

(2007) 11 CAL CK 0016
In the Calcutta High Court
Case No : Writ Petition No. 24027 (W) of 2007

Md. Abdus Samad Fakir

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 27-11-2007

Acts Referred:

Citation : (2008) 2 CHN 854

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Debabrata Saha Roy and Bikash Goswami, for the Appellant; Sajal Chakraborty, for the Respondent

Judgement

Debasish Kar Gupta, J.—The subject-matter of challenge in this writ application is the order of suspension passed by the respondent No. 5 under his Memo No. 675/SC/FS/DH/07 dated August 2, 2007 in respect of the MR Distributorship of the petitioner situated at village, P.O. & P.S. Mograhat, Dist. South 24-Parganas. The petitioner further prays for quashing the proceeding initiated against his MR Distributorship on the basis of the show-cause notice dated September 30, 2007.

2. Since a point of law is to be decided in this writ application on the basis of the admitted facts and circumstances, this writ application is taken up for final disposal with the consent of the parties.

3. The fact of the case in a nutshell is this, a show-cause-notice dated July 30, 2007 was issued to the petitioner by the respondents in connection with the above MR Distributorship of the petitioner. The petitioner submitted his reply dated July 31, 2007 to the above show-cause-notice. Thereafter, the impugned order of suspension dated August 2, 2007 was passed by the respondent No. 5, the proceeding initiated against the petitioner is yet to be disposed of by the respondent authority. According to the petitioner in view of the provisions of paragraph 26 of the West Bengal Public Distribution (Maintenance and Control) Order, 2003, the above order of suspension cannot be sustained in law.

According to the petitioner in accordance with the provisions of Clause (c) of paragraph 26 of the above Control Order, the concerned Sup-Divisional Controller must forward the explanation/reply of the petitioner of the concerned MR Distributorship to the District Controller within ten days from the date of receipt of such explanation/reply, the concerned District Controller in his turn must dispose of the proceeding within one month from the date of receipt of the communication. Since in this case the petitioner submitted his reply to the show-cause-notice on July 31, 2007, the above statutory period to dispose of the proceeding has expired. In view of the above, according to the petitioner, the proceeding under challenge cannot continue and the order of suspension is also liable to be set aside.

4. Appearing on behalf of the respondent Mr. Sajal Chakraborty, learned Junior Government Advocate, High Court, Calcutta submits that the provisions of Clause (c) of paragraph 26 of the above Control Order is directory in nature. So, in the event the proceeding is not complete within the above statutory period, the same can continue.

5. Having heard the learned Counsel on behalf of the respective parties and after considering the materials on record, I find that a period is mentioned in Paragraph 26 of the West Bengal Public Distribution (Maintenance and Control) Order, 2003 for disposal of a proceeding initiated against the MR Distributor. The above provision is quoted below:

Procedure for dealing with the irregularity of distributorship.- (a) Every distributor shall abide by the instructions as may be issued from time to time by an authority not below the rank of an Inspector working in the Department of Food and Supplies. He shall also abide by the terms and conditions of the appointment and licence as may be issued to him.

(b) In the event of detecting any discrepancy of commodities or for violation of any order as may be issued by the competent authority and/or violation of any condition of appointment and licence, the Sub-Divisional Controller, Department of Food and Supplies shall issue a notice of show-cause to the distributor asking for an explanation of the irregularity committed by the distributor within 15 days from the date of detection of irregularity and/or any other misconduct and may also place the licence under suspension with the approval of the District Controller, Department of Food and Supplies till the disposal of the proceedings as may be drawn against the said distributor.

(c) Upon receipt of the explanation as may be submitted by the distributor against the notice of show-cause served upon him by the Sub-Divisional Controller, Department of Food and Supplies, the Sub-Divisional Controller shall forward the said explanation with his remarks to the District Controller, Department of Food and Supplies within 10 days from the date of receipt of such explanation. The District Controller, Department of Food and Supplies, after giving an opportunity of hearing to the distributor, shall dispose of the

proceedings within one month from the date of receipt of communication from the Sub-Divisional Controller, Department of Food and Supplies.

6. The District Controller, Department of Food and Supplies, in course of disposal of the proceedings, may terminate the licence and appointment issued to the distributor or may forfeit the security deposited by the distributor or may reduce the number of dealer attached with the said distributor. In the event of termination of licence, the security deposit shall stand automatically forfeited to the State.

7. In my opinion, the above statutory period prescribed in Clause (c) of paragraph 26 of the said order for conclusion of the proceeding cannot be held to be mandatory rather the same is directory in nature. But in the event any order of suspension is passed with regard to the business of the MR Distributorship then the question of hardship and inconvenience of the concerned Distributor has to be taken into consideration. Therefore, in my opinion, the suspension of the Distributor in connection with a proceeding initiated in accordance with the provisions of paragraph 26 of the West Bengal Public Distribution (Maintenance and Control) Order, 2003 must come to an end after the period specified in Clause (c) of paragraph 26 of the above Control Order even within that period, the proceedings are not completed.

8. The provision to initiate a proceeding against the MR Dealer under the above Control Order is prescribed in paragraph 21. Those provisions are similar in a pari materia in nature with the provisions of paragraph 26 of the above Control Order. In the decision of Md. Yeasin and Others Vs. State of West Bengal and Others, , a Division Bench of this Court held as follows:

In view of the aforesaid discussions, this Court is of the opinion that this statutory provision about conclusion of the proceedings within the period of three months from the date of issuance of the show-cause notice cannot be held to be mandatory. The same is directory in nature. But one thing is clear that the proceedings which have been initiated should be disposed of as expeditiously as possible. But the suspension of the dealer causes great inconvenience and hardship as the dealer is thrown out of his business without any subsistence during the suspension period. So the period of three months should be considered as mandatory as far as the continuance of suspension in connection with the proceeding is concerned. Therefore, this Court holds that the suspension of the dealer in connection with such proceedings must come to an end after a period of three months if within that period the proceedings are not completed. But the proceedings are not ipso facto terminated just on the expiry of the said of three months but should be concluded as early as possible if not within the period of three months, but very soon thereafter.

9. In the instant case, I find that the petitioner submitted his reply to the show-cause notice on July 31, 2007. The period to forward those papers to the respondent No. 4 by the respondent No. 5 expired after ten days. The period for

passing the final order in the above proceeding by the respondent No. 4 is prescribed for one month from the date of receipt of the above papers, those period have already been expired.

10. On the basis of the above facts and circumstances and in view of the observations made with regard to the point of law involved in this writ application, I find that the impugned order of suspension dated August 23, 2007 passed by the respondent No. 5 is liable to be set aside. As such, the same stands quashed. The respondent authority is directed to resume the supply of the MR cereals to the MR Distributor of the petitioner forthwith.

11. However, this will not prevent the respondent authority to proceed against the petitioner in accordance with law expeditiously.

12. This writ application is, thus, disposed of.

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

14. Urgent xerox certified copy of this order, applied for, be given to the parties on priority basis.