

GAHC010173652022



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

Case No. : WP(C)/5676/2022

MIRAJUL ALI MOLLAH
S/O LATE SAHER ALI MOLLAH @ LATE SAHOR ALI MOLLAH, R/O VILL
NO. 2 SOUTH MUSALMANPARA, P.O.-KAMALSING, P.S.-GOSSAIGAON,
DIST-KOKRAJHAR, BTC, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY, FOOD
AND CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT, DISPUR,
GUWAHATI, PIN-781006

2:THE SUB DIVISIONAL OFFICER (CIVIL)
GOSSAIGAON SUB-DIVISION
P.O. AND P.S.-GOSSAIGAON
DIST-KOKRAJHAR
BTC
ASSAM
PIN-783360

3:THE ASSTT. DIRECTOR
FOOD AND CIVIL SUPPLIES AND CONSUMER AFFAIRS
GOSSAIGAON
P.O. AND P.S.-GOSSAIGAON
DIST-KOKRAJHAR
BTC
ASSAM
PIN-783360

4:THE BODOLAND TERRITORIAL COUNCIL
REPRESENTED BY THE SECRETARY
FOOD

CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM

5:THE SECRETARY
M/S GAMBARIBIL SAMABAY SAMITY LTD.
P.O. AND P.S.-GOSSAIGAON
DIST-KOKRAJHAR
BTC
ASSAM
PIN-783360

6:THE CHAIRMAN
M/S GAMBARIBIL SAMABAY SAMITY LTD.
P.O. AND P.S.-GOSSAIGAON
DIST-KOKRAJHAR
BTC
ASSAM
PIN-783360

7:MD. SAHA ALI PRAMANIK
S/O LATE MOFIZUDDIN PRAMANIK
VILL- NO. 2 SOUTH MUSALMANPARA
P.O.-KAMALSING
P.S.-GOSSAIGAON
DIST-KOKRAJHAR
BTC
ASSAM
PIN-78336

Advocate for the Petitioner : MR. A A R KARIM

Advocate for the Respondent : GA, ASSAM

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

ORDER

29.03.2023

Heard Shri AAR Karim, learned counsel for the petitioner. Also heard Shri CKS Baruah, learned State Counsel, Assam for the State respondents whereas Shri MA Mondal, learned counsel has appeared for the respondent no. 7.

2. Considering the subject matter and as agreed to by the parties, the instant writ petition is taken up for disposal at the admission stage itself.

3. The petitioner is a dealer of a Fair Price Shop connected with M/S Gambaribil Samabay Samity Ltd. As per the petitioner, a false FIR was lodged on 20.04.2022 leading to registration of Gossaigaon PS Case No.146/2022 under Sections 379/411/420/ 294/506/34 of the IPC read with Section 7 of the Essential Commodities Act. The said FIR was lodged by the respondent no. 7 with the allegation that PDS rice was sought to be sold by the petitioner. On such FIR, the petitioner was arrested and subsequently, released on bail. The petitioner is aggrieved by an order dated 31.05.2022 whereby his license has been put to suspension.

4. It is the case of the petitioner that thereafter, no further proceedings of issuing of any show cause notice has been taken and the petitioner remains to be under suspension till date.

5. Shri Karim, learned counsel for the petitioner has referred to the Assam Public Distribution of Articles Order, 1982 (Order of 1982), more specifically Order 15 thereof where in sub-section (2), it has been stipulated that the suspension can be for a maximum period of 90 days. He further submits that no opportunity of any kind was afforded to the petitioner before passing of the impugned order. The learned counsel submits that going by the mandate of the aforesaid provision of law, an order of suspension will spend its force on expiry of 90 days. Shri Karim, learned counsel, however submits that as per an interim direction of this Court, no other person has been appointed in place of the petitioner.

6. Shri Baruah, learned State Counsel submits that an affidavit-in-opposition has

been filed by the respondent no. 3 on 30.01.2023. The learned State Counsel submits that the allegations are serious in nature and the investigation is going on and in the interest of justice, the suspension order should not be revoked. He further submits that the allegations are in direct connection with the business of Fair Price Shop.

7. Shri Mondal, learned counsel for the complainant submits that the complaint has been filed *bona fide* in which the petitioner was, indeed arrested and investigation is going on.

8. Shri SR Rabha, learned Standing Counsel submits that he would adopt the argument advanced on behalf of the State, as the offence, in question, is of serious in nature.

9. After hearing the parties and on perusal of the records, this Court finds force in the arguments made by the learned counsel for the petitioner that Order 15 (2) of the Order of 1982 stipulates that an order of suspension can be issued for a maximum period of 90 days which, admittedly has spent its force. The learned counsel for the petitioner has also relied upon the following decisions:

- i) ***Mornoi Gaon Panchayat Mahila Multipurpose Samabai Samity & Anr. Vs. State of Assam & Ors., 2007 (1) GLT 538,***
- ii) ***Santanu Medhi Vs. State of Assam & Ors., 2014 (3) GLT 253,*** and
- iii) ***Kaushal Kumar Singh Vs. State of Assam & Ors., 2016 (4) GLT 566.***

10. After going through the aforesaid provision of law and the interpretation given by this Court on the said provision, this Court is of the unhesitant opinion that the order of suspension is not liable to be continued any further as the same has spent its

force after expiry of 90 days. No discernible materials have been placed on record by which an exercise was done to reconsider for extension of the suspension order and the requirement of such suspension.

11. In that view of the matter, the impugned order dated 31.05.2022 is set aside and accordingly, the petitioner would be allowed to operate his Fair Price Shop in accordance with law. The present order interfering with the suspension, however should not be construed to have any influence on the ongoing investigation or on the merits of the allegations against the petitioner.

Comparing Assistant