
(1975) 04 CAL CK 0010
In the Calcutta High Court
Case No : Matter No. 214 of 1972

Jagadish Lal Gupta

APPELLANT

Vs

The Director of Rationing and Others

RESPONDENT

Date of Decision : 25-04-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1975 Cal 471

Hon'ble Judges : Ghose, J

Bench : Single Bench

Advocate : K.P. Sinha, for the Appellant; Standing Counsel and Shib Lal Bose, for the Respondent

Final Decision : Dismissed

Judgement

Ghose, J.—By this application filed under Article 226 of the Constitution, the petitioner seeks to have an order dated 26th May, 1972 suspending the appointment of the petitioner as an Appointed Retailer in respect of the Area Rationing Shop No. 2805 in Hare Street Sub Area, Central Zone under the Rationing Officer at Bowbazar cancelled and/or rescinded. The petitioner's shop is situated at room No. 2 at No. 8/2, Hastings Street, Calcutta. The petitioner was appointed as a Retailed Dealer and/or Retailer in ration to sell rationed articles including rice, wheat etc. in accordance with the provisions of the West Bengal Rationing Order, 1964. The facts culminating in the making of the application as stated by the petitioner in the petition are set out here-under.

2. A complaint was lodged in the Hare Street Police Station by one Shivaji Das Gupta, a resident of No. 36. Aianta Road, Calcutta-32 that the employees of the petitioner had sold one kg suji to the said Shivaji Das Gupta at rupee 1.30 p. The petitioner on the basis of the aforesaid complaint was put under arrest and was kept detained in the police custody. The petitioner was released on bail by the Chief Presidency Magistrate on the following day. On 23rd May. 1972 a physical

verification of the stock in the ration shop of the petitioner was made and the stock book and other books of the petitioner were seized and taken away by the Police.

3. By a letter dated 26th May, 1972, written by the Director of Rationing, West Bengal to the petitioner the petitioner was asked to show cause to Shri S. K. Chandra, W. B. C. S., S. O. Initial Area--I who was appointed an Enquiring Officer within 7 (seven) days from the receipt of the said notice as to why the appointment of the petitioner as an appointed retailer should not be revoked under sub-paragraph 5 of Paragraph 3 of the West Bengal Rationing Order 1964 on the grounds mentioned in the said notice dated 26th May, 1972. The said grounds were stated to be (1) the case instituted against the petitioner and his employees for selling suji at Re. 1.30 p. per kg. instead of Re. 1.14 p. to one Shivaji Das Gupta and (2) discrepancies found in the stock of the petitioner's ration shop when physical verification was made on 23rd May, 1972. The particulars of the discrepancies in the stock were enclosed to the said notice.

4. The impugned order dated 26th May, 1972 mentioned hereinabove passed by the Director of Rationing West Bengal suspended the appointment of the petitioner as appointed retailed dealer in respect of A. R. Shop No. 2805 with immediate effect and the Rationing Officer of Bowbazar was requested to delink all cards from the A. R. Shop No. 2805 and to re-link them to other neighbouring shops. On 21st May, 1972, 2885 ration cards meant for adults and 85 ration cards meant for children were linked with the petitioner's A. R. Shop No. 2805. "Suji" at the relevant time was de-rationed and was no longer a rationed article with effect from 6th September, 1971. Thus, in any event, sale of "suji" at the said price i.e. Re. 1.30 p. could not be in violation of any of the provisions of West Bengal Rationing Order, 1964 or of any regulations framed thereunder. The said complaint according to the petitioner was engineered and made on account of the petitioner's refusal to accept the request by the youths of the locality to pay subscription at an exorbitant rate.

5. Mr. K. P. Sinha, the learned Advocate appearing for the petitioner submitted that the impugned order of suspension amounted to infliction of penalty even prior to holding of the enquiry or arriving at the finding that the petitioner was guilty of any offence within the meaning of West Bengal Rationing Order, 1964. Mr. Sinha submitted that the impugned order contravened the provisions of the natural justice and further was bad in view of the fact that the petitioner's means of subsistence was taken away by the impugned order of suspension and de-linking of ration cards linked with the petitioner's shop. Even though the impugned order be assumed to be an administrative order, the said order according to Mr. Sinha was fraught with civil consequence and should have been passed after giving reasonable opportunity to show cause against the proposed order of suspension and de-linking.

6. Mr. Sinha next submitted that proviso to sub-para (5) of paragraph 3 of the West Bengal Rationing Order, 1964 was bad inasmuch as the relationship

between the petitioner and the State of West Bengal was in the nature of Master and servant and the impugned order of delinking the cards linked with the A. R. Shop No. 2805 of the petitioner amounted to deprivation of subsistence allowance of the petitioner and in the absence of such provisions the said order of delinking was bad. In support of his contention, Mr. Sinha cited a number of authorities to which I shall advert later. Mr. Sinha further submitted that the said proviso was bad inasmuch as it was or in any event had the possibility of being discriminatory and thus offended against Article 14 of the Constitution.

7. The next contention of Mr. Sinha was that the power in regard to the formation of opinion by the said proviso was arbitrary and so invalid. Even though the said power be assumed to be valid, Mr. Sinha contended that before forming an opinion within the meaning of the said proviso, an enquiry ought to have been made. In the absence of such enquiry the impugned order of such suspension is bad. Mr. Sinha in support of this contention relied on various authorities including the celebrated case of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, . The impugned order, in any event, according to Mr. Sinha was mala fide inasmuch as it travelled beyond the limits of power granted by the statute and there was no fact in existence at all to enable the respondent Director of Rationing to form the opinion as he has done and so the impugned order should be struck down

8. It appears from an affidavit of Birendra Kumar Bose. the Rationing Officer, affirmed on 2nd August, 1972 that on various occasions discrepancies in the stock of ration articles were detected in the shop of the petitioner. In fact, on a previous occasion, the petitioner was let off with severe warning. Although "suji" was de-controlled at the relevant time, the petitioner and/or his employees could not sell "suji" at Re. 1.30 p. per kg instead of the controlled price of Re. 1.14 p. per kg. to Shri Shivaji Das Gupta on 23rd May, 1972. "Suji" could not be sold on that date at any rate above the retailed price of Re. 1.14 p. per kg. fixed by the Government by an order dated 7th May, 1969. Under the rules and regulations prevalent at the time, an appointed ration dealer could sell "suji" only to a ration-card holder and at the controlled price fixed by the Government. The petitioner could not from A.R. Shop No. 2805 sell "such" on 23rd April, 1972 to Sri Das Gupta who did not hold a ration-card and thus was guilty of gross misconduct.

9. It appears further that on the verification of stock being made by the Inspector of Bowbazar Rationing Office in the presence of the petitioner and one J. Biswas, Sub-Inspector of Police, Sec.-G on 23rd May, 1972 various discrepancies were found which have been set out in paragraph 9 of the said affidavit of the respondent No. 2 affirmed on 2nd August. 1972.

10. The learned Senior Standing Counsel appearing with Mr. Shiblal Bose, submitted that in view of the provisions of the West Bengal Rationing Order 1964 and in particular the proviso to sub-paragraph (5) of paragraph 3 of the said West Bengal Rationing Order, 1964, the impugned orders were validly passed.

11. The West Bengal Rationing Order, 1964 was made by the Governor of West Bengal in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (Act X of 1955). The West Bengal Rationing Order, 1964 was amended in 1969 by an order dated April 11 1969 published in the Calcutta Gazette on the same day. By the said amendment a proviso was added to sub-paragraph (5) to paragraph 3 besides making certain other amendments in the said sub-paragraph. Sub-paragraph (5) of paragraph 3 of the said order after the above-mentioned amendment reads as follows to wit:--

"3 (1)

(2)

(3)

(4)

Explanation

(5) Whenever in the opinion of the State Government it is necessary or expedient so to do in the interests of the general public, the State Government may amend, vary, suspend or revoke any appointment made under this paragraph after making an enquiry in which an opportunity shall be given to the holder of the appointment of being heard either in person or by an agent and for reasons to be recorded in writing and in every such case the holder of the appointment shall be bound to surrender on demand to the State Government the order of appointment for endorsement or cancellation as the case may be :

Provided that pending an enquiry in-to a charge against the holder of an appointment, the State Government may suspend his appointment if in the opinion of the State Government immediate suspension is necessary in the interests of general public."

12. I have underlined those portions of sub-paragraph (5) of paragraph 3 of the order quoted above which were amended in 1969.

13. Even though, the petitioner was appointed as a dealer by virtue of a contract entered into by and between the petitioner and the State of West Bengal, the provisions for amendment, variation, suspension and revocation of the appointment have been embodied in sub-paragraph (5) of paragraph 3 of the said order. The said provisions are statutory and therefore, a writ would be for any suspension or termination to such appointment as ration dealer in rationed articles made in contravention of the provisions laid down in sub-paragraph (5) of paragraph 3 of the said order. In the case of *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, the Supreme Court repelled the contentions of the appellant that the only remedy of a citizen against the arbitrary or unlawful action on the part of a public authority was by way of a suit and not by way of a proceeding under Article 226 of the Constitution where the source of the right violated lay in a contract. Similar were the observations of the Supreme Court in

the Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, .

14. Paragraph 22 (1) of the West Bengal Rationing Order confers power upon the State Government to delegate by general or special order any of its powers under paragraph 3 of the said order. In exercise of such power of delegation, the State of West Bengal by an order dated May 31, 1969 delegated its powers to the Director of Rationing in the department of Food and Supplies Government of West Bengal. The State of West Bengal is itself a delegate of the Central Government in making the West Bengal Rationing Order u/s 3 of the Essential Commodities Act, 1955. In the premises, redelegation by the State of West Bengal of its power under paragraph 3 of the said order to the Director of Rationing is challenged by the petitioner.

15. The Director of Rationing has been conferred with various powers under sub-para. (1) of paragraph 22 of the said order as also the form of the agreement appended thereto. The agreement between the petitioner and the State of West Bengal in the instant case is in the same form. Thus the powers in connection with the execution of the agreement as well as implementation of the provisions of the said West Bengal Rationing Order by the Director of Rationing were provided for in the terms of the said agreement as well as sub-paragraph (1) of paragraph 22 of the said order. The orders of the delegates are subject to review and revision by the State Government in terms of the provisions of sub-paragraph (2) of paragraph 22 of the said order. Essential Commodities Act, 1955 does not prohibit such delegation. The said Act on the contrary provided for delegating various powers to the State Government and thus contemplated the exercise of such powers by the State Government through its officers. This is implicit in the power of delegation provided for by Section 3 of the Essential Commodities Act, 1955, The ultimate control of the State Government by way of review and revision of all orders passed by any officer by virtue of authority conferred upon him under sub-paragraph (1) of paragraph 22 of the said order does not make the exercise of such power by such officers in any way illegal or ultra vires, In fact, in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , Bachawat J. observed that

"the maxim *delegatus non potest delegare*" does not embody & rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. But the intention may be negated by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted."

In the instant case, the State Government must necessarily act primarily through its officers and thus the power of delegation conferred by sub-paragraph (1) of paragraph 22 of the said order cannot be said to be tainted with the vice of illegality.

16. Mr. Sinha then contended that the proviso to sub-paragraph (5) of paragraph 3 of the said order confers uncanalized and unbridled discretion in the officers of the State Government without providing for any guidance or control for the exercise of the discretion vested in them by the said proviso. Thus the said delegation should be struck down, as excessive.

17. It should be noted, however, that the power in the said order has been conferred upon the Director of Rationing a high and responsible officer who is expected to discharge his duties in a responsible manner. Moreover any order passed by such officer is subject to the control of the State Government. In the premises abuse of powers, by such high ranking and responsible officers should not and cannot be assumed and moreover, if such power is abused, it is liable to be corrected by the State Government in review or revision. Thus the ratio in *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, where the unregulated power to grant or refuse to grant license was conferred without any check or control has no application to the facts and circumstances of the present case. In any event, the ratio in *Chinta Lingam and Others Vs. Government of India and Others*, relating to the assumption or exercise of discretion legally and reasonably by high ranking officers are applicable to the facts and circumstances of the present case.

18. Power to suspend an appointment without hearing under the circumstances mentioned in the proviso to sub-paragraph (5) of paragraph 3 of the said order was introduced by way of amendment of the West Bengal Rationing Order, 1964 in 1969 by inserting the proviso. Thus, it is clear that the intention of the Legislative Authority in inserting the proviso was that the power of suspension could be exercised under the circumstances mentioned in the proviso without hearing the party concerned, Prima facie it may seem to contravene the principle of natural justice. But then whether the "exercise of a power conferred by a statute or statutory provision should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power," as was observed by the Supreme Court in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, . The statute in the instant case, to my mind, seems to have made it clear that in the interest of general public and in the contingencies mentioned in the proviso to sub-paragraph (5) of paragraph 3 of the said order, the suspension temporarily pending the enquiry into the alleged misconduct or misdemeanour of the appointee can be made even without hearing the appointee. The final order, however, cannot be passed without giving an opportunity to the appointee to show cause against the proposed order. The challenge to the existence of the circumstances that could lead to the formation of the opinion for exercising the power by the Director of Rationing under proviso to sub-paragraph (5) of paragraph 3 of the said order has no substance in my opinion. Such existence of circumstances is certainly justiciable as was held in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, . But the facts as alleged

in the affidavit-in-opposition mentioned hereinabove, in my opinion certainly could induce the Director of Rationing to form the opinion as he has done to exercise the power of suspension conferred upon him by the proviso of sub-paragraph (5) of paragraph 3 of the said order.

19. The relationship between the petitioner and the State of West Bengal was not that of master and servant. The manner in which the petitioner was to act as the dealer in ration goods was certainly not controlled by the State Government. The State Government could not direct how the said work had to be done by the petitioner. Thus the cases cited on behalf of the petitioner on the basis of relationship of master and servant are not relevant for the purpose of the instant application. It is, therefore, not necessary to deal with the said cases by me in details, but I merely note the said cases.

20. AIR 1935 Bom 333. Lakshminarayan Ram Gopal and Son Ltd. Vs. The Government of Hyderabad, . Shivnandan Sharma Vs. The Punjab National Bank Ltd., . State of Uttar Pradesh and Another Vs. Audh Narain Singh and Another, . R.P. Kapur Vs. Union of India (UOI) and Another, . Balvantray Ratilal Patel Vs. The State of Maharashtra, . V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, deal with the cases where there were no express powers of the master to suspend the servant. They cannot therefore be applicable to the present case, for the simple reason that the relationship between the petitioner and the respondent, the State of West Bengal was not that of master and servant and in particular because there is express provision to suspend conferred upon the State of West Bengal by the proviso to sub-paragraph (5) to paragraph 3 of the said order.

21. For the reasons stated herein-above. I am of the view that there is no possibility of discriminatory exercise of the power conferred by proviso to sub-paragraph (5) of paragraph 3 of the West Bengal Rationing Order and the same provision does not offend against the provisions of Article 14 of the Constitution. In any event, the said point has not been taken in the petition and in my opinion the petitioner should not be allowed to urge the said point. Thus the cases relied on behalf of the petitioner namely, Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers, and Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, on the abovementioned question do not help the petitioner.

22. In view of the judgment of Salil Kumar Dutt, J. in C. R. Case No. 6097 (W) of 1972 = Srinath Singh Vs. S.K. Bhattacharjee and Others, . (In the matter of Srinath Singh v. S K. Bhattacharjee) wherein the contentions urged on behalf of the petitioner on identical grounds were repelled by the learned Judge. I am unable to accept any of the contentions urged on behalf of the petitioner. The said contentions in the said case were identical as urged by Mr. Sinha before me. The said judgment was delivered by a learned Judge of coordinate jurisdiction and is binding on me. Reference in this connection may be made to Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, and Indian Airlines Corporation Vs. Sukhdeo Rai, .

23. In the premises this application must fail and is dismissed. The rule nisi is discharged. In the facts and circumstances of this case each party however shall bear and pay his or its costs of and incidental to this application.