
(2014) 07 CAL CK 0071
In the Calcutta High Court
Case No : W.P. No. 19180 (W) of 2014

Ajoy Bakli

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Citation : (2014) 142 FLR 1072 : (2014) 4 LLN 380

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Debabrata Saha Roy and Pingal Bhattacharyya, Advocate for the Appellant; Sushoval Sengupta and Subir Pal, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Joymalya Bagchi, J.—Supplementary affidavit filed today is kept with the record.

2. The impugned suspension and show cause notice dated 2.7.2014 passed by the respondent no. 4, District Controller, Food and Supply, Paschim Medinipur, has been assailed.

3. It appears that a physical verification was jointly conducted on 29.6.2014 at the godown cum office room of the petitioner and as per joint physical verification report, the following irregularities in stocks were detected:

1. Rice- 5.3894 Qtls. Shortage

2. Wheat- 3.646 Qtls. Excess

3. Sugar- 42.9 Kg. Shortage

4. It was also detected-

1. That there was no sign board/stock cum rate board displayed in the godown at conspicuous place.

2. That the PDS stock was kept haphazardly and un-hygienically.

3. No Complaint book or Inspection book was available in the godown.

5. On that premise, the respondent no. 4 observed as follows:

.....it appears that you have violated the condition under para- 2, 5, 6, 7, 9 & 10 of the Licensing conditions.

6. By the selfsame notice, the petitioner was placed under suspension until further orders.

7. Mr. Saha Roy, the learned counsel appearing for the petitioner, submits that inspection was not properly held and that there was no irregularity whatsoever. He further submits that the shortage in stock, if at all, were within the permissible limits. He also submits that the expressions used in the show cause notice disclose a closed and preconceived mind on the part of respondent no. 4. Suspension was directed without recording requisite satisfaction as to its immediate necessity. In this connection, he refers to the proviso to paragraph 31(b) of the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 (hereinafter referred to as the "Order of 2013").

8. Mr. Sengupta, learned counsel appearing for the respondents, submits that pursuant to a joint inspection large scale irregularities were noted and therefore, the show cause notice had been issued. He refutes that there was any conclusive formation of opinion and the show cause notice was issued upon prima facie satisfaction as required under law. He further submits that the suspension was lawfully issued.

9. Having considered the rival submissions of the parties and the materials on record, I find that the petitioner has been called upon to reply to the allegations in the impugned show cause notice. Factual correctness of such accusations in the show cause notice cannot be gone into in exercise of writ jurisdiction at this stage. The petitioner is at liberty to controvert them and lead rebuttal evidence in support of his defence in response to the show cause notice in accordance with law. Undisputedly, respondent no. 4 had requisite jurisdiction to issue the impugned show cause notice.

10. Coming to the issue as to closed mind on the part of the respondents at the time of issuance of the show cause notice, I am unable to agree with the submission of Mr. Saha Roy, learned counsel for the petitioner, that show cause notice is couched in such language that betrays such state of mind. After enumerating the allegations against the petitioner it has been observed as follows:

....it appears that you have violated the condition under para- 2, 5, 6, 7, 9 & 10 of the licensing conditions.

11. The said expression when read in the context of the entire show cause notice, clearly shows that the same is a prima facie one and is not conclusive as to the allegations contained therein. Hence, I do not find that in the facts of the

case the show cause notice requires to be interfered with at this stage on the score of being issued with a closed and preconceived mind.

12. Coming to the issue of suspension, I find that such power can be issued by the respondent no. 4 only upon recording that immediate suspension is necessary in the interest of general public. Proviso to paragraph 31(b) of the Order of 2013 reads as follows:

31(b) If a Distributor or his authorized agent or employee or any other person acting on his behalf contravenes any of the provisions of this order or any of the regulations made there under or any of the conditions of his licence or any discrepancy is detected on examination of the documents and/or stock of public distribution commodities or weighing devices, the District Controller, Food and Supplies shall issue a notice to the distributor for showing cause in writing of such contravention or discrepancy.

The District Controller, F & S, may also place the licence under suspension till disposal of the proceeding if in the opinion of District Controller, F & S, immediate suspension is necessary in the interest of general public.

In case of suspension the concerned dealers may be tagged temporarily with the neighbouring distributor for uninterrupted supply of public distribution commodities.

13. A perusal of the impugned show cause notice does not show reflection of mind on the part of the respondent no. 4 to the aforesaid exigency, which is a condition precedent for exercise for the power of suspension.

14. Accordingly, I set aside the portion of the impugned notice whereby the petitioner has been placed under suspension. The petitioner is at liberty to reply to the show cause notice in accordance with law within a period of fortnight from date and the respondent no. 4 shall conclude the enquiry within a period of two months from date.

15. This order shall not preclude the respondent no. 4 in exercising his power relating to suspension in accordance with law if he is so satisfied.

16. Since the respondents are not called upon to file affidavits, the allegations made in the writ application are deemed to have not been admitted by them.

17. The writ application is disposed of with the aforesaid directions. There shall be no order as to costs.