

10.01.2025.
Item No.15.
Court No. 13
ap

M.A.T. No. 2354 of 2024
With
I.A. No. CAN 1 of 2024

State of West Bengal & Ors.
Versus
All Bengal Fair Price Shop Dealers' Welfare
Association & Anr.

Mr. Kishore Datta, Id. Advocate General,
Mr. Sirsanya Bandopadhyay, Id. Jr. Standing Counsel,
Mr. Ritesh Kumar Ganguly.
...For the appellants.

Mr. Debabrata Saha Ray, Id. Sr. Advocate,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das,
Ms. Neil Basu,
Mr. Sankha Biswas.
...For the respondents.

1. The Advocate-on-record for the appellants undertakes before this Court to rectify the defects pointed out by the Additional Stamp Reporter dated 24th December, 2024.

2. The challenge in the instant intra court appeal is to an interim order dated 12th December, 2024 passed by a learned Single Judge of this Court in W.P.A. No. 27453 of 2024.

3. The writ petition was filed by an Association of Fair Price Shop Dealers in the State of West Bengal. The said Association is recognized by the State. Discussions have been held with the said Associations by the State in the past.

4. The grievance of the Association in the writ petition was with regard to the West Bengal Targeted

Public Distribution System (Maintenance and Control) Order, 2024 (in short 'Control Order of 2024'). The said Control Order was passed by the State pursuant to power conferred under Section 3 of the Essential Commodities Act, 1955 and the mandate under the GSR No.213E dated 20th March, 2015 issued by the Ministry of Consumer Affairs, Food and Distribution of the Central Government.

5. The distribution of essential food grains to consumers under the Central Public Distribution System Scheme implemented through the State are required to be governed by the Rules which the State in the country are authorized to frame.

6. In exercise of such powers, the State of West Bengal passed the aforesaid Control Order of 2024. The writ petitioners are aggrieved by several provisions of the Control Order of 2024. One particular provision that the learned Single Judge found fault with, at an ad interim stage of admission of the writ petition, was Chapter-IX thereof, concerning penalties on erring dealers.

7. The learned Single Judge was persuaded by the writ petitioners to stay Chapter-IX of the Control Order of 2024 primarily on the ground that paragraphs 45 and 46 thereof, do not provide sufficient safeguards to a FPS dealer, before imposition of penalties.

8. The learned Single Judge of this Court, at the time of admission of the writ petition, which

challenged the constitutional vires of the Control Order of 2024 as a whole, was pleased to stay the operation of Chapter-IX thereof.

9. Learned Advocate General, Mr. Kishore Datta, has advanced threefold arguments against the impugned order. Firstly, that interim orders are seldom passed, at an ad interim stage in a writ petition challenging the constitutional vires of any Rules or Statute. The learned Single Judge of this Court was apprised of the decision of the Hon'ble Supreme Court of India in the case of ***Health for Millions – Vs. – Union of India & Ors.*** reported in ***(2014) 14 Supreme Court Cases 496*** and several other cases where at paragraph 13 thereof the aforesaid proposition was discussed and laid down by the Hon'ble Supreme Court of India. The learned Single Judge while recording the same in his order dated 12th December, 2024 has not applied the same.

10. Secondly, the writ petitioner Association cannot be aggrieved by the Control Order of 2024 as a whole since no specific violation of the principles of natural justice has been brought to the notice of the Court. The locus of the Association to maintain the Writ Petition is questionable.

11. Thirdly, whenever a Statute is silent on the compliance of the principles of natural justice, the same have to be read into such Statute and/or Rules. The apprehension expressed by the writ petitioners as

accepted by the learned Single Judge of this Court for violation of principles of natural justice was, therefore, misplaced.

12. Countering the arguments of the learned Advocate General and supporting the interim order, Mr. Debabrata Saha Ray, learned Senior Advocate has argued that mere use of the expression “after being heard” would essentially give uncanalized powers to the authorities implementing the aforesaid Control Order of 2024. He has from his experience referred to several cases where mere lip service of a personal hearing and compliance of natural justice has been demonstrated.

13. Mr. Saha Ray has referred to two earlier Control Orders of the 2003 and 2013 which laid, some procedures and safeguards to FPS Dealers before penalties are imposed. Mr. Saha Ray further submits that the omission of the aforesaid safeguards mentioned in the 2003 and 2013 Control Orders from the year 2024 Control Order, is irrational and arbitrary. He also submits that the omission is aimed at giving uncanalized and draconian powers to the persons entrusted with the implementing of the Control Order of 2024. He, therefore, submits that the impugned order calls for no interference at this stage.

14. This Court has carefully heard the submissions advanced by the learned Advocate General for the

State and Mr. Debabrata Saha Ray for the writ petitioners.

15. It is now a well-settled proposition that orders staying parts or portions of Rules are not passed at an ad interim stage of a proceeding challenging Constitutional vires of any Statute, Rules or Regulations.

16. This Court notices that there is substance in the locus/maintainability issue urged by the State before the learned Single Judge of this Court. The writ petitioner no.1 is an Association of FPS Dealers. Unless a specific instance of infraction of accepted principles of natural justice is placed before a Court, the Writ Court does not pass an order of stay of any provision on the basis of a mere apprehension expressed and that too by a representative body.

17. This Court is of the view that the maintainability issue should have been conclusively decided by the learned Single Judge before venturing to pass any order of stay of any part of the provisions of the Control Order of 2024.

18. This is so as, if it is found later that the writ petition is not maintainable, the interim order could cause incalculatable damage to the interest of the State and consequently to the public at large, which is the second ground that this Court finds calling for interference with the impugned order.

19. As already stated hereinabove, whenever a Statute or Rules framed thereunder are silent with regard thereto, the conformity of the principles of natural justice, the same must be read into such Statute or Rules or Regulations. The law in this regard has been settled by the Hon'ble Supreme Court of India and need not be restated.

20. It appears that the writ petition is still pending consideration. The State is yet to file its affidavit-in-opposition to the main writ petition as the deadline, therefor, has not been crossed. The State may do so. The writ petition may be finally heard after receiving affidavits from the respective parties as directed by the learned Single Judge of this Court.

21. However, the impugned order of stay of operation of Chapter-IX of the Control Order of 2024 is set aside for reasons already recorded hereinabove.

22. This Court records the assurance of the learned Advocate General for the State that the principles of natural justice would be duly complied with and followed, while applying penalty provisions to the FPS Dealers in the State.

23. It is made clear that the State shall not be prevented from making any changes and/or amendments or modifications to the Control Order of 2024 as it may deem fit and proper to ensure due conformity with similar subordinate legislation already

framed in the State and other parts of the country, in accordance with law.

24. It is further made clear that the learned Single Judge shall proceed to hear out the writ petition afresh after receiving affidavits from the respective parties and pass necessary orders uninfluenced by any observations made hereinabove.

25. With the aforesaid observations, M.A.T. No. 2354 of 2024 shall stand disposed of.

26. In view of the disposal of the appeal itself, the connected application being CAN 1 of 2024 shall also stand disposed of.

27. There will be no order as to costs.

28. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)