

30.08.2024
SL No.1
Court No.24
Ali

WPA 21825 of 2024

**Md. Alauddin Sk. & Ors.
Versus
The State of West Bengal & Ors.**

Mr. Syed E. Huda,
Sk. Aptabuddin,
Mr. Himadri Roy,
Ms. Nabeela Akbar

...for the petitioners.

Mr.Suman Sengupta,
Ms. Amrita Panja Mallick

.....for the State.

The present petitioners are the licence-holders of a Fair Price Shop situated at Village-Sahajadpur, under P.S. Raghunathganj, District-Murshidabad.

The checkered history of the case is that on the earlier occasion the ration card holder of two Villages, namely, Charbajitpur and Charshibpur under P.S. Raghunathganj were tagged with the present petitioner's Fair Price Shop.

The present petitioner suffers immense difficulty due to distribution of food grains which he has to distribute the articles after carrying them by crossing a river to supply the villagers of Charbajitpur under the scheme of "Duare Ration". By suffering such huge expenses of distributing the food grains, he filed a writ petition being No. 18648 of 2024 for seeking instructions upon the concerned

authority so that the ration card holders of Charbajitpur may be de-tagged with nearby FPS dealers from his Fair Price Shop. In the said writ petition one direction was passed upon the authority concerned to submit a report.

In the meantime, the concerned authority had suddenly inspected the Fair Price Shop of the petitioners on 22nd August, 2024 and on the next day i.e. on 23rd August, 2024 has issued a show-cause cum suspension Notice for non-compliance of provisions of licence and Control Order. In such Show-cause notice the irregularities in the FPS as observed during the inspection were noted down under nine (9) heads.

By such Show-cause Notice the petitioner was directed to Show-cause within seven days from receipt of the said notice as to why disciplinary action shall not be taken against him and licence of the petitioner was put under suspension. On the same day, the FPS shop of the petitioner was tagged with nearby one FPS dealer of one Ali Bordy Sk. It is the case of the petitioner that the act of the concerned authority is *mala fide*. As this Court has directed the authority to submit a report they have issued the purported Show-cause notice on some flimsy ground only to teach a lesson to the petitioner.

Mr. Huda submits that the order of suspension is illegal according to the provisions of the Control Order. Moreover, the allegation made in the letter of suspension cum Show-cause Notice is not commensurate to the punishment to issue an order of suspension.

He further submits that there is only allegation for non-providing “Duare Ration” to some of the beneficiaries but they have written to the concerned authority to the effect that they usually receive the slip and they have no objection against the present petitioner.

He further submits that by virtue of the provisions of the act itself regarding the schedule of Penalties, the Offences regarding contravention as stated in the Show-cause Notice is not to warrant immediate suspension.

He further submits that this Court on the earlier occasion in WPA 16949 of 2024 has also stalled the order of show-cause cum the suspension notice of the concerned authority on the ground that the authority cannot put the licence under suspension without hearing of the licence holders.

Mr. Suman Sengupta, learned counsel appearing on behalf of the State authority submits that the impugned memo of show-cause Notice issued by the Sub-Divisional Controller, Food &

Supplies concerned is according to the provisions of law.

During inspection the authority has noted several discrepancies in the FPS. The said inspection memo has properly clarified regarding the discrepancies. In pursuance of such inspection memo the show-cause cum suspension Notice was issued.

He further pointed out that the present petitioner was given an opportunity of being heard. Moreover, there are some provisions of filing appeals against the order passed by the concerned Sub-Divisional Controller, Food & Supply. The Control Order itself provided the statutory appeal.

He further pointed out that according to the provision of chapter IX, Sub-clause 2 of Clause 45 of the said Control Order, if a Dealer found to be guilty from the offence which was committed earlier on second time or third time, then the licence, may be put under immediate suspension.

Mr. Sengupta also relied upon the provisions of Sections 56 and 57 which stated about the statutory appeal against the order of the concerned authority. He submits that in this case, there are two statutory Appellate Authority; first appeal is to be filed before the District Controller and second appeal before the Director. It is the argument of Mr.

Sengupta that by virtue of the decision of Hon'ble Apex Court in ***Titaghur Jute Mill Vs. State of West Bengal*** as well as ***J. Jayalalithaa & Ors. Vs. State of Karnataka & Ors.***, when there is a statutory provision of filing appeals against the order of the authority, the writ Court should not interfere in merit regarding the order passed by the concerned authority. He further submits that the statute itself provides the provision of appeal. Thus, the present petitioner has every opportunity to agitate his grievances before the statutory Appellate Authority.

Mr. Huda in refuting the contention of Mr. Sengupta, argued that the statutory authority has acted illegally and in- biasedness to put the licence of the present petitioner under suspension. He further argued that the writ Court has ever opportunity to interfere with any order passed by the concerned authority if it appears to be unjustified improper and without jurisdiction.

He further argued that the provision of schedule 'C' of the Control Order regarding schedule of punishment disclosed about the punishment of immediate suspension of licence only when the offence was committed for the third time. Penalty for the first offences of penalty for the second offences is only provided imposition of fine.

Mr. Huda also clarified that in dealing with Sub-clause 2 of Clause 45, along with the schedule- 'C' of the said Control Order, the interpretation should be harmonious. In such way the punishment awarded upon the present petitioner by putting the licence under suspension is illegal in the eye of law and he prayed for necessary order to quash the said order of suspension.

Heard the learned advocates; perused the entire facts also perused the "Suspension cum Show cause Notice". It appears that the present petitioner was earlier found guilty of same offences wherein he was given punishment of payment of fine. However, the *mala fide* by the respondent is pleaded in the instant writ petition. Let me consider whether actually the concerned authority has acted *mala fide* in passing the impugned "Suspension cum show cause Notice" against the present petitioner. It is the only case of the present petitioner that the authority is ill motivated and to justify their personal vengeance against the present petitioner while this Court has asked for submit of a report in the writ, a petition being No. 18648 of 2024 the surprise inspection was carried out.

It appears to me that, in writ petition No. 18648 of 2024 the concerned authority has already submitted a report. The report of the authority does

not contain about any of the fact of mala fide as raised in the instant writ petition. Moreover, the concerned authority has every right and authority to make a surprise inspection over any FPS. It is true that the authority concerned during inspection has found some discrepancies in the FPS. It is also correct that the discrepancy was reflected in the Show-cause cum suspension memo. The case as dealt with by this Court in WPA 16949 of 2024 is not similar to that of this case. In the earlier case (WPA 16949 of 2024), the authority concerned was issued the Show cause cum suspension on the previous occasion and by their own accord suo moto they have withdrawn the said suspension cum show case Notice. But in the present case, the suspension and Show cause Notice was issued upon the petitioner on the earlier occasion wherein he was found guilty for some contravention and some punishment was imposed in terms of fine.

In perusing the provision of Sub-clause 2 of Clause 45 of the said Control Order, it appears that the authority may pass an order by putting the licence under suspension if they found that the dealer have contravened the provisions for second or third time, whereas the schedule-‘C’ of the said Control Order stated about the punishment of suspension can immediately effected only when the

contravention was made for third time. To assess the true purport and meaning of the said provision Sub-section 2 of Section 45 is required to be set out below:

“(2) If a Dealer, who is found guilty of an offence committed under clause (1) is again found to have contravened the same provisions for the second time or third time, the licensing authority may render his license under suspension immediately and after giving him an opportunity of being heard and for reasons to be recorded in writing, impose punishment of either fine or reduction of the volume of business according to the gravity of the offence or termination of his license as stipulated in Part I of Schedule C”.

Sub-Section 2 of Section 45 specifically dealt with the provisions when the contravention was made by the licensee for second time or third time. It has been stated that the licence may put under immediate suspension but the opportunity has given to the licensee of being heard and after hearing if it appears that the imposition of punishment is either fine or reduction of valuable business instead of termination of licence, the authority is at liberty to pass such order.

In the present case, the licence of the present petitioner was put under suspension and he was given seven days Show cause Notice to file his written explanation. Today is the last day of submission of written explanation.

This Court is in dark whether the offence was committed by the petitioner for the third time or not.

Considering the true nature of offence as demonstrated in the Show cause Notice it appears to me that the punishment as disclosed in the suspension cum Show cause Notice, *prima facie*, not commensurate with the offences and charges as made 1 to 9 paragraph of such Show cause Notice. Moreover, the issue can only be dealt with by the concerned authority not by this Court. Thus, in my view, the present petitioner has every opportunity to agitate his grievances before the authority concerned.

Thus, at this juncture, I find no justification to entertain the merit of this case as regard to the plea of *mala fide* and personal vengeance by the concerned authority against the present petitioner .

The concerned authority has acted upon the inspection memo and issued the Show cause cum suspension Notice. This writ Court cannot entertain the merit of alleged offences and the alleged discrepancies as dealt with by the concerned authority.

However, I also make it clear, if the concerned authority found to be justified that the punishment is not commensurate to the offences,

then the licence of the present petitioner may be restored according to the provisions of law.

Under the above observation, the application being **WPA 21825 of 2024** is disposed of.

I find no justification to pass any favourable order in favour of the present petitioner. The present petitioner may approach the concerned authority with his written explanation within 10 days from the date of passing of this order; on such explanation the concerned authority shall dispose of the same according to the provisions of law, within two weeks thereafter by providing a reasonable opportunity of being heard to the petitioner.

As affidavits are not exchanged between the parties, the allegation made in the writ petition shall deem to have been not admitted.

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

(Subhendu Samanta, J.)