

**(2005) 01 CAL CK 0038**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 29 of 2005**

Rinku Kundu

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 17-01-2005

**Acts Referred:**

**Citation :** (2005) 3 CHN 136

**Hon'ble Judges :** Jayanta Kumar Biswas, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Jayanta Kumar Biswas, J.—The petitioner in this writ petition is aggrieved by the order of the Sub-Divisional Controller, Food and Supplies, Barrackpore, dated December 20th, 2004 cancelling her licence under West Bengal Kerosene Control Order, 1968.

2. After hearing Counsel for the parties, I find that only a short question of law is involved in the writ petition, and that it can be decided on the admitted facts. Hence I propose to finally decide it at the admission stage itself, and for this purpose on agreement of Counsel for the parties, I treat it as an adjourned motion and also on the day's list.

3. While the petitioner was working as a dealer within the meaning of West Bengal Kerosene Control Order, 1968, the Controller issued a suspension order against her on November 22nd, 2004. It was issued in exercise of powers conferred on him by para 9 of the Control Order. The petitioner suffered the suspension since certain allegations had been made regarding irregularities in the running of her dealership.

4. No chargesheet was prepared and issued; no show-cause notice was issued; and no copies of the complaints and other documents from which the Controller acquired the knowledge of the alleged irregularities were supplied to the petitioner.

5. After issuing the suspension order the Controller simply gave her an opportunity of personal hearing and cancelled the dealership by the order under challenge.

6. Mr. Kalyan Bandopadhyay, Senior Advocate, appears for the petitioner. He argues that although nothing has been expressly said in para 9 of the Control Order about the requirements of issuing a show-cause notice or chargesheet and giving an opportunity to submit the written statement of defence by the dealer, I should interpret the provisions and hold that requirements of giving such opportunities to the dealer are inbuilt in them.

Paragraph 9 of West Bengal Kerosene Control Order, 1968 reads as follows :

"9 Cancellation or suspension of licence.--If it appears to the Director of the District Magistrate having jurisdiction that an agent or a dealer has indulged in any malpractice or contravened any provision of this Order or any condition of the licence or any direction given under paragraph 12 of this Order, he may forthwith temporarily suspend the licence :

Provided that the agent or the dealer whose licence has been so suspended shall be given an opportunity of being heard before cancellation of the licence or revocation of the order of suspension of the licence finally by an order in writing to be made within 30 days from the date of suspension of the licence. The order shall be passed ex parte if the dealer whose licence has been so suspended fails to appear at the hearing."

7. My reading and understanding of para 9 of the Control Order is that it confers on the authority two powers : (1) the power to suspend the licence, and (2) the power to cancel the licence. The power to suspend can be exercised if there are allegations of irregularities against the dealer. It provides that the licence can be cancelled only after giving an opportunity to the dealer of being heard.

8. The question is whether the authority is under any obligation to comply with any other requirements; I am of the view that he is. To my mind, the provisions of para 9 are not akin to the ones that prescribe a summary procedure. The power to suspend is indicative of the intention of the makers of the provisions that the licence is not to be cancelled through a summary procedure. The right of hearing given to the dealer cast the corresponding obligation on the authority to act fairly and reasonably for ensuring that the dealer can utilize his right of hearing effectively and meaningfully. I think, the dealer will be able to utilize his such right only when he knows what are the allegations against him, and what materials form the foundation of such allegations. If he is not informed of the allegations and supplied with the materials, the opportunity of hearing given to him is bound to be an entirely ritualistic exercise; and the purpose for which it is provided in para 9 (I think, it is provided for giving the dealer the opportunity to defend himself) will stand totally defeated. It seems to me, the right given to the dealer is likely to fall an easy prey to an intended arbitrary action, if the corresponding obligation of the authority remains skeletal.

9. I am, therefore, of the view that the process of cancellation of licence under para 9 of the Control Order must conform to the fundamental principles of natural justice; it should not be a summary one, beginning only with an opportunity of hearing and ending with the final decision. The authority must give the dealer an effective and meaningful opportunity of hearing by informing him in detail about the allegations, by supplying him copies of all documents, complaints, enquiry reports, -- on which the authority relies, and by giving him an opportunity to submit his statement of defence. The opportunity of hearing should be given only after complying with such formalities, which are recognised prerequisites for the opportunity to become a real and meaningful opportunity.

10. Admittedly, in the present case a summary procedure was followed, and the petitioner is yet to know the nature of the allegations, which were made against her. I am, therefore, of the view that the impugned order should be set aside with liberty to the Controller to give a fresh decision in the proceeding following the procedure indicated by me hereinbefore.

11. For these reason, I allow this writ petition and set aside the impugned order dated December 20th, 2004. The Controller will be at liberty to proceed afresh against the petitioner for cancellation of her licence. If he does not take necessary steps for proceeding afresh, within a fortnight from the date of receipt of a copy of this order by him, then it will be presumed that he has decided not to proceed afresh; and in that case, he shall immediately revoke the suspension order. If he takes the decision to proceed afresh, then he shall conclude the proceeding by giving the final decision within thirty days from the date of receipt of a copy of this order by him, and till the conclusion of the proceeding the suspension order shall remain operative.

12. In the facts and circumstances of the case, I am not inclined to make any order for costs in favour of the petitioner. Hence there will be no order for costs in the writ petition.

13. All parties are to act on a signed xerox copy of this dictated order on the usual undertakings.