

GAHC010123552015



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

Case No. : WP(C)/6935/2015

HAFIZUL HUSSAIN

S/O- LT. SIDDIQUE HUSSAIN, VILL.- KAZIPARA, PART- I, P.O. and P.S.-
CHAPAR, DIST.- DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS
THROUGH THE SECY. TO THE GOVT. OF ASSAM, FOOD AND CIVIL
SUPPLIES DEPTT., DISPUR, GHY- 6.

2:THE DIRECTOR OF FOOD AND CIVIL SUPPLIES
ASSAM.

3:THE COMMISSIONER OF LOWER ASSAM DIVISION
DISPUR
GHY- 6.

4:THE DY. COMMISSIONER
DHUBRI
P.O.
P.S. and DIST.- DHUBRI
ASSAM.

5:THE DY. DIRECTOR OF FOOD AND CIVIL SUPPLIES
DHUBRI
P.O.
P.S. and DIST.- DHUBRI
ASSAM.

6:THE SUB-DIVISIONAL OFFICER CIVIL
BILASHIPARA
DHUBRI
ASSAM.

7:THE FOOD AND CIVIL SUPPLIES INSPECTOR

BILASHIPARA SUB-DIVISION
BILASHIPARA
DHUBRI
ASSAM.

8:THE AREA OFFICER
FOOD AND CIVIL SUPPLIES AND CONSUMER AFFAIRS
BILASHIPARA
DIST.- DHUBRI
ASSAM.

9:SHAHJAHAN ALI
S/O- LT. OSMAN FAKIR
R/O VILL.- KAZIPARA PART- I
WARD NO. 4
P.O. and P.S.- CHAPUR
DIST.- DHUBRI
ASSAM
PIN- 783371

Advocate for the Petitioner : MR.D M KHAN
Advocate for the Respondent : FOR CAVEATOR

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

02-01-2023

Heard Shri M. H. Ahmed, learned counsel for the petitioner. Also heard Shri R. Talukdar, learned State Counsel for the respondent Nos. 1 to 8 whereas the private respondent No. 9 is represented by Shri M. U. Mondal.

The grievance expressed in this writ petition is against the license issued in favour of the private respondent No. 9 for a fair price shop. It is the case of the petitioner that the earlier license holder in that area is one Meera Sultana Bewa who was the aunt of the petitioner. The petitioner claims to have been adopted by the earlier license holder and was operating the shop on her behalf. On 13.06.2012, the license holder had expired and accordingly the petitioner had submitted representation dated 27.05.2013 for issuing a license in his name and/or to convert the existing

license. Such representation was submitted before the Sub-Divisional Officer (C), Bilasipara Sub-Division and the same was also forwarded to the Departmental Minister. However, by the impugned order dated 18.08.2015, the license has been issued in favour of the respondent No. 9.

Shri Ahmed, the learned counsel for the petitioner submits that *dehors* the fact that the petitioner is related to the earlier license holder, he is entitled to a fair and opportunity and scope in the selection process which according to the petitioner was not known. He further submits that by running the shop on behalf of the earlier license holder for a long period of time, he had gathered sufficient experience and was a better candidate than the respondent No. 9 and these relevant considerations have been overlooked which requires an intervention by this Court in the decision making process by which the license has been granted in favour of the respondent No. 9.

Shri R. Talukdar, learned State Counsel by referring to the affidavit-in-opposition filed on 17.02.2016 submits that the rules holding the field, namely, the Assam Public Distribution of Articles Order 1982, there is no provision to give any benefit to a legal heir and all license are issued by maintaining the standard of fairness and transparency. Refuting the contentions made on behalf of the petitioner, Shri Talukdar, the learned State Counsel has referred to the averments made in paragraph 8 of the affidavit-in-opposition in which it has been categorically stated that both the applicant and the petitioner were afforded personal hearing before culminating the process of issuance of license. It has further been stated that as per Clause 20(C) of the Order Of 1982, the SDO (C) wields the power of the licensing authority.

Shri M. U. Mondal, learned counsel for the respondent No. 9 submits that the writ petition has been filed on a misconceived notion that certain benefits are available to the legal heirs of all previous license holders. Disputing that such benefits are available, Shri Mondal submits that after a fair process, the respondent No. 9 was selected for the license.

Shri Ahmed, the learned counsel for the petitioner however submits that the

contentions made in the affidavit of the Department regarding personal hearing are not correct. He accordingly submits that the matter be remanded for a fresh consideration.

After hearing the learned counsel for the parties, a situation has arisen where there are questions of fact which are disputed by the rival parties. At this stage, the affidavit filed on behalf of the Department attains importance. In the said affidavit-in-opposition dated 17.02.2016, it has been stated that no benefits accrue upon the legal heirs of a previous license holder. The said affidavit-in-opposition also contains a specific statement of giving a personal hearing to the contesting parties including the petitioner and this statement has not been refuted by any rejoinder affidavit by the petitioner. It is seen that the aforesaid counter affidavit was filed in February 2016 and till today there is no such rebuttal.

The Department has also stated that powers are vested upon the CDO (C) to issue the license and the same was granted by following all the requisite formalities and all such averments have gone unrebutted.

In view of the aforesaid facts and circumstances, this Court is of the considered opinion that no case for intervention by a Court exercising writ jurisdiction is made out.

Accordingly, the writ petition stands dismissed.

JUDGE

Comparing Assistant