

GAHC010029712021



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

Case No. : WP(C)/1222/2021

BOLORAM DAS AND 8 ORS
S/O- LT. DEBESH CH. DAS, R/O- TALOWA GAON, P.O. SRINAGAR, DIST.-
DHUBRI, ASSAM

2: ABDUL SALAM MONDAL
S/O- LT. HASEN ALI MONDAL
R/O- KAIMATI
P.O. CHOTOGUMA
DIST.- DHUBRI
ASSAM

3: SANKAR PANDIT
S/O- LT. MONTU PANDIT
R/O- VILL AND P.O. CHOTOGUMA
DIST.- DHUBRI
ASSAM

4: WAZIL ISLAM
S/O- LT. JONAB ALI SK
R/O- POKALAGI PART-II
P.O. KAMANDANGA
DIST.- DHUBRI
ASSAM

5: MOTIAR RAHMAN MONDAL
S/O- JOYNAL ABEDIN
R/O- KAIMATI (CHOTTOGUMA)
P.O. CHOTTOGUMA
DIST.- DHUBRI
ASSAM

6: TAHER ALI SK.
S/O- ANARUDDIN SK.
R/O- BHERBHERI

P.O. BARJAN
DIST.- DHUBRI
ASSAM

7: BANDANA SAHA
W/O- SUBHASH CH. SAHA
R/O- NATABARI PART-I
P.O. AND P.S. TAMARHAT
DIST.- DHUBRI
ASSAM

8: DHANESH BHAKAT
S/O- DHARNA NARAYAN BHAKAT
R/O- MESPARA
P.O. BARJAN
DIST.- DHUBRI
ASSAM

9: FOZLUL HOQUE
S/O- ABDUS SALAM SK.
R/O- KAMANDANGA KUTI
P.O. KAMANDANGA
DIST.- DHUBRI
ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, FOOD AND
CIVIL SUPPLIER DEPTT., DISPUR, GHY-06

2:THE DY. COMMISSIONER
DHUBRI P.O. AND DIST.- DHUBRI
ASSAM
PIN- 783301

3:THE DY. DIRECTOR
FOOD AND CIVIL SUPPLY
DHUBRI
P.O.
P.S. AND DIST.- DHUBRI
ASSAM
PIN- 783301

4:THE ASSTT. DIRECTOR
FOOD
CIVIL SUPPLIER AND CONSUMER AFFAIRS
GOSSAIGAON

KOKRAJHAR
ASSAM
PIN- 78336

For the petitioner (s) : None appears

For the respondent (s) : Mr. N. Goswami, Govt. Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

25.08.2023

The instant writ petition has been filed by the petitioners seeking a direction upon the respondent Nos.3 & 4 not to issue any licence for operating new fair price shops by curtailing the existing customers of the petitioners' fair price shops in terms with the order passed by this Court dated 13.09.2013 passed in WP(C) No.5312/2013 as well as for a direction upon the respondent No.2 to dispose of the representation dated 02.08.2020 and to comply with the communication dated 09.11.1998 before issuing any licence for fair price shops in the operational area of the petitioners.

2. This Court, taking into account the relief sought for, finds it relevant to refer to the judgment of the Supreme Court in the case of ***Sarkari Sasta Anaj Vikreta Sangh, Tahsil Bemetra and Others vs. the State of Madhya Pradesh and Others***, reported in ***(1981) 4 SCC 471***. In the said judgment, the Supreme Court observes that fundamental rights of traders like the petitioners therein who were carrying on the business in foodstuffs was in no way affected. It was observed that the petitioners therein could carry on trade in foodstuffs without hindrance as dealers, only they could not

run fair price shops as agents of the Government. It was observed that no one could claim a right to run a fair price shop as an agent of the Government and all that persons could claim was a right to be considered to be appointed as an agent of the Government to run a fair price shop. Paragraph No.11 of the said judgment, being relevant, is reproduced herein under:-

“11. Earlier, we have referred to the abuses which had grown up in the prevailing system of distribution of foodstuffs under the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960. The system had deteriorated and become completely unworkable and rotten to a breaking point. An absolute and thorough overhaul of the system had become compulsive if the population of Madhya Pradesh were to receive a regular supply of their rations. It was in those circumstances that the Government came to the conclusion that distribution of foodstuffs through cooperative societies (consumers’ cooperative societies), would be the best method of distribution by which the goods could be delivered i.e. rations could be supplied to the consumers. No one can doubt the positive and progressive role which cooperative societies are expected to and do play in the economy of our country and, most surely, in the fair and effective distribution of essential articles of food. There certainly was a reasonable classification and a nexus with the object intended to be achieved, which was a fair and assured supply of rations to the consumer. The fundamental right of traders like the petitioners to carry on business in foodstuffs was in no way affected. They could carry on trade in foodstuffs without hindrance as dealers; only, they could not run fair price shops as agents of the Government. No one could claim a right to run a fair price shop as an agent of the Government. All that he could claim was a right to be considered to be appointed as an agent of the Government to run a fair price shop. If the Government took a policy decision to prefer cooperative societies for appointment as their agents to run fair price shops, in the light of the frustrating and unfortunate experience gathered in the last two decades, we do

not see how we can possibly hold that there was any discrimination.”

3. Taking into account the observations so made by the Supreme Court as quoted herein above, it is the opinion of this Court that the petitioners have a right to carry on the business of fair price shops on the basis of the licences so issued. The issuance of the further licences by the respondent Department would depend upon the administrative exigency as well as the National Food Security Act, 2013 and the Rules framed therein under.

4. Under such circumstances, the issuance of a writ as has been sought for by the petitioners would not be in the interest of the administrative exigency, and more so, in view of the mandate of the National Food Security Act, 2013 and the Rules framed therein under.

5. Accordingly, the instant writ petition is devoid of any merit for which the same stands dismissed.

6. It is made clear that the respondent authorities before issuance of any licence shall take note of the viability of the petitioners' fair price shops.

JUDGE

Comparing Assistant