannot enter into the merit which may dealt with as appellate court.

26. Under the above observations, I am of a view that the observation of the SCF&S as well as the Appellate Authority suffer no illegality thus requires no interference.

27. It further appears that the Sub Divisional Controller, Food and Supply Malda, after disposal of the appeal on 17th September, 2024 has issued order of suspension on the next day i.e. on 18th September, 2024; by passing such order SCF&S concern has itself violated the direction of appellate authority, he required to wait for 10 days from the date of receipt of the order by the petitioner. Therefore, the order of suspension dated 18.09.2024 by Sub Divisional Controller, Food and Supply Malda, has issued in a post haste manner. Thus the order of suspension appears to me not proper. However the merit of the suspension order cannot be quashed entirely, but it requires to be stalled for some period allowing the petitioner to carry out/comply order dated 17.09.2024, failing which the order of suspension shall revive.

28. Under above observations, the order of suspension passed by the Sub Divisional Controller, Food and Supply Malda dated 18th September 2024 be stalled till 15th of November, 2025, petitioner is permitted to deposit amount as mentioned by appellate authority vide its order dated 17th September, 2024 within 15th November,

2025, failing which the order of suspension dated 18th September, 2024 issued by Sub Divisional Controller, Food and Supply Malda, shall be revived in its true forces.

29. On deposit of the amount, the license of the petitioner shall revive according to law.
30. Under the above observation the instant writ petition is disposed of.
31. Interim order if any, passed by this court during the pendency of the instant writ petition is hereby vacated. Connected applications, if pending, are also disposed of.
32. 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.)