
(1972) 07 CAL CK 0031
In the Calcutta High Court
Case No : Civil Order No. 6097 (W) of 1972

Srinath Singh

APPELLANT

Vs

S.K. Bhattacharjee and Others

RESPONDENT

Date of Decision : 21-07-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1973 Cal 28 : 77 CWN 84

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Arun Kumar Datta, Nawal Kishore Choudhury, Amitava Datta and Partha Mukharji, for the Appellant; Siblal Bose and Paritosh Kumar Mullick, for the Respondent

Final Decision : Dismissed

Judgement

Salil Kumar Datta, J.—The petitioner in this application had been a dealer in foodgrains prior to 1964. After the enforcement of West Bengal Rationing Order, 1964 (hereinafter referred to as the said order), he was appointed a retail dealer having a ration shop at 10, Hastings Street, Calcutta being A. R. Shop No. 2598 and is carrying on business as such. The petitioner receives stock of foodgrains from the respondents and sells the same to persons who are ration card holders numbering 4100. According to the petitioner's case, in course of business, he complained to the authorities about bad quality of foodgrains. The petitioner's employee the respondent No. 8 who had earlier represented to the petitioner to part with Rs. 1,000/- as advance, inadvertently made on June 13, 1972 some cash-memos for NBSF rice though NMB rice was supplied. The petitioner immediately contacted the customers and returned the excess amount inadvertently realised and informed and explained the matter to the Rationing Officer. Bowbazar of his own accord. At this the respondent No. 7 passed an order on June 14, 1972 calling upon the petitioner to explain the matter within seven days. It appears that on June 16, 1972, an order was issued by Shri S. K.

Battacharjee, Director of Rationing (Respondent No. 1) informing the petitioner that there was a report about his selling N. B. M. (Boiled) rice at Rs. 1.41 instead of Rs. 1.24 and he was asked to show cause to the Enquiry Officer appointed for the purpose within seven days as to why his appointment should not be revoked under para. 3 (5) to the said order. On the same date there was another order by the said authority informing the petitioner that as it was necessary in public interest to suspend his appointment pending enquiry, in exercise of powers under proviso to para, 3 (5) thereof his appointment was suspended with immediate effect. By another order of the Rationing Officer Respondent No. 7, incorporated in the preceding order all ration cards of the petitioner's shop were transferred and relinked to other shops. All these orders were served on the petitioner at 6 p. m. on June 16, 1972.

2. The petitioner contended that there was never any complaint against him and the said order of suspension was mala fide, arbitrary and contrary to the provisions of the Rationing Order, the petitioner's business would be completely stopped thereby, causing irreparable loss and injury to him. It was further contended that under para. 5 (3) of the said order there could be no order of suspension without giving an opportunity to the petitioner of being heard. The Rationing Officer, Bowbazar has also no jurisdiction or authority to transfer all existing valid ration cards of the petitioner's shop and to relink them to another shop. On these allegations and contentions the petitioner moved the application in this Court on June 17, 1972 at my residence on leave granted by the Chief Justice in the special circumstances of the case on the prayer of the petitioner against the interim order of suspension. After hearing Mr. Arun Kumar Dutta (Sr.), the Court fixed the hearing of the application on June 20, 1972 on notice to the respondents Nos. 2 and 7 and in the meantime an interim order was issued restraining the respondents from giving effect to the order of interim suspension of the petitioner's appointment. The petitioner was granted leave to file a supplementary affidavit as prayed for.

3. Mr. Sibal Bose, learned counsel for respondents Nos. 1 to 7 had appeared on June 20, 1972 and directions were given for affidavits while the interim order has been continued. The petitioner filed a supplementary affidavit in which it was stated that excess price was collected deliberately by his employee the respondent No. 8 who, as already stated, made a demand of Rs. 1,000/- off the petitioner on threat of dire consequences for some "alleged reasons", which demand was declined by the petitioner. The petitioner made a representation to the officers of the Rationing Office apprehending trouble. It was further stated that during his appointment as such dealer there was never any specific complaint against him. On June 14, 1972, the shop was visited by some officer of the department who made an inspection note asking the petitioner to explain about the excess price realised (Annex. X). Further visit to the shop was made on June 15, 1972 by some other officer who found shortage in stock within allowable limit. The petitioner on coming to know of the excess charge, took steps to refund the amount. In this state of affairs, the orders of June 16, 1972

were not passed in bona fide exercise of power or authority, depriving the petitioner of his trade or business and without allowing him to submit defence.

4. An affidavit-in-opposition was filed on behalf of the respondents in which it was stated that the appointment of the petitioner as a retailer was suspended on June 16 pending enquiry into serious charges of misconduct and violation of the statutory provisions prejudicial to the interest of the general public. It was denied that there was any representation by the petitioner about the defective supply of foodgrains. It was said that the petitioner never made any representation or gave explanation of his own accord and no case of inadvertence in realising excess price or return of such price was ever put forward at the enquiry on June 14. It was stated that the order of suspension was passed under proviso to para. 3 (5) of the Rationing Order in due and bona fide exercise of powers. The delinking of cards which is authorised by the rules was necessary in view of the interim suspension of appointment of the petitioner. It was stated no fundamental rights of the petitioner were involved in the matter. On receipt of the complaint over telephone that the petitioner was realising excess price for rationed commodities from card holders an enquiry on spot was made when the petitioner was not present. It was found that excess charges were in fact realised and thereafter the disciplinary proceedings were drawn up and the impugned orders were issued in due exercise of powers under the said order. The application filed by the petitioner should in the circumstances be dismissed.

5. The petitioner filed an affidavit-in-reply reiterating his allegations made in the petition and in the supplementary affidavit stating that the service of the respondent No. 8 in the meantime has been terminated. It was contended that the provisions of para, 3 (5) and its proviso are violative of Article 19(1)(g) of the Constitution and are void. There was no material before the State Government to form an opinion that the impugned order was passed in public interest. The impugned order of suspension was passed arbitrarily and in mala fide exercise of power. The petitioner also referred to the statement alleged to have been made by the ration card holders stating that they had no complaint against the petitioner.

6. On June 28, 1972 an application was filed by the petitioner for amendment of the main petition by incorporating fresh grounds of attack on the said Rationing Order. It was contended that proviso to para. 3 (5) confers unguided uncanalised and arbitrary powers on the rationing authorities and as such are void. Further proviso to sub-para. (5) of para. 3 of the said order providing for power of substantive suspension without enquiry makes provisions of sub-para. (5) nugatory. It was also contended that enquiry could only be directed after appointment of officer by the State Government under sub-para. (6) of para. 3, Further the Deputy Controller of Rationing has no authority to delink the ration cards and such re-delegation, which is excessive is not contemplated under the parent Act.

7. The point for our consideration Is whether the order of suspension of the

petitioner's appointment pending enquiry is warranted by law and in the facts of the case and also if such order is justifiable. The West Bengal Rationing Order, 1964 was framed by the State Government in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1950. There was further amendment of the said order in 1969 (vide Government of West Bengal Order No. 2282-F S./FS/14R-52/68 dated April 11, 1969 published in the Calcutta Gazette on the same date) whereby a proviso was added to sub-paragraph (5) in addition to certain amendment in the said sub-paragraph itself as underlined in the extract quoted below:

"3 (5). Whenever in the opinion of the State Government it is necessary or expedient so as to do in the interests of the general public, the State Government may amend, vary, suspend or revoke any appointment made under this paragraph after making an enquiry in which an opportunity shall be given to the holder of the appointment of being heard either in person or by an agent and for reasons to be recorded in writing, and in every such case the holder of the appointment shall be bound to surrender on demand, to the State Govt., the order of appointment for endorsement or cancellation, as the case may be:

Provided that pending an enquiry into a charge against the holder of an appointment the State Government may suspend his appointment, if in the opinion of the State Government immediate suspension is necessary in the interests of general public."

By notification No. 3570F. S./FS/14R-52/68 Pt. II dated May 31, 1969, published in the Calcutta Gazette on the same date, the State Government has delegated to the Director of Rationing in the Department of Food and Supplies, Government of West Bengal, inter alia, the powers conferred on the State Government under paragraph 3 of the said order. In view of the above provisions, there can be (no) dispute that the impugned orders have been duly issued by the competent authority under the Rationing Order being the Director of Rationing.

8. Before we proceed further a preliminary objection has been taken by Mr. Bose, contending that as the appointment of the petitioner is on the basis of a contract, its provisions cannot be enforced by constitutional writs in proceedings under Article 226(1) of the Constitution and remedy, if any, lies in damages. There is no doubt that on the appointment as retail dealer, such retail dealer has to execute an agreement and the terms and conditions of his appointment are also governed by the said agreement. The agreement however is not complete in itself in all respects though it provides under Clause 17 for its automatic termination and for its other terms and conditions reference has to be made to the Rationing Order, in particular to its paragraph 3 : Sub-para. (5) of the said paragraph quoted above provides for amendment, variation, suspension and revocation of the appointment by the State Government and by its proviso the power of suspension pending enquiry has also been provided. There can therefore be little doubt that if the provisions of sub-para. (5) of para. 3 of the said order, which by nature and character are statutory, are violated, it would be

open to the aggrieved party to approach the Court in this jurisdiction for appropriate reliefs. Further in the case of *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, the Court did not accept the contention that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority, he must resort to a suit and not to a petition by way of a writ. The Supreme Court also observed in the case of *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, that a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high handed, arbitrary or unjust is entitled to a hearing of the petition on merits. In the case before us, the question at issue is an alleged violation of the statutory provisions as also an alleged arbitrary exercise of a statutory power. For these reasons the preliminary objection against the maintainability of the application is overruled.

9. Mr. Dutt has contended that the powers to issue orders under Section 3 of the Essential Commodities Act, 1955 are exercisable by the Central Government and can be delegated by it to the State Government u/s 5. The State Government as delegatee cannot in law further redelegate its powers under the Act. The West Bengal Rationing Order, 1964 as amended from time to time, has been issued by the State Government and under para. 22 (1) of the said order, it is provided that the State Government, by general or special order, delegate any of the powers conferred on it by paragraph 3 of the said order. In exercise of the said powers, the State of West Bengal by order Ref No. 3570F.S./FS/14R-52/68-Pt II dated 31st May, 1969 delegated its powers under paragraph 3 to the Director of Rationing in the Department of Food and Supplies, Government of West Bengal. This delegation has been impugned by the petitioner, as the relevant orders have been passed by the said authority.

10. In the decision *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, the proposition has been set out by Bachawat, J. in the following words :

"The maxim *'delegatus non potest delegare'* does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. But the intention may be negated by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted."

There is no dispute about the above proposition of law though there is some difference of opinion in the said decision about its application in the facts of the said case. The delegation to the State Government for exercise of powers u/s 3 has not been and cannot be questioned. The Director of Rationing, as we have seen, has been given under sub-para (1) of para 22 of the said order and also under the agreement appended thereto, various powers in connection with the

execution and implementation of the provision of the order and the agreement. All orders of the delegatee officers, at the instance of the aggrieved party, are made subject to review and revision by the State Government under sub-para (2) of paragraph 22 of the Rationing Order. There is no express prohibition against such delegation in the statute which is neither personal nor attached to any office, and the necessary implication in delegating powers to the State Government by the Act is that such power should be exercised through such of its officers as it may be deemed fit. The exercise of such power is again subject to the ultimate control of the State Government by way of review and revision of all orders passed by such delegatee if impugned. I am accordingly of the opinion that the provision under para 22 (1) of the Order and the said notification do not suffer from any vice of illegality on this aspect as contended by the petitioner.

11. Mr. Dutt has next contended that the proviso under sub-para (5) of paragraph 3 of the Rationing Order provides uncanalised and unbridled discretion in the Officers of the State Government in the exercise of powers delegated to them without any guidance resulting in unreasonable and excessive delegation. Reliance was placed on the decision in the case of *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, in which it was held that when the power conferred on any officer for grant or refusal to grant license is unregulated by any rule and principle and it is left entirely to the discretion of particular persons to do anything they like without any check or control by higher authority, the law or order conferring such power must be held to be unreasonable. In the present case, it would appear that the power under the order has been given to a high and responsible officer like the Director of Rationing who is expected to discharge his duties in responsible manner and any order passed by such officer has been made subject to the control of the State Government. Such provisions ensure against the commission of any mischief as noticed in the *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, , In *Chinta Lingam and Others Vs. Government of India and Others*, , the Court observed that when power to grant or refuse permits is conferred on fairly high officers, abuse of powers by such officers cannot be easily assumed. For these reasons the contention of Mr. Dutta is not acceptable.

12. Mr. Dutt has next contended that order of suspension of appointment pending enquiry was passed without hearing the petitioner in violation of the principles of natural justice and amounts to punishment. There is no statutory provision, as will be seen from the rules referred to above, for affording the ration dealer any opportunity when an interim order is passed though such opportunity has been provided at the time of passing final order. In this connection reference may be made to the following observations in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, :

"..... the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law

but supplement it".

In Union of India (UOI) Vs. Col. J.N. Sinha and Another, it has been observed:

"..... if a statutory provision either specifically or by necessary implication excludes the application of any or all the rules or principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice Whether the exercise of, a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose of which it is conferred and the effect of the exercise of that power".

The order we are concerned with is an interim order pending enquiry and it would be alive so long the final order in the proceeding is not passed. Such interim order is to be passed when in the opinion of the State Government immediate suspension pending an enquiry into the charge is necessary in the interest of the general public. In this state of affairs no question of following the principles of natural justice arises in view of the provisions in the Rationing Order and the purpose for which the power is conferred. Of course such order unlike suspension of service will have serious consequences of closing down the business of the dealer which even might affect his future business and put a stigma in his business activity. Considering however the nature of things, such eventuality cannot be avoided as it is inextricably connected with the appointment of dealership and order of suspension pending enquiry passed in the circumstances cannot be deemed as punishment or contrary to principles of natural justice.

13. The rules provide that an interim order may be passed only in case where the State Government is of opinion that immediate suspension is necessary in the interests of the general public. The impugned order states that as a proceeding has been drawn up against the petitioner and in view of the charges pending against him it is necessary in the interest of the general public to suspend his appointment pending enquiry into the proceeding, the appointment of the petitioner is suspended with immediate effect. The order has been issued by the Director of Rationing on the basis of opinion formed by him in public interest as the order indicates. There is accordingly compliance of all conditions requisite for issue of such order and I am unable to accept the contentions of Mr. Dutta that requisite conditions for issue of the order are absent.

14. This brings us to the formidable contention of Mr. Dutt urging that formation of opinion by the authority is justiciable by the Court. He has referred to the decision in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, referred to above in support, in which the Court was considering an order issued by the Company Law Board appointing Inspectors for investigating the affairs of the Company u/s 237(b) of the Companies Act. It was observed by Shelat, J., which was also the opinion of the majority, as follows;

"Though an order Passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond the limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts".

The existence of the circumstances namely realisation of excess price over the fixed price of rationed goods from the consumers is undisputed. The case of the petitioner is that it was done by his employee inadvertently and at another place it is said that the employee did so as he was not accommodated with Rs. 1,000/- as demanded. There was a faint suggestion of mala fides as the petitioner is alleged to have made a representation to the authorities against the supply of inferior quality of rationed articles while the receipt of any representation is however denied by the respondents. In absence of any positive evidence, as at present advised, these allegations are not worthy of any credence and there is even no allegation of mala fide or otherwise against the Director of Rationing. Mr. Bose has submitted that the whole object of statutory rationing is to ensure for proper supply of food grains and to control the price level of the rationed articles for the benefit and in the interest of general public. The appointment of the ration dealers enjoins strict compliance of the terms and conditions of such appointment as also of the relevant rules and any deviation therefrom, of the nature in the present case, in my opinion, cannot but be viewed with serious concern. If in this situation after detection by the officers of the overcharge made by the petitioner's shop, who do not admit that the factum of overcharge was pointed out by the petitioner of his own, the Director of Rationing has suspended the appointment pending investigation of the charge, in my opinion, it could not be said that the order was passed not in public interest but on grounds extraneous to the Rationing Order or that there were no grounds at all for passing it or also that the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the order, while the defence plea is yet to be tested at the proceeding that has been drawn up against him. There is accordingly no escape from the conclusion that the order is warranted in law or on the facts and is an order passed bona fide in public interest on honest formation of opinion on relevant facts.

15. Mr. Dutt has also contended that the delinking of cards is unwarranted by law and is contrary to a decision of this Court the particulars whereof however could not be given by him and the respondents have stated that they are not aware of such decision. It however seems obvious that if there is a temporary suspension

of the appointment of the ration dealer, some arrangements must be made for enabling the ration card holders to obtain the rationed commodities which would not be otherwise available. Such arrangement would obviously be temporary pending final orders in the proceeding against the petitioner.

16. Another point raised by the petitioners is about the order of suspension which in its operative portion does not indicate that it is an order of temporary duration and on the contrary appears to be a substantive order. The order, as pointed out by Mr. Bose. should be read as a whole and it is really one sentence and on reference to its earlier portion there can be little doubt that the order is one pending enquiry.

17. For all these reasons, the application heard on contest, fails and is rejected without however any order as to costs. All interim orders passed in the matter are vacated.

18. As prayed for let there be stay of the operation of this for two weeks from date.