

GAHC010198302023



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

Case No. : WP(C)/5177/2023

MITU BEGUM MAZUMDAR
D/O ABDUR RAHMAN MAZUMDAR, R/O VILL-GOSSAIPUR PART-III, P.S.-
UDHARBOND, DIST-CACHAR (ASSAM), PIN-788030

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER/SECRETARY TO THE
GOVERNMENT OF ASSAM, FOOD AND CIVIL SUPPLIES AND CONSUMER
AFFAIRS DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR OF FOOD AND CIVIL SUPPLIES AND CONSUMER
AFFAIRS
ASSAM
BHANGARH
GUWAHATI-5

3:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR
DIST-CACHAR
ASSAM
PIN-788001

4:THE ADDITIONAL DEPUTY COMMISSIONER
CACHAR
I/C FOOD AND CIVIL SUPPLIES AND CONSUMER AFFAIRS
SILCHAR
P.O.-SILCHAR
DIST-CACHAR
ASSAM
PIN-788001

5:THE SUPERINTENDENT

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
SILCHAR
DIST-CACHAR
ASSAM
PIN-788001

6:THE SECRETARY
RONGPUR CO-OPERATIVE SOCIETY LIMITED
P.S.-UDHARBOND
DIST- CACHAR
ASSAM
PIN-78800

Advocate for the Petitioner : MR. B CHAKRAVARTY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 08-09-2023

Heard Mr. B. Chakravarty, learned counsel for the petitioner and Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 1 – 5.

2. The petitioner was a licensee under the Assam Public Distribution Article [APDA] Order, 1982. On being granted a retail license under the APDA Order, 1982, the petitioner was running a fair price shop. The said retail license came to be suspended by an office order dated 27.03.2023 passed by the respondent no. 5. Thereafter, a hearing was conducted and the impugned order dated 11.05.2023 came to be passed by the respondent no. 5 whereby the respondent no. 5 as the licensing authority has cancelled the retail license issued to the petitioner under the APDA Order, 1982 purportedly exercising power conferred upon it under Clause 15[2] of the APDA Order, 1982. Contending that the said order of cancellation dated 11.05.2023 is not sustainable in law, the petitioner has preferred the instant writ petition assailing the same.

3. Mr. Chakravarty, learned counsel for the petitioner has submitted that aggrieved by the

order of cancellation dated 11.05.2023, the petitioner has already preferred an appeal before the Deputy Commissioner, Cachar, Silchar on 16.05.2023 and receipt of the same has been duly acknowledged by the office of the Deputy Commissioner, Cachar on 17.05.2023. As a period of more than 3 [three] months have elapsed in the meantime and the appeal has not been disposed of by the Appellate Authority till date, Mr. Chakravarty has submitted the writ petition can be disposed of, at this stage, by directing the Appellate Authority i.e. the Deputy Commissioner, Cachar to consider and dispose of the appeal filed in the form of representation in compliance with the provisions contained in Clause 29 of the APDA Order 1982.

4. Mr. Chetia, learned Junior Government Advocate, Assam appearing for the respondent nos. 1 – 5 has submitted that since the petitioner has preferred a statutory appeal before the Appellate Authority i.e. the respondent no. 3, the writ petition can be disposed of at this stage, as sought for by the petitioner, with a direction to the appellate authority to consider and dispose of the appeal within a reasonable period of time.

5. Clause 29 of the APDA Order, 1982, framed in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, reads as under :

29. [1] Any Person aggrieved by an Order made by any officer under this Order may.

[a] if the Order is made by the Director appeal to the State Government.

[b] if the Order is made by any Officer lower in rank than the Deputy Commissioner appeal to the Deputy Commissioner.

[c] if the Order is made by the Deputy Commissioner appeal to the Commissioner.

[2] No such appeal shall be entertained if not preferred within 30 days from the date of receipt of the Order appealed against by the appellant.

[3] No Order which adversely affects any person shall be passed under this Clause unless such person has been given a reasonable opportunity of being heard.

[4] Pending disposal of the 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.

6. It is noticed that the impugned order of cancellation dated 11.05.2022 has been passed by the respondent no. 5 and the petitioner has accordingly preferred the appeal in the form of representation within the prescribed period of time for preferring an appeal before the Appellate Authority i.e. the Deputy Commissioner under Clause 29[1][b] of the APDA Order, 1982. As the statutory appeal is stated to be pending, this Court is of the considered view that instead of keeping this writ petition pending, the same can be disposed of, as agreed to by the learned counsel for the parties, with a direction to the Appellate Authority, that is, the respondent no. 3 to consider and dispose of the appeal within a reasonable period of time after giving a reasonable opportunity of being heard to the appellant-representationist, that is, the petitioner. It is accordingly ordered. It is expected that the Appellate Authority will consider and dispose of the appeal preferred by the petitioner before him within a reasonable period of time, preferably within a period of 1 [one] month from the date of submission of a copy of this order by the petitioner at his office. In case the petitioner is aggrieved in any manner by the appellate order to be passed, the petitioner will at liberty to file avail appropriate remedy, available to him under the law.

7. This order disposes of the writ petition.

JUDGE

Comparing Assistant