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Court : Kolkata

Decided On : Oct-06-2010

Judge : Bhaskar Bhattacharya, J.

Appeal No. : G.A. No. 2580 of 2010

Appellant : Subimal Chakraborty

Respondent : The State of West Bengal and ors.

Advocate for Def. : Mr. M. M. Das ; Mr. M. K. Sardar,Advs.

Advocate for Pet/Ap. : Mr. D. Saha Roy ; Mr. R. Ray Choudhury ; Mr. P. Bhattacharya ; Mr. D. Chakraborty, Advs.

Judgement :
At the time of hearing of the present appeal preferred against an order refusing to grant any interim relief in the writ-application passed by a learned Single Judge, we decided to hear out the writ-application itself as the fate of the writ-application depended upon the answers to the same questions of law, which are also the points involved herein.

In the writ-application, the writ-petitioner/appellant, a Fair-Price-Shop owner, has challenged an order dated 30th June 2010, passed by the Director of Rationing, West Bengal. By the said order, the Director of Rationing, in exercise of power conferred under paragraph-26 of the West Bengal Urban Public Distribution System (Maintenance and Control) Order, 2003 (hereinafter referred to as the

Control Order), imposed punishment of not only the forfeiture of the entire security deposit made by the writ-petitioner but also delinking of 2,000 APL adult ration cards from the shop in question in the interest of general public & PDS. It appears from the record that on a surprise visit to the FPS No. 3079, owned by the writ-petitioner on 11th March 2010, by the inspection team of the Directorate of Rationing, some irregularities in the conduct of the said business were detected.

As a result, a notice to show-cause was issued upon the writpetitioner as to why appropriate action should not be taken against him.

After the writ-petitioner had answered the notice, the Director of Rationing, West Bengal, by order dated 30th June, 2010, found the writ-petitioner guilty and decided to forfeit the entire amount of the security deposit and also to de-link 2,000 cards, as indicated above, in exercise of power conferred upon him under paragraph-26 of the Control Order.

Being dissatisfied, the appellant filed the writ-application challenging the entire disciplinary proceedings. However, the only point advanced by Mr. Saha Roy, the learned advocate appearing on behalf of the appellant before us, was that the Director of Rationing acted without jurisdiction in de-linking 2,000 cards from the Fair-Price-Shop of the writ-petitioner in exercise of the power conferred under paragraph-26 as a measure of punishment.

According to Mr. Saha Roy, in exercise of the power conferred under paragraph-26, the Director may, if the licence holder is found to be guilty, either suspend or vary or cancel the licence and the appointment, and can even in exercise of power conferred under paragraph-24 forfeit the security deposit, but, Mr. Saha Roy continues, the Director has no power of de-linking any card by way of punishment. Mr. Das, the learned advocate appearing on behalf of the State- Respondents, has, on the other hand, opposed the aforesaid contention of Mr. Saha Roy and he initially contended that the aforesaid de-linking of 2,000 ration cards was made in exercise of the power conferred upon his client by virtue of the Circular No. 1478 FS/FS/SECTT/Food/6F5/05Pt.I. for smooth functioning of the system and as a routine administrative measure and by way of a punishment.

Mr. Saha Roy, however, vehemently asserted that the said Circular is not applicable to a Fair-Price-Shop, situated within the territorial limit of the Kolkata Municipal Corporation Act. In view of such submission, the Division Bench presided over the Honble Chief Justice, in the past, directed the Director of Rationing, West Bengal, to affirm an affidavit indicating whether the said Circular had really any application to the Fair-Price-Shops situated within the territorial limit of Kolkata Municipal Corporation Act. Pursuant to such direction, the Director of Rationing, West Bengal, has affirmed an affidavit admitting that the said Circular has no application to the Fair-Price-Shops situated within the territorial limit of the Kolkata Municipal Corporation Act.

Thus, it is clear that the initial submission of Mr. Das that his client delinked 2,000 cards not as a punishment but in exercise of power conferred under the aforesaid Circular for smooth functioning of the system, is without any basis. Therefore, the only question that arises for determining in the writ application is whether in exercise of power conferred under paragraph-26 of the Control Order, the Director of Rationing, by way of punishment, can de-link any ration card attached to a Fair-Price-Shop. In order to appreciate the aforesaid question, the provisions contained in paragraphs-24, 26 and 27 of the Control Order are relevant and those are quoted below:

24. Deposit of Security :- (1) Every Wholesaler and Dealer shall, for the due and faithful performance of his duties and obligations under this Order and as a measure of security against non observance on his part of any of the terms and conditions of the licence, any departmental orders or instructions issued in connection therewith, before a licence is issued to him, deposit with the Director a security of Rs.5000 in case of a Wholesaler and Rs.750 in case of a Dealer. The security shall be deposited in the form of a Postal Savings Bank Pass Book or National Savings Certificate or any other form as may be prescribed by the State Government and shall be pledged to the Director in favour of the Governor of West Bengal.

(2) The Government shall not be liable for payment of any interest for the security deposit or for any depreciation thereof.

(3) Without prejudice to the provisions of paragraph 26, if the Director is satisfied that Wholesaler or Dealer, being a licensee has contravened any of the provisions of this Order, or any of the regulations made thereunder or any of the conditions of the licence and that a forfeiture of the security deposit is called for, it may, after giving the licensee a reasonable opportunity of being heard pass such orders as may forfeit the whole or any part of the security deposit to the licensee and communicate a copy of the order to him.

(4) If at any time the security deposited by a licensee falls short of the amount specified in sub-paragraph (1), the licensee shall, on being required by the Director, forthwith deposit such further security as would make up such amount.

(5) The security may also be applied towards recovery of any amount found due to the State Government from the Wholesaler Dealer in the event of his failure to pay the same within 15 days of his getting a notice of demand in this behalf from the Director.

26. 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 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. (Emphasis given by us).

27. Appeal:- Any Wholesaler or Fair-price shop owner aggrieved by an order of the Director cancelling or suspending licence or forfeiting the whole or any part of a security under the provisions of this Order, may prefer an appeal to the State Government within 30 days of the receipt by him of such Order. (Emphasis supplied by us). After going through the aforesaid provisions of the Control Order, we find that in case of any contravention of the provisions of Control Order or of

the Regulations made there under or of any of the terms and conditions of the licence found to have been committed by any Dealer or Fair-Price-Shop-owner, the Director of Rationing, in exercise of power conferred under paragraph 26, can not only suspend, vary or cancel the licence and the appointment but can also forfeit the security furnished by the Wholesaler or the Fair-Price-Shop owner in exercise of power conferred under paragraph-24. A Wholesaler or the Fair-Price-Shop owner is given a right of appeal against an order of suspension, cancellation or variation of his licence or against an order of forfeiture of his security under paragraph 27.

However, either in paragraph 26 or in paragraph 27, there is no reference of de-linking of cards. It is, therefore, clear that the lawmakers had no intention to confer right of delinking of cards attached to a wholesaler or Fair-Price-Shop owner upon the Director of Rationing as a measure of punishment. Once the Director of Rationing in his affidavit has admitted that the Circular No. 1478 FS/FS/SECTT/Food/6F5/05Pt.I, which authorizes the Director to de-link cards in appropriate cases from one wholesaler or Fair-Price- Shop owner and attach those to another, is not applicable to the shop in question, and at the same time, he is also unable to produce any other lawful authority empowering him to de-link cards from the shop in question, we have no hesitation to conclude that the punishment of de-linking was ex facie without any authority of law.

At this stage, Mr. Das tried to convince us that de-linking of the cards should be taken to be in the nature of variation of licence and thus, the order impugned was quite justified. We, however, are not impressed by the said contention for the following reasons: Before a person is selected a Wholesaler or Fair-Price-Shop owner, a declaration of vacancy is advertised and on that basis, the selection is made from the applicants.

In the declaration of vacancy, the area, for which such vacancy is declared, is given by way of reference of boundary. The selected person, by virtue of his selection, gets absolute right to link with his licence all the cardholders of the area for which he is selected. As admitted by the Director of Rationing in his affidavit before us, in the case of any wholesaler or Fair-Price-Shop situated within the

territorial limit of the Kolkata Municipal Corporation Act, there is no application of the Circular, which specially authorizes him to de-link any card attached to a licence-holder and to link the same with another.

Therefore, for justifying the order of de-linking of the cards as a punishment of variation of terms of licence upon a licence holder within the territorial limit of the Kolkata Municipal Corporation Act, there should be fresh declaration of vacancy by curtailing the area of the licence-holder who has suffered such punishment. Similarly, there should be a simultaneous fresh declaration of vacancy by annexing the area so curtailed to some adjoining licence holder.

However, there is no scope of simply de-linking of 2000 cards from the shop of a licence-holder and attaching those to another, when the latter has admittedly no right over the area from which those de-linked cards are additionally annexed to his licence. Thus, there has been no lawful variation of the condition of licence of the writ-petitioner and still, he is the only licence-holder of the area for which he was selected by virtue of the declaration of vacancy advertised. We find that in the order impugned in the writ-application, the Director of Rationing has specifically asseverated that the order of de-linking was made in exercise of his power conferred under paragraph-26. We have already quoted the aforesaid paragraph which does not provide for de-linking of any card by way of punishment.

Therefore, it is apparent that the aforesaid order of de-linking was passed notwithstanding the fact that the Director of Rationing did not possess the power of inflicting such punishment. It is now settled law that a natural person can do anything that is not prohibited by law. However, the position of a statutory authority is just the reverse. A statutory authority can do only those acts which it is authorized to do under the law. Once the Director of Rationing has admitted in his affidavit that the particular Circular authorizing him to de-link cards from a licensee and to annex those to another licensee is not applicable to any shop situated within the territorial limit of Kolkata Municipal Corporation, and at the same time, no other authority could be placed indicating conferment of such power upon the Director of Rationing to de-link any ration card from a shop situated within the aforesaid area, we are left with no other alternative but to hold that the action of

the Director of Rationing to de-link 2,000 cards from the shop of the writ-petitioner by way of punishment in exercise of power under paragraph 26 was patently illegal. We, therefore, set aside that part of the order dated 30th June, 2010 impugned in the writ-application by which the Director of Rationing de-linked 2,000 APL adult ration cards from the shop of the writ-petitioner.

We do not disturb the other part of the order by which the security money was forfeited. The appeal and the writ-application are, thus, allowed by modifying the imposition of punishment dated 30th June, 2010 to the extent indicated above. In view of disposal of the appeal itself, the connected application has become infructuous and the same is disposed of accordingly. In the fact and circumstances, there will be, however, no order as to costs.

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