

(2013) 11 CAL CK 0024

Calcutta High Court

Case No: M.A.T. No. 1003 of 2013 and C.A.N No. 6676 of 2013

Sudhanshu Kumar Biswas

APPELLANT

Vs

State of W.B.

RESPONDENT

Date of Decision: Nov. 29, 2013

Citation: (2014) 1 CHN 747

Hon'ble Judges: Samapti Chatterjee, J; P.K. Chattopadhyay, J

Bench: Division Bench

Judgement

Re: Application for Stay (C.A.N. 6676 of 2013).

1. This application has been filed in connection with the appeal preferred from the order dated 7th June, 2013 whereby a Learned Judge of this Court has been pleased to dispose of the writ petition without quashing the order of suspension issued by the respondent No. 4 in respect of the Fair Price Shop licence of the petitioner herein. From the records we find that the licence of the M.R. cum S.K. Oil Shop No. 60♦ of the petitioner was temporarily suspended by the order dated 5th February, 2013 issued by the Sub-Divisional Controller, Food and Supplies, Siliguri.

2. Admittedly no show-cause notice was issued by the respondent authorities asking the appellant/petitioner to explain his conduct before issuing the aforesaid order of suspension dated 5th February, 2013.

3. Mr. Amalesh Roy, learned Advocate representing the appellant/petitioner submits that the order of suspension cannot be sustained in the eye of law since the same was issued without issuing any show-cause notice to the appellant/petitioner herein.

4. Mr. Roy refers to Order 21 of the West Bengal Control Orders. In terms of sub-rule (1) of Order 21 the Sub-Divisional Controller, Food and Supplies is authorised to issue show-cause notice to the dealer concerned after detection of any discrepancy and may also place the dealership under suspension.

5. In the present case, the Sub-Divisional Controller placed the dealership of the appellant/petitioner under suspension without issuing any show-cause notice asking the said dealer, namely, the appellant/petitioner to submit explanation in writing in respect of the discrepancy alleged to have been detected by the Area Inspector, Food and Supplies.

6. The licence of the M.R. cum S.K. Oil Shop No. 60❖ of the petitioner could not be suspended without issuing any show-cause notice under Order 21(1) of the West Bengal Control Orders.

7. For the aforementioned reasons, the order of suspension issued to the appellant/petitioner cannot be sustained in the eye of law and the same is therefore, quashed.

8. The learned Single Judge also did not appreciate that the dealership of the appellant/petitioner could not be suspended before issuing any show-cause notice in terms of Order 21(1) and therefore, the impugned order of the learned Single Judge cannot be sustained and liable to be set aside.

9. We have been informed that a show-cause notice has already been issued by the respondent authorities on 6th November, 2013, The appellant/petitioner should submit his explanation in answer to the said show-cause notice.

10. On the prayer of the learned Advocate of the appellant/petitioner, two weeks time is granted to the said appellant/petitioner to submit his reply to the show-cause notice before the authority concerned.

11. The concerned respondent is directed to take appropriate decision in this regard in future upon considering the explanations of the appellant/petitioner herein in answer to the said show-cause notice in accordance with law.

12. Mr. Roy further submits that the show-cause notice issued to the appellant/petitioner is also illegal and therefore, cannot be sustained in the eye of law. The validity and/or legality of the show-notice was however not the subject-matter of dispute in the writ petition since the said show-cause notice was issued after disposal of the writ petition.

13. We are, therefore, not inclined to decide the validity and/or legality of the said show-cause notice in the present proceedings. However, the appellant/petitioner will be at liberty to question the validity and/or legality of the said show-cause notice issued by the Sub-Divisional Controller before the appropriate forum in accordance with law in future, if so advised.

14. With the aforesaid observations and directions, we quash the impugned order of suspension issued to the petitioner herein on 5th February, 2013 and set aside the impugned order under appeal passed by the learned Single Judge and dispose of both the application as well as the appeal upon treating the said appeal as on day's

list. There will be no order as to costs.