

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Dec-04-2012

Judge : Jayanta Kumar Biswas

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET W.P.No.664 of 2012 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE MAZHAR ALI Petitioner Versus THE STATE OF WEST BENGAL & ORS.Respondents BEFORE: The Hon'ble JUSTICE JAYANTA KUMAR BISWAS Date :

4. h December, 2012.

For Petitioner : Mr.Saptangshu Basu, Sr.Advocate Ms.Nibedita Pal, Mr.Ramesh Dhara, Advocates For Respondent Nos.1-4 : Mr.Amitesh Banerjee, Ms.Rima Das, Advocates For Respondent No.5 : Mr.S.K.Debnath, Advocate The Court : The petitioner in this WP under Art.226 of the Constitution of India dated August 10, 2012 is questioning a direction dated July 26, 2012 (WP page

59) given by the Joint Director of Rationing, Kolkata North.

The direction was given in connection with the petitioners request for renewal of his FPS license.

The relevant part of the direction is quoted below :With reference to the subject captioned above, you are once again requested to get your Trade Licence renewed as early as possible so that your FPS licence can be renewed.

The petitioner was to apply for renewal of his license under para 23 of the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2003.

The application was to be submitted using the prescribed Form C appended to the Control Order.

Admittedly, the petitioner applied for renewal of his license under para 23 of the Control Order using the prescribed Form C appended to the Control Order.

Nothing in the provisions of para 23 of the Control Order or of the prescribed Form C, appended to the Control Order, required the petitioner to submit a valid trade license issued under provisions of the Kolkata Municipal Corporation Act, 1980.

If the petitioner carries on business without obtaining a trade license, if a license is required for carrying on the business, then none of the authorities under the Control Order can take any measure against him; for the contravention, if any, will entitle only Corporation petitioner.

the Act, authorities 1980 to take under the appropriate Kolkata measure Municipal against the Hence the provisions of the Control Order do not empower the authority giving the impugned direction to ask the petitioner to produce a valid trade license for renewal of his license.

Relying on a Circular dated November 14, 2007 issued by the Director of Rationing, West Bengal, Mr.Banerjee appearing for the State has submitted that the authority issuing the impugned direction rightly asked the petitioner to produce a valid trade license.

He has pointed out that with the application for renewal the petitioner gave a statement that he possessed a valid trade license, though in reality at the date the

application was filed he did not possess any valid trade license.

The Circular dated November 14, 2007 was not issued in exercise of any power conferred by any provision of law on the Director of Rationing, West Bengal.

It is evident from the Circular that thereby the Director introduced several requirements a person seeking renewal of his license must fulfil.

The requirements are in addition to the ones mentioned in lawfully conferred requirements virtually the to statutory power the amounted provisions.

the statutory to In Director the absence could not requirements; unauthorised amendment for of the the of add any the addition statutory provision.

Hence the authority issuing the impugned direction asked the petitioner to comply with an extraneous requirement.

The petitioners representation, if any, will not create his statutory obligation to comply with the extraneous requirement.

For these reasons, I set aside the impugned direction, allow the WP to this extent and direct the respondents concerned to decide the petitioners application for renewal of license according to provisions of the Control Order, within a fortnight from the date of this order is served.

No costs.

Certified xerox.

(JAYANTA KUMAR BISWAS, J.) SN.

AR(CR)

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