
(1971) 11 CAL CK 0012
In the Calcutta High Court
Case No : Matter No. 111 of 1971

Re. Md. Abdul Rahim

APPELLANT

Vs

Dy. Controller of Rationing (Establishment) and Others

RESPONDENT

Date of Decision : 17-11-1971

Acts Referred:

West Bengal Rationing Order, 1964 — Clause 10(iii)

Citation : 76 CWN 229

Hon'ble Judges : S.K. Mukherjea, J

Bench : Single Bench

Advocate : Somendra Chandra Bose and Arun Prakash Sarkar, for the Appellant; P.K. Sen Gupta and S. Pal, for the Respondent

Judgement

S.K. Mukherjea, J.—The case arises out of a Rule issued by Sabyasachi Mukharji J. directing the Deputy Controller of Rationing (Establishment), Government of West Bengal, to show cause why by a writ of mandamus, he should not be made to withdraw or cancel, or rescind an order dated March 3, 1971 by which the ration quota of cereals allotted to the petitioner, who is the owner of a cheap catering establishment in the city, was reduced from 810 Kgs. to 155 Kgs. per week. By the said Rule his Lordship also directed the Deputy Controller to show cause why the said order should not be quashed by a writ of certiorari. The facts may briefly be stated.

The petitioner has been carrying on the business of a catering establishment, picturesquely described as an eating house, at 13, Sun Yat Sen Street, Calcutta. He holds a ration permit for 800 Kgs. of cereals per week for the purpose of his business. By a notice dated 6th August, 1969 he was directed by the Deputy Controller to show cause why his quota of cereals should not be reduced to 154.50 Kgs. per week. After several adjournments of the case, the petitioner received a notice on the 27th July, 1970 directing him to appear personally before the respondent No. 2, the Special Officer. The Special Officer gave the petitioner a hearing on the 19th January, 1971. The Deputy Controller of

Rationing says in his affidavit that at the hearing given on that date the petitioner, in spite of requests, failed to produce sales tax returns, sales tax clearance certificate, or any other documents or papers. The petitioner, however, denies that he was asked to produce any of these documents. Be that as it may, by an order dated March 3, 1971 the petitioner's cereal quota was reduced to 155 Kgs. per week by the Deputy Controller. Against that order the petitioner moved the Writ Court and obtained the Rule.

2. The grounds taken by the petitioner are :

(a) The Deputy Controller of Rationing had issued the order without giving the petitioner an opportunity of being heard by himself;

(b) the respondent No. 1 had no authority and/or jurisdiction to pass any order on the basis of an enquiry held by the respondent No. 2;

(c) the order does not disclose any reason for reducing the petitioner's quota of cereals.

It is not disputed that the order made by the Deputy Controller of Rationing (Establishment) reducing the ration quota of the petitioner, was made under clause 10(iii) of the West Bengal Rationing Order, 1964. The clause provides:

Whenever in the opinion of the State Government it is necessary or expedient so to do in the interest of the general public, the State Government may add to, amend, vary or rescind any ration document after giving the holder of the ration document an opportunity of being heard either in person or by an agent and for reasons to be recorded in writing....

3. In the present case, the order reducing the ration has been made by the respondent No. 1, the Deputy Controller of Rationing. Hearing was undoubtedly given by the respondent No. 2, the Special Officer, who has been more than indulgent to the petitioner in granting adjournments. The fact, however, remains that the hearing was given not by the Deputy Controller of Rationing who made the order, but by the Special Officer. Sub-clause (iii) of clause 10 provides for an opportunity to be given to the holder of the ration quota, of being heard in person. When the statute confers the right of a personal hearing, the personal hearing should be given by the authority which passes the order. In the case of (1) Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , Subba Rao J. speaking for the majority observed:

While the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the rules imposes a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the argument and the party appearing to persuade the authority by reasoned argument to accept his

point of view. If one person hears and another decides then personal hearing becomes an empty formality.

4. In the light of these observations, it is clear that the hearing spoken of in clause 10 (iii) of the West Bengal Rationing Order should have been given by the Deputy Controller of Rationing who made the order and not by the Special Officer.

5. Counsel appearing on behalf of the petitioner contended that the order is bad because no reason for the impugned order has been recorded in writing as prescribed by the Rationing Order. He relied on certain observations made by Shah J. in (2) Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, . That was a case under U.P. Sugar Dealer Licensing Order, 1962. The District Magistrate had cancelled the petitioner's license without giving any reasons for the order he had made. The Court observed:

The case discloses a disturbing state of affairs. The authorities have disclosed by their conduct a reckless disregard of the rights of the appellants. The order passed by the District Magistrate cancelling the license was Quasi-judicial; it could be made only on a consideration of the charges and the explanation by the appellants. That necessarily implied that the District Magistrate had to give some reasons why he held the charges proved, and the explanation unacceptable.

6. In that case, the statute did not enjoin that reasons be recorded in writing for making the order cancelling the license. In the present case, the statute is clear and unequivocal. If no reasons are recorded in writing, that by itself is enough to condemn the order as having been made in noncompliance with the statute.

7. Although no reasons were given for the order at the time it was made and none was recorded in writing, at the hearing of the Rule, reasons were given in paragraph 5 of the affidavit of the respondent No. 1. He says?"in or about the month of March or April, 1969 the Government of West Bengal, in its Directorate of Rationing, decided in the interests of the general public to review and reduce the weekly allotment quota of cereals to be issued to the catering and manufacturing establishments in a phased manner and to fix the same commensurate with the gross annual turnover (i.e. the total sale) of each establishment to ensure that eating house establishments permit-holders having large gross turnover are not deprived of their legitimate quota of cereals and that also a cereal quota in excess of what is required for normal and usual volume of business may not be issued in favour of any such establishment. It was also decided that the cereal quota should be fixed for such establishment at the rate of 25 Kgs. per week per Rs. 10,000/- annual gross turnover (i.e. gross annual sale) of such establishment on the principle that an establishment getting 25 Kgs. of cereals per week should normally have gross annual sale of Rs. 10,000/- under the provision of Bengal Finance (Sales Tax) Act, 1941. Any manufacturing concern with gross turnover exceeding Rs. 10,000/- is liable to pay sales tax."

8. The full and frank disclosure made by the Deputy Controller of Rationing is revealing. It is clear that the policy of the rationing authorities is to issue ration

of cereals to catering establishments in quantities proportional to their annual gross turnover (i.e. gross annual sale). They have quantified the proportion by deciding to issue cereal rations at the rate of 25 Kg. per week per Rs. 10,000/- annual gross turnover on the principle that an establishment getting 25 Kg. cereals per week should normally have gross annual sale of Rs. 10,000/-. By gross turnover the Deputy Director obviously means gross turnover as the expression is understood in Sales Tax law. That he does so will clearly appear from the concluding sentence where he says, that under the provision of Bengal Finance (Sales Tax) Act, 1941 any manufacturing concern with gross turnover exceeding Rs. 10,000/- is liable to pay sales tax.

9. The statute has conferred on the State Government, in the interest of the general public, to add, to amend, vary or to rescind any ration document. The State Government can do any of these things but only in public interest. The policy adopted by the State Government in allotting ration quota of cereals on the basis of gross annual turnover, is in my judgment, not in public interest but against public interest. The purpose of issuing rations to catering establishments is to enable those establishments to cater to the actual needs of their customers. The quota should, therefore be related to the quantity of cereals actually consumed by them. The quantity of cereals consumed by customers has little relevance to the gross annual turnover of an establishment. The annual turnover of a catering establishment depends not only on the sale of cereals but also on the sale of other commodities in the shape of food and drink. Moreover, consumption of cereals per customer is greater in cheaper catering establishments where the poorer section of the people and particularly manual workers eat, than in the more expensive restaurants which are mostly to be found in the comparatively fashionable parts of the city patronised by those who are better off. It is common knowledge that consumption of cereals per capita is greater in the lower strata of society all the world over. That being so, it will be unreasonable, in my opinion, to allot the same quantity of cereals per capita to all catering establishments in the city indiscriminately. What the rationing authorities have done is even less satisfactory. In allotting quotas they have not gone by the number of customers of cereals or by actual consumption of cereals but by the gross turnover. In a Park Street restaurant lesser consumption of cereals per capita with larger turnover per customer is to be expected than in a catering establishment of a poorer area. A customer of a catering establishment of a poorer area is likely to consume a larger quantity of cereals than a customer of a Park Street restaurant. Yet the Park Street customer pays more for the smaller quantity of cereals he consumes. That being so, the turnover of a Park Street catering establishment will be much larger in respect of the same quantity of cereals. Moreover, in the catering establishments situate in the poorer parts of the city, cereals are likely to be consumed more and luxury items consumed less. The sale of such luxury items goes to swell the turnover of the catering establishments in the more fashionable parts of the city. The result of adopting the policy which the Deputy Controller of Rationing says, the State Government

has adopted, will be to issue a larger quantity of cereals per capita to catering establishments in certain parts of the city where the demand for cereals is less than to those establishments which require cereals in larger quantities. The issue of cereal rations to the more expensive catering establishments in quantities larger than they need for actual consumption is likely to result in malpractices. It may lead to trafficking in rations. To compel cheaper catering establishments to subsist on smaller quantities of cereals than they actually need will be to compel them to resort to procurement of cereals by undesirable means.

10. Now that a clear statement of the policy of the State Government has been made, I consider it necessary to point out that the basis on which the cereal rations are sought to be issued to catering establishments is basically illogical, unsound, and unfair. I have no doubt that the State Government has adopted the policy in good faith and without giving much thought to the consequences such a policy is likely to entail. It seems to me that the rationing authorities in their eagerness to assist the revenue have sought to relate the issue of cereal rations to gross turnover. The only duty of the rationing authorities is to ensure that rations are distributed fairly and equitably. It is no part of their duty to act as revenue agents. They ought not to adopt an illogical and indefensible policy merely for the purpose of helping collection of revenue.

11. In view of what I have said. I am of opinion that for more reasons than one, the impugned order dated March 3, 1971 ought to be set aside. The order is therefore quashed. The Rule is made absolute. There will be no order for costs. This order is made without prejudice to the rights of the State Government to amend, vary or rescind any ration document held by the petitioner, in accordance with law.

I direct that a copy of this judgment be forwarded by the Registrar, Original Side, to the Solicitor for the State of West Bengal for transmission to appropriate authorities.