Form J(2).
Item No. 109-110
Court No. 1

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN

WPA(P) 361 of 2025
Ashim Kumar Baidya
Vs.
State of West Bengal & Anr.
With

WPA 25777 of 2025
Satya Sharan Mondal & Sons and Anr.
Vs.
State of West Bengal & Ors.

Appearance:-

For the Petitioners In WPA(P) 361 of 2025	:	Mr. Shyamal Sarkar, Sr. Adv. Mr. Ram Anand Agarwal Mr. Nibedita Pal Mr. Ananda Gopal Mukherjee Ms. Nasrin Khatoon
For the Respondent No.5 In WPA(P) 361 of 2025 & For the Petitioner in in WPA 25777 of 2025	:	Mr. Debabrata Saha Roy, Sr. Adv. Mr. Pingal Bhattacharya Mr. Neil Basu Mr. Sankha Biswas Ms. Oildrila Sarkar Mr. A. Paul
For State	:	Mr. Swapan Kumar Dutta, Ld. GP Mr. Nilotpal Chatterjee Mr. Amritalal Chatterjee
Heard on	:	17.09.2025, 03.12.2025, 11.03.2026 17.03.2026
Delivered on	:	17.03.2026

JUDGMENT (ORAL)

PER, SUJOY PAUL, CJ.:-

1. In PIL, being WPA(P) 361 of 2025 the petitioner has called in question the legality, validity and propriety of the order dated 7th August, 2025. The order dated 7th August, 2025 is sought to be implemented by a dealer in a Single Bench matter, i.e. WPA 25777 of 2025. In other words, in the PIL the order dated 7th August, 2025 is the subject matter of challenge whereas in WPA/25777/2025 it is prayed that the said order be directed to be implemented. Accordingly, both the matters were analogously heard with consent and decided by this common order.

Factual Matrix :

2. The facts are taken from PIL. On 7.9.2024, upon an inspection conducted by the Food and Supply Department on the premises of distributor/respondent no.5 it was found that 2513.80967 quintals of rice were found short and/or misappropriated. Accordingly, on 9.9.2024, a show cause cum suspension notice was issued to the respondent no.5. The respondent no.5 filed his reply to the said show cause notice.

Stand of the Petitioner :

3. The stand of the learned senior counsel for the petitioner in PIL is that the public distribution system in State of West Bengal is governed by the statutory provision, namely, **West Bengal Targetted Public Distribution System (Maintenance and Control) Order 2024** (hereinafter referred to as the "**Control Order**"). This is not in dispute in the instant cases that the validity of the impugned order needs to be decided on the anvil of the said Control Order.

4. Learned senior counsel for the petitioner by taking this Court to various provisions of the Control Order urged that the competent authority has not acted in consonance with and in terms of the said Control Order.

5. In order to explain, it is submitted that Clause 48 of the Control Order deals with punishment for black marketing, misappropriation or siphoning off commodities under public distribution system. It is submitted that the authority in consonance of Clause 48 can suspend the license of a distributor immediately after giving him an opportunity of being

heard and if he is found guilty, may pass a reasoned order by imposing a punishment of either fine or reduction of volume of business according to the gravity of offence or terminate his license. Reliance is also placed on Schedule C. Part II of the Schedule C is relied upon which deals with penalty for offence/contravention. It is submitted that for committing offence under Clause 48 the fine or cost can be imposed in the manner described in the third column of Schedule C.

6. By taking this Court to the impugned order, the learned senior counsel for the petitioner submits that the District Controller (F & S) (hereinafter referred to as District Controller) passed an order, which is unknown to law. He permitted the respondent no.5 to replenish the deficit quantity of 2513.80967 quintal of rice and imposed a penalty of Rs.4,00,000/- only. Upon depositing the same, the license was directed to be restored.

7. Learned senior counsel for the petitioner also relied on Clause 50 of the Control Order to demonstrate that there exists a statutory time limit of maximum 90 days within which the disposal must take place. In the instant case, it is pointed out that the proceeding commenced with issuance of show cause

notice on 9.9.2024 which ended with imposition of penalty of Rs.4,00,000/- on 24.07.2025. Thus, the statutory time limit of 90 days was deliberately breached and the proceedings continued upto 330 days.

8. Learned senior counsel for the petitioner submits that the Control Order/Statute does not contain any provision to replenish the deficit quantity of food items. In absence of any enabling provision, the statutory authority was not competent to adopt this method, which is unknown to the Statute. It is submitted that if a Statute prescribes a thing to be done in a particular manner it has to be done in the same manner. Reliance is placed on the judgement of Supreme Court in the case of **Nautam Prakash DGSVC, VADTAL** vs. **K.K. Thakkar & Ors**. reported in **2006(5) SCC 330**.

9. By placing reliance on a Single Bench judgement of this Court in the case of **Scotts (P) Ltd. & Ors**. vs. **Corporation of Calcutta & Ors.** reported in **79 CWN 883**, it is urged that the fundamental principle of law is that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. Conversely, the statutory

corporation/authority has no power to do anything unless such power are specifically conferred on it by the relevant statute. Thus, there is a sever criticism of method adopted by the District Controller in the manner he permitted replenishment.

10. Learned senior counsel for the petitioner submits that on the one hand the petitioner is surprised about the kind of kindness shown to the respondent no.5 and on the other hand for similar offence committed by another distributor order dated 12.08.2025 (Annexure P7 of the Supplementary Affidavit) was passed whereby his dealership was terminated and in addition, he was directed to deposit Rs.2,47,14,100.00 as economic cost on account of public distribution commodity misappropriation. It is submitted that the same District Controller of same district has acted in two different ways by applying two different formulas in cases of similar nature of deficiency of rice. Thus, pick and choose action and selective favour to respondent no.5 deserves to be deprecated.

Stand of State :

11. Mr. Chatterjee, learned counsel for the State submits that the facts are not in dispute. He at the outset fairly submits that the

statutory provision, namely, the Control Order, does not contain any specific provisions which enables the District Controller to allow replenishment of stock in case of deficiency of stock. He submits that the District Controller in the given factual matrix of present matter was kind enough in deciding that replenishment may take care of the public needs, public welfare and, therefore, permitted replenishment. After replenishment since there existed no deficiency of relevant food item, he decided to impose only Rs.4,00,000/- as cost whereas in the other case for which the order dated 12.08.2025 (Annexure P7 of the Supplementary Affidavit) was issued, the quantity of misappropriated food item was much higher than the quantity involved in the case of respondent no.5.

Stand of the Respondent no.5

12. Mr. Saha Roy, learned senior counsel for the respondent no.5 opposed the petition by contending that not a single complaint was preferred by anybody against the respondent no.5 in relation to deficiency of food items or poor quality of item distributed from his distributorship. Since no common man or consumer has preferred any complaint regarding the deficiency

of services this petition cannot be treated to be a PIL filed on behalf of the public at large. In the entire body of PIL there exists no pleading to show as to what is the cause of action in favour of the present petitioner. He raised eyebrows on the locus of the present petitioner.

13. Secondly, the learned counsel for the respondent no.5 has taken pains to take us through the show cause notice, reply filed by the respondent no.5, hearing notice given to him and the final impugned order passed in the instant matter. He strenuously contended that in the manner his agency was placed under suspension and in the manner the procedure was followed it clearly violates the Control Order. The time limit prescribed in the Control Order to complete the proceeding was 90 days. Since it continued for much longer time, the respondent no.5 under compelling circumstances replenished rice item and the authority, accordingly, rightly imposed a cost of Rs.4,00,000/- only. During the course of hearing, the learned senior counsel for the respondent no.5 also fairly admitted that under the Control Order there exists no specific

provision which permits replenishment of misappropriated food item by the District Controller.

14. Lastly, by placing reliance on certain annexures filed with WPA 25777 of 2025 and in his counter filed in PIL he submits that even after passing the impugned order dated 7th August, 2025 the dealership of the respondent no.5 was not restored. He was compelled to approach the writ Court by filing WPA 25777 of 2025. The learned Single Judge observed that if the State is not aggrieved by order dated 7th August, 2025 there is no reason for not implementing the same.

15. Lastly, he placed reliance on the order dated 7th December 2025 to canvass the position that till that date his distributorship was not restored fully and the stock was not transferred from the agency it was tagged at the time of suspension, namely M/s. Annupurna Enterprise.

16. The parties confined their argument to the extend indicated above.

17. We have bestowed our anxious consideration on the rival contention and perused the record.

FINDINGS

18. Before dealing with rival contentions it is apposite to mention that the learned counsels for the parties agreed that the validity of the impugned order has to be examined on the touch stone of the Control Order. Relevant portion of the Control Order needs reproduction. Clause 48 reads as follows:

> *"48. Punishment for Black marketing, misappropriation or siphoning off etc. of public distribution commodities by Distributor. – If a Distributor has committed an offence of –*
>
> *(i) Black marketing, or*
>
> *(ii) misappropriation, or*
>
> *(iii) siphoning off,*
>
> *of public distribution commodities, the licensing authority may suspend his license immediately and after giving him an opportunity of being heard, if found guilty of such offence, may by passing a reasoned order in writing, impose a punishment of either fine, or reduction of the volume of business according to the gravity to the gravity of the offence, or termination of his license, as per the offences specified in Part I of Schedule C.*
>
> *Explanation I.- Keeping public distribution commodities in a godown other than the godown registered with the licensing authority or shortage of stock may be regarded as misappropriation of public distribution commodities and the Distributor shall be liable for the penalty under this clause.*

Explanation II.- Selling the public distribution commodity on the price higher than the price fixed by the Government shall be regarded as black marketing and the Distributor shall liable for the penalty as per this clause.

Explanation III.- Transferring or Selling the public distribution commodity to any unauthorized person or entity shall be regarded as siphoning and the Distributor shall be liable for the penalty as per this clause."

(Emphasis Supplied)

19. This Clause needs to be read with relevant schedule i.e. Schedule C (Part II). Relevant portion of this Schedule reads thus.

Sl. No.	**Offences/contravention under relevant cause**	**Penalty for first offence/ contravention**	**Penalty for second time offence/ contravention of same provision**	**Penalty for third time or subsequent offence/contravention of same provisions**
(1)	**(2)**	**(3)**	**(4)**	**(5)**
1.	Contravention of any of the provisions of sub-clause (1) to (5) of clause 35	Fine of minimum of Rs.25,000/- for each of the contravention committed by the distributor which may be extended to maximum of Rs.50,000/- for each contravention with an overall limit of	Fine of minimum of Rs.50,000/- for each of the contravention committed by the distributor which may be extended to maximum of Rs.1,00,000/- for each contravention, with an overall limit of	The licensing authority may impose a penalty of Rs.1,00,000/- for each of the contravention committed by the distributor which may be extended to maximum of Rs.2,00,000/- for each contravention, with an overall limit of Rs.10,00,000/- and the Licensing Authority may also render his license under suspension immediately for minimum 3 three months and

		Rs.2,00,000/-.	Rs.4,00,000/-.	maximum 6 months and after giving him an opportunity of being heard and for the reasons recorded to be in writing, either reduce the volume of business (upto 50% quantity) according to the gravity of the offence.
2.	……………… ………	………………… …..	………………….	…………………...
3.	Committing offence under clause 48	**Fine of minimum of 2 (two) times and maximum of 3 (three) times the economic cost of the public distribution commodities and also a minimum fine of Rs.3,00,000/- for an offence of black marketing or misappropriation or siphoning off public distribution commodities meant for public distribution.**	Fine of minimum of 2(two) times and maximum of 3 (three) times the economic cost of the public distribution commodities and also a minimum fine of Rs.10,00,000/- for an offence of black marketing or misappropriation or siphoning off public distribution commodities meant for public distribution.	Fine of minimum of 3 (three) times the economic cost of the public distribution commodities and also a minimum fine of Rs.10,00,000/- for an offence of black marketing or misappropriation or siphoning off public distribution commodities meant for public distribution or terminate his license.
4.	………………	………………….	………………….	………………………………

20. On a combined reading of Clause 48 and entry 3 of Schedule C makes it clear that there exists no enabling statutory provision which permits the statutory authority to allow replenishment of deficient/misappropriated stock. In case of deficiency, the statutory authority can take only such action which is statutorily prescribed in Clause 48 read with Entry III of Schedule C of first offence/contravention. Learned counsel for parties during the course of hearing also fairly admitted that there exists no statutory provisions which enables the District Controller to permit the distributor to replenish the misappropriated deficit food items.

21. This is trite that if a law prescribes a thing to be done in a particular way it has to be done in the same manner and other methods are forbidden. The basic judgement in this regard is **Tailor vs. Tailor** reported in **(1875) LR 1 Ch D426** which is consistently followed by the Supreme Court in several cases **(See: 2014 (3) SCC 502 (Dipak Babaria & Anr. vs. State of Gujarat)**

22. The judgement in the case of **Nautam Prakash (Supra)** on which reliance was placed it was held that a statutory authority

must exercise its jurisdiction within the four corners of the Statute. It cannot act beyond the same. Any order which is passed by an authority which lacked inherent jurisdiction would be *ultra vires*. In view of aforesaid legal position, there is no cavil of doubt that the decision of the District Controller permitting replenishment of misappropriated food item is *ultra vires* the control order without authority and jurisdiction.

23. For this reason alone, the impugned order cannot sustain judicial scrutiny.

24. It is also noteworthy that as per Clause 50 of control order the statutory time frame for disposal of the proceeding is prescribed which reads thus:

> "**50**. **Timeframe for disposal of the proceedings**.-(1) The inspecting authority or the team shall submit their report to the licensing authority within twenty one (21) days of the date of inspection or visit. However, the report may be submitted within thirty (30) days of the date of inspection or visit in special circumstances and reasons for such delay shall be recorded in the report.
>
> (2)<u>All the proceedings initiated under this chapter shall be disposed of by the licensing authority within sixty (60) days of the date of inspection or visit.</u>

> <u>However, the case **shall be** disposed of within ninety (90) days of the date of inspection or visit in special circumstances and reasons for such delay shall be recorded in writing</u>."
>
> *(Emphasis Supplied)*

25. In the instant case, there exists abnormal delay in concluding the proceedings. The District Controller (F&S) has permitted the respondent no.5 to gain time to replenish the entire misappropriated/deficient food staff. This practice is totally unknown to law and we deprecate the same. The very purpose of providing public distribution system is to ensure that the public at large gets the food items expeditiously and regularly. If misappropriation is permitted to be replenished by extending time in favour of defaulting distributor, it gives wrong signal and cannot be said to be in public interest.

26. The Respondent No.5's contention about locus and maintainability of petition is concerned, this court has already dealt with this aspect when this objection was raised on 3rd December, 2025 and overruled the said objection. Even otherwise, if there is huge misappropriation of rice by public distributor working under public distribution system, it cannot

be said that grievance in this regard has no public element in it. In our considered opinion, petition of this nature falls within the ambit of public interest litigation.

27. Even assuming that petitioner did not have any locus to raise this issue or was personally interested the petition involving grave public interest cannot be thrown to winds. The Apex Court has drawn curtains on this issue in ***Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh and Ors.*** reported in ***(2011) 5 SCC 29***. It is apt to quote the relevant Paragraph:

"80. The challenge to the locus standi of the appellant merits rejection because it has not been disputed that the appellant is a public-spirited organization and has challenged other similar allotment made in favour of Punjabi Samaj, Bhopal, That apart, as held in Shivajirao Nilangekar Patil vs. Mahesh Madhav Gosavi even if a person files a writ petition for vindication of his private interest but raises question of public importance involving exercise of power by men in authority then it is the duty of the court to enquire into the matter.

(Emphasis Supplied)

In view of the principle laid down in this Judgment of Apex Court, by no stage of imagination it can be said that instant matter is not a public interest litigation or it must be rejected on the technical grounds.

28. So far argument of ld. Counsel for Respondent No.5 about procedural flaws allegedly committed by the Food and Supply Department while weighting the food stock etc. and other alleged procedural flaws are concerned, suffice it to say that Respondent No.5 did not challenge those alleged procedural flaws before any appropriate forum. He on his own decided to replenish the misappropriated/deficient food item. The impugned order in the PIL was not called in question by him. Instead, he filed the connected writ application seeking execution/enforcement of the said order. Thus, it does not lie in his mouth to say that the procedure adopted by Food Department while assessing the shortage of rise suffered from any irregularity or illegality.

29. So far the question of discretion of District Controller is concerned, the comparative reading of impugned order in the present case dated 07.08.2025 and order date 12.08.2025 passed in case of other distributor shows that the District Controller (F&S) who passed the order in both the cases is same

and belongs to the same district. Whether or not he belongs to same district and same person, the authority is guided by same statute namely control order. Thus, his jurisdiction is confined to pass an order within the framework of the control order. He cannot be permitted to act as per his whims and fancies. For one distributor act beyond the control order and act in a totally different way for another distributor. He does not have any such unfettered discretion. The discretion is flowing from Clause 48 and schedule which permits him to impose fine or issue direction for reduction of volume of business or terminate his licence as the case may be, considering the gravity of offence and so far cost is concerned, he can take guidance from Entry 3 of Schedule C Part II of the control order. In that case also, the discretion is limited to impose fine either two times or three times considering the gravity of the matter. Beyond that, there is no other discretion available with the District Controller.

30. In this view of the matter, in our opinion, the impugned order dated 07.08.2025 in the PIL cannot sustain judicial scrutiny. Resultantly, the order dated 07.08.2025 is set aside. The

matter is remitted back to the District Controller (F&S) to pass a fresh order in accordance with control order by taking into account the observations made by us hereinabove.

31. As notice above, in the connected WPA 25777 of 2025, the petitioner is seeking enforcement of the order dated 07.08.2025 which has been set aside in the previous paragraph, hence no relief is due in this petition.

32. In the peculiar facts of this case, we deem it proper to direct that if in the meantime, District Controller (F&S) of the South 24 Parganas, who had passed the impugned order is changed, new District Controller (F&S) may on remand pass the fresh order in accordance with law. In case the said District Controller (F&S), who passed the impugned order, is still continuing in the same district, it shall be the duty of State Government to direct the District Controller (F&S) of North 24 Parganas to pass a fresh order on remand in accordance with law.

33. The entire exercise be completed by the concerned District Controller (F&S) within 30 days from the date of production of the copy of this order. Accordingly, the PIL being WPA(P) 361 of

2025 is **allowed** and the writ petition being WPA 25777 of 2025 is **dismissed**.

34. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(SUJOY PAUL, CJ.)

I agree.

(PARTHA SARATHI SEN, J.)

RP(AR.CT.)