

(2013) 05 MP CK 0107
In the Madhya Pradesh High Court
Case No : W.A. No. 233 of 2013

Seva Sahakari Samity

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2013) 05 MP CK 0107

Hon'ble Judges : Krishn Kumar Lahoti, Acting C.J.; Subhash Kakade, J

Bench : Division Bench

Advocate : Amrit Lal Gupta, for the Appellant; Jaideep Singh, Deputy Government Advocate for State, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard. This appeal is directed against an order dated 22nd February, 2013 passed in W.P. No. 2837/2013, by which, the writ petition preferred by the appellant was dismissed on the ground of availability of an alternative remedy.

2. The facts of the case are that the appellant was allotted a fair price shop licence at Bagalwada, District Raisen. The said shop was inspected by the Assistant Supply Officer, Bareilly on 08/02/2013 and 12/02/2013. In the inspection, serious irregularities were found in the shop. A report was submitted to the Sub Divisional Officer, Bareilly, who by an order Annexure P/1 dated 12/02/2013 directed suspension of the shop and the said shop was attached to a marketing co-operative society, Bareilly temporarily. This order dated 12/02/2013 was assailed by the appellant before the writ Court and the writ Court found that under para 12 of the Order namely Madhya Pradesh Public Distribution System (Control) Order, 2009 (hereinafter referred as "Control Order"), the appellant herein could have filed an appeal and directed disposal of the writ petition with a liberty to the appellant to avail such a remedy of appeal. This order has been assailed by the appellant before this Court on following grounds:-

(i) That, the suspension is by way of punishment and penalty as provided under

clause 11 of the Control Order.

(ii) That, under sub-clause 2 of the Control Order, a show cause notice and opportunity of hearing was necessary before the suspension of the shop and in the present case, the shop was suspended without issuance of a show cause notice and extending an opportunity of hearing, so the order Annexure P/1 was without jurisdiction and could have been challenged in the writ petition.

3. It is submitted that when such order is without jurisdiction, learned single Judge erred in dismissing the writ petition with a liberty to file an appeal.

4. Shri Jaideep Singh learned counsel appearing for the State supported the order and submitted that for suspension of the shop, it was not necessary for the Sub Divisional Officer to issue a show cause notice or extend an opportunity of hearing. However, for revocation of the fair price shop licence, a show cause notice and opportunity of hearing was necessary, so the appellant will get such an opportunity after suspension of the shop. It is submitted by Shri Jaideep Singh that post decisional hearing has been provided under the provisions and the appellant would get such an opportunity before revocation of the licence.

5. As directed by this Court, the respondents have produced the file of the matter and from the perusal of the file, we find that the shop of the appellant was inspected on 08/02/2013 and 12/02/2013 by the Assistant Supply Officer, Bareilly, in which, near about 12 irregularities were found. The aforesaid irregularities appear to be serious in nature. We are not considering the propriety of the order dated 12/02/2013, but, are considering the contentions of the appellant that before suspension of the licence, it was necessary for the authority to issue a show cause notice and extend opportunity of hearing, as the suspension amounts to punishment-cum-penalty. It appears that after suspension, a show cause notice has been issued to the appellant on 09/04/2013, which is available in the file, but learned counsel for the appellant submits that he has no information whether such a notice has been received by the appellant till date or not.

6. In the light of the aforesaid facts, we have examined the case. Clauses (1) and (2) of Para 11 of the Control Order are relevant and for the ready reference, we quote the aforesaid paras, which read as under:-

11. Punishment and Penalty:

(1) In case of contravening any provision of central order or this order by any co-operative institution running the fair price shop, the authority letter shall be suspended or revoked and the security deposit shall be forfeited and in such a case, the forfeited amount shall be recoverable from the erring employee of the concerned society.

(2) The shop allotment officer cannot revoke the licence as per sub-clause (1) without issuing the show cause notice to the concerned fair price shop and till such time an opportunity has been given to the fair price shop holder to put forth

its arguments in writing and after reasonable opportunity has been given, the shop allotment officer in a reasoned order shall suspend the licence and the shop allotment officer shall issue a show cause notice within ten days of suspending the fair price shop following the principles of natural justice giving a reasonable opportunity to the fair price shop holder and ensure that the final order be passed within three months.

7. Clause (1) of Para 11 of the Control Order provides that in case of contravening any provision of central order or this order by any co-operative institution running the fair price shop, the authority letter shall be suspended or revoked and the security deposit shall be forfeited and in such a case, the forfeited amount shall be recoverable from the erring employee of the concerned society. The aforesaid provision empowers the authority for the aforesaid punishment and penalty. It appears that under Clause (1) of Para 11 even suspension of the shop has been treated as punishment-cum-penalty, but Clause (2) of Para 11 of the Control Order makes four provisions:

(i) The shop allotment officer cannot revoke the licence as per sub-clause (1) without issuing the show cause notice to the concerned fair price shop and till such time an opportunity has been given to the fair price shop holder to put forth its arguments in writing;

(ii) The shop allotment officer in a reasoned order shall suspend the licence;

(iii) The shop allotment officer shall issue a show cause notice within ten days of suspending the fair price shop following the principles of natural justice giving a reasonable opportunity to the fair price shop holder; and

(iv) It shall ensure that the final order be passed within three months.

8. The aforesaid provision is very specific and provides that before revocation of the licence, a show cause notice is necessary, but for suspension of the licence, such show cause notice is not necessary. However, issuance of show cause notice within ten days from the date of suspension of the shop is mandatory requirement and that a final order should have been passed within three months from the date of suspension of the shop.

9. The aforesaid provision makes it clear that for revocation of licence, a show cause notice is necessary, but for suspension of the licence, such a notice or opportunity of hearing is not necessary, but within ten days of suspending the fair price shop, issuance of show cause notice is mandatory requirement under the law.

10. In the present case, it is apparent that the show cause notice was issued on 09/04/2013, while the shop was suspended on 12/02/2013. The licencing authority ought to have issued a show cause notice within a period of 10 days from the date of issuance of suspension order and ought to have passed a final order within a period of three months from the date of suspension of the licence. Admittedly, the show cause notice was issued beyond the period of ten days, the

licence remained suspended for a period of more than two months from the date of suspension order.

11. In the aforesaid circumstances, we find that the order of the writ Court that an appeal ought to have been filed by the appellant against such order, is just and proper, but taking into cognizance of the subsequent event that within a period of ten days, a show cause notice was not issued from the date of suspension of the licence, we find it appropriate to set aside the suspension order. Accordingly, we set aside the suspension order. However, a liberty is granted to the respondents to conclude the proceedings within a period of two months from today. With the aforesaid direction, this appeal is finally disposed of with no order as to costs.