

Abul Kalam Halder Vs. the State of West Bengal and ors.

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Court : Kolkata

Decided On : Sep-13-2010

Judge : Indira Banerjee, J.

Appeal No. : WP No.1148 of 2010

Appellant : Abul Kalam Halder

Respondent : The State of West Bengal and ors.

Advocate for Def. : Mr. Prafulla Ghosh ; Ms. Amrita Sinha, Advs.

Advocate for Pet/Ap. : Mr. Kalyan Bandopadhyaya, ; Mr. R.A. Agarwal, ; Ms. Nibedita Pal ; Mr. Ramesh Dhara, Advs.

Judgement :

The Court : It appears that on August 13, 2010 the Sub Divisional Controller, Food & Supplies, Baruipur visited the petitioners fair price shop along with the Chief Inspector, Area Inspector and one Inspector of different area and carried out inspection of the fair price shop.

An inspection report was prepared recording that the updated rate cum stock board and updated stock registers were found in the fair price shop, but the sales register and the cash memo register were not found.

The inspecting team was informed that the aforesaid document was in the house of the `Muhuree. The petitioner was directed to produce the original sales register

and the cash memo register in the office of the Sub Divisional Controller, Food and Supplies, Baruipur.

In the inspection report it is further recorded that the petitioner was directed to make arrangement for 100% weighment, but could not make such arrangement. It is, thus, apparent that no physical weighment took place. According to the petitioner, the petitioner produced the sales register and the cash memo register in the office of the Sub Divisional Controller, Food and Supplies as directed.

After going through the sales register and the cash memo register, a decision was taken for allotment of commodities to the fair price shop of the petitioner. In the writ application, the petitioner has, inter alia, challenged a show cause notice no.944(5)/SC/FS/Showcause/MRD/BRP/10 dated August 24, 2010 whereby the petitioner has been directed to show cause why suitable action should not be taken against the petitioner for the alleged contravention as specified in the said notice.

In the impugned notice, it is alleged that the petitioner did not produce inter alia cash memo book and sample box. Pending receipt of satisfactory reply, further supply to the fair price shop has been suspended with immediate effect. Prima facie there was no demand for production of cash memo books or sample box.

Furthermore no physical verification of stocks actually took place. Moreover, as pointed out on behalf of the petitioners by Mr. Bandopadhyay the procedure in paragraph 21 of the West Bengal Public Distribution System, (Maintenance and Supply) Order, 2003 provides as follows: 21. Penalty: [i] If on examination of the documents and/or stocks of public distribution commodities or weighing devices, any discrepancy is detected, the Sub-divisional Controller, Department of Food and Supplies, shall issue a notice to the concerned Dealer asking for explanation in writing for such discrepancy and may also place the dealership under suspension till the disposal of the proceedings by the Sub-divisional Controller, Department of Food and Supplies. 22. Appeal:

Where a dealer is aggrieved against the order passed by the Sub-divisional Controller Department Food and Supplies, the Dealer may file an appeal to the

District Controller, Department of Food and Supplies, who may dispose of the appeal within a period of 45 days from the date of receipt of the appeal:

Provided that if any action is taken as per instruction of the District Controller Department of Food and Supplies the appeal shall lie with the Regional Deputy Director. Similarly an appeal against an action arising out of the instruction of a Regional Deputy Director, shall lie with the Director of District Distribution, Procurement and Supply.

In the instant case the dealership has apparently not been suspended. There is no provision for suspension of supply without formal order of suspension of the dealership. There will, therefore, be stay of operation of the impugned show cause notice only to the extent that supply in favor of dealership has been suspended with immediate effect. It is clarified that the petitioner will give his explanation in writing as directed by the show cause notice.

The proceedings against the petitioner might continue. Affidavit-in-opposition be filed within October 6, 2010. Affidavit-in-reply thereto, if any, be filed within November 10, 2010. Matter be listed as For Orders on November 11, 2010. The interim order shall continue till December 1, 2010 or until further orders whichever is earlier.

The reply to the show cause notice if submitted within a fortnight from date shall not be rejected on the sole ground of delay.

All parties are to act on a signed Photostat copy of this order on the usual undertakings.

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