

(1976) 06 CAL CK 0035
In the Calcutta High Court
Case No : Matter No. 332 of 1973

Messrs. Wheaten Products		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision : 28-06-1976

Acts Referred:

Constitution of India, 1950 — Article 19(1)(f)
West Bengal Anti-Profiteering Act, 1958 — Section 5(1)(a)

Citation : 80 CWN 897

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : Bikas Chandra Sen and Alok Kumar Biswas, for the Appellant; P.K. Sen Gupta, Government Pleader and B.P. Banerjee for the State, for the Respondent

Judgement

S. Mukharji, J.—The petitioner who used to carry on business as handling agents of wheat products was aggrieved by the communication dated 25th April, 1973. The said communication was from the Deputy Director, District Distribution Procurement & Supply addressed to different parties. The relevant portion of the said communication stated as follows:

From : The Deputy Director (D) District Distribution. Pro. & Supply.

To

All District Controllers, F & S.

"Assistant District Controllers, F & S.

" Sub-Divisional Controllers, F & S.

Sub: Procedure for lifting of wheat products.

1. I am directed to say that it has been the usual practice of the wheat product permit holders in the district to authorise some agents in Calcutta for the lifting

of stock from the Flour Mills and to get the permits revalidated in the event of the expiry of their validity. Some of the Agents in collusion with the permit holders have been found to be actively engaged in smuggling wheat products out of this State and indulging in various other corrupt practices. The following Agents, found guilty on the above counts have been black listed and as such they should not be allowed to handle any permit of permit holders or lift stocks from Flour Mills henceforth the District nominees should therefore be advised accordingly.

(1) M/s. Wheaten Products and (2) its sister organisation International Supply Company, (3) M/s. Uma Shankar Pradip Kumar.

The other portions of the directions contained in the said communication are not relevant. The petitioner's grievance is that by the aforesaid communication the petitioner's right to carry on trade has been interfered with and, therefore, there has been violation of the petitioner's right to carry on trade as guaranteed under Article 19(1) (f) and (g) of the Constitution. It was, further, contended that the order in question was illegal and arbitrary and violative of the principles of natural justice. In this connection reliance was placed on several decisions. Counsel drew my attention to the decision in the case of Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others, . Reliance was also placed on the decisions in the case of Mohammed Faruk Vs. State of Madhya Pradesh and Others, , State of Assam v. Tulsi Singh (1962) (3) S.C.R. 508, State of Madhya Pradesh v. Thakur Bharat Singh AIR 1967 S.C. 1170 and M.K. Mathulla Vs. N.N. Wanchoo and Another, . Counsel submitted that the order in question imposed unreasonable restriction on his right to carry on trade and business as mentioned before. I am unable to accept this contention. The petitioner has the right to carry on trade and business, that right to carry on trade is not interfered with. Wheat products being essential commodity, the distribution of the said commodities is controlled for the benefit of the community. Therefore, regulation for the distribution of essential commodity in the manner indicated cannot, in my opinion, be construed to be interference with the right of the petitioner to carry on his trade or business.

2. There is, however, another aspect of the matter. I have noticed that in the impugned communication it has been stated that the petitioner was found to be engaged in smuggling in wheat products. In answer to the rule nisi issued in the case it has been stated in paragraph 9 of the affidavit as follows :

With reference to paragraph 11 of the said petition, I say that in course of inspection of certain bakery units in the district of 24 Parganas it was detected that supply of flour made for such bakeries were being directed clandestinely into the black-market for making unlawful profit in an unauthorised manner at the cost of the consumers' interest. One such bakery unit was Kohinur Bakery Unit of Bakrahat in 24-Parganas. It was detected that the said bakery was only in existence in its signboard and no production was made by the said bakery though permits were obtained and flour was drawn and lifted through the

petitioner M/s. Wheaten Products on the basis of permits. Necessary action against the bakery has been taken in due manner departmentally and the case was also referred to the Enforcement Branch for further action in the matter according to law, It was also detected that the said non-existent bakery was lifting its quota of flour meant for the purpose of manufacturing bread was lifted through the petitioner. The said Wheaten Product was also found to have lifted flour against permit held by a closed bakery at Suri in June 1972. The said case is being pursued separately. It was therefore apparent that the petitioner M/s. Wheaten Products has formed a league in collusion with uncrupulous traders and businessmen to divert essential commodities and indulged in corrupt and malpractices. Therefore, under the facts and circumstances a memorandum was issued by the Deputy Director by which the petitioner and some other handling agents have been prohibited from acting as agents of the permit holders from lifting stock from flour mills in public interest and in order to prevent the recurrence of such corrupt and malpractices. Save as aforesaid I deny all other allegations made in paragraph 11 of the said petition.

3. In paragraph 11 it has been stated, interalia, as follows :

...I further say that the reputation was never above board. It appears that one of the partners of the petitioner firm was convicted by the Presidency Magistrate (Bankshall Court) on 19th June 1967 u/s 5(1) (a) of the West Bengal Anti-Profiteering Act 1958.

In the reply to this affidavit in answer to the said statements made in the aforesaid paragraphs have been denied. It has been further stated that the application before the Presidency Magistrate (Bankshall Court) had nothing to do with the alleged smuggling. It is not in dispute that the impugned decision to black-list the petitioner and the communication of the said decision was taken without giving the petitioner a hearing or an opportunity to show cause. It is well settled that in this country under our Constitution administrative action must also be governed by the rule of law and must not be arbitrary and such administrative actions which affect the rights of persons in any manner must be taken in consonance with the principles of natural justice. But the application of such principles of natural justice is dependent upon the nature of the order and the effect thereof and the facts and circumstances of the case. If it appears that administrative authority has taken a decision which is based on certain facts in respect of which certain other facts might be drawn attention to by the persons concerned, then such administrative actions must in order to avoid arbitrariness be after giving reasonable opportunity to the persons concerned. If what the respondents state are true then certainly the respondents are entitled to black list the petitioner. But before the respondents act on the basis that the allegations made by the respondents are true, an opportunity should be given to the petitioner to rebut or explain the said facts. This will avoid arbitrariness in the action and will be in consonance with rule of law. This view is in consonance with the ratio of the decision of the Supreme Court in Erusian Equipment and

Chemicals Ltd. Vs. State of West Bengal and Another, .

In the aforesaid view of the matter, inasmuch as during the hearing of this application there was an interim order of stay, in my opinion, the appropriate order will be to direct that the respondents will not give effect to the impugned communication until the respondents give an opportunity to the petitioner and if after such opportunity the respondents are still of the opinion that the said communication should be adhered to the respondents will be at liberty to adhere to the said communication or modify the same as they may think fit and proper in the light of the facts gathered upon hearing the parties.

With the aforesaid directions, the rule is disposed of.

There will be no order as to costs.