

GAHC010011892023



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

Case No. : WP(C)/296/2023

JOYDEEP SHOW

S/O. LT. JAMINA PRASHAD SHOW, VILL. BALACHERRA T.E., P.O.
BALACHERRA, P.S. BORKHOLA, DIST. CACHAR, ASSAM, PIN-788110.

VERSUS

THE STATE OF ASSAM AND 6 ORS
TO BE REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
FOOD, CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPT., DISPUR,
GUWAHATI-06.

2:THE DIRECTOR
FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS
ASSAM
BHANGAGARH
GUWAHATI-05.

3:THE DEPUTY COMMISSIONER
CACHAR P.O. SILCHAR
DIST. CACHAR
ASSAM
PIN-788001.

4:THE DEPUTY DIRECTOR
FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS
CACHAR
P.O. SILCHAR
DIST. CACHAR
ASSAM
PIN-788001.

5:THE ADDL. DEPUTY COMMISSIONER
CACHAR IN CHARGE FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS
SILCHAR

P.O. SILCHAR
DIST. CACHAR
ASSAM
PIN-788001.

6:THE SUPERINTENDENT
FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS
SILCHAR
P.O. SILCHAR
DIST. CACHAR
ASSAM
PIN-788001.

7:THE AREA OFFICER CUM INSPECTOR

FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS
CACHAR
SILCHAR
P.O. SILCHAR
DIST. CACHAR
ASSAM
PIN-788001

Advocate for the Petitioner : MR H I CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03-04-2023

Heard Shri K. P. Pathak, learned counsel for the petitioner. Also heard Shri N. Goswami, learned State Counsel appearing for all the respondents.

Notice of Motion was issued in this case on 20.01.2023.

Considering the subject matter in dispute and as agreed to by the parties, the instant writ petition is taken up for disposal at the admission stage.

The petitioner is a Fair Price Shop Agent under the Jatinga Co-operative Society Ltd. in the district of Cachar having License No. 2376 which was issued under the ***Assam Public Distribution of Articles Order, 1982.***

It is the case of the petitioner that in spite of discharging his duties and functions in the aforesaid capacity, an order dated 12.09.2022 was issued to the petitioner to show-cause against certain allegations of anomalies in the stock and the Price Board.

It is case of the petitioner that on receipt of the Show-Cause Notice, he had submitted his response on 14.09.2022. However, before the said reply could be submitted, an order has been passed on 12.09.2022 by which the Fair Price License of the petitioner has been suspended and the consumers were tagged to a nearby Fair Price Shop.

It is the case of the petitioner that the aforesaid impugned order dated 12.09.2022 has been issued without any opportunity and the same is the same subject of challenge in this writ petition.

Shri Pathak, the learned counsel for the petitioner by drawing the attention of this Court to the Orders of 1982 more specifically Clause 15 (2) submits that the maximum period for which a license can be suspended is 90 days and the said period has already spent its force. He further submits that to the information of the petitioner, no exercise has been conducted for renewal of the suspension order.

Shri N. Goswami, the learned State Counsel has submitted that the allegations against the petitioner are serious which would require an enquiry. However, with regard to the provisions of the Order of 1982 regarding suspension, he fairly submits that the order which provides for suspending the license for maximum period of 90 days is over. Clause 15 of the Articles under Order of 1982 reads as follows:-

“15. (1) If any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms and conditions of the licence, then without prejudice to any other action that may be taken under the Essential Commodities Act, 1955 (Central Act 10 of 1955) his licence may be cancelled or suspended by any Order in writing of the Licensing Authority and an entry will be made in his licence relating to such suspension or cancellation.

(2) No Order of cancellation shall be made under this Clause unless the licensee has

been given reasonable opportunity or stating his case against the proposed cancellation by but during the pendency or in contemplation of the proceedings of cancellation of the licence, the licence can be suspended for a period not exceeding 90 days without giving any opportunity to the licensee of stating his case."

A careful perusal of the aforesaid provisions would indicate that while the law in force is question does not contemplate providing of an opportunity before suspending a licence, such suspension can be for a period not exceeding 90 days.

In the instant case, it clearly appears that the impugned order was issued on 12.09.2022 and therefore the period of 90 days had expired long time back and therefore the order of suspension has spent its force.

That being the position, this Court is of the unhesitant opinion that the order of suspension has become otiose and therefore the same is set aside and quashed.

The petitioner would accordingly be allowed to function and operate his Fair Price Shop on the strength of the licence.

It is however clarified that the present order has been passed only on the issue of suspension and the same would have no influence on any proceedings which might have been contemplating or initiated against the petitioner with regard to the anomalies.

JUDGE

Comparing Assistant