

GAHC010067592023



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

**Case No. : WP(C)/1752/2023**

MD. AZHAR ALI  
S/O- LATE ABDUL AWAL SK, VILL- UZANBAZRA, P.O- HAZIRHAT, PIN-  
783128, DIST- SOUTH SALMARA, MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,  
REVENUE AND DM DEPTT, DISPUR, GHY- 6

2:THE SECRETARY TO THE GOVT OF ASSAM  
REVENUE AND DM DEPTT  
DISPUR  
GHY-6

3:SHANTANU P GOTMARE  
INSPECTOR GENERAL OF REGD  
ASSAM  
RUPNAGAR  
GHY- 32

4:ARUP JYOTI HAZARIKA  
S/O- LATE DAYAL KRISHNA HAZARIKA  
ASSTT IG OF REGD  
ASSAM  
RUPNAGAR  
GHY- 32

5:PALLAVI SARKAR  
D/O- SRI MANOJ KUMAR SARKAR  
THETHEN DY COMM CUM DISTRICT REGISTRAR  
SOUTH SALMARA MANKACHAR DIST

PRESENT WORKING AS SECRETARY  
SOCIAL WELFARE DEPTT  
ANDAMAN AND NICOBAR ADMN SECRETARIAT  
PORT BLAIR 744101

6:THE DEPUTY COMMISISONER CUM DISTRICT REGISTRAR  
SOUTH SALMARA MANKACHAR DIST  
P.O- HATSINGIMARI  
DIST- SOUTH SALMARA MANKACHAR  
ASSAM  
PIN- 78313

**Advocate for the Petitioner** : MR A ISLAM

**Advocate for the Respondent** : GA, ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**Date : 19/05/2023**

Heard Mr. A. Islam, learned counsel appearing for the writ petitioner. Also heard Mr. J. Handique, learned Standing Counsel, Revenue and DM Department, Assam, appearing for the respondent nos. 1 to 4 and Mr. H. Sarma, learned Additional Senior Government Advocate, Assam, representing the respondent no. 6. The remaining respondents have not appeared.

The writ petitioner herein was appointed as a Muslim Marriage Registrar (MMR) and Kazi in the district of South Salmara about 25 (twenty five) years back and since then, he has been functioning as an MMR and Kazi. In the year 1997, the petitioner was granted a license to perform the work of MMR in terms of the provisions contained in the ***Assam Muslim Marriage and Divorce Registration Act, 1935*** and the rules framed there-under. According to the petitioner, he has been functioning as MMR & Kazi without any blemish to his reputation. However, acting on some frivolous complaint received from persons with vested interest, the license granted to the petitioner was suspended by the respondent no. 2 by order dated 16/07/2022, pending drawal of disciplinary proceeding. According to the petitioner's counsel, his client is not a regular Government servant and, therefore, there is no provision in the Rule for drawal of disciplinary proceeding against the petitioner. As such, the impugned order dated 16/07/2022 is wholly arbitrary and illegal.

It is also the submission of Mr. Islam, learned counsel for the petitioner that after issuance of

the impugned order dated 16/07/2022, the petitioner has been out of employment, as a result of which, not only him, but even his family members consisting of minor children, are suffering immensely. On such ground, the petitioner's counsel has prayed for setting aside the order dated 16/07/2022.

Controverting the stand of the petitioner's counsel, the learned departmental counsel have invited the attention of this Court to the documents on record to demonstrate that the petitioner did not appear before the authorities pursuant to the notice dated 26/05/2022, as a result of which, the preliminary enquiry had to be conducted in his absence. On conclusion of the preliminary enquiry, a report was submitted before the respondent no. 2 projecting that the allegations brought against the petitioner were correct. Taking note of such preliminary enquiry report, the respondent no. 2 has ordered a regular enquiry and accordingly, Sri Bonny Inam Shadab, ACS, Additional Deputy Commissioner, South Salmara, Mankachar and Sri Balin Baba Balari, ALRS, Circle Officer, South Salmara Revenue Circle, South Salmara, Mankachar, have been appointed as Enquiry Officer and Presenting Officer respectively.

Mr. H. Sarma, learned Government Advocate, Assam, submits that the writ petitioner has refused to accept the notice sent by the Enquiry Officer and has also failed to appear before the Enquiry Officer. As such, there has been delay in conclusion of the enquiry proceeding.

The petitioner's counsel has submitted that no memorandum of charge accompanied by the documents and the list of witnesses, which the department wishes to rely upon to prove the charge, has been served upon his client. However, Mr. Islam, learned counsel for the petitioner has not enable to convince this Court that his client has been rendering co-operation in the Enquiry Proceeding.

Since the petitioner has refused to respond to the notice issued by the Enquiry Officer, the grievance expressed on the ground of non-furnishing of Memorandum of Charge and documents, in the opinion of this Court, cannot be gone into at this stage. It is the undisputed position of fact that the petitioner is holding a license issued to him under the provisions of the ***Assam Muslim Marriage and Divorce Registration Act, 1935*** based on which he was functioning as MMR & Kazi and, therefore, if there are complaints received by the authorities against the petitioner, it cannot be said that the administration would not have any right to enquire into those allegations. However, the enquiry proceeding undoubtedly has to be in accordance with the Rules and certainly in observance of the Principles of Natural Justice.

During the pendency of an Enquiry Proceeding wherein, allegations brought against the petitioner are being looked into, this Court would not interfere with the order of suspension of license,

more so, when the petitioner has apparently failed to cooperate with the enquiry. As such, without expressing any opinion on the merit of the claims and counter claims, in so far as correctness of the allegations are concerned, this writ petition is being disposed of, with the consent of the learned counsel for the parties, with the following observations :-

- i) Within one week from today, the petitioner will appear before the Enquiry Officer and produce a certified copy of this order.
- ii) Within one week from his appearance, the petitioner shall be furnished with a copy of the memorandum of charge along with the list of documents and the witnesses, which the department proposes to rely upon in the enquiry proceeding.
- iii) Within seven days thereafter, the petitioner will file his reply to the charges.
- iv) In view of the delay that has already taken place in this case, an attempt be made to conclude the enquiry proceeding as expeditiously as possible but not later than 45 (forty five) days from the date of receipt of the reply submitted by the petitioner responding to the charge brought against him.
- v) Once the enquiry proceeding is concluded and a report is submitted, the respondent no. 2 and 6 shall suitably review the order dated 16/07/2022 within 10(ten) days thereafter, and if it is found that the allegations brought against the petitioner could not be substantiated based on cogent materials, shall forthwith withdraw the suspension of the license of the petitioner to operate his MMR and Kazi and notify the same through formal communication.
- vi) If the petitioner continues to remain aggrieved in the matter even thereafter, he will be at liberty to approach this Court again by filing appropriate proceeding

Writ petition stands disposed of.

**JUDGE**

*sukhamay*

**Comparing Assistant**