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**(2016) 07 CAL CK 0030**  
**In the Calcutta High Court**  
**Case No : WP 26603 (W) of 2015**

Samarendra Nath Ghosh

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision :** 15-07-2016

**Acts Referred:**

**Citation :** (2016) 3 CalLT 621

**Hon'ble Judges :** Samapti Chatterjee, J.

**Bench :** Single Bench

**Advocate :** Mr. Ram Anand Agarwal, Learned Advocate, Ms. Nibedita Pal, Learned Advocate, Mr. A.G. Mukherjee, Learned Advocate and Mr. Ramesh Dhara, Learned Advocate, for the Petitioner; Mr. Susovan Sengupta, Learned Advocate and Mr. Sirsanya Bandyopadhyay, Learned Ad

**Final Decision :** Dismissed

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## Judgement

Samapti Chatterjee, J.—Issues involved in this case to be decided are as follows :-

- (i) Whether the statutory competent authority after taking independent decision would fail to act on the basis of the decision thereby referring the subject to his Superior Officer;
- (ii) Whether the impugned order suffers from the doctrine of dictation so also without jurisdiction;
- (iii) When admittedly there is no appeal in the eye of law thereby rejecting the appeal filed by the petitioner's daughter on behalf of the petitioner on the technical ground, then cancellation of the petitioner's licence by the Director of consumer goods on 25th February, 2014 exists.

Fact of the Case

2. The petitioner's case in brief is as follows :-

The petitioner was a kerosene dealer and was granted dealership licence by the Director of Consumer Goods under West Bengal Kerosene Control Order 1968. Since then petitioner had been carrying on business as a kerosene dealer under the name and style of M/s Balaram Bhandar as a proprietor. On 28th February, 2005 the Director issued a notice thereby suspended the petitioner's licence and also directed to reply to the charges framed therein. Pursuant to the same on 7th March 2005 the petitioner appeared in the hearing before the Director and made submission and also filed reply to the said notice dated 28th February, 2005 and 2nd March, 2005.

Thereafter vide order dated 24th March, 2005 the petitioner's licence was cancelled. On 18th April, 2005 petitioner filed an appeal for restoration of his kerosene oil dealership. Due to his illness the petitioner failed to take steps in respect of his pending appeal. Therefore after recovery the petitioner filed another appeal before the appellate authority on 11th September, 2007. Since then petitioner made repeated representations before the authorities praying inter alia for restoration of his licence and ultimately sometime in December, 2007 the petitioner was asked to submit another appeal before the commissioner and Principle Secretary and accordingly the petitioner submitted another appeal on 21st January, 2008 before the appellate authority.

In course of time the landlord of the shop room took forcible possession thereof taking advantage of closure of petitioner's business, the petitioner without finding any alternative approached this Hon'ble Court by filling writ petition being no. W.P 361 of 2011 which was disposed of by order dated 18th May, 2011 thereby directing the respondent authority to pass a reasoned order after giving an opportunity of the hearing to the petitioner.

Pursuant to the said judgment and order on 18th May, 2011 the authority passed a decision on 3rd June, 2011 thereby quashing the order of cancellation dated 24th March, 2005 and further directing the respondent to initiate fresh proceedings on the ground of same allegations strictly in accordance with law. Upon quashing of the cancellation order of the petitioner's licence the petitioner prayed before the director to allow him to continue with dealership at the changed site at B/502/H/8 , Rabindra Sarani, Kolkata-700005. Accordingly the petitioner was allowed to resume his business from the changed place of business. Thereafter on 20th January, 2014 the Director issued show cause notice on the allegations referred therein and immediately thereafter the Director issued an order on 6th February, 2014 making fresh allegations and directed the petitioner to appear in the hearing on 18th February, 2014 in his chamber.

Since the petitioner at that relevant point of time was in UK due to his treatment of cancer the daughter of the petitioner appeared in hearing on 18th February, 2014 before the Director and requested him to allow the petitioner to run the said business through his daughter by virtue of a power of attorney. Unfortunately on 25th February, 2014 the Director cancelled the petitioner's licence on the alleged ground that the petitioner did not appear for hearing

though admittedly the petitioner appeared through his daughter and submitted a request on the same date i.e. on 18th February, 2014.

Petitioner filed a statutory appeal against the said rejection order dated 25th February, 2014 which was also rejected only on the ground of delay of seven days but not on merit. Since the appeal was not considered on merit the petitioner claimed to be entitled to a fresh licence against the cancelled licence and accordingly the petitioner made a representation before the authority on 18th July, 2014 for grant of licence of kerosene dealership. Thereafter the authority directed the petitioner to submit same documents for grant of licence. Accordingly the petitioner on 7th August, 2014 submitted the documents in the office of the Director. The Director passed the order on 14th August, 2014 thereby directing his officers to hold enquiry in the petitioner's application for grant of licence and such enquiry was conducted by an inspector and report was also submitted by the said inspector on 27th August, 2014 thereby recommending the petitioner's case.

On 5th October, 2014 the Director approved the petitioner's case for issuance of a fresh licence in favour of the petitioner and sent the records to his superior officer, namely, Food Commissioner and at the dictate of the Food Commissioner, the Director passed another order on 30th October, 2014 thereby directing not to issue licence to the petitioner and to declare the vacancy of the same and accordingly recalled his own order. Hence, the present writ petition for cancellation of the impugned order dated 30th October, 2014 and to issue kerosene dealership licence in favour of the petitioner in terms of the order dated 15th October, 2014.

#### Submissions of the Learned Advocates

3. Mr. Ram Anand Agarwal, learned Counsel appearing for the petitioner submitted that under Paragraph 6 of the Control Order 1968 the Director being the statutory authority passed an order on 15th October, 2014 for grant of licence to the petitioner. As per paragraph 8 of the Control Order 1968 the Director has the jurisdiction to grant or renew the licence to a dealer. Under Paragraph 10 of the Control Order 1968 the Commissioner/Principal Secretary was the appellate authority against the order passed by the Director. The paragraph 8 and 10 of the Control Order 1968 are respectively quoted below:

"Paragraph-8-Refusal to grant or renew license-The Director or the District Magistrate having jurisdiction, may after giving the agent or the dealer concerned an opportunity of stating his case in writing and for reasons to be recorded in writing refuse to grant or renew a license under this order. Paragraph-10-Appeal- (a) Any person aggrieved by an order passed under paragraph 8 or paragraph 9 of this Order, may within 30 days from the date of the order, prefer an appeal to the State Government in the Food and Supplies Department.

(b) Elsewhere-

(i) where the order is passed by the District Magistrate or the Deputy Commissioner of a district, to the State Government,

(ii) where the order is passed by any other officer authorised by the District Magistrate or the Deputy Commissioner of a district under clause of paragraph 3, to the District Magistrate or the Deputy Commissioner, as the case may be, of the district."

4. Mr. Agarwal further vehemently contended that in the present case the Director on 15th October 2014 passed an order granting licence to the petitioner in terms of the power conferred upon him under Paragraph 6 of the Control Order, 1968 But curiously the Director sent the entire file to the Commissioner who is an appellate authority, who has no role to play in grant of licence which is exclusively under the domain of the Director as per statute. Therefore Mr. Agarwal vehemently argued that the Director has no scope under the statute to send the file to the Commissioner, the appellate authority nor has any power to recall the order on 30th October, 2014 thereby withdrawing his earlier order dated 15th October, 2014 for grant of licence to the petitioner. The order dated 30th October, 2014 is therefore, patently without jurisdiction.

5. Mr. Agarwal further strongly contended that the rejection of the petitioner's appeal on 27th May, 2014 was made on the ground that the petitioner's daughter has no locus standi to file the appeal under Paragraph 10 of the Control Order 1968 as the power of attorney in her favour already expired. The purported rejection was on technical ground and not on merit.

6. Mr. Agarwal further contended that since there was no adjudication, there could not be any appeal in the eye of law, accordingly, there was no scope to challenge the order of the appellate authority. Therefore after returning from UK the petitioner made a representation on 18th July, 2014 praying for revival of licence cancelled on the ground of non-appearance.

7. Mr. Agarwal further contended that it is the domain of the Director alone to pass order and any other person even a superior authority cannot interfere with the power of the Director vested under the statute. In support of his contention Mr. Agarwal relied on a decision reported in 2011 (5) Supreme Court cases page-435 Paragraphs-26 to 28 (Joint Action Committee of Air Line Pilots' Association of India (ALPAI) And Others v. Director General Of Civil Aviation And Others) which are quoted below :-

"Para-26-The contention was raised before the high Court that the Circular dated 29.05.2008 has been issued by the authority having no competence, this cannot be enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set up like ours, persons occupying key positions are not supposed to mortgage their way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the

behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. Vide *Purtabpore Co. Ltd v. Cane Commr. Of Bihar*, *Chandrika Jha v. State of Bihar*, *Tarlochan Dev Sharma v. State of Punjab* and *Manohar Lal v. Ugrasen*)

Para-27-Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji*, *Bahadurshing Lakhubhai Gohil v. Jagdishbhai M. Mamalia* and *Pancham Chand v. State of H.P* observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

Para-28-In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner."

8. Mr. Agarwal further vehemently urged that it is a settled principle of law that if a licence is cancelled due to illness and no vacancy thereof is declared then there is no legal bar to restore the dealership, when admittedly the petitioner came to India after having recovered from his illness. In support of his contention Mr. Agarwal relied on a decision reported in 2004 (3) CHN Page-350 Paragraph-9 (*Pradip Kumar Maity v. State of West Bengal & Ors*).

9. Mr. Agarwal also relied on a Supreme Court decision reported in 1983 (3) SCC Page-284 ( *Y.V. Rangaiah and Others v. J. Sreenivasa Rao and Others*) Paragraph-9 on the ground that rules existing at the time of passing order shall prevail and not the rules which are subsequently amended. Therefore, before parting with his argument Mr. Agarwal submitted that the impugned order dated 30th October, 2014 issued by the Director upon the dictation of his superior office, the appellate authority herein, is bad in law and should be quashed and set aside by this Hon?ble Court.

10. Per contra, Mr. Susovan Sengupta, learned Advocate appearing for the respondent authority vehemently urged that after rejection of the appeal by the appellate authority against the petitioner's cancellation of appeal even on the ground of technicality the Director has no authority to restore or grant licence to the petitioner as the order dated 27th May, 2014 of the appellate authority is not under challenge before any forum. Therefore, the order of cancellation reached its finality.

11. Mr. Sengupta further contended that before grant of licence the approval of Government is very much necessary and the Director acted within the periphery of the law thereby seeking approval from the Commissioner.

12. Mr. Sengupta further strongly argued that no licence can be granted to any person unless a proper vacancy is declared for the public at large to apply for the

same under existing provision of Control Order. In support of his contention Mr. Sengupta relied on a decision reported in 2007 (1) CHN Page- 161(Ramkrishna Pandia v. Jogesh Chandra Sarkar & Ors) Paragraphs 9, 10 & 11 which are quoted below :-

"Para-9-Therefore, after the coming into operation of 2003 order mentioned above, if any new M.R. Distributor is to be appointed, the same must be done in accordance with the mandate of that order and should be preceded by a declaration of vacancy and followed by a fresh process of selection simply because 21 years ago, the appellant was found to be the most suitable candidate in accordance with the then norms, that does not mean that without declaring fresh vacancy, the vacancy occurred 21 years ago in accordance with the then norms should be given effect to by depriving others who have subsequently acquired right to apply under 2003 order. In this connection, it will not be inappropriate to refer to the decision of the Supreme Court in the case of State of U.P. & Ors v. Vijay Bahadur Singh, reported in AIR 1982 SC 1234 where the Apex Court held that even after acceptance of the provisional bid, the Government is entitled to change its policy and reject the highest bid and no vested right accrued in favour of the highest bidder to have the selection notwithstanding the change of policy.

Para-10-At this stage, it will not be out of place to refer to a decision of the Supreme Court in the case of P.T.R Exports (Madras) Pvt. Ltd. & Ors v. Union of India & Ors, reported in 1996 (5) SCC 268, where a Bench consisting of three-Judges held that an applicant for license has no vested right or accrued right to have a license in accordance with the policy subsisting at the time of submission of the application and the Government has power to evolve its new policy in public interest, which includes its power to withdraw the old policy and the Court cannot bind the Government to its previous policy by invoking the doctrine of legitimate expectation of the applicant for license unless the change in policy is vitiated by mala fides or abuse of power, which the applicant must plead and prove to the satisfaction of the Court. The Supreme Court further held that the doctrine of promissory estoppel is equally inapplicable in such circumstances.

Para-11-Therefore, the District Magistrate acted without jurisdiction in asking the District Controller of Food and Supplies to seek approval for appointment of the appellant when according to 2003 order a fresh vacancy is required to be declared according to the existing position and then selection should follow."

Therefore, in conclusion Mr. Sengupta submitted that there is no infirmity in the order dated 30th October, 2014 passed by the Director of the consumer goods which deserves interference by this Hon'ble Court.

#### Decision with Reasons

13. Considering the submissions advanced by the learned Advocates and after perusing the records it is revealed that admittedly against the cancellation of the petitioner's licence dated 25th February, 2014 by the Director of Consumer

goods, appeal was preferred by the petitioner's daughter which was ultimately rejected by the appellate authority on 27th May, 2014 on the ground that she has no locus standi to file the appeal under Paragraph 10 of the Control Order 1968 since the power of attorney in her favour given by the petitioner has expired. Therefore, since there is no appeal in the eye of law the order of cancellation dated 25th February, 2014 remains, the petitioner did not challenge the order of rejection of appeal dated 27th May, 2014 passed by the appellate authority. Then in my considered view the Director of consumer goods has no authority to pass the order dated 15th October, 2014 thereby granting the licence to the petitioner, contrary to his earlier cancellation order dated 25th February, 2014.

Therefore, in my opinion the impugned order dated 30th October, 2014 issued by the Director thereby holding that vacancy shall be declared, and no licence will be issued to the petitioner as his appeal is rejected is not bad in law.

14. It is admitted position that the Director has no authority to send the matter to the Commissioner who is the appellate authority for his opinion, the Director is empowered to take decision under Paragraph 8 of the Control Order 1968 to grant, renew or to refuse a licence to a dealer. Further under Paragraph 8 of the Control Order 1968 there is no scope to send the matter to his higher official the Commissioner. Granting or renewal or refusal to grant licence is completely within the domain of the Director of consumer goods.

In the present case also the Director being the statutory authority once on 15th October, 2014 passed an order for grant of licence to the petitioner, but subsequently on the dictation of his superior officer, the Commissioner, (who is the appellate authority herein) has passed the impugned order dated 30th October, 2014 thereby holding that vacancy shall be declared, no licence will be issued in favour of the petitioner as his appeal was rejected.

In the premises in my considered view there is no infirmity in the impugned order dated 30th October, 2014 as admittedly the appeal against the cancellation of licence has been rejected by the appellate authority on 27th May, 2014 and the petitioner did not challenge the said order of the appellate authority before any court of law.

15. Now I deal with the decisions relied on by Mr. Agarwal. In Y.V. Rangaiah And Others case (supra) the case relates to promotion in the services. There the petitioner's case was considered under the new rule though the petitioner's case should have been considered under the old rules. Therefore, the Hon'ble Division Bench dismissed the appeal. But in the present case the petitioner's appeal against the cancellation of his licence was rejected as a result the cancellation of the petitioner's licence still exists. The Director of the consumer goods had no power to take further decision on 15th October, 2014 to issue fresh licence in favour of the petitioner. Since the order dated 15th October, 2014 was bad in law, therefore, in my opinion there is no infirmity in the impugned order dated

30th October, 2014 issued by the Director of consumer goods thereby holding that unless vacancy is declared, no licence will be issued to the petitioner as his appeal was rejected. The argument of Mr. Agarwal that in the Control Order 1968 there is no provision to seek direction from the higher authority by the Director of Consumer goods has no force as it is evident from record that the petitioner against the rejection of his licence filed appeal through his daughter which was rejected on technical ground and no further steps was taken against the order of cancellation of his licence. Therefore, the cancellation of the petitioner's licence on 25th February, 2014 still remained in force.

The decision in Pradip Kumar Maity case (supra) though it is a good point but this decision has no manner of application in the present case in hand because in the said case the petitioner got dealership on compassionate ground on the death of his father at the self same area but here the facts are totally different.

With regard to the decision in Joint Action Committee of Air Line Pilots?

Association of India (ALPAI) (supra) the case relates to a decision taken by the statutory authority at the behest or on suggestion of a person who has no statutory role to play. I do not dispute the proposition of law that if any decision has been taken by any statutory authority, the same can not be recalled at the behest of any person who has no role to play but this proposition of law is not applicable in the present case in hand because the order of cancellation of licence dated 25th February, 2014 was not properly and lawfully challenged, the resultant effect is that the order dated 25th February, 2014 hold the field and cancellation licence remained in force.

16. That being the scenario emerging in the above discussions I have no hesitation to hold that there is no merit in the writ petition which deserves interference by this Hon'ble Court.

17. Accordingly, the writ petition stands dismissed, however no order as to costs.

18. Urgent photostat certified copy of this judgment, if applied for be supplied to the parties after fulfilling all the formalities.