
Sujit Saha and Another Vs State of West Bengal and Others

Writ Petition No. 751 of 2008

Court: Calcutta High Court

Date of Decision: Feb. 13, 2009

Acts Referred:

West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2003 "â€" Clause 26, Paragraph 18

Hon'ble Judges: Aniruddha Bose, J

Bench: Single Bench

Advocate: K.K. Maitra and D. Saha Roy, for the Appellant; K.K. Mukherjee for the State, for the Respondent

Final Decision: Allowed

Judgement

Aniruddha Bose, J.

The Judgment of the Court was delivered by:

1. The petitioners are the joint owners of the fair price shop under a licence which was being operated under the provisions of the West Bengal

Urban Public Distribution System (Maintenance & Control) Order, 2003. In this writ petition, they challenge an order passed by the Director of

Rationing, West Bengal on 24th April 2008 cancelling their licence. This order appears to have been passed in exercise of power under the

provisions of clause 26 of the said Control Order. The Director of Rationing has directed forfeiture of entire security amount which was deposited

by the petitioners in addition to cancellation of their licence. The allegations against the petitioners in substance are misutilisation of public

distribution commodities and contravention of the provisions of paragraph 18 of the 2003 Control Order, as also violation of licensing conditions.

2. The dispute over allegations of irregularities in running the shop had arisen in the year 2004. On 25th October 2004, a notice to show cause was

issued against the petitioners on the charge of excess shortage of stock and for failing to produce proper accounts and certain other records. In this

notice,

which I shall henceforth refer to as the first notice, violation of certain provisions of the West Bengal Rationing Order, 1964 was alleged. By that

time, however, the Control Order of 2003 had become operational and the 1964 Order stood repealed. I shall refer to these Control Orders in

the later part of this judgment as the ""1964 Order"" and ""2003 Order"". The petitioners sent a representation to the authorities for withdrawal and/or

revocation of the show cause notice dated 25th October 2004 primarily on the ground of repeal of the 1964 Order.

3. No further step against the petitioners appear to have had been taken after their response to the first show cause notice. However, a further

show cause notice was issued on 9th November 2006, broadly repeating the irregularities in maintenance of stock, which formed the subject-

matter of the earlier notice of 2004. I shall describe the notice of 9th November 2006 in this judgment as the second notice. The petitioners were

directed to answer the allegations made in the second notice within seven days from the date of receipt of the same. The text of this notice is

reproduced below:-

Govt. Of West Bengal

Deptt. Of Food & Supplies

Office of the D.D.R.(IA-I)

11/A, Mirza Galib Street

Kolkata - 87

Memo No. 2807/IA-I

To

Sri Sujit Saha & Sri Chandan Saha

Proprietors of FPS 1773

Sub-Area - Ballygunge

Sub : show cause Notice.

Whereas it appears from a report since submitted by the Deputy Director of Rationing, Initial Area-I, that following irregularities have been

detected by a squad of the D.D.R.I.A-I during the time of inspection in your Shop No. 1773 on 22.7.04.

1. That no books of accounts, except the Stock Register of APL Wheat and stock Register of BPL commodities, were found by the Inspecting

Office of the said squad at the time of their visit in your shop on 22.7.04.

2. That on physical verification of stock of the following items on excess shortage of the following commodities had been detected by the

Inspecting Officers to the extent as mentioned below:-

Name of the items Amount of excess shortage

a) APL Wheat 33.59.500 Ontls.

b) BPL Wheat 02.50.000 Ontls.

c) BPL Wheat 01.46.500 Ontls.

A) BPL Sugar 02.81.700 Ontls.

3. That you were asked to appear before the Dy. Director of Rationing IA-I on 23.7.04 positively along with all the books of accounts and used

Cash Memos, but you have violated and/or ignored the instructions of the squad.

- AND -

Whereas above irregularities are tantamounts to contravention of the provisions contained in Para 18(iii) and 18(iv) of the West Bengal Public

Distribution System (Maintenance & Control) Order, 2003.

Therefore, I, the Director of Rationing, West Bengal, hereby ask you to show cause within seven (7) days from the date of receipt of this notice in

writing as to why disciplinary action will not be taken against you as per Para 26 of the above said order.

Failure to reply within the stipulated period will lead to ex parte action without reference.

The show cause Notice issued earlier vide this office No. 2572/IA dated 25.10.2004 stands modified by this notice.

Director of Rationing

West Bengal.

4. In their reply to the second notice, (which was in the nature of an interim reply) the petitioners took objection as regards the legality of the

notice. The petitioners' main objection to this notice was that the proceeding against the petitioners ought to have been treated as dropped as upon

receiving the reply of the petitioners to the earlier notice dated 25th October 2004, no further step was taken. The allegations of irregularities in the

petitioners' operations were also refuted. A point was also taken in the reply that since the petitioners were not issued appointment letter or

granted licence under the 2003 Order, no proceeding could be initiated against them under the 2003 Order. The petitioners, in their reply had also

asked for a copy of the report of the Deputy Director, IA-I, which was referred to in the notice, and copies of various documents, which it

appears, were seized by the enquiry squad of the food and supplies department in course of their enquiry on 22nd July 2004. To meet the

expenses for copying such documents, a bank draft for rupees five hundred was enclosed to the reply dated 17th November 2006.

5. Thereafter on 23rd April 2007, a notice was issued fixing a hearing in respect of the show cause notice dated 9th November 2006, scheduled

for 27th April 2007 in the office chamber of the Director of Rationing.

6. A further representation was made by the petitioners on 26th April 2007 in which their request for supply of the report of the Deputy Director

and also copies of the other seized documents were repeated. It does not appear that the authorities had responded to the petitioners' request

made in their representation dated 26th April 2007. The petitioners also did not attend the hearing scheduled on 27th April 2007. A further

memorandum was issued by the Director of Rationing on 30th August 2007 directing the petitioners to appear before him on 5th September 2007,

on which date the petitioners appeared before the Director of Rationing. It has been pleaded in the writ petition that on that date, the said authority

had required the petitioners to produce the seizure list dated 22nd July 2004, and the petitioners claim to have furnished the photocopy of such

seizure list on 10th September 2007. No further action in respect of the second notice appears to have had been taken by the authorities until

certain further allegations were made against the petitioners in pursuance of an inspection conducted on 22nd February 2008. The copies of the

report or documents, as sought for, were also not supplied to the petitioners.

7. On 22nd February 2008, the Chief Inspector (Food & Supplies) along with an inspector of the same department had visited the petitioners' fair

price shop and seized certain documents including the books of accounts on the allegation of excess shortage of ration articles. The petitioners,

however, allege that none of the officers who visited their shop took physical measurement of the ration articles on that date. On that date, in the

petitioners' inspection book, a directive was issued to the following effect:-

In connection with the excess shortage of APL wheat 02.05.235, BPL rice 01.00.837 and BPL wheat 00.43.150 mt. which detected on p.v. on

22.2.2008, the licensee of F.P.S-1773 is hereby directed to submit an explanation to R.O(s) within 3 days under what circumstances the same has

been found excess shortage in the respective stocks.

P.V. Chart is enclosed after being adjusted the excess shortage of the respective stock register.

Sd/- Sd/

Area Inspector Chief Inspector, R.O(s)

22.2.2008 22.2.2008

Received the BPL Cash memo being No. 301 to 400 duly certified and APL cash memo being No. 1601 to 1700 duly certified the above cash

memo left on 22.2.2008 for the interest of the (illegible)

Sd/

C.I., R.O.S.

22.2.2008

8. The petitioners again refuted these allegations in writing by a communication dated 25th February 2008, a copy of which has been annexed to

the writ petition marked ""P10"". Hearing was posted on 2nd April 2008, in connection with their fair price shop before the Director of Rationing in

which the petitioners participated. The intimation of such hearing was given to the petitioners by the Deputy Director of Rationing and Officer-in-

Charge, Legal and Licencing Cell, Directorate of Rationing. The hearing notice which was issued on 24th March 2008 was captioned as ""Ref:

Their letter dt. 25-02-08"". On that date the hearing was concluded, and on 24th April 2008, the order cancelling the petitioners" licence was

issued by the Director of Rationing. The text of this order is reproduced below:

O R D E R

On the basis of hearing held on 02.04.2008 in respect of PPS- 1773 under Ballygunge Sub-Area.

1. WHEREAS on surprise visit and after physical verification of PDS commodities of the FPS-1773, the Food Officials of the Rationing Office,

Ballygunge, on 22.2.2008 have detected Shortage (excess) of PDS Commodities as follows:-

100% weighment:

Date Commodity Closing balance Actual stock Allowable Excess

after P.V. Shortage Shortage

22.2.08. APL Wheat 12-91-600 10-47-00 0-39-365 02-05-235

BPL Rice 07-34-000 06-23-000 0-10-163 01-00-837

BPL Wheat 05-99-750 05-43-000 0-07-600 00-49-150

- A N D -

2. WHEREAS on the spot, through "Inspection Book" the owners of the PPS-1773 was asked to show cause for such misappropriation of highly

subsidised PDS commodities and the reply as submitted by the said licensees of the PPS, dated 25.02.2008 was not at all convincing;

- A N D -

3. WHEREAS the physical verification of the Stock was done after 100% weighment under their presence & signature, the licensees of the said

PPS were asked to appear before the Director of Rationing, West Bengal on 02.04.2008 for giving an opportunity of being heard in terms of para

26 of the West Bengal Urban PDS (Maintenance & Control) Order, 2003 and at the said hearing the said licensees have submitted their

deposition admitting that they often divert ration articles to the local people other than rationees & beyond the scope of the above said Control

Order:

- A N D -

4. WHEREAS it reveals from the record that the same licensees of the FPS-1773 were asked to Show Cause previously vide memo No.

2572/IA-I dated 20.10.04 for mis-appropriation of huge stock of PDS Commodities to the extent as mentioned below, after physical verification

with 100% weighment:

Date Commodity Excess Shortage

22.07.04 APL Wheat 33 - 59 -500

BPL Rice 02 - 50 - 000

BPL Wheat 01 - 46 - 500

BPL Sugar 02 - 81 - 700

5. WHEREAS in reply to the said Show Cause they have taken a plea that ""the charges framed against them for contravention of the Order

referred to in the "notice" no longer exist since the Govt. has repealed the West Bengal Rationing Order 1964.

- A N D -

6. WHEREAS under para 30 (Part IV Miscellaneous) of the West Bengal Urban PDS (Maintenance & Control) Order, 2003, it is clearly stated

that ""such repeal shall not affect""; (d) any penalty, forfeiture or punishment incurred in respect of any offence committed against any of the said

Orders; or (e) any investigation, legal proceeding etc.

- A N D -

7. WHEREAS having regard to the above facts & circumstances I am of the opinion that the above mentioned licencees are habitual offenders in

so far as it relates to distribution of PDS Commodities to the Rationees as per the West Bengal Urban PDS (Maintenance & Control) Order,

2003;

- N O W -

8. THEREFORE taking all above aspects into consideration, and in exercise of the Power conferred upon me by Para 26 of the West Bengal

Urban PDS (Maintenance & Control) Order, 2003, I, Sri Dipak Ghosh, the Director of Rationing, West Bengal, do hereby cancel the licence and

appointment granted to i) Sujit Saha & ii) Chandan Saha, as licensees of FPS-1773 with forfeiture of entire security for misappropriation of PDS

Commodities and Contravention of Para 18 and licensing conditions of the said Control Order and in the interest of the PDS.

9. L E T the copies of this Order be communicated to all concerned.

Sd/- (23/4/08)

Director of Rationing,

West Bengal

9. It is this order which is assailed by the petitioners in the present writ petition. The main submission of the petitioners is that the notice on the

strength of which the hearing was conducted on 2nd April 2008 was not a notice to show cause in terms of the provisions of the 2003 Order. The

petitioners" contention is that their licence could not be directed to be cancelled without issuing a proper notice to show cause in terms of

paragraph 26 of the 2003 Order. In this regard my attention has been drawn to paragraph 26 of the 2003 Order which provides:

26. Power to suspend or cancel a licence:- If a licensee or his agent or servant or any other person acting on his behalf contravene any of the

provisions of this Order or any of the regulations made there under or any of the conditions of his licence the Director shall issue a notice to the

licensee for showing cause of such contravention.

The Director may forthwith temporarily suspend the licence, if in the opinion of the Director immediate suspension is necessary in the interest of the

general public.

The Director may, by order, after giving the licensee an opportunity of stating his case in writing and after giving him an opportunity of being heard

and after recording the reasons therefore, suspend, vary or cancel the licence and appointment or revoke the order of suspension within 30 days

from the date of suspension of the licence.

10. The case of the petitioners is that in the present case no notice was issued by the Director of Rationing in terms of paragraph 26 of the 2003

Order, which according to them is the condition precedent for passing an order for cancellation of licence, and the order of cancellation cannot be

sustained because of noncompliance of such condition precedent.

11. It has also been argued on behalf of the petitioners that reference in the order to the petitioners as habitual offenders was without any basis and

punishment could not be imposed on that basis. On behalf of the petitioners, Mr. Maitra, learned Senior Advocate argued that the impugned order

could not be sustained also because of violations of the principle of natural justice. His case on breach of the principle of natural justice was

founded on two planks. Firstly, it was contended that the petitioners were denied the opportunity of having access to the report of the authority,

which formed the basis of the first two show cause notices. It was also contended that the order impugned did not disclose reasons. The authorities

on which reliance was placed in support of such submissions were the decision of the Hon'ble Supreme Court in the case of Union of India (UOI)

Vs. H.C. Goel,). Two judgments of this Court in the cases of Sujit Das vs. The West Bengal Board of Secondary Education reported in [(1997)

2 CLJ 497] and Sachi Nath Ghosh & Ors. vs. West Bengal Board of Secondary Education & Ors. [1976(2)CLJ 289] were also cited on this

count.

12. On the aspect of the allegations relating to detection of irregularities on the basis of inspection of the petitioners' shop by the officers of the

department on 22nd February 2008, the petitioners' contention is that no proper notice to show cause was issued to them before the hearing was

held. The specific case of the petitioners on this point is that before an order of cancellation is issued, the licensee is required to be issued a notice

by the Director. In the present case, no specific notice to show cause was issued, but the inspecting authorities made an endorsement on the

inspection book requiring the petitioners to explain the excess shortage. A proceeding for cancellation of the licence of the petitioners, it was

submitted, could not be initiated on that basis, but a further notice to show cause was required to be issued by the Director.

13. Learned counsel appearing for the respondents defended the order of the Director of Rationing and submitted that the petitioners are offenders

in a number of cases involving misuse of public distribution commodities. It was argued that the petitioners had violated the provisions of the

Control Order as well as the conditions of licence. As regards the earlier proceedings, his submission is that the proceeding was initiated in the year

2004 but could not be completed due to non-cooperation of petitioners themselves. He also argued that the documents sought for by the

petitioners" could not be submitted at this stage after lapse of about four years.

14. In the affidavit-in-opposition filed on behalf of the respondents affirmed by one Monoj Chakraborty, the rationing officer of the concerned

area, copies of certain inter-office memoranda pertaining to the visit of the inspectors to the shop of the petitioners have been disclosed. As

regards reference to the 1964 Order, the respondents" case is that wrong reference to a statutory instrument in an order cannot invalidate it, if the

power to issue such order can be otherwise traced to some valid source. The impugned order is also sought to be justified on the ground that the

Director of Rationing decided to hear the petitioners only after going through the report and explanation offered by the petitioners. It has also been

pleaded that the petitioners had, in course of hearing admitted the fault.

15. On the aspect of validity of the show cause notice to allegations in relation of excess shortage detected on 22nd February 2008, specific

submission on the part of the respondents is that under the 2003 Order, the inspectors of the department are empowered to initiate proceeding and

seek clarification in case of detection of excess shortage in terms of paragraph 25 of the 2003 Order. It was further submitted that the order, the

validity of which is challenged in the writ petition, is an appealable order in terms of paragraph 27 of the 2003 Order. On this count, Mr.

Mukherjee, the learned Advocate appearing for the respondents prayed for dismissal of the writ petition on the ground of there being an alternative

remedy available under the statute itself.

16. I shall first deal with the objection on maintainability of the writ petition on the ground of existence of an alternative remedy. It is not in dispute

that the order impugned could be appealed against in accordance with the provisions of paragraph 27 of the Control Order. But mere availability

of an alternative remedy does not automatically oust the jurisdiction of the Writ Court to examine the validity of an administrative order. In the case

of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, it has been held:

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a

writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available,

the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a

bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where

there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act

is challenged.

17. In this writ petition specific case has been made out that the petitioners' fundamental right to carry on business has been breached upon

passing of the impugned order of cancellation. In paragraph 29 (iii), (iv), (v), (vi), (vii) and (viii) of the writ petition which contains the grounds on

which the writ petition is founded, specific case has been made out of violation of the provisions of Articles 14, 19(1)(g), 21 and 300A of the

Constitution of India as well as breach of principle of natural justice. Thus in my opinion, in the facts of the present case, the petitioners would be

entitled to invoke the Constitutional Writ Jurisdiction of this Court for redressal of their grievances arising out of the impugned order. The

petitioners satisfy the "Whirlpool" test laid down by Hon'ble Supreme Court in the case reported in Whirlpool Corporation Vs. Registrar of Trade

Marks, Mumbai and Others, for maintaining the writ petition.

18. Next comes the question as to whether the provisions of the 2003 Order was complied with by the Food & Supplies authorities before

passing the order cancelling the licence of the petitioners on the ground of alleged irregularities detected on 22nd February 2008. Clause 26 of the

2003 Order, which has been reproduced in the earlier part of this judgment, empowers the Director to cancel the licence of a dealer. But such

order can be passed only after giving the dealer an opportunity of stating his case in writing and after giving him an opportunity of being heard and

after recording the reasons. In this case so far as the discrepancies alleged to have been detected by the inspectors" of the department on 22nd

February 2008, there was no show cause notice from the Director. The definition of Director in Clause 2(i) of the 2003 Order includes any person

not below the rank of Assistant Director of Rationing in department of Food & Supplies, West Bengal, authorised by the Director in writing to

perform all or any of the functions of the Director under the Control Order. No case has been made out by the respondents that the Area

Inspector or the Chief Inspector holds rank equivalent to that of an Assistant Director, and that they had been authorised by the Director to

discharge the duties of the Director. Clause 25 of the 2003 Order, on which reliance was placed by the respondents permit officers holding rank of

Sub-inspector or any other post superior to that rank to cause inspection of the premises and to require furnishing of informations on and stocks,

accounts etc. But the notice dated 22nd February 2008 endorsed on the inspection book cannot be treated to be a valid show cause notice in

pursuance of clause 26 of the 2003 Order. In my opinion consideration of such notice and explanation furnished in response thereto would not

empower the Director straightway to hold a hearing on the question of cancellation of the licence of the petitioners. Issuing of a notice in terms of

Clause 26 of the 2003 Order is essential before such a hearing is posted. The explanation furnished by the petitioners in response to a directive

issued by an Inspector may be examined by the Director for deciding as to whether he shall initiate proceeding for contravention of the provisions

of the Control Order or conditions of licence. If he is satisfied that the situation warrants issuance of such a proceeding, then he may require the

dealer to show cause for such contravention. But before directing cancellation of licence, the Director is required to give opportunity to the

petitioner to state his case in writing, as also give such dealer opportunity of being heard. Thereafter, an order of cancellation can be passed, after

recording reasons. This is the requirement of the statute, and it is only after following this process penalty may be imposed on a dealer, in the form

of variation or suspension of licence, apart from issuing an order for cancellation.

19. In the case of the petitioners, the Director has proceeded to hear the petitioners' case on the basis of the report of the inspectors and the

explanation of the petitioners to the requisition of the inspectors. Such a course is contrary to the scheme of the Control Order. It is impermissible

for a statutory authority to exercise power in a manner not prescribed in the statute. The ratio of the decisions of the Hon'ble Supreme Court in the

cases of J.N. Ganatra Vs. Morvi Municipality, Morvi, and Jamal Uddin Ahmad Vs. Abu Saleh Najmuddin and Another, , clearly prohibit exercise

of power by the statutory authority in deviation of the statutory scheme.

20. Minor irregularities in the decision making process may save an order, but in my view the nature of irregularity which resulted in cancellation of

the petitioners' licence is not of a trivial nature which could save the order. The issuance of a show cause notice itself involves some element of

exercise of a discretionary power and the decision to issue a notice to show cause has to be taken upon considering various factors. The Control

Order vests such power or authority on the high ranking authority, being the Director. I do not think this process can be bypassed or short-

circuted, and if the Director straightway gives a hearing to a dealer on the allegation of irregularities on the basis of explanations called for by

officers holding much inferior ranks, and the condition precedent for issuance of a show cause notice in terms of Clause 26 of the 2003 Order

remains unsatisfied, the consequential order of cancellation of the licence would stand invalidated even if such order is passed by the Director.

21. In the affidavit-in-opposition, a photocopy of a handwritten note, which appears to be the recorded of the proceeding in the hearing before the

Director on 2nd April 2008 has been annexed. In this document, it has been recorded that the petitioners stated that as their shop is located in a

slum area, they often have to divert ration articles to the local people as per their demand. It also appears from this document that the petitioners

have prayed for mercy for their lapses. Could such statements justify the order which has been assailed in this writ petition, even if no proper notice

requiring explanation is issued in terms of paragraph 26 of the 2003 Order?

22. In my opinion, they would not. The statements contained in Annexure ""R3"" are not admission of guilt on charges made against the petitioners

but are statement of a general nature relating to diversion of stock. Excess shortage, for which explanation was called for has not been proved. At

least there is no finding to that effect. Moreover, for the reasons which I have discussed in the earlier paragraphs of the judgment, in my opinion the

hearing itself was without the authority of law, no show cause notice having been issued against the petitioners. The hearing itself being without the

authority of law, any development in course of hearing cannot justify or legitimize any consequential actions. Before passing the order of

cancellation of licence and forfeiture, it was incumbent upon the Director himself to call for explanation from the petitioners before he passed the

impugned order.

23. But the alleged irregularity in stock position of 22nd February 2008 was not the sole ground on which the petitioners' licence was cancelled.

There is also reference to the irregularity in the stock position in the form of excess shortage which was the subject of notice dated 25th October

2004. This was also referred to in the order impugned. But in the order, I do not find that there is any finding as regards allegations of excess

shortage in relation to the inspection or enquiry which took place on 22nd July 2004. The original notice to show cause was issued on 25th

October 2004. In that notice violation of various provisions of the West Bengal Rationing Order, 1964, as well as certain other orders of Director

of Rationing dated 11th April 1972 were alleged. Thereafter on the same set of allegations a fresh notice was issued in which contravention of

provisions of paragraphs 18(iii) and (iv) of the 2003 Order were alleged. The petitioners had asked for supply of the report of the Deputy Director

of Rationing on the strength of which the original show cause notice, as also the second show cause notice were issued. Such report was not made

available to the petitioners. Further in the notice of hearing dated 24th March 2008, there is no indication that such hearing was to be held in

connection with the allegations against the petitioners in pursuance of the first two notices to show cause. In the impugned order, the Director of

Rationing appears to have altogether ignored the prayer of the petitioners for supply of the report of the Deputy Director of Rationing, Initial Area-

I as well as other documents.

24. The decision of the Hon"ble Supreme Court in the case of Union of India (UOI) Vs. H.C. Goel, , broadly lays down the guideline for dealing

with allegations made before a quasi-judicial authority. In this case, it has been held:-

It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the

principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal

trials as to disciplinary enquiries held under the statutory rules." Though this judgment was delivered in a case relating to service jurisprudence, this

authority lays down a wholesome legal principle which ought to apply to all fields of administrative law. I do not think any deviation ought to be

made or a different principle should apply in connection with a proceeding resulting in termination of a licence granted under a Control Order

promulgated under the Essential Commodities Act, 1955.

25. The entitlement of a delinquent to receive copies of documents or materials on the strength of which a quasi-judicial authority seeks to establish

charges against him is now integral part of the administrative jurisprudence. In the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar,

etc. etc., it has been

held:-

Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the

Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard

to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of

the Inquiry Officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee

to prove his innocence and is a breach of the principles of natural justice.

26. On the question of necessity of supplying report to a delinquent on the basis of which he is sought to be implicated, two other authorities of this

Court were cited on behalf of the petitioners, being Sachi Nath Ghosh & Ors. vs. West Bengal Board of Secondary Education & Ors. (1970) 2

CLJ 289, and Sujit Das vs. The West Bengal Board of Secondary Education (1997) II LLJ 497. The ratio of both these decisions is that supply of

such report/document is essential requirement for compliance of the principle of natural justice.

27. The manner in which the case of the petitioners have been dealt with in relation to allegations of irregularities on the basis of which the first and

second show cause notices were issued does not reflect proper application of mind on the part of the Director of Rationing. The hearing officer has

not considered the defence of the petitioners at all, and solely based his decision on the defence of the petitioners on the aspect of non-applicability

of 1964 Order.

28. The petitioners had also assailed the order on the ground that the same was not supported by reason. In the order, the allegations against the

petitioners have been summarised in the first four paragraphs. In paragraph 5, the petitioners' defence in relation to the first show cause notice has

been outlined. As it has been discussed earlier, the defence of the petitioners was that the 1964 Order having been repealed on the day the

irregularities alleged, proceeding complaining of the breach of the 1964 Order could not be initiated. In the next paragraph, the plea of the

petitioners on non-maintainability of the proceeding has been negated relying on the savings clause in the 2003 Order. This was in relation to one of

the grounds of defence taken by the petitioners that before issuing appointment letter and grant of licence, the 2003 Order could not be invoked

against the petitioners. Defence on certain other counts were also taken in reply to the second show cause notice, but those factors have altogether

been ignored by the Hearing Officer.

29. In the sixth paragraph of the order, the savings clause in the 2003 Order has been referred to, and thereafter without any further discussion, the

hearing officer has come to a finding that the petitioners were habitual offenders. In the absence of any reflection in the order about the mental

exercise through which a quasi-judicial authority comes to a finding about the guilt of an errant dealer, such order in my opinion cannot be held to

be a reasoned order, and would fail the test of compliance of the principle of natural justice. In the case of Mahabir Prasad (supra), it has been

held:-

7. Opportunity to a party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials

before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication by a reasoned judgment

upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must

appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him: it must appear that

he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from

the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal

to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached

according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily

entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is

greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly

ascertained, the relevant law was correctly applied and the decision was just.

30. For the reasons discussed above, in my opinion the impugned order cannot be sustained. This order is fraught with a series of irregularities,

being in violation of the provisions of the Control Order of 2003, and also for noncompliance of the principle of natural justice. The principle of

natural justice has been violated for failure on the part of the respondents to supply the report of the Deputy Director of Rationing, and then

because of non-disclosure of reasons. The impugned order is accordingly set aside. The respondents are directed to revive the licence of the

petitioners and restore supply of the public distribution commodities to them.

31. The writ petition stands allowed in the above terms.

32. There shall, however, be no order as to costs.

33. Urgent Photostat certified copy be given to the parties, if applied for, as expeditiously as possible.