

GAHC010050882023



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

Case No. : WP(C)/1391/2023

DAYANANDA BORA
S/O- LATE AKAN BORA, R/O- VILL.- TILA BARABARI, P.O. SAMAGURI,
DIST. NAGAON, ASSAM, PIN- 782102.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM, FOOD, CIVIL SUPPLIES AND CONSUMER
AFFAIRS DEPARTMENT, DISPUR, GUWAHATI-781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE DIRECTOR

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
BHANGAGARH
GUWAHATI-781005.

4:THE DEPUTY COMMISSIONER
NAGAON
ASSAM
PIN- 782001.

5:THE ADDITIONAL DEPUTY COMMISSIONER AND I/C FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS

NAGAON.

6:THE DEPUTY DIRECTOR

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
NAGAON
ASSAM

7:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
NAGAON
ASSAM

8:THE SECRETARY

M/S CHAPANALA CO-OPERATIVE SOCIETY
VILL.- CHAPANALA
P.O. CHAPANALA
P.S. SAMAGURI
DIST. NAGAON
ASSAM
PIN- 782135.

9:B. P. CIVIL HOSPITAL
NAGAON
ASSAM
REPRESENTED BY ITS SUPERINTENDENT

Advocate for the Petitioner : MR. U K BARMAN,

Advocate for the Respondent : GA, ASSAM, SC, HEALTH,SC, CO OP

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

06.09.2024

Heard Shri Y. Kothari, learned counsel for the petitioner. Also heard Shri M. Chetia, learned State Counsel; Ms. A. Mesen, learned counsel appearing on behalf of the Co-operation Department and Ms. S. Sarma, learned Standing Counsel, Health Department.

2. The grievance raised in this petition was with regard to an order dated 08.02.2023 whereby an earlier order dated 19.10.2022 of grant of a fair price license has been cancelled. The said impugned order emanates from a Medical Certificate dated 05.12.2022 on the mental fitness of the petitioner.

3. As per the facts projected in the petition, the father of the petitioner had a fair price shop in the district of Nagaon and after his demise on 21.11.2021, the petitioner applied for the license which was supported by a Certificate of Mental Fitness. The license was accordingly issued to the petitioner on 19.10.2022. However, on 09.11.2022, a letter was issued by the Office of the Deputy Commissioner, Nagaon to the respondent no. 9 - Hospital to re-furnish a medical report of the petitioner. It is submitted by the learned counsel that such a step was taken apparently on certain allegations which were never furnished to the petitioner. Nonetheless, on 05.12.2022, a summary report was submitted that the petitioner had intellectual disability and based on the same, the cancellation order dated 08.02.2023 has been passed.

4. Shri Kothari, learned counsel for the petitioner has submitted that before re-doing the medical examination on the aspect of mental fitness, the allegations ought to have been made known to the petitioner and an opportunity be granted. So far as the Certificate dated 05.12.2022 is concerned, it has been averred in the writ petition that the same could not have been construed to be a report in the true legal sense. It is submitted that apart from the Certificate being issued by only two nos. of Doctors, the parameters which are to be taken into consideration were not there and the Certificate appears to be in a summary manner which would be in violation of the law holding the field.

5. The learned counsel for the petitioner has however submitted that in terms of an order dated 22.09.2024 of this Court, a fresh medical examination of the petitioner has been done, the outcome of which was not officially made known to the petitioner.

6. Ms. Sarma, the learned Standing Counsel, Health Department for the respondent no. 9 – Hospital has submitted that in terms of the direction contained in the order dated 29.07.2024, a fresh Medical Board was constituted in accordance with law and the petitioner was examined. The said Board has come to a conclusion that the petitioner is intellectually disabled of moderate level. A copy of the report has been placed before this Court and is also furnished to the learned counsel for the petitioner.

7. The earlier impugned order of cancellation was based on a report dated 05.12.2022 which apparently do not meet the requirement of law. The present report states that the intellectual disability is of moderate level. Whether the said disability of moderate level would be a ground for cancellation of the license is required to be re-considered by the Department.

8. This Court is of the opinion that without making any observation on the legality or otherwise of the fresh report which has been forwarded on 19.08.2024, interest of justice would be served if the writ petition is disposed of by directing a fresh consideration in view of the report, indicated above. The District Commissioner, Nagaon is accordingly directed to make a fresh consideration on the aspect of the continuance of the fair price license of the petitioner in view of the fresh report. This Court further observes that in case a decision is taken against the petitioner, he would be at liberty to challenge the same in accordance with law.

9. The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant