
(2008) 03 CAL CK 0022
In the Calcutta High Court
Case No : Writ Petition No. 128 of 2008

Mina Karmakar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-03-2008

Acts Referred:

Citation : (2008) 3 CHN 370

Hon'ble Judges : Aniruddha Bose, J

Bench : Single Bench

Advocate : D. Saha Roy, for the Appellant; Dipak Das, for the Respondent

Judgement

Aniruddha Bose, J.—The petitioner is a dealer of kerosene oil under the West Bengal Kerosene Control Order, 1968. Though it is not pleaded so learned Counsel for the petitioner on instructions submits that the license was granted in the year 1982. In this writ petition the petitioner challenge an order passed by the Sub-Divisional Controller (F & S) suspending her license temporarily. A copy of this order has been made Annexure P-10 to the writ petition.

2. The petitioner had applied for inclusion of the names of her husband who appears to have retired from Government service and her eldest son as dealers and the application was made on 19th January, 2007. Prior to that, some complaints had been made about reduction of number of ration cards tagged to her business but for the purpose of adjudication of the present writ petition, these facts are not of much relevance.

3. After such representation was made the petitioner on some occasions had been directed to produce various registers for verification of her transaction and obviously there is some dispute on that account which eventually resulted in issuance of a show-cause notice on 24th January, 2008. The charges against the petitioner as made out in the show-cause notice are reproduced below:

i) Without taking prior permission from the competent authority, your husband is carrying on your business.

ii) Without taking any prior permission and unauthorised person collect, your allotted quantity of S.K. Oil from the agent's point.

iii) You know, business premises may be defined as where books of ACs are kept, but I can not understand why your husband shifted books of A/Cs from the business premises.

4. These charges were framed, it appears, because the petitioner could not produce certain registers on being required to do so and she had intimated the concerned authority that such registers were lost when these were being brought to her home by her husband.

5. The petitioner replied to the show-cause notice on 28th January, 2008 in which she indicated that her husband and son were only assisting her in conducting the business and those registers were brought home during the weekend only, mainly for the purpose of updating the accounts etc. After considering the reply, the impugned order of suspension was passed.

6. Learned Counsel for the petitioner has submitted that there is no scope of suspension under the Control Order after issuing a show-cause notice. The concerned authority has to follow the course of either issuing a show-cause notice or pass an order of suspension in which explanation is to be asked for as regards the allegations of irregularity on the strength of which such suspension is effected. Thereafter if the explanation is considered to be not satisfactory the licence may be cancelled. There is also provision for imposing penalty but the present dispute has not reached that stage. Para 9 of the Control Order of 1968 is relevant in this regard and the same is reproduced below:

If it appears to the Director or the District Magistrate having jurisdiction that an agent or a dealer has indulged in any malpractice or contravened any provisions of this Order or any condition of the licence or any direction given under paragraph 12 of this Order, he may forthwith ask the agent or the dealer to show-cause for the violations made or suspend the licence:

Provided that the agent or the dealer who has been asked to show-cause or whose licence has been suspended shall be given an opportunity of being heard and the Director or the District Magistrate having jurisdiction shall pass an order in writing within 30 days from the date of serving the show-cause notice or suspension of the licence taking any or all of the actions given below:

i) He may let off the agent or dealer if sufficient cause has been shown.

ii) He may pass an order by imposing a penalty which according to the gravity of the violations made will not be less than Rs. 10,000/- in case of an agent and Rs. 2,000/- in case of a dealer and revoke the suspension order if already served.

iii) He may cancel the licence:

Provided that the order shall be passed ex parte if the agent or the dealer whose licence has been so suspended or on whom show-cause notice has been served

fails to appear at the hearing.

7. Learned Advocate appearing for the respondent-authorities has contested this writ petition by filing affidavit. In the affidavit, case has been made out primarily to establish the allegations of irregularity in maintaining the accounts and registers. The reason for reduction in the number of cards has been explained in the affidavit. The reason is that actual number of card holders in reality decreased over a period of time and for this purpose verification process was being carried on.

8. Question has been raised by the respondents on the eligibility of the husband of the petitioner and her elder son being included as partners in the business of the petitioner and it has been stated in the affidavit that legal opinion elicited on the question as to whether a retired Government employee can be included as one of the partners in a Government subsidised superior kerosene oil business. But I am not to examine that issue while adjudicating the present writ petition because that is not what is in issue in this proceeding. What has been argued by the learned Counsel for the petitioner is that is no scope in the Control Order for passing an order of suspension after issuing a show-cause notice and upon considering the explanation or reply to such show-cause notice.

9. Under the provisions of paragraph 9 of the Control Order, if it appears to the Director of Consumer Goods or the District Magistrate that an agent or dealer has indulged in any malpractice or contravened any provision of the order or any condition or any direction, such agent or dealer can be asked to show cause for the violation made or his licence can be suspended. The question which falls for determination in this matter is as to whether after issuing a show-cause notice and considering the response of the dealer to the show-cause notice, an order for suspension as an interim measure can be passed or not.

10. I find from the provision of paragraph 9 of the Control Order that the authorities designated therein has been vested with the power to issue a show-cause notice or pass an order of suspension if it appears to such authority that an agent or a dealer is guilty of having committed breach of the Control Order. Such authority has been vested with the discretion to either ask the agent or dealer to show-cause or suspend his license. Whichever course such authority adopts, there is provision for giving opportunity to such dealer or agent to explain his stand. After hearing the dealer or agent, there is provision for passing an order for cancellation of license or impose penalty in monetary units, if the reply of the errant dealer or agent is unsatisfactory.

11. However, under the scheme of paragraph 9, there is no scope of passing an order of suspension after issuance of the notice to show-cause. That would require reading the expression "or" as used in the substantive provision of paragraph 9 of the Control Order as "and".

12. In my opinion, there is no scope for reading "or" as "and" in this provision. I hold so because in the proviso to paragraph 9 also the expression "or" has been

used. In the proviso to that paragraph it has been specified that the agent whose licence has been suspended shall also be given an opportunity of being heard after the order of suspension has been passed. It does not appear to be the legislative intent of using both the modes of enquiry and imposition of temporary punishment being the order of suspension in a conjunctive sense. The basic rule of construction is that a word shall be understood in its ordinary meaning and only if such ordinary meaning gives rise to complication or there arises difficulty in implementation of the statute, then there is scope of enquiry as regards the intention of the legislature. In the aforesaid provisions of the Control Order, I do not find any difficulty in construction if the expression "or" is employed in its ordinary sense. Moreover, in the present case after issuing a show-cause notice, there is no indication given as to why the concerned authority chose to suspend the petitioner temporarily. Paragraph 9 provides that after issuing show-cause notice and upon giving the opportunity of being heard to the notice, the Director of Consumer Goods or the District Magistrate can pass an order in accordance with Sub-clauses (i), (ii), (iii) of the proviso to the said paragraph. Suspension is not one of the prescribed modes of punishment in the Control Order. There is no provision for suspension under the Control Order which has been shown to me.

13. Under these circumstances, following the century old principle laid down in the case of *Taylor v. Taylor* 1876(1) Ch. D. 426, reaffirmed by the Judicial Committee of the Privy Council in the case of *Nazir Ahmed v. Emperor* reported in AIR 1931 PC 531, I am of the view that in this matter the Sub-Divisional Controller has not discharged his duty in the manner prescribed in the statute.

14. Under these circumstances, the order for suspension after considering the reply of the dealer cannot be sustained. I also find from the order of suspension that this was not passed independently of the issuance of the show-cause notice upon discovery of any aggravating circumstances or fresh instance of malpractice or of breach of the Control Order. It is recorded in the order of suspension that the same was being passed upon considering the reply to the show-cause notice. The order of suspension passed on 31st January, 2008 shall accordingly stand quashed. However, a fresh opportunity of hearing shall be given to the petitioner on the strength of his reply and the final order may be passed upon considering the reply and the submissions of the petitioner. In the event the concerned authority choose to rely on any witness, then the petitioner shall be given a right to cross-examine such witness. Any material which would be relied upon by the concerned authority shall also be made available to the petitioner for inspection prior to the date of hearing. At least seven days must be given to the petitioner after such inspection is carried out for hearing and the matter shall be disposed of by passing a reasoned order.

15. Since I am quashing the order of suspension, allotment may be made to the petitioner until the final decision is taken by the respondents authorities. The continuance of such allotment shall be subject to and dependent upon the final decision taken by the concerned authority.

With these directions, the instant writ petition is disposed of. There shall, however, be no order as to costs.

16. Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.