

GAHC010159032022



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

Case No. : WP(C)/5263/2022

M/S ROYAL MULTIPURPOSE AND TRADING CO-OPERATIVE SOCIETY LTD.
VILL./P.O. SONABARIGHAT, P.S. SILCHAR, DIST. CACHAR REP. BY ITS
CHAIRMAN SRI HUSSAIN AHMED MAZUMDER, S/O. LT. MATABUR
RAHMAN MAZUMDER, VILL. SONABARIGHAT PART-II, P.O.
SONABARIGHAT, P.S. SILCHAR, DIST. CACHAR, ASSAM, PIN-788013

VERSUS

THE UNION OF INDIA AND 5 ORS.
MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT (DEPTT. OF
AGRICULTURE AND CO-OPERATION), GOVT. OF INDIA, NEW DELHI.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
AGRICULTURE DEPTT.
DISPUR
GUWAHATI-06.

3:THE DIRECTOR OF AGRICULTURE

ASSAM
KAHILIPARA
GUWAHATI-21.

4:THE DEPUTY COMMISSIONER

CACHAR
SILCHAR.

5:THE DISTRICT AGRICULTURE OFFICER

CACHAR
SILCHAR.

6:THE SUB DIVISIONAL AGRICULTURE OFFICER

SONAI
CACHAR
DIST. CACHAR

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

09.01.2023

Heard Shri HRA Choudhury, learned Senior Counsel assisted by Shri FU Borbhuiya, learned counsel for the petitioner. Also heard Ms. G Bora, learned Standing Counsel, Agriculture Department, Assam.

2. Considering the dispute involved, the instant writ petition is taken up for disposal at the motion stage.

3. The facts projected in the writ petition are that the petitioner is a registered Cooperative Society which was established with the aims and objectives of socio economic development of the farmers and for distribution of fertilizers to the farmers. The petitioner had, accordingly obtained a retail sale license of fertilizer and by use of the same, was doing transaction. The petitioner alleged that on some misinformation, an FIR was lodged by the respondent no. 6 against the Chairman of the petitioner-Cooperative Society alleging that the Chairman was attempted to sell fertilizer to another retailer. Accordingly, vide the impugned letter dated 04.10.2021, the retail license of the petitioner was temporarily suspended.

4. It is the case of the petitioner that thereafter no action has been taken and in the police case, the Chairman was also granted bail by the Court.

5. Assailing the order dated 04.10.2021, Shri Choudhury, learned Senior Counsel has submitted that the same is not sustainable in law. By referring to the Fertilizer (Control) Order, 1985 (Order of 1985), more particularly, Order No. 31, it is submitted that though there is no doubt regarding availability of power of suspension, the law mandates that within 15 days, a decision has to be taken by giving opportunity to the incumbent, either for revoking of the order of suspension or debarment of the incumbent from business. The learned Senior Counsel for the petitioner submits that no such exercise, as mandated by law, has been done and therefore, the order of suspension has, otherwise also deemed to inoperative after the completion of the aforesaid period of 15 days.

06. Ms. Bora, learned Standing Counsel, however, strenuously opposed the prayer of the writ petitioner. She has placed before this Court a statement made by the Chairman of the petitioner-Cooperative Society in connection with the police case wherein, an admission appears to have been made with regard to the charge against him. She, accordingly submits that in view of such serious allegations which are admitted, the continuation of the suspension is fully justified. The learned Standing Counsel, however submits that the present case can be taken as an exception to the proviso of the Order of 1985.

07. Rejoining his submission, Shri Choudhury, learned Senior Counsel for the petitioner submits that even assuming that the statement produced on behalf of the Department is an authentic one, such statement would not have any relevance in the trial, as the same is only a statement made before the police which does not have any

evidentiary value. The learned Senior Counsel, accordingly submits that it is the law holding the field which would prevail.

08. After hearing the parties and on perusal of the records, this court is of the view that Clause 31 of the order of 1985 lays down the proviso regarding the consequence of suspension order after 15 days. For ready reference, the relevant provision is extracted hereinbelow:

“31. Suspension, Cancellation Or Debarment

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 fertilizer 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).

.....”

09. The aforesaid provision makes it clear that it is incumbent upon the authorities to give an opportunity of hearing for, either revoking the order of suspension or debarment within 15 days which, in the instant case, has, admittedly not been done.

10. That being the position, this Court is left with no other alternative but to interfere with the impugned order of suspension dated 04.10.2021 and accordingly, the same stands set aside. Consequently, the petitioner be allowed to run the business on the strength of the sale license granted to it earlier.

11. It is, however made clear that the present intervention has got nothing to do of the *inter-se* merit of the parties, either in the police case or any proceedings which may have been initiated against the petitioner.

12. In view of the above, the writ petition is, accordingly disposed of.

JUDGE

Comparing Assistant