

21
09.01.2026
Court No. 10
AGM

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 519 of 2026

**Sathi Biswas Mondal
-versus
State of West Bengal & Ors.**

**Mr. Debabrata Saha Roy. Sr. Adv.
Mr. Pingal Bhattacharya.
Mr. Subhankar Das.
Mr. Neil Basu.
Mr. Sankha Biswas.
Ms. Oindrilla Sarkar.
Mr. Avidipta Paul.
...For the Petitioner.**

**Mr. Suman Sengupta. Sr. Govt. Adv.
Mr. Sambuddha Dutta.
Mr. Ritesh Kumar Ganguly.
... For the State.**

1. Heard the parties through their respective counsels.

2. The petitioner has filed the instant case challenging inter alia, the show cause notice dated 7.11.2025 along with the order of suspension dated 27.11.2025 and the corrigendum dated 1.12.2025 issued by the respondent no. 5.

3. Apropos the facts of the case, the petitioner is the Fair Price Shop Dealer under Tehartta Sub Division and has been running her fair price shop since the date of granting the license to her by the licencing authority on compassionate ground.

4. The petitioner suffers a show cause notice dated 17.11.2025 on the basis of an enquiry conducted at the shop of the petitioner based upon a complaint lodged by the private respondent.

5. The petitioner submits that the show cause notice was issued by conjoining two Control Orders, i.e. West Bengal Public Distributor System (Maintenance and Control) Order 2013 and West Bengal Targeted Public Distribution System (Maintenance and Control) Order 2024 (hereinafter referred to WBPDS 2013 and WBTPDS 2024) alleging inter alia on the ground of siphoning foodgrains by a toto.

6. Allegation raised in the show cause notice runs contrary to the enquiry conducted by the respondent.

7. Response to the show cause notice was filed on 21.11.2025 by the petitioner. Subsequent thereto, a personal hearing was fixed on 26.11.2025.

8. After completion of the proceeding the respondent no. 5 passed an order of suspension on 27.11.2025 on the ground of violating the provisions contained in paragraph 19 of the West Bengal Public Distributor System (Maintenance and Control) Order 2013 and West Bengal Targeted Public Distribution System (Maintenance and Control) Order 2024 which was followed by a corrigendum dated 1.12.2025 by way of modifying partially which is reproduced below:

“In partial modification of this office earlier memo no. 661/S.C. F &S/Tehatta/MR/Suspension/2025 dated 27.11.2025, please read WBTPDS (M&C) Order’2024 instead of WBPDS (M&C) Order’2023 and WBTPDS (M&C) Order’2024 in Para-I and Para-VI.

In partial modification of this office earlier memo No. 661/661/S.C. F &S/Tehatta/MR/Suspension/2025 dated 27.11.2025, please read clause 16(19) or the relevant sub-clause under Clause 16 of WBTPDS (M&C) Order’2024 instead of clause 19 of WBPDS (M&C) Order’2013 and WBTPDS (M&C) Order’2024 in Para-III and Para-V.

9. It is submitted that as per sub-clause 19 of clause 16 contemplates that a dealer shall not store any public distribution commodities in any place outside

the godown as endorsed in the license without prior written permission of the licencing authority.

10. In the instant case the petitioner submits that the order of suspension passed by the authority concerned is in contravention to the allegations made in the show cause notice under memo 661/S.C. F &S/Tehatta/MR/Suspension/2025 dated 27.11.2025.

11. The main show cause was issued on the basis of transacting foodgrains less in quantity to the private respondent and misbehaving with her. Secondly, for siphoning of foodgrains by a toto evidenced from an image which was never forwarded or shared by the petitioner to refute the same.

12. Learned counsel appearing for the State respondents takes the point of maintainability on the ground that since the charge levelled against the petitioner falls under Chapter IX, therefore, there is an alternative remedy available under Section 57 to ventilate their grievance for redressal.

13. In this context he relies upon paragraph 10 in the matter of **Rikhab Chand Jain -Vs- Union of India & Ors** reported in **2025 SCC Online SC 2510** which is reproduced below:

“10. We may profitably refer, in this context, to the Constitution Bench decision in Thansingh Nathmal V. A. Mazid, Superintendent of Taxes. In Thansingh Nathmal (supra), this Court had the occasion to lay down a principle of law which is salutary and not to be found in any other previous decision rendered by it. The principle, plainly, is that, if a remedy is available to a party before the high court in another jurisdiction, the writ jurisdiction should not normally be exercised on a petition under Article 226, for, that would allow the machinery set up by the concerned statute to be by-passed. The relevant passage from the decision reads as follows:

“The jurisdiction of the High Court under article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the article. But the exercise of the jurisdiction is discretionary; it

is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the court will not entertain a petition for a writ under article 226, where the petitioner has an alternative remedy, which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up.”

(emphasis supplied)

14. The petitioner submits that it is a well settled proposition of law as held in the case of **Whirlpool Corporation -Vs- Registrar of Trade Marks, Mumbai and Ors.** reported in **(1998) 8 SCC** wherein it has been categorically observed that a writ petition can be entertained only if the authority has exceeded his jurisdiction and/or gross irregularity in the decision making process.

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three

contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.” (emphasis supplied)

15. The petitioner further draws the attention of this Court by relying a Notification dated 16.10.2025 with regard to an amendment made in the West Bengal Targeted Public Distribution System (Maintenance and Control) Order, 2024 in clause 44 for sub-clause (2) by substituting the following:

“ (2) If a Dealer or Distributor or his authorized representative or any other person acting on his behalf, do not comply with the provisions of this Control Order; or do not abide by the terms and conditions as specified in the licence, Government orders, Standard Operating Procedures and Guidelines; or do not operate the fair price shop/distributorship and discharge the responsibilities as provided in the Clause 15, Clause 16, Clause 17, Clause 18, Clause 34, Clause 35 and Clause 36 as the case may be; the licensing authority may take steps as follows:

- a.** Issue a show-cause notice to the concerned Dealer or the Distributor, as the case may be; and thereby ask for explanation in writing for such contravention and/or discrepancy.”
- b.** Place such Dealership or Distributorship licence under suspension till the disposal of the proceedings.
- c.** If not satisfied upon the written explanation submitted by the concerned Dealer or Distributor, may give an opportunity of hearing;
- d.** After such hearing, for the reasons to be recorded in writing, may impose the penalty, if found guilty, as per the provisions contained in the Part I or Part II of the Schedule C as the case may be.”

16. In this context, learned counsel for the petitioner submits that by dint of a said Notification the respondent authorities ought to have imposed the penalty or a fine but could not have passed final order of suspension by concluding the proceedings.

17. The intention of the Notification is quite clear that the licence for dealership or distributorship can be suspended till the disposal of the proceedings. Wherein in the instant case the authorities have already concluded the proceedings by passing an order of suspension which dehors the mandate of the amended Notification dated 16.10.2025.

18. The State respondents further relies upon another judgment of the Hon'ble Apex Court in the case of **United Bank of India -Vs- Satyawati Tondon & Ors** reported in **(2010) 8 SCC 110** wherein it has been held that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

19. After hearing the rival contentions of the parties and upon considering the materials available on records, I am of the considered view that the order of suspension by the authorities is in contravention to the letter and spirit of the mandate of the statute.

20. It is clear from the Notification relied upon by the State respondents that any licence of a dealership or a distributorship can only be suspended subject to the completion of the proceedings.

21. Learned counsel for the State respondents fails to apprise the Court from the order of suspension that the proceedings initiated by the authority is still pending and has not been concluded. It is apparent from the order of suspension that on the basis of the discrepancies and/or irregularities, the petitioner being the Fair Price Shop Dealer has violated the provisions

contained in paragraph 19 of the West Bengal Public Distributor System (Maintenance and Control) Order 2013 and West Bengal Targeted Public Distribution System (Maintenance and Control) Order 2024 the dealership remains suspended.

22. In view of the above, the writ petition is disposed of by setting aside the order of suspension and the consequential proceedings thereof.

23. Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Smita Das De, J.)