
(1967) 04 CAL CK 0016
In the Calcutta High Court
Case No : A.F.O.O. No. 202 of 1966

Director of Rationing and Others

APPELLANT

Vs

Basudeo Gupta and Others

RESPONDENT

Date of Decision : 06-04-1967

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1967 Cal 620 : 71 CWN 576

Hon'ble Judges : D.N. Sinha, C.J.; A.K. Mukherjea, J

Bench : Division Bench

Advocate : Dipankar Gupta, for the Appellant; Chittatosh Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Sinha, C.J.—The facts in this case are shortly as follows:

In exercise of powers conferred u/s 8 of the Essential Commodities Act, 1955 read with the order of the Government of India No. GSR 888 dated 28th June 1961, the Government of West Bengal promulgated the West Bengal Sugar Dealers Licensing Order, 1963 (hereinafter referred to as the "licensing order") which came into force on and from the 15th January 1963. Under the said licensing order, a "retailer" means a person engaged in the business of purchase, sale or storage for sale of sugar in quantities exceeding 60 quintals at any one time, but does not include an industrial undertaking which is engaged in the manufacture and production of sugar and which is registered or licensed under the Industries (Development and Regulation) Act, 1951 (Act 65 of 1951). The "licensing authority" means an officer appointed by the State Government to exercise powers and perform the duties of a licensing authority in respect of such areas as may be specified. Under para 3 of the said Order, no person is permitted to carry on business as a retailer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority.

2. It will thus appear that the licensing order merely controls the distribution of sugar by confining such distribution to licensed dealers. It is not analogous, for example, to the Steel Control Order where the entire distribution of steel is brought under the superintendence of the Steel Controller acting through controlled stockists. All that it provides for, is that a dealer wishing to deal in sugar in quantities exceeding 50 quintals at any one time, should take out a licence. There is no provision in the said licensing order for Government to supply sugar to a dealer. Next we come to a Central order known as the (Sugar Control) Order, 1963 which was originally enacted under the Defence of India Rules, 1961 and was reenacted in 1966 under the Essential Commodities Act, and is hereinafter referred to as the "control order". Under the said control order, "a recognised dealer" means a person carrying on the business of purchasing, selling or distributing sugar and licensed under the order relating to the licensing of sugar dealers for the time being in force in a State or Union territory. A "producer" means a person carrying on the business of manufacturing sugar. Under para 8 of the control order, no producer shall sell or agree to sell or otherwise dispose of, sugar, or deliver or agree to deliver sugar from the appointed godown of the factory in which it is produced, except under and in accordance with a direction issued in writing by the Central Government or the Chief Director. Para 4 grants the Central Government or the Chief Director the power to issue a general order or special order to any producer or recognised dealer containing directions regarding production, description of stock, storage, sale, grading, packing, marking, weightment, disposal, delivery and distribution of sugar as he may think fit. Under para 5, the Central Government or the Chief Director has got the power to regulate the movement of sugar. Under para 6 It has power to fix the price. Under para 7, the Central Government or the Chief Director may, from time to time, by order, allot quotas of sugar to any specified State or area. Under para 8, the Central Government or the Chief Director may, from time to time by order issue directions to any producer or recognised dealer to supply sugar of such type or grade and in such quantities as it may think fit to such persons, organisations or State Governments as may be specified. The Central Government has also enacted the Sugar (Movement Control) Order, 1959 which lays down that no person shall take or cause to be taken sugar to any State or any part of a State except under permit or directions issued by the Central Government. We now come to the facts of the present case. It will be better to set out here the relevant allegations in the petition which show the exact position of the respondent No. 1 as a dealer. I set out below paragraphs 6, 7 and 8 of the petition.

"6. The West Bengal Government has appointed a number of dealers for purchase, sale or storage for sale of sugar exceeding 50 quintals sugar within the State. Some of the said dealers have been appointed for importing sugar from producers manufacturing sugar. The said dealers who import sugar can sell sugar only against delivery orders issued from time to time by the State Government in favour of other appointed dealers who carry on wholesale business of sugar.

7. The dealers obtain sugar under the said delivery orders sell sugar to the retail dealers under orders of the Rationing Officers of the respective areas. Such retail dealers who are generally appointed retailers of Food Ration Shops sell sugar to holders of Ration documents i.e Family Identity Cards and Permits.

8. Your petitioner is a dealer appointed under the said Licensing Order and your petitioner is authorised to purchase, sell and store for sell of sugar. The Licensing Authority of your petitioner is the Sub-Divisional Controller, Food and Supplies, Howrah. A copy of the said Licence for the current year is annexed herewith marked with the letter "A" ". The respondent No. 1 was appointed as a whole sale dealer of sugar in June 1961 by appointment No. SWR/III. At the relevant time, the area within which he was operating was Howrah Zone (Central) to Howrah Zone (North). On the 10th of July, 1963 general directions were issued for wholesalers a copy of which is set out in the paper book at pages 43 to 46. Instruction No. 1 is as follows:

"The wholesalers on receipt of the information from the Rationing Officer or D. C. R. should arrange for taking delivery of D. O. from the R. A. or D. C. R D. O. should be produced before the Importer without any loss of time along with the licence and the letter of authority".

There are two letters of complaint against the respondent No. 1. The first being dated 10th of August 1965 and the other dated 14th of August 1965 copies of which are let out at pages 33 and 68 of the paper book. These complaints how the following facts: On 2nd of August 1965 the respondent No. 1 received D. O. 07368 dated 28-7-66. On 6th of August 1965 dealers linked with him as wholesalers who were connected with the rationing shops, reported non-availability of sugar from him. The C. I. contacted the said respondent and requested him to lift out sugar and distribute it to the retailers immediately, otherwise the shops would go dry. Shri N. Chakravarty C. I. went to the said respondent's godown at about 3.45 p.m. but found it closed. He then contacted the said respondent at his residence at 72, Harimohan Bose Road and enquired of him about the stock of sugar. The said respondent told him that the stock had already been received. When however, he was informed that the godown was found closed, he said that the stock would be received in the evening of 7-8-65, but the dealers reported to N. Banerjee, Rationing Officer, Howrah Zone (North) that their shops were about to go dry for want of sugar. Upon this, loan slips had to be Immediately arranged to avoid the shortage in the F. P. shops. In para 17 of the petition, it is stated that on the 23rd August, 1965 the respondent No. 1 as usual went to the office of the Rationing Officer, Howrah (North) Zone to take delivery of the delivery order for the week. The said delivery order was not given to the said respondent although delivery orders were given to other wholesale dealers, namely, respondents Nos. 9 to 14. On the 25th of August, 1965 the said respondent sent a solicitor's letter, a copy whereof is set out at pages 17 and 18 of the paper book. After stating the fact that on 23rd August, 1965 the said respondent had gone to the rationing office, and had failed to get the delivery

order, and that he was told that his quota has not been sanctioned, the letter proceeds to state as follows:

"Under the provisions of Sugar Control Order 1963 you are bound to supply the weekly quota to my client and as such you have acted arbitrarily, illegally, mala fide and without jurisdiction or authority of law." This letter was framed as a demand of justice, indicating that legal steps will be adopted for redress. This was followed by another letter dated 2nd of September, and a letter dated 13th of September, 1965 in which the solicitor stated that if the weekly quota was not immediately given, legal proceeding would be taken. The Rule in this case was issued on the 23rd of November, 1965 upon the respondents to show cause as to why a writ in the nature of Mandamus should not be issued directing them to act in accordance with law and not to unreasonably restrict the business of the appellant by withholding the delivery order of sugar and further to forbear from making any discrimination against the said petitioner in the matter of issuing delivery orders and why a writ in the nature of Certiorari should not be issued setting aside cancelling or quashing the order of withholding delivery orders of sugar and for other reliefs. In the affidavit-in-opposition affirmed by Narayan Das Banerjee who acted as the Rationing Officer at the relevant time in the Howrah (North) Zone it is stated as follows:

(i) That the Government of West Bengal had not appointed anybody to act as wholesale dealer for purchase, sale or storage for sale of sugar as alleged in the paragraph 6 of the petition.

(ii) That a licence was issued to the respondent No. 1 by the Sub-Divisional Controller, Howrah under the said licencing order.

(iii) Some of the dealers who hold licences under the said licensing order were selected by the Director of Rationing of the Food and Supplies Department for obtaining delivery of sugar and distributing the same to fair price shops for sale to consumers holding ration cards or family Identity cards.

(iv) The respondent No. 1 was appointed one of such dealers to supply ration shops in Howrah (North).

(v) The respondent No. 1 was irregular in lifting stocks of sugar. The precise complaint is set out in paragraph 7 as follows:

"I state that the petitioner had not been carrying on the business as one of such distributors in a proper manner. The petitioner was irregular in lifting stocks of sugar for which delivery order was issued to him and to distribute the same to the Ration Shops concerned. In particular I state that on the 20th day of July 1965 he was granted a Delivery Order No. 07358 to obtain delivery of sugar from the importers for distribution as aforesaid but he failed to do so promptly and within a reasonable time as a result of which the Ration shops concerned were running out of stock."

3. The stand taken was that the said respondent had no legal right to obtain

delivery orders for supply of ration shops or the particular delivery order complained of and delivery orders were being issued to selected dealers who were carrying on their business effectively in, the interest of the general consumers. As the respondent No. 1 was not working satisfactorily, the delivery order for the particular week complained of, was not given to him. In answer, the said respondent in his affidavit-in-reply stated as follows in paragraph 9. He said that on 2nd of August, 1966 the office of the Rationing Officer, Howrah (North) handed over a copy of the delivery order No. 07358 addressed to Bhartiya Sugar Industries Private Ltd. directing it to deliver 100 bags of sugar to the appellant. The delivery order was valid for 10 days from the date of issue. On 4th of August, 1965 the said respondent deposited with Bhartiya Sugar Industries Private Limited a sum of Rs. 12,815 being the price of 100 bags of sugar covered by the said order. On 7th August, 1965 the transport agent of the supplier delivered the sugar at the said respondent's shop and the said respondent thereupon started to deliver sugar to the retailers. These facts have been stated to show that the said respondent had not committed any default. He takes a stand that he had a legal right to claim issue of the delivery order. On these facts, Mr. Mukherjee appearing on behalf of the respondents has argued three points. The first point is that the withholding of the delivery order was mala fide, secondly that there was discrimination violative of the Article 14 of the Constitution and thirdly, that the act of the authorities in withholding the delivery order amounted to suspension of the said respondent's licence and this was done without any notice to him to show cause and there was thus a violation of the law and rules of natural justice. It appears that in the court below, the last point was found to be of substance and the application succeeded. In other words, the learned Judge in the court below found that in effect the withholding of the delivery order amounted to a suspension of the licence of the respondent No. 1 and this was done without giving him any opportunity to show cause and the application was entitled to succeed. I shall now proceed to deal with these points. One thing which has been firmly established, is that an allegation of mala fides must not be made in a vague and general way, but all facts must be pleaded to show the mala fides. Whether it is a judicial act or an administrative act, mala fides go to the root and destroy the efficacy of either a judicial order or an administrative action. Therefore, an allegation of mala fides cannot be treated lightly. See C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, . Let us see what are the allegations of mala fides in this case. In paragraph 15 of the petition, it is stated that the said respondent's son Bejoy Gupta is the owner of F. P. S. 2719 at 72, Harimohan Bose Road, Howrah. He is an appointed retailer under the West Bengal Rationing Order, 1964. It is stated that the Deputy Controller of Rationing tried to delink certain ration documents i.e., family identity cards from F. P. S. 2719 and transferred them to another ration shop. Thereupon, the said Bejoy Kumar Gupta made an application to this Court in the writ jurisdiction and a Rule was issued on the 20th August 1965. This application is still pending. In paragraph 16 it is said that respondents Nos. 1, 2, 3 and 6 have been annoyed with the appellant and his family on account of

the matter and that is why the said respondents have mala fides and animus against the respondent No. 1. In my opinion, these allegations do not amount to allegation of mala fides, sufficient to support an application in the writ jurisdiction. The withholding was on or about 23rd of August 1965 and there is nothing to show that by that time the Rule issued by this Court in matter No. 279 of 1966 was served upon anybody or that the appellant or the other respondents came to know about the same. There is no allegation to that effect in the petition. Apart from this, the point seems to be covered by a Supreme Court decision *Kishan Chand Arora Vs. Commissioner of Police, Calcutta*, . That was a case under the Calcutta Police Act. Section 39 of the Calcutta Police Act 1866 empowers the Commissioner to grant licences to the keeper of eating houses. The Commissioner of Police, Calcutta refused to grant a licence to the applicant and between them there were previous litigations. One of the points taken was that the Commissioner had been annoyed with him because he went to the High Court by means of a writ application and that is why licence was not being given and this was said to be mala fide. In turning down this complaint, Wanchoo, J. said as follows:

"Then we turn to the question of mala fides. It is not the case of the petitioner that the Commissioner has any personal animus against him or that he is favouring Bhowmick. What he says in ground 41 of his petition in this connection is that the reasons given by the Commissioner in his order dated May 30, 1959, for refusing the licence are not correct and that the Commissioner is annoyed with him because he went to the High Court by means of a writ application. These in our opinion are no ground for holding that the order of the Commissioner passed in this case on May 30, 1959 is mala fide."

While mala fide exercise of discretion on the part of a public officer doing administrative duty might be struck down, the court never interferes with a bona fide exercise of discretion even if the action entails hardship. See *The State of West Bengal Vs. Anwar Ali Sarkar*, . I now come to the question of discrimination. The way that discrimination has been pleaded in the petition is as follows: In paragraph 10 of the petition the names of six dealers have been set out who are said to be carrying on business as a dealer of sugar under the licencing order, as wholesalers linked to different zones of the rationing areas. In paragraph 11 it is said as follows:

"The Messrs. Howrah Wholesale Consumers Stores (which is one of the names mentioned in paragraph 10), Howrah has been appointed as a wholesale dealer of sugar in respect of all the five zones including the aforesaid North Zone of Howrah Sadar and is consequently getting a much larger amount of sugar. No other person or body has been appointed as a dealer for more than one zone. In the premises, without any intelligible basis the said Howrah Wholesale Consumers Co-operative Stores Ltd. has been given a favourable treatment. The same amounts to discrimination against other dealers of sugar."

This paragraph has been dealt with in the affidavit-in-opposition affirmed by

Narayandas Banerjee on the 10th of January 1966 in paragraph 8. It has been stated that the Howrah Wholesale Consumers Co-operative Stores is an apex organisation for all primary consumers co-operative societies in the district of Howrah and its area of operation extends through out the district. As such, the society has been selected by the Director of Rationing for the whole of the district of Howrah under the statutory rationing with the result that it naturally gets more than others. There it, therefore, no basis for saying that there has been discrimination. The respondent No. 1 and the Consumers Co-operative Society which is an apex organisation stand on a different footing. It has now been established that discrimination can only be amongst equals. The next allegation is that while in September 1965 the said respondent was not given delivery order, some of the dealers other than the said respondent got their delivery orders. To this an explanation has been given. It is pointed out that the conduct of the respondent No. 1 was not found satisfactory. Of course, this is not admitted by the respondent No. 1 but if the matter stood there it would only be a question of disputed facts which cannot be resolved in this jurisdiction As I shall, however, presently show, such a question of fact is not necessary to be considered, because the said respondent has failed to show a legal right in obtaining any particular or specific delivery order.

4. Mr. Mukherjee on behalf of the respondent No. 1 has relied on a Division Bench judgment of the Gujarat High Court, Ramanlal Nagardas and Others Vs. M.S. Palnitkar and Another, . In that case the facts were as follows: The petitioner carried on business as partner in a firm which had been carrying on business as a wholesale sugar dealer The Central Government made an order called the Sugar (Control) Order, 1955 in exercise of the powers conferred on it by Section 3 of the Essential Commodities Act, 1955. u/s 5 of the Essential Commodities Act, 1955 the Central Government delegated its power to making orders u/s 3 of the Act to the State Government namely the State Government of Bombay. The State Government thereafter passed the Bombay Sugar Dealers Licencing Order, 1959. The Collector of Mehasana was appointed as the licensing authority for the Mehsana district in Bombay. The petitioner took out a licence under that Order on 24-6-59, Under Clause (6) of the Central Order, the State Govt. of Bombay was allotted a quota of sugar by the Central Government and the State Government divided the said quota amongst the districts. The Collector as the licencing authority advised the licence holders to form an association and entrusted the distribution of sugar of the quota for the Mehsana district to the association. Sometime in the beginning of January 1960 the association learnt that the Collector had issued orders to entrust the wholesale distribution of sugar only to co-operative societies and that sugar of the entire quota for the Mehsana district would be allotted only to co-operative societies for the distribution to the retail dealers and owners of hotels The petitioner thereupon challenged this order. Bhagwati, J. held that the prayer of the petitioner for an order directing that the State Govt. should only act in accordance with the provisions of law was too wide and that a writ of Mandamus could not issue in such general form

because any relief to be granted by the court must be specific and qua the petitioner. It is only when any right of the petitioner is infringed by an action of the State which was not in accordance with law that the petitioner could ask the court to issue an appropriate writ against the State. Merely because a licence was not being granted to the association would not be enough but the application succeeded upon another point namely, that the action of the State in entrusting wholesale distribution of sugar to co-operative societies only, to the exclusion of other licence holders, as a matter of policy, was violative of the fundamental right guaranteed by Article 14 of the Constitution. We find, therefore, that the facts in that case were entirely different. The wholesale distribution of sugar was only to be given to a class of persons without any intelligible differentia. That is not the case here. In the present case, no particular class has been singled out for special treatment. Another case referred to is *Lalchand Jagannath v. District Food and Supplies Controller*, AIR 1966 Punj 410. In that case, the petitioner was a retailer in sugar, and a licence holder under the relevant licencing order in force in Punjab. By an executive order all retail dealers were required to form a syndicate and a licence was only given to this syndicate. It was held that this was the creation of a monopoly and was discriminatory and violative of Article 14. These decisions find confirmation in the Supreme Court decision in *Mannalal Jain Vs. The State of Assam and Others*, . There also it was held that the granting of licences only to co-operative societies, was discriminatory and violative of Article 14 of the Constitution. As I have said, on facts there is no application of these authorities to the facts of the present case. I now come to the last point, namely as to whether the action of the authorities amounts to a suspension of the licence of the respondent No. 1 and whether the act has been violative of the rules of natural justice.

5. Before the learned Judge in the court below, Mr. Mukherjee had framed his case upon this point in the following manner: He said that his client was "entitled as a licence holder under the Licencing Order", to the delivery order which the respondents refused to make over, to his client. It was argued that the failure on the part of the respondents to make over the delivery order to the petitioner had the effect of suspension or cancellation of his licence, as he was prevented from carrying on his business as a licence holder. Therefore, in fact the respondents had suspended or cancelled the licence, although without making a formal order to that effect, and this was done without an opportunity of showing cause to the petitioner. The respondents, therefore, were trying to do indirectly what they could not do directly, since by the proviso to Clause 7 of the Licencing Order, a licence could not be cancelled or suspended unless the licensee had been given an opportunity of stating his case against the proposed cancellation or suspension of the licence. In support of his contention, a number of cases were cited and were considered by the Court below. The first case cited was a decision of *Mine Kamal Singh Rampuria and Others Vs. Corporation of Calcutta and Others*, . It was held there that one of the recognised exceptions to the rule that an administrative order did not require previous notice or hearing of the parties

affected was where a right of property was concerned. The right of property concerned was a right to immovable properties. The next case cited was Mrs. Florence Manasseh Vs. A.S. Bam and Others, . That was a case under Iron and Steel (Control) Order, 1956. It was held that suspension of supply of iron and steel to a controlled stockist under the Iron and Steel (Control) Order, 1956 must be upon notice to the party affected, otherwise there would be violation of the rules of natural justice. In my opinion, neither of these cases are relevant on the point in issue. The right to immovable property stands on a separate footing altogether and has no application to the facts of the present case. As I have already pointed out, the cases arising under the Steel Control Order are also on a different footing, because the very scheme of that Order makes the distribution of iron and steel, subject to a scheme, whereby the Steel Controller controls the entire distribution of iron and steel through "controlled stockists" of Government and the position cannot be equated with the position of a dealer under the Licencing Order. The teamed Judge in the court below came to the conclusion that from materials placed before him he was of the opinion that the withholding of the delivery order amounted to a suspension of the licence. In my opinion the materials do not warrant the conclusion that withholding of the delivery order No. 07358 amounted to the suspension of the appellant's licence. One must not be confused between the licencing provisions under the West Bengal Sugar Dealers' Licencing Order 1963 and the Sugar Control Order, 1963 passed by the Central Government. The licence of the respondent No. 1 is granted under the West Bengal Sugar Dealers' Licencing Order, 1963. This Order states that no person shall carry on business as a dealer in West Bengal except under and in accordance with the terms and conditions of a licence issued by the licencing authority. Under the said Order, there is no provision compelling either Government or the licencing authority to supply the dealer with any sugar. In this particular case, the Government was proceeding under the Rationing Orders passed under the Essential Commodities Act and it was its duty to find rations of sugar for certain shops in the Howrah area. For this purpose, it has appointed certain wholesale dealers for distribution of sugar to appointed retailer for sale to consumer holding ration cards or family identity cards or permits. The respondent No. 1 was selected one of such distributors. It is not at all clear in the petition or the affidavits as to the precise legal provision under which the delivery orders, including the delivery order No. 07358 involved in this case, were being issued. All that we find is that Government was in the habit of issuing delivery orders upon certain firms and handed these over to the wholesale dealers who thereupon approached the firms and took delivery from them and supplied the same to the ration shops. Undoubtedly, one of the ways in which Government would obtain sugar would be under the Central Government Sugar (Control) Order, 1963. Under that order, the Central Government regulated the sale of sugar by any producer or recognised dealer and inter alia ordered that certain amounts were to be supplied to the State Governments. In the petition all that is said is contained in paragraphs 6 and 7, namely that the West Bengal Government had appointed a number of dealers for purchase, sale or storage of

sugar within the State and such dealers should import sugar and sell sugar only against delivery orders issued from time to time by the State Government in favour of other appointed dealers who carry on wholesale business of sugar and that the dealers obtain sugar under the delivery orders and sell the same to the retail dealers under orders of Rationing Officer. So far as paragraph 6 is concerned, it has been denied in the affidavit-in-opposition that the Government of West Bengal has appointed anybody to act as wholesale dealer for purchase, sale or storage as stated in paragraph 6. The result is that we do not know the exact position with regard to the sugar which was the subject-matter of the delivery order No. 07368 in this case. There is no allegation that, apart from this delivery order, the appellant was unable by restriction of law, to procure any sugar in the market. There is not even an averment of that nature in the petition. I have several times asked Mr. Mukherjee to show me from the petition where the allegation has been made that, as a result of Government action, the respondent No. 1 had a licence but could not possibly secure any sugar in the market. He has been unable to show me any such allegation. All that we find from the records is that the West Bengal Government, in its Rationing Department, was making arrangements to supply the ration shops. So far as Howrah (North) is concerned it was done by issuing delivery orders on certain selected firms. The wholesale dealers who were selected were given the delivery orders and they in their turn paid for and took delivery of this sugar and supplied the ration shops. There is no agreement or statutory liability on the part of the Government or the Rationing authority to supply the respondent No. 1 or any of the selected dealers with any delivery orders, not to speak of a particular delivery order. For convenience of certain ration shops, they had selected some wholesalers through whom the work was accomplished. Since there was no legal liability to give any supply to these selected dealers, I do not see how the mere fact of selection confers a legal right to any such dealer to obtain supplies from the Rationing Department or to obtain any particular delivery order. Mr. Mukherjee has not minced matters, but in the court below specifically argued that his client had a legal right to get this particular delivery order. If he can substantiate this undoubtedly the withholding of the delivery order may be actionable. If it was a mere right in the region of contract, then of course it is not within the scope of a writ application. For breach of contract his client can take action, in damages. It is only if there was a statutory liability, a violation of it might bring it within the scope of a writ application. I regret to say that no statutory liability has been shown. That is why the plea has been taken of a violation of a constitutional provision. Impliedly, what is being argued is that the respondent No. 1 has a right to carry on business of his choice under Article 19(1) (g) and although Government can control it or regulates it in the interest of the public, it could not be entirely stopped. As I have said, even assuming that such a state of affairs would be capable of being remedied in the writ jurisdiction, there are not sufficient facts alleged or proved to the satisfaction of the Court which establish the existence of any such circumstances. Reference has been made to certain control orders and vague allegations of appointment of dealers

by the State Government. No particulars have been given and even the facts such as have been stated are not admitted, so that the writ court cannot act on the same. An arguable case might have been made out, if it was alleged and shown that the entire stock of sugar in the State had been commandeered and that the respondent No. 1, although the holder of 8 licence, could not possibly get any amount of sugar to carry on his business, unless he got the particular delivery order No. 07358. There is, however, no such allegation made in the petition nor has the same been proved to the satisfaction of the court by undisputed evidence. All that we have is that the Government, in supplying some ration shops had selected some wholesale dealers for supplying these retail shops, but as Government was not satisfied with the conduct of the respondent No. 1, it did not give a particular delivery order to him. If the respondent No. 1 has failed to prove any legal right in getting these delivery orders, or if it is not proved to the satisfaction of the court that there was any legal liability on the part of the Government to supply to him the amount of sugar covered by the delivery order, then I do not see why Government should be compelled to continue supplying sugar to a dealer whom it considers unsatisfactory or not suitable. These are administrative actions which the court cannot control. In any event any such conclusion involves disputed questions of fact, which cannot be resolved in the writ jurisdiction. Under the circumstances, we are unable to support the finding of the learned Judge in the court below that there has been any suspension of the licence of the respondent No. 1 at any time. Since this is so, no question of giving notice to the respondent No. 1 arises. The learned Standing Counsel has not argued the if it was in fact a suspension, notice was not required. For the reasons stated, the appeal should succeed and the finding of the court below is set aside and the application is dismissed and the Rule is discharged. There will, however, be no order for costs throughout. Interim orders, if any, are vacated.

A.K. Mukherjea, J.

6. I agree.