

GAHC010047262023



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

Case No. : W.P.(C) NO. 1327/2023

Md. Kashim Ali
Proprietor Of
M/s Kamrup Beej Bhandar,
S/o- Late Khawajuddin Ali,
Village - Kachari Solmari,
P.O. & P.S.- Rangia,
District - Kamrup, Assam, PIN- 781354.

.....Petitioners

-Versus-

1. The State of Assam
Represented by the
Commissioner & Secretary
To The Government of Assam, Agricultural Department,
Dispur, Guwahati- 781006.
2. The Director of Agriculture,
Assam, Khanapara,
Guwahati- 781022.
3. The District Agriculture Officer,
Kamrup, Assam,
Ulubari, Guwahati - 781007.
4. The Deputy Commissioner,
Kamrup, Assam
At Amingaon,
Guwahati- 781031.

5. The Sub-Divisional Officer (Civil),
Rangia, District – Kamrup,
Assam, PIN- 781354.

6. The Officer-In-Charge
of Rangia Police Station,
Rangia, District – Kamrup,
Assam, PIN- 781354.

.....Respondents

Advocates :

Petitioner

Mr. A. Mobaraque, Advocate

Respondent nos. 1, 2 & 3

Mr. B. Choudhury, learned Standing Counsel, Agriculture Department

Respondent nos. 4, 5 & 6

Mr. B.J. Talukdar, learned State Counsel, Assam

Date of Hearing and Judgment & Order : 17.03.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER

By instituting the writ petition under Article 226 of the Constitution of India, the petitioner has **inter alia** challenged an order dated 22.12.2022 passed by the respondent no. 3 i.e. the District Agricultural Officer, Kamrup whereby the respondent no. 3 had suspended the petitioner's Fertiliser Retail Licence no. SDAO/RANG/FERT-RT-R/2021/01325 temporarily with immediate effect and until further.

2. In view of the nature of issue raised in the writ petition and as agreed to by the learned counsel for the parties, the writ petition is taken up for disposal at the stage of motion itself.

3. The factual matrix of the case, in brief, is that the petitioner is the proprietor of M/s Kamrup Beej Bhandar and to run his business in fertilisers, he has been granted a Retail Fertiliser Licence bearing no. SDAO/RANG/FERT-RT-R/2021/01325 by the respondent Agriculture Department, which had a validity up-to 16.06.2026. In order to carry out his business, the petitioner after obtaining a trade licence from Rangia Municipal Board, had been running a shop in the name and style of M/s Kamrup Beej Bhandar, located at Pragati Chowk, Murara at Rangia. He used to deal in fertilisers along with other agriculture related products like pesticides, vitamins, agriculture equipments and allied products, from his shop.

3.1. On 17.12.2022, an inspection was carried out at the shop of the petitioner by a team of officials from the Rangia Civil Administration. After the inspection, a First Information Report [FIR] came to be lodged before the Officer In-Charge, Rangia Police Station by the Agriculture Development Officer, Nakul with allegations inter alia that when the inspection was carried out, it was found that the son of the petitioner was operating the shop and he was selling urea which is a subsidized commodity, at a much higher price of ₹ 450/- per bag instead of ₹ 265/- per bag, the price at which such subsidized urea was to be sold. On receipt of the FIR, the same has been registered as Rangia Police Station Case no. 761/2022 under Sections 120B/420, Indian Penal Code r/w Section 7 of the Essential Commodities Act, 1955 on 18.12.2022. In the course of investigation,

the son of the petitioner viz. Moidul Islam was arrested and after being arrested, he was produced before the Court of learned Sub-Divisional Judicial Magistrate [M], Rangia on 19.12.2022. The son of the petitioner was thereafter, released on bail on 26.12.2022 by the Court of learned Sub-Divisional Judicial Magistrate [M], Rangia.

3.2. The team of officials from Rangia Civil Administration had also sealed the shop of the petitioner temporarily after the inspection on 17.12.2022. Simultaneously with the registration of the case, Rangia Police Station Case no. 761/2022 [G.R. Case no. 1398/2022], the respondent no. 3 passed the impugned order bearing no. DAO [K]/Tech-139/Fert. Enq./2020-21/3112 dated 22.12.2022, whereby, the Retail Fertiliser Licence bearing no. SDAO/RANG/FERT-RT-R/2021/01325 of the petitioner had been temporarily suspended with immediate effect until further order.

3.3. The order of temporary suspension dated 22.12.2022 was also accompanied by a show cause notice dated 22.12.2022 whereby the petitioner was called upon to submit his written explanation and to show cause as to why the petitioners' Retail Fertiliser Licence should not be cancelled. On being granted 7 [seven] days' time to file his written explanation and reply to the show cause notice, the petitioner stated to have submitted his reply before the respondent no. 3 on 28.12.2022.

3.4. Aggrieved by the temporary suspension of his Retail Fertiliser Licence and sealing of the shop, the petitioner had approached the Court of learned Sub-Divisional Judicial Magistrate [M], Rangia by preferring an application with a

prayer for a direction to the respondent no. 3 to allow him to re-open the shop as the respondent no. 3 while suspending the Retail Fertiliser Licence of the petitioner vide order dated 22.12.2022, had observed that the Retail Fertiliser Licence stood temporarily suspended with immediate effect until further order from the Hon'ble Court. The Court of learned Sub-Divisional Judicial Magistrate [M], Rangia did not interfere with the sealing of the shop of the petitioner on the premise that such sealing was not an act of seizure and rejected the petition preferred by the petitioner by an order dated 31.12.2022. Subsequently, the petitioner preferred a representation before the respondent no. 4 seeking re-opening of his shop and the respondent no. 4 on receipt of the representation, had forwarded the same to the respondent no. 3 for his consideration and necessary action. Having received no response from the respondent no. 3, the petitioner has preferred the instant writ petition.

4. Heard Mr. A. Mobarague, learned counsel for the petitioner; Mr. B. Choudhury, learned Standing Counsel, Agriculture Department for the respondent nos. 1, 2 & 3; and Mr. B.J. Talukdar, learned State Counsel for the respondent nos. 4, 5 & 6.

5. Mr. Mobarague, learned counsel for the petitioner has submitted that in the case in hand, the provision of Clause 31[1] of the Fertiliser [Control] Order, 1985 is not applicable as the suspension of the Retail Fertiliser Licence of the petitioner was not preceded by any show cause notice. It is the provision contained in Clause 31[2] of the Fertiliser [Control] Order, 1985 which is applicable and in that case, the period of temporary suspension of the Retail Fertiliser Licence can continue up to a period of 15 days, unless in the

meantime, any final order is passed pursuant to any show cause notice issued in that connection.

6. Mr. Choudhury, learned Standing Counsel, Agriculture Department has placed a letter bearing no. DAO [K]/Tech-139/Fert. Enq/2020-21/4700 dated 16.03.2023 of the respondent no. 3 containing instructions as regards the case of the petitioner wherein the respondent no. 3 has contended that there is no sufficient ground available to revoke the temporary suspension of the Retail Fertiliser Licence of M/s Kamrup Beej Bhandar.

7. Mr. Talukdar, learned State Counsel has submitted that the inspection on 17.12.2022 and subsequent actions of temporary suspension and initiation of enquiry by the show cause notice are in conformity with the procedure laid down in the Fertiliser [Control] Order, 1985.

8. I have duly considered the submissions of the learned counsel for the parties and have also perused the materials on record. I have also gone through the provisions of the Fertiliser [Control] Order, 1985.

9. The Central Government in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 has made the Fertiliser [Control] Order, 1985. Clause 2[f] has provided the definition of 'dealer' and 'dealer' means a person carrying on the business of selling fertilisers whether wholesale or retail or industrial use and includes a manufacturer, importer, and a pool handling agency carrying on such business and the agents of such person, manufacturer, importer or pool handling agency. As per Clause 2[h], 'fertiliser' means any

substance used or intended to be used as a fertiliser of the soil and/or crop and specified in Part A of Schedule I and includes a mixture of fertilisers and special mixture of fertilisers provisional fertiliser, customized fertiliser, Bio-fertilisers specified in Schedule III and Organic fertilisers specified in Schedule IV. 'Retail dealer', as per Clause 2[t], means a dealer who sells fertilisers to farmers or plantations for agricultural use such as for fertilisation of soil and increasing productivity of crops.

9.1. Part II of the Fertiliser [Control] Order, 1985 has provided for price control. Clause 3[1] has provided that the Central Government may, with a view to regulating equitable distribution of fertilisers and making fertilisers available at fair prices, by notification in the Official Gazette, fix the minimum prices or rates at which any fertiliser may be sold by a dealer, manufacturer, importer or a pool handling agency. As per Clause 3[2], the Central Government may having regard to the local conditions of any area, the period of storage of fertilisers and other relevant circumstances, fix different prices or rates for fertilisers having different period of storage or for different areas or for different classes of consumers. Clause 3[3] has prescribed that no dealer, manufacturer, importer or pool handling agency shall sell or offer for sale any fertiliser at a price exceeding the maximum price or rate fixed under the clause. Clause 5 makes it mandatory for every dealer to issue a cash or credit memorandum to a purchaser of a fertiliser in Form M.

9.2. Part IV of the Fertiliser [Control] Order, 1985 has provided for authorization or registration of dealers. Clause 7 thereof has provided for registration of industrial dealers and authorization of other dealers and Clause 8 has provided

for application for intimation or registration. As per Clause 7, no person shall sell, offer for sale or carry on the business of selling of fertiliser at any place as wholesale dealer or retail dealer except under and in accordance with Clause 8 : provided that a State Government may, if it considers it necessary or expedient, by notification in the Official Gazette, exempt from the provisions of the clause any person selling fertiliser to farmers in such areas and subject to such conditions as may be specified in that notification. Clause 8[2] has **inter alia** provided that every dealer including a retail dealer intending to sell or offer for sale or carrying on the business of selling of fertiliser shall make Memorandum of Intimation to the Notified Authority in Form A1 duly filled in by fulfilling all other conditions mentioned therein. On receipt of a Memorandum of Intimation, complete in all respects, the Notified Authority issues an acknowledgment of receipt in Form A2 and such Acknowledgment of Receipt is deemed to be an Authorization Letter granted and the concerned person as authorized dealer for the purposes of the Fertiliser [Control] Order, 1985. Clause 11 has provided for renewal of Certificates of Registration and Authorization Letters.

9.3. Part VII of the Fertiliser [Control] Order, 1985 has specified the enforcement authorities. While Clause 26 has provided for appointment of Registering Authority, Clause 26A has provided for appointment of Notified Authority. Clause 27, Clause 27A and Clause 28 have provided for appointment of Inspectors of Fertilisers; qualifications for appointment of Fertiliser Inspectors; and the powers of the Fertiliser Inspectors. Amongst the powers of Fertiliser Inspectors includes the power to enter upon and search any premises where any fertiliser is stored or exhibited for sale, if he has reason to believe that any fertiliser has been sold, offered for sale, stored, exhibited for sale

contrary to the provisions of the Fertiliser [Control] Order, 1985. With a view to securing compliance of the Fertiliser [Control] Order, 1985, a Fertiliser Inspector may seize or detain any fertiliser in respect of which a contravention of the Fertiliser [Control] Order, 1985 has been or is being or is attempted to be committed and may also seize any books of accounts or documents relating to manufacture, storage or sale of fertilisers, etc. in respect of which he has reason to believe that any contravention of the Fertiliser [Control] Order, 1985 has been or is being or is about to be committed, provided inter alia that the Inspector shall give a receipt for such fertilizers or books of accounts or document so seized to the person from whom the same has/have been seized.

9.4. Sub-clause [1] and sub-clause [2] of Order 31 of the Fertiliser [Control] Order, 1985 are of relevance for the purpose of the case and the same are quoted herein below for ready reference :

[1] A Notified Authority, registering authority, or as the case may be, the controller may, after giving the authorized dealer or the holder of certificate of registration or certificate of manufacture or any other certificate granted under this Order, an opportunity of being heard, suspend such authorization letter or certificate or debar the dealer from carrying on the business of fertiliser on one or more of the following grounds, namely :-

[a] that the authorization letter or certificate of registration or certificate of manufacture, as the case may be, has been obtained by wilful suppression of material facts or by misrepresentation of relevant particulars:

[b] that any of the provisions of this Order or any terms and condition of the Memorandum of Intimation or certificate of registration or the certificate of manufacture, as the case may be, has been contravened or not fulfilled :

Provided that while debarring from carrying on the business of fertiliser

or canceling the certificate, the dealer or the certificate holder thereof may be allowed for a period of thirty days to dispose of the balance stock of fertilisers, if any, held by him:

Provided further that the stock of fertiliser lying with the dealer after the expiry of the said period of thirty days shall be confiscated.

[2] Where the contravention alleged to have been committed by a person is such as would, on being proved, justify his debarment from carrying on the business of selling of fertiliser or, cancellation of authorization letter or certificate of registration or certificate of manufacture or any other certificate granted under this Order to such person the Notified Authority or registering authority or, as the case may be, the controller may, without any notice, suspend such certificate, authorization letter, as an interim measure:

Provided that the registering authority, Notified Authority or, as the case may be, the controller shall immediately furnish to the affected person details and the nature of contravention alleged to have been committed by such person and, after giving him an opportunity of being heard, pass final orders either revoking the order of suspension or debarment within fifteen days from the date of issue of the order of suspension :

Provided further that where no final order is passed within the period as specified above, the order of interim suspension shall be deemed to have been revoked without prejudice, however, to any further action which the registering authority, Notified Authority or, as the case may be, the controller may take against the affected person under sub-clause [1].

10. It is noticed that as per the procedure prescribed in sub-clause [1] of Clause 31 of the Fertiliser [Control] Order, 1985, a prior opportunity of being heard is to be given to the licensee in connection of the matter of suspension of Licence/Authorisation Licence on the grounds mentioned therein. A look at sub-clause [2] of Order 31 of the Fertiliser [Control] Order, 1985 goes to show that

there is no requirement of giving any prior notice to provide an opportunity of being heard, prior to putting a Licence/Authorisation Letter under suspension as an interim measure. On the ground that there is alleged contravention which would justify debarment from carrying on the business of selling of fertilisers or cancellation of Authorization Letter or Certificate of Registration or Certificate of Manufacture or any other Certificate granted under the Fertiliser [Control] Order, 1985., the Notified Authority or the Registering Authority, as the case may be, the Controller may, without any notice, suspend such Certificate, Authorization Letter, etc. as an interim measure, provided such authority furnishes to the affected person the details and the nature of contravention alleged to have been committed by him immediately and the authority after giving him the opportunity of being heard, is to pass final order either revoking the order of suspension or passing an order of debarment within 15 [fifteen] days from the date of issue of the order of suspension. The second proviso to sub-clause [2] of Clause 31 of the Fertiliser [Control] Order, 1985 has provided further that where no final order is passed within the period as specified above, the order of interim suspension shall be deemed to have been revoked without prejudice, however, to any further action which the authority may take against the affected person under sub-clause [1] of Clause 31 of the Fertiliser [Control] Order, 1985.

11. Mr. Choudhury, learned Standing Counsel, Agriculture Department by referring to the letter bearing no. DAO [K]/Tech-139/Fert. Enq/2020-21/4700 dated 16.03.2023 of the respondent no. 3, has fairly submitted that no final order pursuant to the order of interim suspension dated 22.12.2022 and the show cause notice dated 22.12.2022 has yet been passed.

12. The writ petition has been preferred for setting aside of the order of suspension dated 22.12.2022 along with a direction to the respondent authorities to allow the petitioner to continue his business of selling fertilisers in retail on the basis of his Retail Fertiliser Licence and to allow him also to deal with other agricultural products under different licences and authorities at his shop.

13. Reverting back to the case in hand, it is noted that the order of interim suspension was made on 22.12.2022. Ordinarily, the final order was to be passed within a period of 15 [fifteen] days from 22.12.2022, that is, within 06.01.2023. But if no final order was passed within the said period of 15 [fifteen] days from the date of interim suspension [22.12.2023], the deeming provision became operative straightaway. A conjoint reading of the first proviso and the second proviso to sub-clause [2] of Clause 31 with main part of Clause 31[2] of the Fertiliser [Control] Order, 1985 goes to indicate that ordinarily, the Registering Authority, Notifying Authority or, as the case may be, the Controller is required to pass the final order on the matter of debarment of a Licence from carrying on the business of selling of fertilizers or cancellation of Authorization Letter, etc. within a period of 15 [fifteen] days from the date of interim suspension. The deeming provision incorporated in the second proviso to sub-clause [2] of Clause 31 is to the effect that if no final order is passed within the specified period of 15 [fifteen] days from the order of interim suspension, the interim suspension shall be deemed to have been revoked without prejudice to any further action which the Registering Authority, Notified Authority or, as the case may be, the Controller may take against the affected person under sub-clause [1] of Clause 31. The deeming provision under the second proviso to

sub-clause [2] of Clause 31 comes into operation only when the concerned authority fails to pass or does not pass the final order on the matter of debarment of a licensee from carrying on the business of selling of fertilizers or of cancellation of Authorization Letter. The order of interim suspension passed on 22.12.2022 by the respondent no. 3 is, thus, deemed to have been revoked after expiry of 15 [fifteen] days by virtue of the deeming provision in sub-clause [2] of Order 31 of the Fertiliser [Control] Order, 1985. With the deemed revocation of the interim suspension, after expiry of 15 days from 22.12.2022, this Court is of the considered view that the order of interim suspension of the Retail Fertiliser Licence of the petitioner is no longer in force on and from 06.01.2023. As a consequence, the petitioner can continue to deal with fertilisers from his shop, M/s Kamrup Beej Bhandar at Pragati Chowk, Murara, Rangia till the final decision on the enquiry initiated by the show cause notice dated 22.12.2022 is arrived at. The respondent authorities are, thus, directed to unseal the shop forthwith. The further continuance of the Retail Fertiliser Licence of the petitioner will abide by the final decision to be taken in terms of sub-clause [1] of Order 31 of the Fertiliser [Control] Order, 1985.

14. The petitioner has contended that he had kept stored a substantial quantity of fertilisers in his shop, which is under lock and key since 17.12.2022 till date. The fertilisers stored in the shop has an expiry date/storage period. The respondent no. 3 in his letter bearing no. DAO [K]/Tech-139/Fert. Enq/2020-21/4700 dated 16.03.2023 has mentioned that fertilisers are hygroscopic in nature and the existing stock of fertilisers of the petitioner may be sold to the farmers using their POS machine, except fertilisers. The respondent no. 3 has further stated that if allowed, he would take initiative to permit the petitioner to

operate the retail business subject to other licences like pesticides, seeds, etc. As it is an admitted position that the existing stocks of fertilisers stored by the petitioner are hygroscopic in nature and the interim suspension ceases to be in operation as on date, the petitioner be permitted to sell the stored fertilisers his shop, as on 17.12.2022, to the farmers using their POS machine from his shop after its unsealing under the supervision of an official deputed by the respondent no. 3 till the final decision on the enquiry initiated by the show cause notice dated 22.12.2022, apart from the other agricultural products like pesticides, etc. The matter of further dealing in fertilisers by the petitioner after such final decision will abide by the nature of final decision.

15. With the observations made and the directions given above, the writ petition stands allowed to the extent indicated. No cost.

JUDGE

Comparing Assistant