
(1966) 07 CAL CK 0025
In the Calcutta High Court
Case No : Matter No. 327 of 1965

Basudeo Gupta

APPELLANT

Vs

Director of Rationing

RESPONDENT

Date of Decision : 20-07-1966

Acts Referred:

Calcutta Police Act, 1866 — Section 39
Constitution of India, 1950 — Article 14, 19(1), 226
Essential Commodities Act, 1955 — Section 3

Citation : (1966) 2 ILR (Cal) 539

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Advocate : G. Mukherjee, for the Appellant; D. Gupta, for the Respondent

Judgement

B.C. Mitra, J.—In this application the Petitioner seeks appropriate writs and orders commanding the Respondents not to wit-hold delivery orders of sugar and also further commanding them to forbear from making any discrimination against the Petitioner.

2. In exercise of the powers conferred u/s 3 of the Essential Commodities Act, 1955, read with the Order of the Government of India No. G.S.R. 888, dated June 28, 1961, the Government of West Bengal (the Respondent No. 7 herein) promulgated the West Bengal Sugar Dealers Licensing Order, 1963 (hereinafter referred to as the Licensing Order). Under the Sugar Control Order, 1963, the Central Government and the Chief Director, allot quotas of sugar to different States in India. Under this order no producer of sugar can sell or otherwise dispose of sugar or deliver or agree to deliver sugar except in accordance with directions issued by the Central Government. Under the Licensing Order, no person is entitled to carry on business as a dealers except in accordance with the terms and conditions of a licence issued by the Licensing Authority. The Respondent No. 7 appointed a number of dealers for purchase, sale or storage of sugar exceeding fifty quintals within the State. These dealers who import sugar

from producers can sell the commodity only against delivery orders issued from time to time by the State Government in favour of other appointed dealers to carry on wholesale business of sugar. These appointed dealers who obtain sugar under the said delivery orders, sell sugar to retail dealers under orders of the Rationing Officers of the respective areas and the retail dealers, in their turn, sell sugar to holders of family identity cards and permits.

3. The Petitioner is a dealer appointed under the said Licensing Order and as such, he is authorised to purchase and store sugar for sale. The Petitioner claims a right to carry on business as a dealer of sugar subject to the provisions of the Licensing Order. The sugar dealers who act as wholesalers are linked to different zones of the rationing areas and the Petitioner, along with these other dealers, are the wholesale sugar dealers for the Mowrah North Zone. The delivery orders for different wholesale dealers are despatched to the offices of the Rationing Officers of the respective zones and the Rationing Officers, in their turn, hand over the delivery orders to the wholesale dealers.

4. As such dealer as aforesaid, the Petitioner had been receiving delivery orders of an average of 125 quintals per week approximately until suspension of the delivery orders as hereinafter stated.

5. It is alleged that the Petitioner's son Bejoy Kumar Gupta is the owner of the fair price shop No. 2719 at 72, Harimohan Bose Road, Howrah and he is a dealer under the West Bengal Rationing Order, 1964. Under the orders of the Deputy Controller of Rationing dated August 13/14, 1965, the Rationing Officer of Howrah North Zone delinked the family identity cards from the said fair price shop No. 2719 and transferred them to another shop. Thereupon the said Bejoy Kumar Gupta moved a writ petition in this Court and a Rule was issued and interim orders were passed restraining such delinking. The Petitioner alleges that the Respondents Nos. 1, 2, 3 and 5 have been annoyed for moving the said writ petition and it is, therefore, alleged that the Respondents, Nos. 1, 2, 3 and 5 have mala fide and animus against the Petitioner.

6. On August 23, 1965, the Petitioner went to the office of the Rationing Officer, Howrah North Zone, to take delivery of the delivery order due. The Petitioner was told that the delivery order in his name had not been received from the Food Directorate, though the Petitioner found that such delivery orders in the name of the Respondents Nos. 9 to 13 were handed over to them. On August 25, 1965, the Petitioner's Solicitor addressed letters to the Respondents protesting against the alleged illegal stoppage of the delivery orders. On September 3, 1965, the said Bejoy Kumar Gupta called at the office of the Deputy Controller of Rationing and requested the said officer to furnish him in writing with the grounds for not giving delivery order to his father. The said officer told the Petitioner's son that no further delivery orders would be issued in favour of the Petitioner. Although the delivery orders were suspended, the Petitioner's licence was not cancelled and no formal order of suspension of delivery orders was passed. It is in these facts that the Petitioner moved this writ petition and obtained a Rule nisi.

7. Mr. G. Mukherjee contended on behalf of the Petitioner, that the Respondent acted entirely illegally in refusing to make over the delivery orders to the Petitioner, to which he was entitled as a licensee under the Licensing Order. He argued that under Clause (6) of the Licensing Order the Licensing Authority could refuse to grant or renew a licence. Under Clause (7), if the holder of a licence, contravenes any of the terms or conditions of the licence, then the licence may be cancelled or suspended by order in writing of the Licensing Authority, provided that no such order is to be made unless the licensee has been given an opportunity of stating his case in writing against the proposed cancellation or suspension of the licence. Mr. Mukherjee argued that there was clear provision in the Licensing Order for cancellation or suspension of the licence, but the power to suspend or cancel the licence could be exercised only after an opportunity was given to the licence-holder of showing cause in writing against such cancellation or Suspension. In this case, Mr. Mukherjee argued, the failure on the part of the Respondents to make over the delivery orders to the Petitioner had the effect of suspension or cancellation of his licence, as he was prevented from carrying on his business as a licensed sugar dealer. Therefore, in effect, the Respondents have suspended or cancelled the licence of the Petitioner, without making a formal order to that effect, as such an order would have required the Respondents to give the Petitioner an opportunity of showing cause in writing. No such opportunity of showing cause was given to the Petitioner. The Respondents, therefore, Mr. Mukherjee argued, were trying to do indirectly what they could not do directly. If the Respondents for any reason decided to cancel or suspend the licence of the Petitioner, they must give him the opportunity of showing cause in writing as required by the proviso to Clause (7) of the Licensing Order. The Respondents, Mr. Mukherjee argued, were not entitled to withhold delivery orders from the Petitioner, so long as he continued to be licensed dealer. In spite of repeated requests, the Respondents refused to furnish the Petitioner with the grounds for which the delivery orders were withheld.

8. The next contention of Mr. Mukherjee was that in withholding the delivery orders and in refusing to make over the same to the Petitioner, the Respondents acted mala fide as they had animus against the Petitioner. It was because of this animus that the decision to withhold the delivery order was taken by the Respondents. The Petitioner's son had moved this Court in its writ jurisdiction and obtained a rule and interim orders, preventing the Respondents from delinking ration cards from his shop. It was argued that the decision not to give the delivery orders to the Petitioner was taken by the Respondents because of the Petitioner's son's act in frustrating the wrongful design of the Respondents in delinking ration cards from his shop. Mr. Mukherjee developed this argument by contending that allegations of mala fide and animus had been made by the Petitioner against the Rationing authorities, but these allegations had not been denied in the affidavit-in-opposition filed on behalf of the Respondents. The allegations, therefore, must be taken to be substantially correct. It was further argued that the allegations of mala fide and animus in the petition not having

been denied by the Respondents, their act in withholding the delivery orders must be struck down as it was bad on the ground of mala fide.

9. The third contention of Mr. Mukherjee was that the grounds set out in the affidavit-in-opposition for withholding the delivery orders were that the Petitioner had delayed in lifting sugar from the importers, in consequence of which ration shops had gone dry and complaints had been made against the Petitioner by owners of ration shops, who failed to obtain sugar from the Petitioner. There was no substance, Mr. Mukherjee argued, in this allegation made by the Respondents as there was in fact no delay at all and the ground of delay as an excuse for withholding the licence was wholly frivolous. In support of this contention, Mr. Mukherjee submitted that in the relevant week the delivery order was made over to his client on August 2, 1966 and the price of the sugar covered by the delivery order was deposited by him with the wholesale dealer, namely, Bharatiya Sugar Industries Private Ltd., on August 4, 1965. After having paid the price, there remained nothing for the Petitioner to do, but receive the sugar in his godown and make over the same to the ration shop owners on the basis of the permits issued by the Rationing authorities. The sugar covered by the said delivery order was delivered at the Petitioner's godown on August 7, 1965 and on the very same day the Petitioner delivered the sugar to various ration shop owners. There was, therefore, no delay in supply of sugar to the ration shop owners and the Petitioner, Mr. Mukherjee argued, was not guilty of laches.

10. In support of the first contention, namely, that an opportunity should have been given to the Petitioner to show cause against the suspension of the delivery orders, Mr. Mukherjee firstly relied upon a decision of this Court reported in *Kamal Singh Rampuria and Others Vs. Corporation of Calcutta and Others*, . In that case *Sinha, J.* (as he then was) considered the question whether a notice should be given to a party against whom an administrative order is proposed to be made and the objections of the party should be heard before an order was made against him. After considering several English decisions, it was held in that case that one of the recognised exceptions to the rule that an administrative order did not require previous notice or hearing of the objections of the party affected, was where the right of property was affected. It was held that although the Act under which the order was purely ministerial, a hearing was necessary in accordance with the elementary principles of natural justice. In that case a multi-storeyed building was declared as a market by the Corporation of Calcutta and the owners were called upon to take out and pay for necessary licences and also pay the scavenging tax under the Calcutta Municipal Act. The Liquidator of the company which owned the properties protested and prayed for a hearing. The Corporation of Calcutta through its Deputy Licence Officer informed the Liquidator that no hearing could be given and no previous intimation to the owners of the property was required under the Calcutta Municipal Act before declaring a property as a market. It was in these facts that the question whether a notice should be given to a party who is likely to be affected by an administrative order was considered by the Court and it was held that such a

notice ought to be given and the party affected must be given the opportunity of preferring objection. Relying upon this decision, Mr. Mukherjee argued that in this case, although the order or decision to suspend the delivery orders due to the Petitioner was an administrative decision or order, notice should have been given to the Petitioner of the order proposed to be made and the Petitioner should have been given an opportunity to prefer his objection and a hearing should have been given on these objections, before making the order. Mr. Mukherjee contended that the right to carry on the business as a dealer in sugar was a right to property and therefore the same principles should apply as in the case where property right is affected by an administrative order.

11. The next case relied upon by Mr. Mukherjee was also a decision "of this Court reported in *Mrs. Florence Manasseh v. A.S. Bam* (1962) 67 C.W.N. 36 . In that case, the Petitioner carried on the business in iron and steel cutting and scrapping. She was a "controlled stock holder" as well as a "controlled source" within the meaning of Iron and Steel Control Order. The Petitioner was prosecuted for alleged violation of the provisions of the Iron and Steel Control Order. During the pendency of the case against her, the Iron and Steel Controller suspended supply of iron and steel to the Petitioner until disposal of the criminal case, or until satisfactory explanation was furnished by her, Banerjee, J. followed the decision in *Kamal Singh Rampurea's* case Supra and held that the Controller should have conformed to the minimum requirement of natural justice before he could hold the Petitioner guilty of contravention of the Control Order and further, that the Controller should have framed charges against the Petitioner and allowed reasonable opportunity to show cause against the charge and also give her proper hearing. Mr. Mukherjee argued that in *Florence Manasseh's* case (1962) 67 C.W.N. 36 also the order was an administrative order, yet it was held that an opportunity should have been given to the Petitioner of showing cause and a hearing also should have been given to the Petitioner of showing cause and a hearing also should have been given to the Petitioner with regard to the objections raised by her.

12. The next case relied upon by Mr. Mukherjee was a decision of the House of Lords in *Ridge v. Baldwin* 1964 A.C. 40. In that case, a chief constable dismissed without specific charge being framed against him and it was held that the order of dismissal was bad on the ground that the principles of natural justice were violated, as the employee concerned was not informed of the charges made against him and no "opportunity was given to him of being heard. In that case also, Mr. Mukherjee argued, the order was an administrative order and it was struck down as no charges were framed against the chief constable and no opportunity of being heard was given to him.

13. Mr. D. Gupta, Learned Counsel for the Respondents, submitted that the order was an administrative order and the Petitioner was not entitled to any notice of the order proposed to be made, nor was he entitled to any opportunity to raise objections or a hearing with regard to such objections. In support of this

contention, Mr. Gupta relied upon the decision of the Supreme Court in *Kishan Chand Arora Vs. Commissioner of Police, Calcutta*, . In that case, an application for a licence for an eating house was made u/s 39 of the Calcutta Police Act and this application was rejected by the authorities and a contention was raised that the Applicant for the licence was not heard before the order for rejection was passed. The argument advanced on behalf of the Petitioner before the Supreme Court was that Section 39 of the Calcutta Police Act conferred naked and uncanalised powers in the grant or refusal of licence and that no criteria had been laid down anywhere in the Act to guide the discretion of the Commissioner. It was also contended that no provision was made for hearing an Applicant either orally or in writing before passing orders on an application for licence. The Act provided that the licence had to be granted upon certain conditions and those conditions had to satisfy three objects, namely, (i) that the person applying for a licence was the keeper of an eating house and he had actual and effective control and possession of that place, (ii) that the keeper was a person of good behaviour so that the eating house might not become a resort of criminals and (iii) that the keeper was in a position to prevent drunkenness and disorder among those who came to the eating house. The Supreme Court rejected the contention that Section 39, of the Act conferred arbitrary and uncanalised power without any criteria to the Commissioner in the matter of grant or refusal of a licence. On the question of a notice being given to the Applicant, it was held that the exercise of, the discretion by the Commissioner in granting or refusing a licence depended upon his subjective satisfaction as to whether the person applying for licence satisfied the three conditions mentioned above and that the order made by the Commissioner was an administrative order and though the Commissioner was expected to act reasonably, there was no duty cast on him to act judicially. Relying upon this decision, Mr. Gupta contended that the order made in this case was an administrative order and on the principles laid down by the Supreme Court in *Kishan Chand Arora Vs. Commissioner of Police, Calcutta*, , the Petitioner was not entitled to any notice nor to an opportunity of showing cause or of being heard.

14. In my view, the contentions of Mr. Mukherjee on the first question mentioned above are well-founded. The decisions of the Supreme Court in *Kishan Chand Arora Vs. Commissioner of Police, Calcutta*, is of no assistance to Mr. Gupta's client in this case, as in that case the discretion was exercised by the Act itself and the Commissioner was to exercise his discretion on the basis of those conditions. If these conditions were satisfied, the Commissioner, it was held, was bound to issue a licence and it was a matter of subjective satisfaction of the Commissioner as to whether licence should be issued to an Applicant or not. The decision of the Supreme Court in that case was based on the terms of the particular statute which laid down elaborate conditions upon which the discretion was to be exercised. In this case, on the other hand, the statute clearly provides for objections being filed by a licensee and a hearing being given to him on such objections, if the licence was proposed to be cancelled. The Respondents are

clearly trying, to achieve the effect of cancellation of licence in an in direct manner by suspending or withholding the delivery orders, whereby the Petitioner is prevented from carrying on the business of a dealer in sugar. For these reasons, the contention of Mr. Mukherjee on the first point must be upheld.

15. In support of the next contention of the Petitioner, namely, that the Respondents had animus against the Petitioner and acted mala fide in deciding to suspend the delivery order, Mr. Mukherjee submitted that allegations of mala fide had been made in paras. 15 and 16 of the petition. Particulars of mala fide had also been set out in those two paragraphs, namely, that the Petitioner's son Bejoy Kumar Gupta was a retailer under the West Bengal Rationing Order, 1964 and as such was the owner of a fair price shop No. 2719. An attempt was made to delink ration cards from this shop and transfer them to another shop, whereupon a Rule and injunction were Obtained from this Court by the Petitioner's said son and for that reason, the Respondents bore animus against the Petitioner and had acted mala fide. Mr. Mukherjee's contention was that these specific allegations of mala fide were not denied or disputed by the Respondents in the affidavit-in-opposition. In paras. 12 and 13 of the affidavit-in-opposition affirmed by Narayandas Banerjee on January 10, 1966, it had been admitted that the order delinking ration cards from the shop of said Bejoy Kumar Gupta had since been cancelled and withdrawn. Therefore, Mr. Mukherjee submitted, it was admitted that an improper and illegal order was made against the said Bejoy Kumar Gupta, which the Respondents were obliged to cancel or withdraw after a rule and injunction were issued by this Court. The Petitioner's case was that the Respondents, bore animus against the Petitioner because of his son's conduct in seeking relief in this Court against the illegal order of the Respondents. It was argued by Mr. Mukherjee that the allegations relating to animus and mala fide conduct had not been denied by the said Narayandas Banerjee in the affidavit-in-opposition. The failure to deny allegations made against persons, Mr. Mukherjee submitted, must be taken to substantiate charges relating to mala fide and animus. In support of this contention, Mr. Mukherjee firstly relied upon the decision of the Supreme Court in C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, in that case it was held that in order to enable the Court to scrutinise the allegation of mala fide and improper motive, persons against whom such allegations were made should come forward to place before the Court either their denial, or their version of the matter, so that the Court might be in a position to judge as to whether the onus that lay upon persons who made the allegations of mala fides, had discharged their burden of proving it and that in the absence of such affidavits or materials denying the allegations of mala fides, the Court was left to nothing the veracity of the allegations merely on test of probability with nothing more substantial by way of answer. It was also held that as the allegations made against the Chief Minister of Andhra Pradesh in that case were not denied by him personally, but there was a second-hand denial by the Secretary to the Home Department, which was merely hearsay, the allegation that the Chief-Minister was motivated

by bias and personal ill-will, stood un rebutted.

16. Reliance was also placed on another decision of the Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, . In that case also serious allegations were made against the Chief Minister and there were several matters of which he alone could have personal knowledge and that he alone could deny those allegations. But what was placed before the Court in answer to the charges was an affidavit by the Secretary of the Medical Department who could only speak from official records and not from personal knowledge. It was held that in those circumstances it was not proper to brush aside the allegations made by the Petitioner, particularly in those matters where they were supported by evidence of a documentary nature. Relying upon this decision, Mr. Mukherjee contended that allegations of animus and mala fide had been made by the Petitioner and full particulars of such allegations had also been set out in the petition, yet there was no denial that the decision to suspend delivery orders was not made mala fide or that the Respondents did not bear any animus against the Petitioner.

17. Mr. Gupta, however, contended that although the allegations of mala fide and animus had not been denied specifically in the said affidavit-in-opposition, the deponent had stated in the said affidavit-in-opposition that the order delinking ration cards from the said fair price shop had been cancelled or withdrawn and therefore, it could not be urged by the Petitioner that the allegations made by him in the petition had not been denied or dealt with in the affidavit-in-opposition. Mr. Gupta relied upon a decision of this Court reported in *Jnan Prosanna Dasgupta v. The Province of Bengal* AIR 1949 Cal. 1, in which it was held that facts must be proved which would establish that orders were made mala fide or made maliciously and that, even if the Court was suspicious, it could not hold the orders to be mala fide and mere suspicion would not do and further, that where allegations were too general and vague it would be dangerous to inter mala fides from them. This decision, to my mind, does not help Mr. Gupta's client as the allegations made by the Petitioner in the petition are by no means vague or general in nature. All the particulars have been set out and it has been admitted in the affidavit-in-opposition that an order delinking certain ration cards from the particular fair price shop was made and that such order was cancelled or withdrawn after this Court had issued a rule nisi and also an injunction.

18. In my opinion, there is sufficient proof of the fact that an order delinking ration cards from the shop of the Petitioner's son was made, which ultimately was recalled or cancelled. But in the facts of this case I cannot hold that the order has been made mala fide. The facts alleged in the petition raise a strong suspicion that the order has been made mala fide, but suspicion is no proof. Mr. Mukherjee's contention on the question of mala fides, in substance, was that the Court should draw an inference that the decision not to deliver the delivery orders to the Petitioner was made mala fide. The Respondents have admitted that the orders made relating to the ration shop of the Petitioner's son was recalled or withdrawn and further, that the allegations in para. 16 of the petition

are false. There is no material to hold that the impugned decision of the Respondents was the result or consequence of the conduct of the Petitioner's son in moving this Court under Article 226 of the Constitution and obtaining a rule nisi and an injunction. I cannot, therefore, hold that the decision not to deliver the delivery birders to the Petitioner have been made mala fide.

.19. The next contention of Mr. Mukherjee, was that the only ground made out by the Respondents for withholding the delivery orders was delay in lifting sugar from the importers, in consequence of "which ration shops had gone dry. Mr. Mukherjee contended that there was no substance in the explanation offered by the Respondents for withholding the delivery orders for the Petitioner. In support of this contention Mr. Mukherjee drew my attention to the three indents annexed to the supplementary affidavit affirmed by the Petitioner on March 29, 1966. These indents are in the name of three retailers, namely, Mrityunjoy Kundu, Laxminarayan Radheshyam and Rabia Bibi and in all these three indents there is an entry that they are valid on August 7, 1965, although these indents are all dated August 2, 1965. Mr. Mukherjee next drew my attention to the daily stock register which is also annexed to the said affidavit and submitted that it appeared from the entries in this register that sugar was in fact distributed by the Petitioner to the retailers on August 7, 1965 and therefore, Mr. Mukherjee submitted that the retailers actually got the sugar on the very date for which the indent issued to them by the Rationing authorities was valid. It was, therefore, argued that there was in fact no delay in lifting sugar or delivering the same to retailers.

20. It was next contended by Mr. Mukherjee that delivery orders issued to dealers were valid for ten days from the date of issue, as would appear from annEx. "III" to the affidavit affirmed by Basudeo Gupta on January 31, 1966. The Petitioner deposited the money for supply of sugar, to the importer, Bharatiya Sugar and Industries Private Ltd., on August 4, 1965, as would appear from annEx. "IV" to the said affidavit. But Mr. Mukherjee submitted that although payment was made on August 4, 1965, the said importer did not deliver sugar to the Petitioner until on August 7, 1965, on which date the Petitioner started delivering sugar to the retailers. It was argued that the Petitioner could do nothing more than pay the money to the importer, who was to deliver the sugar to the Petitioner's godown and therefore, it was argued that there was no delay on the part of the Petitioner in lifting sugar and delivering the same to the retailers.

21. In my view, however, this Court cannot and should not go into the question if there was delay in taking delivery of the" sugar and in distributing the same to the retailers. -The Court is not sitting in appeal over the decisions of the Respondents in the matter of withholding the delivery orders to the Petitioner. If on the materials before the Respondents, they have come to a decision that there was delay in lifting the sugar or in delivering the same, it is not for this Court to weigh the evidence before the Respondents, which led them to come to

the conclusion that there was delay. Furthermore, it can by no means be said that the Respondents are judicial or quasi-judicial tribunals and for that reason the decisions taken by them or orders made by them can be revised, set aside or quashed by issuing writs and orders. If the Respondents have come to the conclusion that there was delay, it is not for this Court to revise or set aside such a decision on the ground that there was insufficient material before the Respondents. I cannot accept Mr. Mukherjee's submission that this Court should go into the materials set out in the several affidavits filed by the parties and examine the question if there was delay as alleged by the Respondents,

22. Mr. Mukherjee, however, raised another contention that there was discrimination on the part of the Respondents in the matter of issuing delivery orders to the various dealers of sugar. He argued that the Petitioner was a licensee under the Licensing Order along with several other persons and as such the Petitioner was given the delivery orders for distribution of sugar. The Respondents have without any lawful excuse withheld the delivery orders from the Petitioner and thus they have discriminated against the Petitioner. In support of this contention Mr. Mukherjee relied upon a Bench decision of the Gujrat High Court reported in *Ramanlal Nagardas and Others Vs. M.S. Palnitkar and Another*, . In that case, the Petitioners were members of an association of licensed sugar dealers and they challenged the order of the Collector whereby the wholesale distribution of sugar was to be entrusted to co-operative societies. It was held that the State could make a classification for the purpose of achieving legislative objects, but such classification must satisfy two conditions, namely, that it must be founded on an intelligible differentia which distinguished those who are grouped together from other and secondly, that the differentia must have a rational relation to the object sought to be achieved by the legislation. It was held that the order of the Collector was void by reason of violation of Article 14 of the Constitution, in so far as the State Government entrusted the wholesale distribution of sugar to co-operative societies to the exclusion of the other licence-holders and this was discriminatory between licence-holders who were co-operative societies and those who were not. This decision does not support Mr. Mukherjee's contention in the facts of this case. There has been no grouping or classification between two groups or classes of dealers nor had any order been made whereby any group or class has been deprived of the right to carry on business.

23. The next case relied upon by Mr. Mukherjee was a decision of the Punjab High Court reported in *Lai Chand Jagannath v. The District Food and Supplies Controller* AIR 1965 Punj. 410. In that case, the Petitioner was a retailer in Sugar. An order was issued under the Essential Commodities Act, 1955, under which dealers in sugar were required to obtain licences. Thereafter all retail dealers were required to form syndicates and licence was to be given to the retailers through this syndicate. The Petitioner presented the petition and contended that individual licensees had been prevented from obtaining licences and the order, therefore, was bad on the ground of discrimination. It was held,

following an earlier decision of the same High Court, that the creation of monopoly which is confined to co-operative societies and the bar against individual licensees from becoming its members, was liable to be struck down on the ground of discrimination. This decision also does not help Mr. Mukherjee as his client's right to hold a licence and also to obtain delivery orders as such licensee had not been effected nor has a monopoly been created in the sugar trade of a particular class or group of individuals or associations.

24. Mr. Mukherjee next relied upon another decision of the Supreme Court in *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, . In that case, while discussing the question of the validity of Clause (3) of the Non-ferrous Metal Control Order, 1958, it was held if Section 3 of the Essential Commodities Act, 1955, conferred any power to do anything which was in conflict with the Constitution and violated any of the fundamental rights conferred thereunder, that alone would be sufficient for holding that the section was void being ultra vires the Constitution. Mr. Mukherjee relied upon the observations of the Supreme Court that a statute which was in conflict with the Constitution, must be declared to be void. This decision, to my mind, again, is of no assistance to Mr. Mukherjee, as there is no challenge to the vires either of the Essential Commodities Act, 1955, or the said Licensing Order; nor is it the Petitioner's case, as made out in the grounds under para. 34 of the petition, that any of the provisions of the said Act or the said Order is void as it is in conflict with any provision in the Constitution.

25. Mr. Mukherjee also made a passing reference to the decision of the Supreme Court in *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, . In that case, the Supreme Court held that Clause 4(3) of the U.P. Coal Control Order, 1953, was void as it imposed unreasonable restriction upon the freedom of, trade and business guaranteed under Article 19(1)(g) of the Constitution. The question of enforcing the fundamental rights regarding freedom of trade under Article 19(1)(g) of the Constitution does not arise in this case and so I need say nothing more on this subject.

26. In the result, this application must succeed on the first contention of Mr. Mukherjee discussed earlier in this judgment. In my opinion, the Respondents have no authority or jurisdiction to suspend or withhold the delivery orders for sugar to which the Petitioner was entitled, as a licensee, without giving the Petitioner an opportunity to raise objections against the proposed order of suspension, and also without giving him an opportunity of being heard with regard to such objections. The Respondents cannot and must not be allowed to do indirectly what the Licensing Order prohibits them from doing directly. If the Petitioner is an undesirable dealer, his licence may be cancelled or suspended according to the procedure in the Licensing Order. There is nothing in the said Licensing Order which authorises the Respondents to make an order of suspension of the delivery orders or to withhold the same from the Petitioner without giving him an opportunity to show cause and without hearing his

objections, if such objections are raised.

27. For the reasons mentioned above, the rule is made absolute. Let, a writ in the nature of mandamus issue directing the Respondents not to withhold the Petitioner's delivery orders of sugar. Let a writ in the nature of certiorari issue quashing the order or decision of the Respondents to withhold the delivery orders of sugar to which the Petitioner is entitled as a licensee. This order, however, will not debar the Respondents from taking any further or other action against the Petitioner, as they may be advised, according to law. Each party to pay its own costs.