

ASR 22.
Ct. no. 24.
13.1.2025

WPA 27688 of 2024

**Howrah Ward No. 22, Janata Consumer Co-operative Stores
Ltd. & Anr.**

**Vs.
State of West Bengal & Ors.**

**Mr. Debabrata Saha Ray
Mr. Pingal Bhattacharyya
Mr. Subhankar Das
Mr. Neil Basu**

....For the petitioners

**Ms. Sonal Sinha
Ms. Ashmita Chakraborty**

...For the State

Petitioner no. 1 is a Co-operative society.
Petitioner no. 2 is the Secretary of the Petitioner no. 1.
Petitioner had appointed as F.P. Shop Dealer at
Shibpur Sub-Area under Howrah Sub-control in the
District of Howrah since 58 years.

One show-cause-cum-suspension notice issued
on 27.01.2023 against petitioner containing inter alia
that, they allegedly have delivered less food article to 12
number of consumers for which a feed back report was
prepared by the respondent. The petitioner replied the
show-cause notice with a specific averment that the
statement given by the consumers as well as the feed
back report from the beneficiaries were required to be

supplied to the petitioner before conduction of hearing. The petitioner, in his reply to the show cause has depicted the circumstances instances in respect of all twelve consumers regarding the amount of article which was delivered to them; petitioner also supplied a copy of e-Pos slip in respect of all the twelve consumer for that particular period. He also placed a mass petition of different consumers before the authority who support the conduct of the present petitioner regarding reputation running the business. However, one hearing was conducted. Thereafter, the authority concerned has terminated the license of the petitioner vide order dated 23rd March, 2023. Against the said order the petitioner filed an appeal before the appellate authority with a specific ground that no documents were handed over to the petitioner before the hearing of the matter by the concerned Rationing Officer.

It is the case of the petitioner that on 24th May, 2023, a bunch of 24 pages documents were handed over to the petitioner on the date of appeal hearing i.e. on 24th May, 2023 at 2 P.M. It is the further case of the petitioner he prayed for some accommodation to demonstrate the matter before the first appellate authority but the first appellate authority, has not given any opportunity to the petitioner and passed the order on 7th of June, 2023 affirming the order of the licensing authority.

The petitioner approached this court vide W.P. No. 18942 of 2023 against the order of the first appellate authority. However, by the leave of this court the petitioner has filed statutory second appeal. The Second appellate authority has also heard the matter and dismiss the second appeal affirming the order of the first appellate authority.

The petitioners approach this court with a specific ground that principle natural justice has been violated by the concerned authority in dealing with this matter. He submits that the licensing authority has not furnished any documents /complaint/feed back report of the authority before conduction of the hearing, but arbitrarily terminated his license. It is further argument of the petitioner that the first appellate authority though had given the documents on the date of hearing but has not given any opportunity to demonstrate the matter properly before the first appellate authority.

He further argued that the order of the second appellate authority is also cryptic one. No reason has been assigned by any of the authorities in deciding the matter. So, he prayed for rejection of the orders passed by the concerned authority.

In support of his contention, Mr. Saha Ray, learned Senior counsel appearing on behalf of the petitioner, has cited decision of a Hon'ble Apex court in ***Ravi Yashwant Bhoir- Vs.- District Collector,***

Raigad & Ors., reported in (2012) 4 Supreme Court Cases 407. .

38.“ it is a settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order.

39. In shrilekha Vidyarthi –V. State of U.P. this court has observed as under (SCC p. 243, para 36)

“36...Every State action may be informed by reason and it follows that an act uninformed by reason, is arbitrary. The rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is the trite law that ‘be you ever so high, the laws are above you’. This is what men in power must remember always.

In S. N. Mukherjee V. Union of India it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was

held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

47. This court has consistently held that the State is under an obligation to act fairly without ill will or malice in fact or in law. Where malice is attributed to the State. “Legal malice” or “malice in law” means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.”

Ms. Sonal Sinha, learned counsel appearing for the State with Ms. Ashmita Chakraborty submits firely that if this court observe that the order passed by the competent authorities are devoid of any reason the matter may be remanded back to the authority to re-hear the matter. He further submits that a specific direction may be passed by this court so that the authority concerned may dispose of the matter within a very short span of time.

In reply Mr. Saha Ray submits that, in that score, if the order of termination is set aside the license of the petitioner would be en-effect to be revived. Heard learned counsels at length perused the order passed by the concerned authorities.

The matter in hand has some admitted facts; admittedly, the Rationing Officer, Shibpur, Howrah authority has not handed over any of the complaint of the consumers or feed back report of the officers of the food and supply department to petitioner before passing the order of termination.

It further appears that the petitioner in his reply to the show-cause has categorically demonstrated what amount of food grains were supplied to all the twelve consumers with the slip of e-pos generated cash memo. More surprisingly Rationing Officer has not given any reason, as to why e-pos generated cash memos can disbelieved. It is necessary to set out the final order of the Rationing Officer in respect of order of termination, which runs as follows:

“therefore undersigned in exercise of the power as delegated as clause 29 under WP PDS (MNC), order 2013, do hereby passed an order of termination of your F.P.S license as a disciplinary proceeding with immediate effect.”

It is also admitted fact that 24 pages of volumes documents were handed over to the petitioner on 24th

May, 2023 at 2 P.M. i.e. on the date of hearing of the first appeal but no accommodation was provided to the petitioner to argue on that documents. The reasoning of the order of the first appellate authority is as follows:

“Taking into consideration all facts and submissions, I do not find any reason to alter the decision of the L.A. Hence, the order of the licensing authority vide memo no. 76/RO/SHB/HOW/2023, dated 23.3.2023 is hereby upheld.”

The order of the reasoning of the second appellate authority is also more surprisingly which runs as follows:

“Upon careful consideration of the submissions the Director of Rationing found no merit in the appellant’s argument. It was observed that the Appellate Authority had already addressed the issue of natural justice by ensuring that the appellant was provided with the relevant documents before the final hearing on 31.05.2023.”

So after plain perusal of the orders competent authority it appears to me the order are not only non-speaking order but also without any reason. Passing an order by the competent authority must assign some reason. It is true, without any reason, an order can not be stand alone. Reasoning is a back bone of an

order. Every order without any reason not only violative to constitutional mandate, but also violative to the principles of natural justice.

On the above observation I am clear view that the proceeding and the order passed by the competent authorities i.e. the order of termination order of first appellate authority, as well as second appellate authority appears to me arbitrary and illegal. Thus all the orders are hereby set aside.

However, the concerned authority has liberty to initiate any proceeding against the present petitioner if it is found to be required under the provision of law. But such proceeding must be initiated by supplying specific complaint/ Feed back report/ of the officer and other materials, before initiation of the process.

Under the above observation, the writ petition is allowed and disposed of. The order passed by the Rationing Officer as well as first appellate authority and second appellate authority are quashed.

Consequences thereof the license of the present petitioner be hereby revived. The competent authority is directed to restore the license of F.P. Shop business of the petitioner and take necessary steps so that the business of the present petitioner may be continued as it was before the termination of license of the petitioner, within a period of two weeks from the date of communication of this order.

The application (WPA 27688 of 2024) is disposed
of. .

[Subhendu Samanta, J]