

18.03.2025
SL No.31
Court No.24
Ali

WPA 27156 of 2024
Khorsed Alam Khan
Versus
The State of West Bengal & Ors.

Mr. Sagar Bandhapadhyay,
Mr. Abhrajit Roy Chowdhury
.....for the petitioner.

Ms. Sonal Sinha,
Mr. Amrita Lal Chatterjee
.....for the State.

Petitioner was appointed as a dealer of Fair Price Shop in terms of Vacancy Notification dated 24th of January, 2018. The licence was issued in favour of the petitioner by the concerned department on 9th of January, 2023. During the subsistence of such business, the petitioner was served with a notice of personal hearing by Sub-Divisional Controller (F & S) concerned dated 4th March, 2024. The petitioner appeared before the authority for hearing and after the hearing is concluded the Sub-Divisional Controller (F & S) has terminated the licence of the petitioner vides order dated 7th March, 2024, on the ground that the petitioner does not having the requisite Bank balance in his account to continue the business. Against the order of termination, the petitioner preferred an appeal before the District Controller.

The District Controller has given hearing to the petitioner and passed an order on 25th of April, 2024 affirming the order of the Sub-Divisional Controller (F & S) concerned. Against the order of the District Controller, the petitioner again approached to the Second Appellate Authority i.e. the DDP & S, F&S Department, and Government of West Bengal. The Second Appellate Authority has also dismissed the Second Appeal by a reasoned order dated 5th of August, 2024.

Being aggrieved by the act and action of the concerned authority the petitioner approached this Court.

Mr. Sagar Bandopadhyay, learned senior counsel appearing on behalf of the petitioner submits that the issuance of notice of personal hearing by the concerned Sub-Divisional Controller (F & S) is bad in law as per provisions of Clause 24 of the West Bengal Public Distribution System (Maintenance & Control) Order, 2013. He submits that before initiation of any proceeding, notice of show cause has to be served upon the petitioner as per provisions of Clause 24 of the said Control Order. He submits that in this case, no show cause notice was issued against the present petitioner. Only notice of personal hearing was served. He

further argued that from the notice of personal hearing as well as the order itself it would be revealed that the Sub-Divisional Controller (F & S) concerned has acted upon the instruction of higher authority pre-determining the fact that he had to terminate the licence of the petitioner

Mr. Bandopadhyay, learned senior counsel further submits that the order of the concerned Sub-Divisional Controller (F & S) as well as the orders passed by the 1st Appellate Authority and the Second Appellate Authority are all bad in law.

In support of his contentions, Mr. Bandopadhyay, learned senior counsel cited three decision of Hon'ble Apex Court.

- (1) ***Nawabkhan Abbaskhan Vs. State of Gujarat reported in (1974) 2 SCC 121.***
- (2) ***Joint Action Committee of Air Line Pilots' Association of India (Aplai) & Ors. Vs. Director General of Civil Aviation & Ors. Reported in (2011) 5 SCC 435 and***
- (3) ***Oryx Fisheries private Limited Vs. Union of India & Ors. Reported in (2010) 13 SCC 427***

Mr. Bandopadhyay, further argued that the Hon'ble Apex Court has specifically guided that the statutory authority has to act according to the procedure enumerated in the statute itself. The act

and action of the authority beyond statutory is not permissible.

Ms. Sonal Sinha, learned counsel appearing on behalf of the State respondent raised strong objection. She submits that the authority has used Affidavit-in-Opposition against the writ petition wherefrom it would be revealed that at the time of applying (through Form-'C') for the said Notification, the petitioner has disclosed the name of Bank and its Branch. He has mentioned that SBI, Daltanpur Branch Vide Saving Bank Account No. 31997807702 in his banker. It appears to the authority that the petitioner had Bank Account of Rs.5,00,287/- as on 11th March, 2019, thereafter, he withdrew the amount of Rs. 5,00,000/- from the said account on 15th March, 2019. It is the specific case of the State authority that there are a stipulation of the vacancy Notification specified in Clause 6 of eligible criteria as follows:

"6. The application for dealership must have Bank Balance of at least Rs. 5.00 Lakh (Five Lakh) as working capital reflected on the day of application and one year preceding the date of application".

It is the contention of the State authority that the petitioner do not have working capital of at least Rs. 5,00,000/- one year preceding the

date of application. During personal hearing, the petitioner had admitted his guilt. Furthermore, the authority concerned had take a report from the Branch Manager of concerned SBI. Wherefrom, it appears that Rs. 5,00,000/- working capital was in the Bank Account of the petitioner only for the period of 11.03.2018 to 11.03.2019. It is the case of the State authority that the petitioner has applied the licence with a false and fabricated document. Thus, his licence cannot be allowed to be continued. He further submits that the action of the State authority was justified in the eye of law so the instant writ petition has no merit to entertain.

Having heard the learned counsel for the parties also considering the materials it appears that the petitioner admittedly could not maintain working capital at least Rs. 5,00,000/- for one year preceding to the date of application.

The petitioner has approached this Court with a fixed deposit of Rs. 6,50,000/- maintained in a Somobay Samiti. The said account was never mentioned in Form-'C' by the petitioner at the time of filing application. It appears that the petitioner has applied for licence violating the conditions of eligible criteria. However, it further appears that the licence was issued in favour of the petitioner

by the authority after verifying all his particulars. At the time of issuance of the licence, the concerned authority was satisfied about the eligible criteria of the petitioner. It is also the fact that the petitioner is running the business since one year prior to the order of termination.

It appears that the termination of the licence of the petitioner is initiated by the concerned authority in terms of a Memo of notice of personal hearing dated 4th of March, 2024. Clause 24 of WBPDS (Maintenance & Control) Order, 2013 has enumerated the powers of the licensing authority to take action against the licensee for committing irregularities. For the better appreciation of the fact, Clause 24 of the WBPDS (Maintenance & Control) Order, 2013 is set out as follows:

"24. Power to take action against a licensee for committing irregularities. '(i) if a licensee of his/her agent or any other person acting on his/her behalf contravenes any of the provisions of this Order or any of the regulations made there under or any of the conditions of his/her licence, or any discrepancy of stocks or in the weighment device is detected, the Sub-divisional Controller, Food and Supplies, shall issue a notice to the concerned Dealer asking for explanation in writing for such contravention and discrepancy and may also place the

dealership under suspension till the disposal of the proceedings by the Sub-divisional Controller, Food and Supplies. In case of suspension, the concerned ration card holders shall be tagged temporarily with the neighboring Dealer for uninterrupted supply of public distribution commodities.

(ii) The licensing authority after giving the licensee an opportunity of being heard and after recording the reasons thereof, may terminate the licence or may reduce the volume of business through reduction of tagged ration cards and/or impose fine according to the gravity of the offence as annexed in Schedule A.

In case of imposition of fine the licensee shall have to deposit the fine with the Sub-divisional Controller, Food and Supplies through Treasury Challan in TR Form No. 7 under the Head of Account as prescribed by the Government .

Entire proceedings shall be completed within 60 days from the date of issue of the show cause notice.

It appears before taking action against the licensee, the authority concerned has to issue show cause notice upon the dealer asking for explanation in writing for alleged contravention or discrepancies.

Hon'ble Supreme Court in **Oryx Fisheries Private Limited (supra)** held that:

"29. In the instant case from the underlined portion of the show-cause

notice it is clear that the third respondent has demonstrated a totally closed mind at the stage of show-cause notice itself. Such a closed mind is inconsistent with the scheme of rule 43 which is set out below. The aforesaid Rule has been framed in exercise of the power conferred under Section 33 of the Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature”.

"31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure

especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence”.

“32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show-cause notice”.

“33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it”.

In **Nawab Khan (supra)** the Hon’ble Supreme Court has held that:

“ 6. The constitutional perspective must be clear in unlocking the mystique of “void” and “voidable” vis-à-vis orders under the Act. The Act is a constraint on a fundamental right and so the scheme of Article 19 must be vividly brought before our minds if extraordinary controls over human rights statutorily vested in administrative tribunals are to be

held in constitutional leash. Freedom of movement, of association, of profession and property, are founding commitments and severe restraints thereon must be strictly construed, not in the name of natural justice – an elusive phrase – nor in literal loyalty to Section 59 but in plenary allegiance to the paramount law. The restriction on the fundamental right must be reasonable and the harsher the restriction the heavier the onus to prove reasonableness. The High Court in Special Criminal Application 18 of 1969 held that the basic condition clamped on the authority to hear and be satisfied according to the “due process” prescriptions of Section 59 had been violated and the order was liable to be quashed. In short, the finding was that the deprivation of the petitioner’s fundamental right having been effected in a mode which is not reasonable, as statutorily expressed in Section 59 of the Act, is illegal and unconstitutional. Once the jurisprudential underpinnings of Sections 56 and 59 of the Act are seen, the invalidatory effect is plain. An unconstitutional order is void, consequential administrative inconveniences being out of place where an administrator abandons

constitutional discipline and limits of power. What about the peril to the citizen if an official, in administrative absolutism, ignores the constitutional restrictions on his authority and condemns a person to flee his home ? A determination is no determination if it is contrary to the constitutional mandate of Article. 19. On this footing the externment order is of no effect and its violation is no offence.

7. Unfortunately, counsel overlooked the basic link-up between constitutionality and deviation from the audi alteram partem rule in this jurisdiction and chose to focus on the familiar subject of natural justice as an independent requirement and the illegality following upon its non-compliance. In Indian constitutional law, natural justice does not exist as an absolute jural value but is humanistically read by Courts into those great rights enshrined in Part III as the quintessence of reasonableness. We are not unmindful that from Sneca's Medea, the Magna Carta and Lord Coke to the constitutional norms of modern nations and the Universal Declaration of Human Rights it is a deeply rooted principle that "the body of no free man shall be taken, nor imprisoned, nor disseised,

nor outlawed, nor banished nor destroyed in any way” without opportunity for defence and one of the first principles of this sense of justice is that you must not permit one side to use means of influencing a decision which means are not known to the other side”.

Hon’ble Supreme Court in **Olga Tellis (Supra)** has also enumerated that the authority concerned has to propose the action to be taken against the licensee by issuing a proper show cause notice.

By virtue of Clause 24 of the WBPDS (Maintenance & Control) Order, 2013 and from the decision of Hon’ble Apex Court it appears to me that the authority concerned had to take recourse by issuing show cause against the present petitioner, who is a licensee against whom action has to be taken according to the law. In this case, the concerned authority has not issued any show cause notice. Status of the provisions was a licensee at the time of serving hearing notice. A licence has already granted, either correctly or incorrectly, so the licence can only be terminated according to the procedure established by law, not otherwise.

I can understand the argument on behalf of the State authority that the present petitioner has adopted fraud practice upon the State authority by showing false and fabricated documents. But, still then when a licence was issued in favour of the petitioner. The licensing authority had no option but to proceed to take action against the errant licence holder according to the procedure as established in the Control Order. Personal hearing notice dated 4th March, 2024 and the impugned order of Sub-Divisional Controller (F & S) concerned on 7th March, 2024 is appears to me not according to the procedure established in Clause 24 of the WBPDS (Maintenance & Control) Order. And, hence, as it is barred to the provision the same is hereby set aside.

In my opinion, a statutory authority has to take an independent view and shall apply his own mind before taking a decision. In the instant case, it appears from the notice of personal hearing as well as the impugned order of concerned Sub-Divisional Controller (F & S) dated 7th March, 2024, that he has acted in terms of the direction of higher authority. The impugned order itself is not reflected the application of mind of the concerned

Sub-Divisional Controller (F & S). Hence, it is bad in law.

Under the above observation, I find justification to entertain the instant writ petition.

The impugned notice of personal hearing dated 4th March, 2024 as well as impugned order dated 7th March, 2024 and subsequent orders by the concerned 1st Appellate Authority and Second Appellate Authority are appears to be bad in law and the same is hereby quashed.

The concerned authority is directed to reinstate the petitioner as a licensee and allow him to continue the business according to the procedure of law.

I make it clear that finding of this Court shall not debar the authority concerned to proceed against the present petitioner regarding the alleged illegality and irregularity according to the procedure established in WBPDS (Maintenance & Control) Order, 2013.

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

(Subhendu Samanta, J.)