

(2014) 01 CAL CK 0077

Calcutta High Court

Case No: W.P. 28092 (W) of 2013

Malek Hossain

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision:** Jan. 15, 2014**Citation:** (2014) 2 CALLT 55**Hon'ble Judges:** D. Datta, J**Bench:** Single Bench**Advocate:** Sagar Bandyopadhyay, Ms. Soma Kar Ghosh and Mr. Niladri Banerjee,  
Advocate for the Appellant; Susovan Sengupta, Advocate for the Respondent**Final Decision:** Partly Allowed

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### Judgement

Dipankar Datta, J.

The petitioner, an M.R. dealer and kerosene oil dealer of Bhagabanpur, P.S. Harishchandrapur, District - Malda, was proceeded against for violation of terms and conditions of the concerned Control Orders in course of carrying on business. By separate orders dated November 1, 2012, the Sub-Divisional Controller, Food and Supplies, Malda terminated the said dealerships. An appeal filed by the petitioner against the order terminating the M.R. dealership was rejected by an order dated March 25, 2013 passed by the District Controller, Food and Supplies, Malda, being the first appellate authority. A further appeal filed by the petitioner before the Regional Joint Director, Food & Supplies, Siliguri was also dismissed by an order dated August 20, 2013. These orders form the subject matter of challenge in this writ petition. Mr. Bandopadhyay, learned advocate for the petitioner contends that the proceedings initiated against him by the respondent authorities for termination of the said dealerships reveal scant regard for compliance with the principles of natural justice. Certain complaints of customers were looked into without furnishing copies thereof to the petitioner. Allegations not forming part of the composite show cause notice, which could not have been issued, were found to have been proved by the Sub-Divisional Controller. The defence raised by the petitioner was not given the

consideration the same deserved and the orders passed at the several tiers reveal that the same are all unreasoned. He, accordingly, prays for setting aside of such orders and for direction on the Sub-Divisional Controller to permit the petitioner resume his business.

2. Per contra, Mr. Sengupta, learned advocate representing the respondents, submits that the petitioner was given adequate and reasonable opportunity to defend himself. The defence raised by him did not appeal to the respondents to be creditworthy and accordingly, penal steps were taken for having violated the terms and conditions of the Control Orders. Finally, it is submitted that the petitioner is an unscrupulous dealer who has indulged in various misdeeds as appearing from the show cause notice and that even if there be some defect in the process, the Court should not come to his rescue since such defects do not have the effect of vitiating such process. Accordingly, it is prayed that the writ petition be dismissed.

3. I have heard learned advocates for the parties and perused the materials on record.

4. The order of the District Controller dated March 25, 2013 contained four paragraphs. The first paragraph refers to the show cause notice issued to the petitioner and the appeal that he had preferred. The second paragraph refers to the hearing that was given to him. The third and fourth paragraphs read as follows:

Gone through reply of show cause notice and oral submission of the dealer and considered. That I am of the opinion that the decision of the Sub-Divisional Controller, Food & Supplies, Malda is in accordance with the provision of the W.B.P.D.S. (M & C) order, 2003. I find no reason to set aside, amend or vary the cancellation order issued under memo No. 1137(12)/SCF(M)/12 dtd. 01.11.12 by the S.C. F & S, Malda.

Hence, the order of the S.C. F & S, Malda dtd. 01.11.12 stands. Appeal of Malek Hossain is disposed of. However, he can appeal before the higher authority.

5. The order dated August 20, 2013 passed by the Regional Joint Director does not fare any better. It also contained four paragraphs. The first paragraph refers to the reason for preferring the appeal and the second paragraph refers to the hearing given to the petitioner and the defence raised by him. The last two paragraphs read as follows:

Gone through his reply of show cause notice served upon by the Sub-Divisional Controller and his personal submission in the hearing I found the action taken by the Sub-Divisional Controller, F & S, Malda fully in accordance with the provision of the W.B.P.D.S. (Maintenance and Control) Order, 2003 and therefore need not be set aside or amend the order passed by the S.C. F & S, Malda, under his memo No. 1137(12)/SCF(M)/12 dt. 01/11/2012.

The petition of the appellant submitted by Mr. Malek Hossain, Ex-M.R. Dealer for hearing was disposed of intimating them, that both may move to the higher authority having jurisdiction under the provision of the relevant order in this regard against this order, if they think so.

6. Reading the two orders one after the other, a great deal of similarity is found. The most striking similarity is that of absence of reasons for rejection of the appeal, which in turn is a manifestation of complete non-application of mind. Why the defence raised by the petitioner did not appeal to the respective appellate authorities is conspicuous by its absence in the appellate orders.

7. In the decision of the Supreme Court reported in [Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others,](#) it has been ruled in paragraph 5 as follows:

In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover case has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

8. In the present case, since the orders of the appellate authority are devoid of reasons, and there is nothing to show application of mind, on this ground alone the said two orders are liable to be set aside. It is ordered accordingly.

9. Insofar as the original orders passed by the Sub-Divisional Controller are concerned, the same also appear to be indefensible. After the notice to show cause was issued, the petitioner had responded to the same by denying the material allegations and had raised defence. What was required in the circumstances is an inquiry for proving the allegations contained in the show cause notice. If there was no written complaint from any of the customers, they ought to have been produced and opportunity of cross-examination given to the petitioner. Admittedly, no such opportunity was given. In regard to stocking of material in a room adjacent to the godown, the petitioner had raised a specific defence to the effect that one Inspector named Sri Subhas Roy had granted him verbal permission in that behalf. The Sub-Divisional Controller ought to have ascertained from the said Subhas Roy as to whether the plea raised by the petitioner is correct or not. If indeed said Subhas Roy had denied granting verbal permission, the petitioner ought to have been given opportunity to cross-examine him. Not having done so, this has the effect of vitiating the process. That apart, the orders passed by the Sub-Divisional Controller

also suffer from the same vice of absence of reasons as found in the appellate orders, not showing application of mind.

10. For these reasons, the orders dated November 1, 2012 also stand set aside.

11. The petitioner shall continue to remain under suspension. The Sub-Divisional Controller is directed to proceed afresh against the petitioner in accordance with law from the stage of receipt of response from him. He shall make sincere endeavour to complete the proceedings within two months from date of receipt of a copy of this order, strictly in accordance with law. The writ petition stands allowed to the extent mentioned above. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date.