

GAHC010243982022



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

Linked Case : **WP(C)/5390/2022**

MD. ALAMGIR ALI
PROPRIETOR OF M/S ALAM FERTILIZER (CP)

S/O LATE SAHID ALI

VILL.- ULUBARI
WARD NO. 3

P.S.- BHELOGURI

DIST.- MORIGAON
ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
AGRICULTURE DEPARTMENT
GUWAHATI.

2:THE DIRECTOR OF AGRICULTURE
ASSAM
KHANAPARA
GUWAHATI.

3:THE DISTRICT AGRICULTURE OFFICER
MORIGAON
ASSAM.

4:THE DEPUTY COMMISSIONER
MORIGAON
ASSAM.

Advocate for : MR. Y S MANNAN

Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

05-01-2023

Heard Shri Y. S. Mannan, learned counsel for the petitioner. Also heard Ms. R. Bora, learned Standing Counsel, Agriculture Department appearing for respondent Nos. 1, 2 and 3. Shri N. Goswami, learned State Counsel has appeared for respondent No. 4.

Considering the facts and circumstances and also taking into account the nature of the grievance, this writ petition is taken up for disposal.

The facts projected in this writ petition is that the petitioner was a fertilizer retailer under the District Agriculture Officer, Morigaon with license upto 08.12.2025. The petitioner claims to be in the business of retail fertilizer since 2005 and has his shop at Moirabari Market in the Morigaon district.

The petitioner was however arrested on 21.03.2022 in connection with CID Case No. 2/2022. It is the case of the petitioner that in the FIR, his name was not there and after his arrest, he was granted bail by this Court on 09.06.2022. Thereafter, the *zimma* of the articles were also given to the petitioner by the Chief Judicial Magistrate, Kamrup (M) vide order dated 18.07.2022, whereafter the petitioner resumed his business of retailed fertilizer. The grievance of the petitioner is against an order of suspension as fertilizer retailer which was issued on 22.07.2022.

By drawing the attention of this Court to the Bio Fertilizers and Organic Fertilizers in ***Fertilizer (Control) Order 1985***, more particularly Clause 31(1), the learned counsel for the petitioner has submitted that though the power to place a license for the suspension is there, the tenure of such suspension is limited to 15 days from the date of issue. The learned counsel has submitted that suspension in the

instant case of the license was done on 22.07.2022 after the petitioner was released on bail after his arrest on 21.03.2022. He submits that the stipulation in Clause 31(1) being clear, there cannot be any reason to prolong the order of suspension. He further submits that no opportunity of hearing has been given to the petitioner till date.

Ms. R. Bora, learned Standing Counsel, Agriculture Department however submits that the present suspension is after his arrest in a CID case and the investigation is still going on and therefore at this stage if the suspension is revoked, the investigation may be prejudiced.

After hearing the parties and on perusal of the materials on record, this Court is of the view that when the order in question stipulates that an order of suspension can be for a period of 15 days in which an opportunity of hearing has to be given to the concerned party and the categorical case projected by the petitioner is that no such opportunity was granted to him, the mandate of law will take its course. The averment that the petitioner has not been granted an opportunity of hearing has not been refuted by the Department in its affidavit filed on 02.12.2022.

In view of the above, the impugned order of suspension of license of the petitioner dated 22.07.2022 stands set aside and quashed. Since the order pertains to two numbers of incumbents, it is made clear that the intervention is only for the petitioner and the same will continue to exist so far as the other incumbents is concerned.

Writ petition is accordingly stands disposed of.

JUDGE

Comparing Assistant