
(2018) 03 CAL CK 0042
In the Calcutta High Court
Case No : W.P. 20103(W) of 2016

DIPA DUTTA

APPELLANT

Vs

THE STATE OF WEST BENGAL & ORS.

RESPONDENT

Date of Decision : 08-03-2018

Acts Referred:

Citation : (2018) 03 CAL CK 0042

Hon'ble Judges : SUBRATA TALUKDAR, J

Bench : Single Bench

Advocate : Pingal Bhattacharyya, Subhankar Bandopadhyay, S. Banerjee

Final Decision : Dismissed

Judgement

Subrata Talukdar, J

This matter has a chequered history.

The petitioner was originally appointed as a M.R Dealer/Fair Price Shop owner (for short FPS). The dealership became the subject matter of an

investigation/enquiry and, pursuant to a spot inspection at the FPS, a show cause notice dated 23rd March, 2015 was issued by the Rationing Officer,

Santragachi-Jagacha, the respondent no.6 to the petition.

The show cause notice (for short SCN), inter alia, alleged that when the shop was visited at about 9.00 am on 21st March, 2015, the Inspecting Team

detected several discrepancies.Â The discrepancies related to both non-availability/non-maintenance of the stock records in the form of Ration

Board, Stock Book, Inspection Book etc. Additionally, shortage of rationing articles, such as rice, wheat and sugar was also detected. It was proposed

that the petitioner/dealer should be acted against for contravention of clauses 26(4)(c)&(d) read with 26(6)Â of West Bengal Urban Public

Distribution System (Maintenance and Control) Order, 2013 (for short the 2013 Control Order).

In an interesting turn of events, the petitioner decided to surrender the dealership and, in this connection, addressed a letter to the respondent no.6

dated 26th March, 2013. The petitioner represented that due to her family condition tied to the impending birth of her next child, it would not be possible

for her to further manage the allotted dealership, viz FPS 3581. Therefore, the respondent no.6 was requested to accept the surrender of her licence.

In the meantime, the SCN dated 23rd March, 2015 was proceeded with by the respondent no.6 and a hearing held in the chamber of the respondent

no.6 on 12th May, 2015. The hearing was attended both by the petitioner/licencee as well as the officers of the Rationing Department connected to

the issue.

At the hearing it was, inter alia, recorded on the basis of the available materials, that the FPS licence No.3851 standing in the name of the petitioner

be terminated for violation of the provisions of clauses 26(4)(c),(d),(f), 26(6), 26(12) and 26(17) of the 2013 Control Order. However, the order of

termination could not be given effect to in view of the order of the Court in WP No.33258(W) of 2013 dated 27th November, 2013.

On the offer of surrender of the licence by the petitioner (supra), by a communication dated 22nd December, 2015 of the respondent no.6, the

petitioner was informed that the FPS licence standing in her name now stood cancelled. The communication dated 22nd December, 2015 was

challenged before the Hon'ble Court by the petitioner in WP No.30691(W) of 2015 and, the letter of cancellation dated 22nd December, 2015

was stayed.

The entire issue of FPS dealership No.3581 as allotted to the petitioner travelled once more to the Hon'ble Court and, was decided by an order

dated 10th May, 2016 in WP No.30691(W) of 2015. The Hon'ble Bench, after discussing the flow of events connected both to the purported

termination of licence and purported surrender of licence vide the orders as recorded above, observed as follows: "Considering the submissions

advanced by the learned Advocates for the respective parties and after perusing the records and also after perusing the rival and contradictory

comments of the officers at the time of hearing as appears at page 30 of the writ

petition, as referred above, I am of the view that the contradictory opinion has been formed by the two officers, namely, one Somnath Bhattacharjee, Chief Inspector, formed the opinion in favour of the petitioner whereas other officer, namely, Himanish Das, Inspector, formed the opinion against the petitioner, therefore, I cannot shut my eyes on the law point that the Rationing Officer, Santragachi-Jagacha, Howrah, who is the appropriate authority, did not take any decision independently but the decision was taken on 22nd December, 2015 by the Rationing Officer, Santragachi-Jagacha, Howrah after obtaining approval from the Director of Rationing, Food & Supplies Department, West Bengal, which is the appellate forum of the licensee.

Â Therefore, in my considered view, there is some substance on the submissions made by Mr. Saha Roy that the impugned decision dated 22nd December, 2015 cannot be sustained as it has been taken after obtaining approval from the Director of Rationing, Food & Supplies Department, West Bengal who is admittedly the appellate authority.

Considering the submissions advanced by the learned Advocates for the respective parties and after perusing the records and the relevant Clause, in my considered view, the impugned order dated 22nd December, 2015 issued by the Rationing Officer, Santragachi-Jagacha, Howrah cannot be sustained in the eye of law. Accordingly, the impugned order dated 22nd December, 2015 issued by the Rationing Officer, Santragachi-Jagacha, Howrah is hereby quashed and set aside.

I direct the Rationing Officer, Santragachi-Jagacha, Howrah to take a fresh decision independently without being influenced by any higher officer, that is to say, Director of Rationing, Food & Supplies Department, West Bengal, within a period of four weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner or her authorised representative and communicate the decision to the petitioner within two weeks thereafter. With this direction, this writ petition is disposed of.â??

Following the mandate of the Honâ??ble Court vide the order of 10th May, 2016 (supra), the respondent no.6 ultimately held the hearing on 03rd

June, 2016 and communicated his order to the petitioner on 24th June, 2016. From the records/minutes of the hearing maintained by the respondent

no.6, the respondent no.6 came to the conclusion that the FPS dealership has

long closed and, therefore has now become defunct. The letter of surrender of dealership as communicated by the petitioner has gained finality and, no satisfactory reason can be now found to re-open the defunct FPS.

After hearing both Mr.Battacharya and Mr.Bandhopadhyaya, Learned Counsel for the petitioner and for the State respectively, the matter was reserved for â??Final Orderâ?? by this Court on 21st December, 2016.

However, due to the sustained non-traceability of the original record, the Court upon a mentioning by the parties, by order dated 20th November, 2017 directed reconstruction of the original writ petition by the Registry on the basis of all the documents to be supplied by the petitioner.

Subsequently, by a Note dated 22nd November, 2017, the Registry demonstrated compliance of the order dated 20th November, 2017 as follows:

â??Honâ??ble Court has been pleased to direct to reconstruct the records on the basis of the entire documents to be supplied by the petitioner for self and for the Staterespondents.

In this context, it is humbly submitted that the Writ file being W.P.No.20103 (W) of 2016 has been traced out and now in the custody of Mandamus Section.

The instant file is now being placed before the Honâ??ble Court for necessary direction. The matter is fixed on 4th December, 2017 under the heading â??To be mentionedâ??.

Lay before the Honâ??ble Bench for favour of an order.

Sd/-

Assistant Registrar (Mandamus-II)â??

Thereafter by order dated 27th November, 2017 this Court once again reserved the matter for â??Final Orderâ?? in presence of learned counsel for the petitioner and the State-respondents.

Having heard the parties and considering the materials placed, this Court arrives at the following findings:

(A) That the factum of surrender of the dealership licence has not been denied byÂ any of the parties. It is the effect of the surrender that is being now disputed/denied by the petitioner.

(B) This Court is unable to speculate on the reasons which first prompted the petitioner to surrender the FPS and, thereafter take the reverse stand

both before the Rationing Authority and then before the Court.

(C) This Court must also notice that the entire issue was remanded to the respondent no.6 by the Honorable Bench vide its solemn order dated 10th

May, 2016 and, the respondent no.6 has accordingly taken a decision.

(D) This Court does not find that the respondent no.6 has taken a decision infected by mala fides, malice or, in irregular exercise of his jurisdiction. As

a first forum on facts the respondent no.6 has taken a considered view which is neither whimsical nor, influenced by the decision of any higher authority.

(E) This Court also cannot be unmindful of the fact that the order of the respondent no.6 is subject to the powers in appeal of the Director of

Rationing, Food and Supply Department, Government of West Bengal.

Therefore, the petitioner, in law, is entitled to challenge even a wrong decision but, rightly arrived at, before the Appellate Authority but, not before a

Writ Court.

In the backdrop of the above discussion, the order impugned of the respondent no.6 dated 24th June, 2016 does not call for any interference.

WP 20103(W) of 2016 stands dismissed.

There will be, however, no order as to costs.

Notwithstanding the above directions the petitioner shall be entitled to participate and be considered in any fresh selection process for FPS dealership

on merits in accordance with law.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.