
(2009) 02 CAL CK 0020
In the Calcutta High Court
Case No : Writ Petition No. 1510 of 2008

Monchop Ali Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Citation : (2009) 02 CAL CK 0020

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Debabrata Saha Roy, Pinjal Bhattacharya and Ratan Kumar Mukhopadhyay, for the Appellant; Pratap Ghosh, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this writ petition dated September 8th, 2008 is questioning the order of the Sub-divisional Controller (F&S) and Ex Officio Assistant Director, Baruipur, South 24-Parganas dated September 1st, 2008, at p. 18.

2. The allegations in the order are these. A squad headed by the Chief Inspector of the office of the District Controller, Food & Supplies, South 24-Parganas after inspecting the S.K. Oil Shop of the petitioner on August 1st, 2008 at 11-30 a.m. found the following irregularities; there was no stock board, rate board, or any approved board indicating the proprietor's name with license No. and address anywhere near or outside or inside the shop premises; bags of paddy were stored, inside the S.K. Oil Shop; the petitioner failed to produce Government license of K. Oil Shop, log book, inspection book, stock register, sales register, cash memo book, ration card register at the time of inspection. It has further been stated in the order that the petitioner submitted a written declaration about his inability to provide S.K. oil license, log book, inspection book, stock register, sales register, cash memo book, ration card register, etc. as the documents were not in his custody at the time of enquiry; and that he had been punished earlier by forfeiture of security deposit for violation of West Bengal Public Distribution System (Maintenance & Control) Order, 2003, and was warned not to commit any

irregularity in future. It has been alleged that he, in the capacity of an S.K. Oil dealer intentionally violated his duties and responsibilities mentioned in para 15(c) of the West Bengal Kerosene Control Order, 1968. Making the allegations the sub-divisional controller ordered as follows :-

"I therefore in exercise of the power conferred upon me under para 9 of West Bengal Kerosene Control Order, 1968 & subsequent amendment order No. 3575/FS/Sectt/Sup/4M-52/02 dt.24.11.03 do hereby suspend the S.K. Oil dealership Licence bearing No. 118/Joy/90 of Sri Monchhop Ali Mondal temporarily with effect from the date of receipt of this order and hereby Sri Mondal is therefore, asked to submit show cause within 7 (seven) days of the receipt of this order and response why disciplinary action will not be taken against him".

3. The petitioner took out the writ petition contending that in view of the provision of para 9 of the control order the sub-divisional controller was not competent to issue the order suspending the petitioner's dealership license and at the same time asking him to show case why disciplinary action should not be taken against him. Considering his case, this Court made order dated September 11th 2008 admitting the writ petition and staying the operation of the order of suspension, but making it clear that pendency of the writ petition or making of the interim order therein would not prevent the authority from proceeding with hearing of the explanation given in response to the show cause notice and taking such steps as would be permissible in law after such hearing was concluded. It was further said that in the absence of conclusion of such hearing the interim order would remain in force for that period specified. I am told that the interim order is still in force.

4. Counsel for the petitioner strongly relies on a decision of this Court in *Mina Karmakar v. State of West Bengal & Ors.*, (2008)3 Cal HN 370. In that case in an identical situation, this Court while quashed the suspension order, apparently sustained the show cause notice. Counsel further relies on the amended provisions of para 9 of the control order providing that if it appears to the authority that a dealer has indulged in any malpractice or contravened any provision of the control order or any conditions of the license or any direction given under para 12 of the control order, he may forthwith ask the dealer to show cause for the violation made or suspend the license. The provisions of para 9 further provide that a dealer who has been asked to show cause or whose license has been suspended shall be given an opportunity of being heard and the authority shall pass an order in writing within thirty days from the date of serving the show cause notice or suspension of the license taking any or all of the actions given thereunder.

5. In the present case, operation of the suspension order was stayed and the respondents never preferred any appeal feeling aggrieved by the interim order. They were given liberty to hear the petitioner and, give final decision in connection with the show cause notice whose operation was not stayed. Mr. Ghosh, Counsel for the respondents, submits that no hearing has been given to

the petitioner, who has not filed any reply to the show cause notice as well. Mr. Saha Roy, Counsel for the petitioner, submits that the entire order is liable to be set aside, since it was made by the sub-divisional controller in contravention of provision of para 9; for he did not possess power to order suspension of license and issue show cause notice simultaneously. He says that since this is his contention, he is not seeking any order from the Court giving the petitioner an opportunity to submit any explanation to the show cause notice.

6. On these facts, I am of the view that there is no need to go into the question whether while issuing an order suspending license the sub?-divisional controller could call upon the petitioner to show cause why disciplinary action should not be taken against him. Operation of the suspension order was stayed and though liberty was given to the respondents to proceed with the show cause notice and give final decision in the proceedings, for undisclosed reasons they have done absolutely nothing. It seems to me that because of pendency of these proceedings, though order was made to clarify the situation regarding the show cause notice, the sub-divisional controller decided not to take any steps for giving the final decision. I do not think it will be in the interest of justice to sustain the order of suspension now. Reasons indicated by this Court while making the interim order have not been dealt with by the respondents to say that the suspension order should be sustained.

7. Under the circumstances, I think the suspension order should be quashed. I am, however, of the view that this is not a case where it can be said that the show cause part of the order cannot be severed from the suspension part thereof. It is known that if a decision of an authority has two parts and one part thereof is found to be invalid, that does not make the other part automatically invalid, provided the two parts can be severed from each other. In the present case, operation of the show cause part was never stayed by this Court presumably for the reason that it is severable from the suspension part of the order. In my opinion, though the suspension part of the order is liable to be set aside for the reasons indicated hereinabove, there is no reason to hold that the show cause part thereof is also liable to be set aside.

8. For these reasons, I dispose of the writ petition ordering as follows. It is partly allowed. The impugned order as to the suspension part thereof is hereby set aside. The show cause part thereof is sustained. The sub divisional controller will be at liberty to give final decision in the proceedings within 30 days from the date of communication of this order. There shall be no order for costs.

9. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the department concerned.