

(2009) 02 CAL CK 0019

Calcutta High Court

Case No: Writ Petition No. 31036 (W) of 2008

Sudhendu Kumar Hazra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Feb. 5, 2009

Acts Referred:

- West Bengal Kerosene Control Order, 1968 - Para 10

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Kashi Kanta Moitra, A.K. Ghosh and Srikanta Moitra, for the Appellant; Syed Nazmul Hossain for the State, for the Respondent

Judgement

Jayanta Kumar Biswas, J.

The petitioner in this writ petition dated December 11, 2008 is aggrieved by the order of the Sub-divisional Controller (F & S) & E.O. Asst. Director, Berhampore, Murshidabad dated December 4, 2008 at p.42, terminating his licence authorising him to carry on business as a kerosene oil dealer.

2. The proceedings were initiated by the authority by issuing a show cause notice dated November 20, 2008, at p.40, whereby the petitioner was given an opportunity to explain the allegations made against him. Case of the petitioner is that though by application dated November 26, 2008, at p.41, he prayed for extension of time by seven days for submitting reply to the show cause notice, the authority rejected his prayer and proceeded to make the impugned order. He has further said that the authority did not give him any opportunity of hearing. Although questioning the impugned order the petitioner was entitled to appeal to the authority named in para 10 of the West Bengal Kerosene Control Order, 1968, he chose to approach the writ Court. Mr Moitra, Counsel for the petitioner, has argued that since the petitioner has alleged patent violation of the principles of natural justice, it should be held that this is a fit case for permitting the petitioner to bypass the statutory appellate authority and approach the writ Court.

3. Under the circumstances, I passed the order dated January 28, 2009, which is as follows:-

"It is necessary to ascertain whether the petitioner applied for extension of time to file reply to the show cause notice and whether the prayer was considered by the authority. It is also necessary to examine whether a reasonable opportunity of hearing was given to the petitioner before his dealership was terminated by the impugned decision.

I think it will be appropriate to direct the sub-divisional controller who issued the impugned order terminating dealership to submit an affidavit regarding these two aspects. The question of admission of the writ petition or its final disposal at the admission stage will be considered after such affidavit is filed. The affidavit in terms of this order shall be filed by next Wednesday.

Place it on the daily list as "motion" Thursday week."

4. In compliance with order dated January 28, 2009 the Sub-divisional Controller has filed an affidavit dated February 3, 2009. In paras 3, 4 and 5 of his affidavit the Sub-divisional Controller has stated as follows:-

"3. That the petitioner after getting the show cause notice dated 20.11.2008 submitted a letter dated 26.11.2008 to me requesting to allow further 7 days time for submission of reply to the said show cause notice but the petitioner did not give any reason for extension of time further 7 days in the said letter on the other hand from the contents of the prayer, it appears that the petitioner has an attitude to delay the process, so his prayer for extension of 7 days for submission the reply to the show cause notice is rejected.

4. That the petitioner did not submitted his reply to the show cause notice dated 4.12.08 being annexure P-7 to the writ petition and as such the said reply to the show cause notice is not available to the office record.

5. That Shri Hazra did not submit the reply to the show cause notice to the office, as such process of hearing could not be considered."

5. It is therefore the admitted position that the petitioner submitted an application seeking extension of time to file reply to the show cause notice; that his such application was rejected by the Sub-divisional Controller on the ground that he did not give any reason why he was seeking extension; and that the Sub-divisional Controller did not give him any opportunity of hearing.

6. In my opinion, the procedure followed by the Sub-divisional Controller cannot be considered to be a fair procedure. Simply because the petitioner did not state reasons why he was seeking extension of time to file reply to the show cause notice, in my view, the Sub-divisional Controller should not have rejected the time was not a mandatory statutory requirement. In my opinion, the Sub-divisional Controller was

required to take a reasonably liberal view. There was absolutely no reason for the Sub-divisional Controller to presume bad intention and become inflexible, when the allegation made in the show cause notice was not such as could be considered a warrant for giving a final decision in the proceedings at once. The allegation was that from 1995 the petitioner was running the dealership that he obtained in 1987, though, on being appointed as a primary school teacher, he was not entitled to carry on the dealership, - an office of profit. I am therefore of the view that the Sub-divisional Controller acted most unreasonably in rejecting the prayer for extension of time made by the petitioner.

7. It is difficult to appreciate how the Sub-divisional Controller could dispense with the requirement of giving a reasonable opportunity of hearing to the petitioner. It was a mandatory statutory requirement. Even if the petitioner was not permitted to submit any reply to the show cause notice, the Sub-divisional Controller was under a statutory obligation to give an opportunity of hearing to the petitioner, this is for the simple reason that the petitioner was at liberty not to file any reply to the show cause notice and thus to waive his right for the purpose, but such waiver by him could not empower the Sub-divisional Controller to proceed on the basis that the petitioner also decided to waive his statutory right to get an opportunity of hearing. His statutory right to get an opportunity of hearing, conferred by para 9 of the control order, could be waived by him only, the Sub-divisional Controller possessed no power to dispense with the requirement.

8. I am therefore of the view that the petitioner has rightly contended that the impugned termination order is vitiated by patent violation of the principles of natural justice and the statutory provisions contained in para 9 of the control order.

9. For these reasons, I dispose of the writ petition ordering as follows. The impugned order dated December 4, 2008 is hereby set aside. The Sub-divisional Controller shall proceed with the matter afresh. He shall give the petitioner and petitioner, all opportunities to defend himself and also of hearing, he shall give the final decision. If the authority wants to rely on any report or document, then authenticated copy thereof shall be supplied to the petitioner, who will be free to cross-examine the author of the thing. The petitioner will be at liberty to examine witnesses in defence. The decision shall be communicated to the petitioner without any delay. The entire process shall be completed within six weeks from the date of communication of this order. There shall be no order for costs.

10. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.