

ASR 1.
Ct. no. 24.
19.08.2025

WPA 19054 of 2025

**Asima Mondal
Vs.
State of West Bengal & Ors.**

Mr. Debabrata Saha Ray
Mr. Pingal Bhattacharyya
Mr. Subhankar Das
Mr. Neil Basu
Mr. Sankha Biswas

.....For the petitioner
Mr. Swapan Kumar Dutta
Mr. Rajat Dutta

.....For the State

Petitioner took part in a selection process in terms of vacancy notification issued by Sub Divisional Controller, Food & Supplies, Contai for filling up vacancy of M.R. dealership.

After due formalities the petitioner became most suitable candidate and offer letter was issued in her favour by the concerned Food & Supplies department, Government of West Bengal on 5th December, 2024.

Fair price shop license was issued in favour of the petitioner on 7th January, 2025 which is valid till 31st December, 2025.

Under the strength of such license the petitioner is catering ration articles to the beneficiaries under her PDS.

The petitioner on 20th May, 2025 suddenly received intimation from the District Controller, Food & Supplies, Purba Medinipur in respect of a letter to Sub

“Memo no. 936 /DCM/Purba/25 dated 20.5.2025
To
The Sub-Divisional Controller,
Food & Supplies Department
Tamluk, Purba Medinipur

As per instruction of the Principal Secretary, Food & Supplies Department dated 20.05.2025 positively and submit report to the undersigned within 27.05.2025 for onward submission to the Department by 31.05.2025.

**District Controller(F&S)
Purba Medinipur”**

Thereafter on 8th August, 2025 the petitioner received an order of termination of FPS from her licensing authority i.e. Sub Divisional Controller, Food & Supplies, Contai.

The order of termination is set out herein under

for better appreciation of the facts.

**“File No. CFS/EMID/2025 dated:-
08.08.2025.
No:- 435**

Order of Termination of FPS Licence.

WHEREAS,

A new FPS dealership at Dakshin Murabania (Central Location: Near Dakshin Murabania Sisu Shikha Kendra) against Vacancy ID: 202200248904 in connection with Notification No. 219/CFS/2023 dated 22.03.2023 has been approved by the prescribed authority on 17.09.2024 after due enquiry along with other relevant formalities in favour of one applicant namely Ashima Mondal, C/O Kalipada Mondal of Vill- Kumarpur, Under Contai-I block, Dist- Purba Medinipur, PIN-721401. Offer letter has been issued on 05.12.2024 & license has been issued on 07.01. 2025 vide FPS Code: WB0345463368. The FPS becomes functional after those due formalities.

WHEREAS,

A COMPLAINT FROM Tahamina Khatun W/O of Asgar Hossain of Vill-Dakshin Murabania, P.S.-Junput, P.S. –Junput Coastal, Purba Medinipur dated 26.03.2025 addressed to the Hon'ble Chief Minister, alleging that the person who has been awarded new FPS dealership at Dakshin Murabania does not possess legal documentation in respect of proposed FPS godown.

WHEREAS,

The report submitted by the Licensing Authority dated 11.04.2025 regarding the above mention allegation found unsatisfactory, DCF&S, Purba Medinipur entrusted SCF&S, Tamruk to cause a thorough enquiry in this regard.

WHEREAS,

SCF&S, Tamruk conducted an enquiry regarding the subject matter and in his report, he has mentioned in details some serious discrepancies between the physical godown and the enquiry reports submitted by the enquiry officers during vacancy enquiry done in the month of August, 2023. The major discrepancies are as:

- i. *The Enquiry Report as submitted by the enquiry officers during vacancy enquiry done in the month of August, 2023 does not mention the fact that, the proposed godown is a residential house, with major issue of access to 1st floor through the same area, which makes the godown not suitable.*
- ii. *During physical enquiry and measurements on 30.05.2025, it was found that the premises offered by Smt. Asima Mondal as proposed FPS godown has 2 proper rooms (24.25 ft. X 11 ft) with approx. 266.75 sq ft which can be treated as godown. There is total 283 sq ft of area in the veranda, which cannot be considered for storage or sale area because of presence of staircase (i.e. access to 1st floor). There is one proper room with 11.5 ft. x 11 ft, ie. 126.5 sq ft can only be considered as sale area. The room 3 mentioned in the enquiry report was physically found to be of dimension 24 ft 10 area. The room 3 mentioned in the enquiry report was physically found to be of dimension 24 ft 10 inches x 6 ft 9 inches, i.e. 167.60 sq ft, is not fit for storage of food grains and should not have been considered as godown space during inspection. Thus the area of the proposed shop becomes approx. 266.75 sq. ft and sale counter becomes 126.5 sq.ft. which does not conform the godown specification as laid down in the gazette notification. The enquiry report dated 30.05.2025 transpires that the approved candidate, Asima Mondal" shop cum godown was not up to the mark of eligibility as laid down in the vacancy Notification No. 219/CFS/2023 dated 22.03.2023. The complaint, Tahamina Khatun*

Bibi's shop is also found inappropriate i.r.o the said notification as the proposed FPS shop-cum-godown is a complete residential house, with people dwelling in that place and not suitable for PDS.

AND THEREFORE,

The FPS dealership of Asima Mondal is hereby terminated on the grounds of flawed selection process based an erroneous enquiry report as submitted by the enquiry officials with immediate effect and the said vacancy will be re-notified in due course. For smooth running of Public Distribution System, the terminated FPS Code is being tagged with the nearest FPS dealer Sumita Jana (FPS Code: 13450190030)

Issued in the interest of uninterrupted PDS."

Mr. Debabrata Saha Ray, learned Senior counsel appearing on behalf of the petitioner submits that the order of termination issued by the Sub Divisional Controller, Contai is erroneous and under dictation of the higher authority.

He submits that the present petitioner being the licensee have never given an opportunity of hearing or any scope of to demonstrate her case in the enquiry proceeding.

He further submits that the entire order of termination is under dictation of Principal Secretary, Food & Supplies, who initially directed the SCFS, Contai to conduct an enquiry. The SCFS, Contai has

conducted enquiry and submit a report on 11th April, 2025.

On perusal of his report and without record any unsatisfaction the principal Secretary dictated District Controller to again re-enquire the FPS of the petitioner by another Sub Divisional Controller i.e. SCFS, Tamluk.

He submits that the entire procedure adopted by the respondent authority is unreasonable and mala fide.

Thus it requires to be set aside.

He further submits that the impugned order of termination is on the basis of a complaint of one Tahamina Khatun. Such complaint was never served upon the petitioner or the petitioner has not given any opportunity of hearing. Thereby valuable right of the petitioner regarding the principle of natural justice has been violated in this case.

He prayed for set aside the impugned order of termination.

Mr. Swapan Dutta, learned Senior counsel, AGP submits that a complaint was made to the Principal Secretary, who conducted a discreet enquiry at the FPS of the petitioner, wherefrom it appears that at the time of appointment of the petitioner, the selection process has been flawed on the basis of erroneous enquiry report.

He further submits the concerned department, under the instruction of the Principal Secretary has only rectified the mistakes done by the concerned official during the appointment process.

He further submits that there is no scope of dictation by the upper authority, the principal Secretary has only instructed to conduct a discreet enquiry. He submits that the Principal Secretary has all authority to rectify the mistake of the department at any time.

He further pointed out the relevant portion of the impugned order of termination, wherein the enquiry report which was submitted by the enquiry officer during vacancy enquiry appears to be erroneous during physical enquiry by the SCFS, Tamluk.

Mr. Dutta further submits that any person cannot claim negative equity. License in favour of the petitioner was granted on the basis of erroneous enquiry report. Thus the department has every opportunity to rectify the mistake. Thereby the license of the petitioner was correctly terminated.

It is further contention of Mr. Dutta that there are a corrigendum of the impugned order dated 8th August, 2025, which disclosed that instead of 'order of termination' it was corrected as "order of revocation" and the last para of the impugned order the FPS of the dealership of the petitioner was "revoked" not "terminated".

In support of their respective contentions Mr. Saha Ray placed some judgements of this court passed **in Khorsed Alam Khan Vs. State of West Bengal & Ors.**, wherein this court has observed that once a license was granted in favour of an individual such license can only be terminated in terms of the provision laid down in the relevant control order not by any other way.

Mr. Saha Ray also placed a decision of the Hon'ble Division Bench of this court dealing with the relevant issues passed in **State of West Bengal & Ors. Vs. All Bengal Fair Price shop Dealers' Welfare Association & Anr. (MAT 2354 of 2024)**, wherein the Hon'ble Divisional Bench under the assurance of learned Advocate General has passed an order that the State shall always duly complied with the Principle of natural justice at the time of imposing penalty upon any FPS dealer.

Mr. Saha Ray has placed reliance upon decision of Hon'ble Apex court passed in **Joint Action Committee or Air Line Pilots' Association of India (ALPAI) & Ors. -Vs.- Director General of Civil Aviation & Ors. Reported in (2011) 5 SCC 435. (para 26)**

“ The contention was raised before the High Court that the Circular dated 29.5.2008 has been issued by the authority

having no competence, thus cannot be enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (vide purtabpore Co. Ltd. V. Cane Commr. Of Bihar, Chandrika Jha v. State of Bihar, Tariochan Dev Sharma v. State of Punjab and Manohar Lal v. Ugrasen)”

Learned AGP also placed reliance upon a decision of Hon’ble Supreme Court reported in **Chaman Lal -Vs.- State of Punjab & Ors. Reported in (2014) 15 SCC, 715.**

Having heard the learned counsel for the parties also considering the proposition of law as involved by

the court as well as by the Hon'ble Division Bench and Hon'ble Supreme Court, it appears to me that the legal proposition of State action at the time of termination of license has time and again observed by this court as well as the Hon'ble Division Bench. In all aspect, and in all the matters this court has directed time and again that the principle of natural justice should have to be followed before termination of any license issued by the State in favour of any individual.

Mr. Dutta, has placed reliance upon a decision of **Hon'ble Apex court in Chaman Lal -Vs.- State of Punjab & Ors.**, wherein the Hon'ble Apex court in deciding relevant Principles of presence of necessary parties to a suit, under Order 1 of CPC, has categorically ruled that when a necessary party was not impleaded in a suit, if the suit is decreed and even if decree attended its finality, then also, for non-impleading the necessary parties to the suit, such final decree is not binding upon the necessary party who was not impleaded in the suit. In deciding such issue the Hon'ble Apex court (in Chamanlal) has discussed, about the legal proposition of negative equity as enumerated under Article 14 of the Constitution of India.

The Hon'ble Apex court in following **Basawarag Vs. Land accusation officer (2013) 14 SCC 81** has observed that if on the basis of fraud and illegality one

wrong decision was obtained, no one can placed reliance upon such decision or claim negative equity.

In deciding the present matter it appears that one unsuccessful candidate namely Thamina Khatun, lodged a complaint to the Hon'ble Chief Minister against license granted in favour of the petitioner.

The impugned order itself disclosed the fact that the allegation is only none possession of some legal document in respect of proposed FPS godown of the petitioner.

On such complaint the Principal Secretary has directed District Controller to conduct a enquiry. Initially SCFS, Contai has conducted enquiry and submit a report. Principal Secretary again directed District Controller that a re-enquiry required to be made in respect of FPS of the petitioner through SCFS, Tamluk, Purba Medinipur.

After thorough scrutiny of the entire State action impugned here in, it appears that on the basis of a complaint of an unsuccessful candidate the Principal Secretary acted to conduct an enquiry initially through licensing officer concerned i.e. SCFS, Contai, who conducted an enquiry, but it appears that though such enquiry report was placed with the authority but no one has recorded dis-satisfaction about such enquiry report and again the Principal Secretary directed District Controller to conduct enquiry through SCFS, Tamluk.

Moreover, the impugned order has disclosed some erroneous finding of enquiry report submitted by the Enquiry Officer during vacancy enquiry which is purely regarding the area of FPS of the present petitioner. The SCFS, Tamluk is of opinion that some room of FPS of the petitioner is not fit for storage of food articles.

It further appears that there is no such hint of illegal possession of proposed FPS godown by the petitioner on the basis of non-possession of the legal documents.

Moreover, the authority concerned has suddenly by an order of corrigendum has changed the nomenclature of the impugned order to the order of a “revocation” in place of “termination”.

Order of “revocation of FPS license” is unknown to the control order.

After considering the entire aspect, it appears to me that the impugned order passed by the concerned licensing authority i.e. Sub Divisional Controller, Food & supplies, Contai is erroneous on the following grounds.

1. The petitioner was never given any opportunity to see the complaint of Thamia Khatun, an unsuccessful candidate.
2. Petitioner nature given any opportunity of hearing before order of termination/order of revocation.

3. The Order of termination/order of revocation is not in according to the control order.
4. The District Controller, Food & Supplies, Purba Medinipur has not never recorded his dissatisfaction over the enquiry report conducted by the SCFS, Contai.
5. Moreover, the Director, DDPS, who is the authority to finally accord permission for selection of a candidate in respect of FPS has not placed any finding regarding his early decision of granting license in favour of the petitioner.

I make it clear that when a license was granted in favour of an individual after complying with all formalities according to the control order, the authority concerned can only terminate the license in accordance with the control order.

I make it clear that the provisions of law relating to State action is not so wide that of private individual. The State, who has source of power under a statute can act only on the basis of the statute only not in another way.

On the other hand, an individual, who is a citizen of India, can act any action according to the law but the state authority is bind by the provision of law by which they are only empowered.

Under the above observation, it appears to me that the impugned order of termination of FPS license dated 8th August, 2025 and thereby the corrigendum i.e. order of revocation dated 14th August, 2025 issued by the concerned authority, it appears to me illegal and erroneous without basis and passed in violation of natural justice. Hence, I find justification to Stay the operation of the impugned order of termination/order of revocation for a period of 10 weeks from date.

The authority concerned is directed to allow the petitioner to run the FPS according to the term of licence within 10 days.

However, it appears that the justification to issue such order of termination/order of revocation by the state authority may be properly demonstrated before this court by filing an affidavit-in-opposition.

Accordingly the State respondent is directed to file affidavit in opposition against the writ petition within four weeks from date.

Reply, if any, by the petitioner within two weeks thereafter.

Let the matter go out of the list.

Parties are liberty to mention.

[Subhendu Samanta, J]