

GAHC010148022020



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

Case No. : WP(C)/4421/2020

NIRUP KUMAR DAS
S/O LATE SITARAM DAS,
RESIDENT OF VILLAGE NAMDANG KUMARGAON (SILSAKO) PO
GAURISAGAR, DIST SIVASAGAR, ASSAM 785664

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, FOOD, CIVIL SUPPLIES AND CONSUMER AFFAIRS
DEPARTMENT, DISPUR, GUWAHATI 781005

2:DIRECTOR OF FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
ASSAM
BHANGAGARH
GUWAHATI 781005

3:DEPUTY COMMISSIONER
SIVASAGAR

PO PS AND DIST SIVASAGAR
ASSAM 785640

4:DEPUTY DIRECTOR
FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
PO PS AND DIST SIVASAGAR
ASSAM 78564

Advocate for the Petitioner : MR. K M HALOI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 10-03-2023

Heard Mr. K.M. Haloi, learned counsel for the petitioner and Ms. M. Barman, learned Junior Government Advocate, Assam for all the respondents.

2. The petitioner was a licensee to carry on sub-wholeseller/retailer business of notified articles under Assam Public Distribution of Articles [APDA] Order, 1982 vide a licence bearing no. SVSL.16/2004/Pt/134 issued to him under the hand of the Licensing Authority i.e. the respondent no. 4. By an order dated 23.04.2020, the respondent no. 4 in exercise of the powers under Clause 15[1] of the APDA Order, 1982, suspended the licence of the petitioner with immediate effect. Subsequent thereto, the petitioner was served with a show cause notice dated 22.07.2020 asking him to show cause as to why the licence granted and issued to the petitioner under the APDA Order, 1982 shall not be cancelled for contravention of the Clauses mentioned therein. The show cause notice had further provided that the written reply of the petitioner should reach the respondent no. 4 within 7 [seven] days from the date of receipt of the show cause notice, failing which decision would be taken ex parte. The show cause notice further mentioned that if the petitioner prefers to be heard in person or require any record relating to the charges leveled against him, the petitioner may intimate the respondent no. 4 in writing prior to submission of show cause reply. On being served the show cause notice, the petitioner submitted a reply to the show cause notice on 04.08.2020 traversing the allegations made in the

show cause notice. The Licensing Authority on the basis of the reports furnished by different authorities named therein and after hearing the petitioner in person on 28.08.2020, had recorded the finding to the effect that the petitioner, as the licensee, failed to substantiate the charges leveled against him either in the show cause reply or during the personal hearing. By the impugned order dated 28.09.2020, the respondent no. 4 in exercise of the powers of the Licensing Authority under the provision of Clause 15[1] of the APDA Order, 1982, as amended, cancelled the license granted and issued to the petitioner as the fair price shop dealer at Village – Namdang Kumar Gaon under M/s Morabazar GPSS with immediate effect without prejudice to any other action under the Essential Commodities Act, 1955.

3. The petitioner has approached this Court by instituting the instant writ petition under Article 226 of the Constitution of India taking a plea that there was violation of the principles of natural justice. Mr. Haloi, learned counsel for the petitioner has submitted that the impugned order had further provided that if the petitioner is aggrieved by the impugned order of cancellation dated 28.09.2020, the petitioner could prefer an appeal before the Deputy Commissioner, Sivasagar as per provisions of Clause 29[1][b] of the APDA Order, 1982.

4. Ms. Barman, learned Junior Government Advocate, Assam has also submitted that since a remedy of appeal under Clause 29[1][b] of the APDA Order, 1982 is available and the said remedy is efficacious and adequate, instead of deciding the writ petition on merits, the petitioner should be allowed to avail the said statutory remedy.

5. Clause 29[1][b] of the APDA Order, 1982 has provided that any person

aggrieved by an order made by any officer under the APDA Order, 1982 may appeal to the Deputy Commissioner if the order is made by any officer lower in rank than the jurisdictional Deputy Commissioner. The impugned order of cancellation dated 28.09.2020 in the case in hand is passed by In-Charge, Deputy Director & Licensing Authority, Food, Civil Supplies & Consumer Affairs, Sivasagar which is an authority lower in rank than the jurisdictional Deputy Commissioner, Sivasagar. The remedy of preferring an appeal under Clause 29[1][b] of the APDA Order, 1982 against the impugned order dated 28.09.2020 is available to the petitioner and this Court is of the considered view of the petitioner should avail and exhaust the remedy of appeal under Clause 29[1][b] of the APDA Order, 1982 first, before involving the extra-ordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India. In such view of the matter, this writ petition is not entertained and accordingly, it is closed, granting liberty to the petitioner to avail the remedy under APDA Order, 1982 by preferring a Memorandum of Appeal before the jurisdictional Deputy Commissioner i.e. the Deputy Commissioner, Sivasagar.

6. It is noticed that the instant writ petition was filed on 14.10.2020. It is observed that the period spent by the petitioner in pursuing the instant writ petition shall not be taken into consideration by the Appellate Authority in entertaining the appeal to be preferred by the petitioner. In the event such appeal is preferred by the petitioner, the Appellate Authority shall consider the appeal on its own merits and in accordance with law.

7. It is also noticed that this Court on 18.11.2020 had passed an interim order directing the respondent authorities not to issue any licence to any 3rd party in place of the petitioner. Clause 29[4] of the APDA Order, 1982 has provided that

the pending disposal of an appeal, the Appellate Authority may direct in appropriate cases that the Order against which the appeal is made shall not take effect until the appeal is disposed of. In view of the provision under Clause 29[4], it is provided that the respondent authorities shall not issue any licence to any 3rd party in place of the petitioner till the matter is considered by the Appellate Authority as regards any interim relief to the petitioner in terms of the Clause 29[4] of the APDA Order, 1982.

8. With the observation made above and directions given, the writ petition is disposed of. No cost.

JUDGE

Comparing Assistant