

(2009) 04 CAL CK 0027

Calcutta High Court

Case No: G.A. No. 320 of 2008 W.P. No. 3 of 2008

Madan Lal Agarwal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: April 21, 2009

Citation: (2009) 3 CALLT 285

Hon'ble Judges: Aniruddha Bose, J

Bench: Single Bench

Advocate: Kalyan Kumar Bandopadhyay, Mr. R.A. Agarwala, Mr. Ramesh Dhara and Ms. Nibedita Pal, for the Appellant; K.N. Mukherjee for the State, for the Respondent

Judgement

Aniruddha Bose, J.

In this writ petition, the petitioner is the holder of a licence of dealership under the West Bengal Urban Public Distribution system (Maintenance and Control), Order 2003 (the "2003 Order" in short). He has challenged in this writ petition the legality of a proceeding initiated against him alleging violation of the certain provisions of the said order, which resulted in cancellation of his licence. The charge against him in substance, is detection of excess shortage in stock. The show cause notice in this regard was issued on 6th August 2007 alleging breach of the provisions Clauses 17, 18(i) and 20(i) of the 2003 Order. The petitioner had replied to the show cause notice denying the allegations. On 13th September 2007, after he submitted his reply, an order was issued temporarily suspending his licence.

2. The petitioner had made a representation after receiving the suspension order, seeking information as to how long the order of suspension would remain in force. According to the petitioner, this representation was made as there was no indication in the order of suspension the length of time during which such order was to subsist. Thereafter, another notice was issued by the Director of Rationing on 26th September, 2007 requiring appearance of the petitioner for hearing on 27th April, 2007. There was an apparent mistake in the said notice as the notice itself was issued on 26th September 2007, and the date of hearing obviously meant 27th

September, 2007. Treating the date of hearing to be 27th September, 2007, the petitioner participated in the hearing on that date. It has been pleaded in the writ petition that in course of hearing, the petitioner's counsel had sought for the documents relied upon in the show cause notice but these were not supplied. It appears that in course of hearing, on behalf of the petitioner it was argued that no ingredient of any offence under the 2003 Order was reflected in the show cause notice. On 9th October, 2007, the authority concerned passed an order imposing punishment of termination of licence and also forfeiture of the entire security money which was deposited by the petitioner.

3. The petitioner preferred an appeal against this order and claims to have filed written submissions taking various points assailing the impugned order of termination. The appellate authority by an order passed on 5th November 2007 held:

The appellant has also raised some question as to the fact of the case in different paragraphs of the appeal (viz. 21, 22, 26 and 27) and these allegations are to be dealt with according to the available documentary evidence. In view of the fact and circumstances of the case and after considering the arguments since advanced by both the parties I therefore remand the case to Director of Rationing for fresh consideration of the allegations since made by the appellant. Such consideration should be made by the Director within six weeks hence and the decision be communicated to the appellant within a fortnight thereafter.

4. On remand, the matter was fixed for hearing on 23rd November, 2007 for fresh hearing before the Director of Rationing, being the respondent No.3. After such hearing, on 6th December 2007, the Director of Rationing passed an order sustaining the order passed by him on 9th October 2007. This order is under challenge in the present writ petition. The petitioner has also challenged the legality of the proceeding initiated against him on 6th August 2007 as also the subsequent orders passed by the Director of Rationing, suspending his licence and thereafter terminating the same as well as the order passed by the appellate authority.

5. Before I examine the case of the petitioner, I deem it necessary to reproduce the order dated 6th December 2007, as argument has been advanced before me primarily questioning the validity of this order. This order provides:

WHEREAS being aggrieved by an Order dated 9th October, 2007 passed by the Director of Rationing, West Bengal, in exercise of power conferred upon him under Clause 26 of the West Bengal Urban PDS (Maintenance & Control) Order, 2003. Sri Madan Lal Agarwal, Ex-proprietor of RPS-2702 under Sub-Area Burrabazar, has filed an appeal and the said appeal was taken up for hearing on 29th Oct. 2007 by the Director General of Food, hereafter referred to as the Appellate Authority;

And

WHEREAS in view of the fact and circumstances of the case and after considering the arguments since advanced by both the parties, the Director General of Food, the Appellate Authority, while upholding the cancellation order on the point of law has passed an order to remand the case to Director of Rationing for fresh consideration of the allegations since made by the appellant, hereafter referred to as Sri Madan Lal Agarwal, the ex proprietor of RPS-2702;

And

WHEREAS with a view to hearing the contention in paras 21, 22, 26 and 27 in the appeal petition, Sri Madan Lal Agarwal, Ex proprietor of RPS-2702 was asked to appear before the Director of Rationing, West Bengal on 26.11-07;

WHEREAS in the said "hearing" it is observed on review, as regards para 21 that the reason for cancellation as cited in the Order passed on 9th October, 2007 was clearly adduced; as regards para 22 there is no scope at the hearing without any special reference(s) to go into the merits of such case(s) which were reportedly treated leniently; as regards para 26, the Director General of Food, the Appellant Authority, in his order passed on 5-11.2007, upheld the legality of issuing cancellation order after temporary suspension; as regards para 27, it is observed on review that entire facts & findings were made known to the Ex proprietor of RPS-2702 during the course of proceedings of the present case;

-Now-

THEREFORE, taking all aspects into consideration and parawise review of the allegations as referred in the appeal-petition at the time of "re-hearing" I, Sri Dipak Ghosh, the Director of Rationing, West Bengal, do hereby sustain the order passed by me on 9th October, 2007 vide this office memo No. 152/L&L/DR. Let the copies of this order be communicated to all concerned.

6. At the interim stage, on 10th, January 2008 this Court had passed an order staying the operation of the order dated 6th December, 2007. A further application was filed being G.A. No. 372 of 2008 in which the petitioner had applied for a direction upon the respondent No. 3 for renewal of his licence which was applied for on 10th January 2008. The respondent authorities also have taken out an application for vacation of the interim order passed on 10th January 2008, which has been registered as G.A. No. 320 of 2008. By an order passed on 5th February 2008, this application filed on behalf of the respondents was treated to be the affidavit-in-opposition to the main writ petition and writ petitioner has also filed reply to this application. There was, however, no affidavit-in-opposition to the petitioner's application being G.A. No. 372 of 2008. The application, being G.A. No. 372 of 2008 was taken out since the licence of the petitioner, under normal circumstances was to lapse on 31st December, 2007. At that point of time his licence stood terminated.

7. The main point argued on behalf of the petitioner, so far as the order of termination passed by the authority of the first instance is concerned, is that after having imposed an order of punishment in the form of suspension subsequent to filing of reply by the petitioner to the show cause notice, the said authority had become functus officio and did not retain the jurisdiction to pass any further order of termination in a proceeding arising out of the same show cause notice. The show cause notice has been challenged on the ground that the same did not disclose any of the ingredients of the offences alleged to have been committed by the petitioners in violation of the provisions of the 2003 Control Order.

8. I would not like to test the validity of the show cause notice or the order of the authority of the first instance which was issued on October 2007, except on the limited question as to whether the said authority retained the jurisdiction to pass the order of termination after suspending the dealership of the petitioner. I choose to take such a course because the petitioner has already submitted to the jurisdiction of the statutory forum, initially by submitting reply to the show cause notice and thereafter by preferring an appeal against the order cancelling his licence. However, the jurisdiction of the authority of the first instance to pass an order of cancellation after passing an order of temporarily suspending the petitioner's licence involves determination of issues concerning pure question of law, and the appellate authority having found such a course to be valid, I am of the view that this point requires consideration by this Court.

9. The argument of the petitioner on this point is that under the scheme of the Control Order, it may be open to the authority to issue a suspension order at the time of issuing notice to show cause. But if an order of suspension "is issued after the considering the reply to the notice, then such suspension" order assumes the form of final order of punishment, and the authority of the first instance does not retain jurisdiction to issue any further directive in the same proceeding.

10. The power to impose punishment under the provisions of the Control Order of 2003 is specified in Clause 26, which provides:

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 thereunder or any of regulations made thereunder 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.

11. It would be apparent from the provisions of the said clause that the power to issue an order temporarily suspending the licence of a dealer is vested with the Director if in his opinion immediate suspension is necessary in the interest of the general public. Such power can be exercised "forthwith" as per the provisions of the 2003 Control Order, which in my opinion implies at the stage when the Director for the first time becomes aware of the allegations of breach of the provisions of the Control Order or of any regulations promulgated under the Order or violation of any of the conditions of licence.

12. In the instant case, however, the Director did not suspend the licence the dealer at the initial stage, that is at the time of issuance of the notice show cause. Such order was passed after receiving the reply of the petitioner to the notice. The case made out by the petitioner is that since the order impugned was passed after the reply was filed, such order assumed the characteristic of a final order and under those circumstances the Director was not empowered to issue any further order. In other words, as per submission of the learned Advocate for the petitioner, the order of suspension was passed in terms of the fourth (i.e. last) paragraph of Clause 26. According to the petitioner, the Director having passed the final order of punishment at best could have clarified the duration of the period of suspension, but no further punishment could be imposed by him.

. 13. In my opinion, however, that is not the correct interpretation of the provisions of the Control Order. Since the Director has been vested with the -jurisdiction to pass an order temporarily suspending the licence of a dealer, if he chooses not to exercise such power at the first instance but waits till the reply to the show cause notice is received, that would not denude him of his jurisdiction to consider the question of cancellation of licence of a dealer at a later stage. It would be well within his jurisdiction to wait for reply, consider the defence and upon taking a prima facie view after perusing the statement of defence submitted by a dealer, he may decide on the question of temporarily suspending the licence of a dealer but leave the question of imposing final punishment at a later stage, after completing hearing upon considering evidence, if such evidence is adduced before him. I do not think if the Director does not pass an order for temporarily suspending the licence of a dealer at the stage of issuing show cause notice, he forfeits his power or jurisdiction to pass such an order at a later stage of the proceeding, before finally deciding on the dispute. The power to temporarily suspend the licence "forthwith" in the said clause is an empowering provision in the said clause permitting the Director to exercise such power at the time when the allegations of violations of the provisions, of the Control Order reaches him for the first time. But in my opinion, if the Director chooses not to exercise his power to temporarily suspend the licence of a dealer at that stage, he is not denuded of his jurisdiction to pass such an order (of temporary suspension of a dealer's licence) in the same proceeding at a later stage. On that

count I do not accept the submission of the petitioner that the Director had become functus officio before passing the order of cancellation on the sole ground that he had passed an order of temporary suspension of licence after receiving the reply of the petitioner.

14. I shall now deal with the last order passed by the Food and Supplies Authorities in sequence of time so far as the present proceeding against the petitioner is concerned, being the order of the Director of Rationing passed on 6th December 2007. The text of this order has been reproduced in the earlier part of this judgment. This order has been assailed on two grounds. The appellate authority had directed rehearing on the aspects of question of fact on different paragraphs of the, appeal, being paragraphs 21, 22, 26 and 27 and was of the view that these allegations were to be dealt with according to available documentary evidence. The case of the petitioner is that such directive of the appellate authority has not been complied with, as the grounds have not been addressed to by the authority of the first instance. The second ground of challenge is that the authority of the first instance could not sustain the earlier order passed by him, as he was required to hear the matter afresh. It has also been argued on behalf of the petitioner that the impugned order does not disclose reasons.

15. It is an accepted principle of administrative jurisprudence that reason has to be disclosed as to why a particular view is being taken by the administrative or quasi judicial authority against a person alleged to have violated the provisions of certain statutory instruments. It has been held in the case of Mahabir Prasad v. State of Uttar Pradesh, reported in AIR 1970 SC 1032:

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.

16. For satisfying the test of being supported by reason, an order of the administrative authority ought to reflect the mental exercise on the part of such authority through which he comes to his conclusion after considering the facts and circumstances involved in the case. I do not find any reflection of this mental process in the order impugned, particularly in relation to paragraphs 21 and 22 of the petition of appeal. In the original order of termination, the authority of the first instance found the reply given by the petitioner to the show cause notice to be an after thought story and not at all convincing. In paragraph 21 of the petition of appeal, point was taken that no reason was assigned for not accepting the reply of the appellant. The appellate authority referring to this paragraph observed that

those allegations (implying the allegations contained in the said paragraph in the petition of appeal) were to be dealt with according to the available documentary evidence. The authority of the first instance, while hearing the matter on remand, however, instead of dealing with such allegations, observed:

...as regards para 21, that the reason for cancellation as cited in the Order passed on 9th October 2007 was clearly adduced;

So far as paragraphs 22 and 27 of the petition of appeal is concerned, the same has been dealt with by the hearing officer in a cursory manner. As regards paragraph 26 of the petition of appeal, I am not subjecting the finding of the hearing officer on this count to further scrutiny as I have already held that no jurisdictional error was committed by the authority of the first instance by continuing with the proceeding after passing the order of temporary suspension of the petitioner's licence.

17. I accept the submission of the learned Advocate for the petitioner that the Director of Rationing cannot "sustain" the earlier order passed by him as the appellate authority had remanded the case to him for fresh consideration. Though the appellate authority did not specifically quash the order issued by the authority of the first instance on 9th October 2007 in explicit terms, the very fact that the matter was remanded for fresh consideration implies that the impugned order stood quashed. Thus the Director of Rationing in the facts and circumstances ought to have passed an order afresh. This was not a "review" proceeding, as observed by the hearing officer.

18. In both the orders, dated 9th October 2007, as well as in the order passed on 6th December 2007, allegations against the petitioner and the petitioner's defence has been dealt with in a casual manner and for that very reason the impugned orders of the Director of Rationing could not be sustained.

19. It was also argued by the petitioner that the order passed on 6th October, 2007 had merged with the appellate order and since the appellate authority had remanded the matter before the authority of the first instance the order of cancellation had merged with the order of the appellate authority and the petitioner's licence ought to have revived under those circumstances. However, in the present matter admittedly the term of the licence of the petitioner has lapsed and his application for renewal was filed after the date on which the licence had lapsed. Thus, unless the licence of the petitioner is renewed, he would not be entitled to conduct his business of dealership under the 2003 Control Order. So even if I accept the submission of the petitioner that the final order passed by the Director had merged with the order of the appellate authority and the order of temporary suspension does not survive, the petitioner's right to conduct his business cannot automatically revive, because of lapse of his licence.

20. In the facts of the present case, in my opinion, interest of justice would be served if the order passed on 6th December 2007 is quashed, which I do.

21. I also direct the respondent No.3, being the Director of Rationing to conduct a fresh hearing on the proceeding and take a decision within eight weeks from date upon giving the petitioner opportunity of hearing and upon compliance of other requirements of natural justice. The decision shall be communicated to the petitioner within a further period of one week. The petitioner shall cooperate with the Director of Rationing and shall not pray for any adjournment save on exceptional grounds to the satisfaction of the Director of Rationing. In the event the proceeding cannot be concluded within the aforesaid timeframe, then the authority concerned shall renew the licence of the petitioner on compliance of other regular formalities for such renewal: and in such a situation the order of suspension shall also stand revoked. On behalf of the respondents it has been submitted that upon lapse of its validity on 31st December 2007, renewal application which was received on 10th January. 2008 could not be entertained.

22. On the aspect of filing of the renewal application after the date of laps of the licence, I accept the petitioner's submission that the application (sic) renewal could not be made earlier as the licence had been terminated and since it was only on 10th January 2008 this Court had passed an order staying the order of cancellation, in the special circumstances of the present case the application for renewal made on 10th January 2008 should be treated as a valid application.

23. With these directions the present writ petition as well as two applications being G.A. No. 372 of 2008 and G.A. No. 320 of 2008 shall stand disposed of.

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