

GAHC010008122013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3489/2013

MRS. JAHERA KHATUN
W/O MD. EUNUS ALI, VILL, JARIBOR, P.O. FOLIHAMARI PATHAR, P.O.
BURAGAON, DIST- MORIGAON, ASSAM, PIN-782127

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, FOOD and CIVIL SUPPLIES DEPARTMENT, DISPUR, GHY-7

2:THE DIRECTOR
FCS and CA
SUPPLY DEPARTMENT
BHANGAGARH
GHY-5

3:THE DY. COMMISSIONER
MORIGAON
FOOD and CIVIL SUPPLY BRANCH
DIST- MORIGAON
ASSAM

4:THE ASSTT. DIRECTOR
FCS and CA
MORIGAON
DIST- MORIGAON
ASSAM

5:THE SECRETARY
TENGAGURI GPSS LTD
VILL. TENGAGURI
P.S. LAHARIGHAT

DIST- MORIGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MR.H R KHAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 30-03-2023

There is no representation on behalf of the petitioner today on call.

2. Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 1 – 4 is present.

3. The instant writ petition has been preferred by the petitioner under Article 226 of the Constitution of India to assail an order dated 28.01.2013 passed by the respondent no. 3 i.e. the Deputy Commissioner, Morigaon as the Licensing Authority empowered under Clause 15 of the Assam Public Distribution of Articles Order, 1982 [‘the APDA Order, 1982’, for short], whereby, the Licensing Authority had cancelled the PDS Retail Licence bearing no. M/S PDS [R] 2/93 issued in the name of the Secretary of M/s Joribor Bahumukhi Mahila Samabay Samiti [BMSS].

4. From the materials on record, it has emerged that a show cause notice was issued to the petitioner herein in the capacity of the Secretary, M/s Joribor BMSS on 28.09.2012 by the respondent no. 4 i.e. The Assistant Director, Food, Civil Supplies & Consumer Affairs [F.C.S. & C.A.], Morigaon under Clause 15 of the

APDA Order, 1982 asking the noticee to show cause as to why the PDS Retail Licence shall not be cancelled. The noticee was asked to submit the written reply within 5 [five] days from the date of receipt of the notice. The show cause notice indicated contravention of the provisions of Clause 14, Clause 25 & Clause 26 of the APDA Order, 1982 and also the terms and conditions contained in Clause 3[a] & [b], Clause 4, Clause 6, Clause 7 & Clause 8[I] of the PDS Retail Licence read with Clause 6[4] of the PDS Control Order, 2001. The show cause notice was issued subsequent to an Enquiry Report submitted by the Area Officer, F.C.S. & C.A., Morigaon on 29.03.2012 alleging irregularities committed by the petitioner as the Secretary of M/s Joribor BMSS under Tengaguri GPSS Ltd. It is noticed that in response to the show cause notice, the petitioner submitted a written reply on 19.11.2012. The petitioner was also heard in person by the respondent no. 3. After affording personal hearing, the respondent no. 3 as the Licensing Authority had reached a finding that there was prima facie evidence against the Secretary of M/s Joribor BMSS as regards irregularities like improper distribution of PDS/TPDS commodities to the intended beneficiaries, non-submission of books of accounts to the authority, etc. and the petitioner as the Secretary of M/s Joribor BMSS had failed to submit sufficient materials to rebut the allegations as wrong. In the affidavit-in-opposition filed by the respondent no. 3, it is contended that the PDS Retail Licence was granted in the name of the Secretary/Acting Secretary of M/s Joribor BMSS and not in the individual name of the petitioner, who was the Secretary of M/s Joribor BMSS, to deal in PDS commodities. M/s Joribor BMSS was a public entrepreneurship which was formed by women as per the Government guidelines and registered under the then Assam Cooperative Societies Act, 1949. The petitioner as the Secretary of M/s Joribor BMSS could

perform the duties only in terms of the By-Laws of M/s Joribor BMSS and was duty bound to run the business in PDS commodities as per the terms and conditions incorporated in the Retail Licence issued in the name of the Secretary, M/s Joribor BMSS under the provisions of the APDA Order, 1982. It is asserted that it was obligatory on the part of an appointed dealer/retail licensee to issue [sell] any of the PDS/TPDS commodities to the consumer on production on their Family Identity Cards [FIPs]. The Enquiry Report stated about deprivation of allotted BPL [Below Poverty Line] rice to a BPL beneficiary against Family Identity Card no. 808919 for a continuous period of three months i.e. January, February & March, 2012. There was also an allegation to the effect that the petitioner had forcibly retained the Family Identity Card of the said BPL beneficiary and in that connection, a First Information Report [FIR] was also lodged by the said beneficiary at Bhuragaon Police Station. It is asserted that the petitioner as the Secretary, M/s Joribor BMSS could not produce any books of account related to lifting and distribution of PDS/TPDS articles to the Inspector, F.C.S. & C.A. for necessary verification.

5. Mr. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 1 – 4 has submitted that the instant writ petition has been filed by the petitioner in her personal capacity whereas the Retail Licence which had been cancelled by the impugned order dated 28.01.2013, was issued in the name of the Secretary, M/s Joribor BMSS. As such, the instant writ petition could not have been maintained by the petitioner in her personal capacity. It is M/s Joribor BMSS, the entity in favour of which the PDS Retail Licence was issued under APDA Order, 1982, who could have raised such grievance.

6. Be that as it may. When the writ petition was listed on earlier occasions i.e.

on 02.03.2023 and on 28.03.2023, there were no representations on behalf of the petitioner on those occasions. Today also, when the matter is called, there is no representation on behalf of the petitioner. Having regard to the same, it appears that the petitioner is not interested to pursue the writ petition. In such view of the matter, the writ petition is dismissed for non-prosecution.

JUDGE

Comparing Assistant