

GAHC010130592013



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

Case No. : WP(C)/3574/2013

SYED BUBUL ALI
S/O LT. TAJUR ALI R/O VILL- PIYALIKHATA MIRATOLA P.S. KAMALPUR
DIST. KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
IN THE FOOD, CIVIL SUPPLIES and CONSUMER AFFAIRS DEPARTMENT,
DISPUR, GUWAHATI-6.

Advocate for the Petitioner : MS.B BHUYAN

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER

11.05.2023

Heard Ms. T. Som, learned counsel for the petitioner and Mr. C.K.S. Baruah, learned Junior Government Advocate, Assam for all the respondents.

2. The instant writ petition under Article 226 of the Constitution of India has been instituted by the petitioner to assail an order dated 13.05.2013 passed by the respondent no. 3 i.e. the Assistant Director, Food, Civil Supplies & Consumer Affairs, Rangia whereby the petitioner was placed under suspension in terms of the provisions contained in Clause 15 of the Assam Public Distribution of Articles Order, 1982 [the APDA Order, 1982]. Apart from

seeking a direction to the respondent authorities to forebear from giving effect to the order of suspension dated 13.05.2013, the petitioner has also sought for a direction to the respondent authorities to revoke the PDS Retail Sale License issued to him under the APDA Order, 1982.

3. The factual matrix of the case lies in a narrow campus. The petitioner was granted a Retail Sale License bearing no. APDAO/RL/RNY/93/702 as SK Oil hawker under the APDA Order 1982. The petitioner was served with the order of suspension dated 13.05.2013 by the respondent no. 3 alleging violation of Clause 26 of the APDA Order, 1982 and Condition no. 2[a] and Condition no. 6 of the Retail Sale License granted to the petitioner.

3.1. The order of suspension had mentioned that an enquiry was carried out by an Inspector of Food, Civil Supplies & Consumer Affairs, Rangia in connection with seizure of accounts relating to lifting & distribution of SK Oil along with 100 litres of undistributed SK Oil from the possession of the petitioner and after such enquiry, the said Inspector had submitted a report dated 29.04.2013. The order of suspension had further mentioned that the report dated 29.04.2013 and the connected papers submitted by the Enquiry Officer along with statement of the petitioner were perused by the respondent no. 3. The order of suspension had further mentioned that the report revealed that the petitioner as a hawker used to distribute kerosene oil from his residence at village – Piyalikhata Miratola itself without coming to the village - Barichua, which was the area of operation of the petitioner. The report had further mentioned that the petitioner used to issue SK Oil @ 2 litres per month amongst 55 to 58 nos. of consumers, as alleged by the complainant. In that way, the petitioner distributed about 110 – 160 litres of blue dyed SK Oil while he as a licensee used to receive 200 litres of SK Oil per month. Thus, the petitioner was found misappropriating 84 to 90 litres of SK Oil per month. As per the report, the petitioner did not maintain the sale register by recording the entries of issue dates and issued quantity of SK Oil. It was reported that the petitioner did not possess even a three-wheeler SK Oil hawking cart. In presence of such materials in the enquiry report, the respondent no. 3 by the order of suspension dated 13.05.2013 alleged violation of Clause 26 of the Assam Public Distribution of Articles Order, 1982 and Condition no. 2[a] r/w Condition no. 6 of the Retail Sale License bearing no. APDAO/RL/RNY/93/702 as SK Oil hawker under the APDA Order, 1982.

4. The petitioner has pleaded that there used to be a rivalry in the village between two groups and the petitioner owed allegiance to one of the said two groups. According to the petitioner, the rival group had made a complaint as regards the alleged irregularities in order to malign reputation of the petitioner in the society. According to the petitioner, the allegations leveled in the order of suspension are without any material basis and as such, the order of suspension dated 13.05.2013 is liable to be set aside.

5. The respondent no. 3 has filed an affidavit-in-opposition on 05.10.2013. It has been averred therein that the petitioner did not distribute full quota of SK Oil in the month of March, 2013. In March, 2013, the petitioner lifted 200 litres of SK oil and he had issued only 100 litres of SK Oil amongst a section of consumers tagged to his hawker license from his own residence at Village - Barichua and not from the actual authorized centre located at Village - Piyalikhata Miratola. The respondent no. 3 has also made mention of a public complaint received from 43 nos. of beneficiaries by the Sub-Divisional Officer [Civil], Rangia on 18.03.2013 and also about the enquiry caused by the Inspector of Food, Civil Supplies & Consumer Affairs, Rangia [the respondent no. 4]. The respondent no. 3 has reported mentioned that the findings in gist reported by the respondent no. 4 in his enquiry report in the order of suspension dated 13.05.2013. It has been mentioned that the Retail Sale Licence of the petitioner was suspended earlier also on 03.12.2011 for violation of the provisions of the ADPA Order, 1982 vide an order bearing no. RSL-40/2011/440 dated 03.12.2011. The said suspension order was revoked after obtaining undertaking from the petitioner where he admitted his wrongful gain with the further assurance that there would be no repetition of any mischief by him. It has emerged from the affidavit-in-opposition of the respondent no. 3 that the petitioner was served with a show cause notice bearing no. RSL-40/2011/791 dated 05.08.2013.

6. Thus, from the pleadings made in the writ petition and the affidavit-in-opposition filed by the respondent no. 3, it has emerged that the petitioner who is a retail sale licensee for SK Oil under the APDA Order 1982, was placed under suspension vide an order of suspension dated 13.05.2013 and thereafter, the petitioner was served with a show cause notice under

Clause 10[2] of the APDA Order 1982.

7. The controversy involved is relatable to Clause 15 of the APDA Order, 1982 and for ready reference, the provisions contained in Clause 15 of the APDA Order 1982 are reproduced in its entirety :-

Clause 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.

8. One of the objectives of placing a person under suspension is to facilitate a proper enquiry in respect of the allegations leveled/found against him by keeping that person out of the mischief range. It has emerged from the order of suspension that the petitioner was placed under suspension on the basis of certain findings made in the enquiry report dated 29.04.2013 submitted by the respondent no. 4 and such enquiry was initiated pursuant to a public complaint submitted by 43 nos. of beneficiaries alleging commission of irregularities by the petitioner as a retail sale licensee/hawker of SK Oil.

9. A combine reading of Clause 15[1] and Clause 15[2] of the APDA Order 1982 makes it apparent that a license granted under the APDA Order 1982 can be suspended for a period not exceeding 90 days without giving an opportunity to the licensee of stating his case, meaning thereby, if no show cause notice is issued to the licensee giving him an opportunity to state his case within a period of 90 days from the date of passing the order of suspension,

then the order of suspension of would automatically lapse on the expiry of 90 days. But in the event a proceeding is initiated for the purpose of cancellation of the licence and for that purpose, a show cause notice is served upon the licensee within a period of 90 days from the date of issuance of the order of suspension, thereby, providing the opportunity to a licensee to state his case, then such an order of suspension can continue beyond the period of 90 days.

10. Neither the contentions made in the affidavit-in-opposition of the respondent no. 3 has been controverted nor the fact that the petitioner was served with a show cause notice dated 05.08.2013 is traversed by the petitioner. It has, thus, emerged that after the petitioner was placed under suspension on 13.05.2013 before initiation of an enquiry proceeding against him for cancellation of his retail sale licence for SK Oil. However, the enquiry was initiated on 05.08.2013, that is, within a period of 90 days from 13.05.2013 by serving the petitioner a show cause notice on 05.08.2013 to state his case. In the above fact situation obtaining in the case in hand, this Court has found no good and sufficient reason to hold the order of suspension as an arbitrary and illegal one on the factual matrix. In view of initiation of the enquiry for cancellation of the retail sale licence by the show cause notice dated 05.08.2013 within a period of 90 days from the date of suspension dated 13.05.2013, the writ petition filed seeking quashment of the order of suspension dated 13.05.2013 on the sole ground that there was no basis to pass an order of suspension, is bereft of any merits in view of initiation of the proceeding for cancellation of the retail sale licence on the basis of the findings recorded in the enquiry report dated 29.04.2013, caused for the purpose of finding out as to whether *prima facie* there was any substance in respect of the allegations made in the public complaint. For the aforesaid reasons, the writ petition is liable to be dismissed. It is accordingly dismissed. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant