

GAHC010093372024



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

Case No. : WP(C)/2461/2024

ANIRUDDHA PALIT AND 3 ORS.
S/O LATE AROBINDA PALIT
R/O VILL- DHEKIAJULI, WARD NO. 3, P.O. DHEKIAJULI
DIST. SOITPUR, ASSAM, PIN-784110

2: SRI MRIDUL TARAN
S/O LATE MANINDRA TARAN
R/O VILL- MANAJULI GAON
P.O. DHEKIAJULI
DIST. SONITPUR
ASSAM
PIN-784110

3: SRI SUBRATA BANIK
S/O LATE SURAJ BANIK
R/O VILL- MANAJULI GAON
P.O. DHEKIAJULI
DIST. SONITPUR
ASSAM

PIN-784110

4: SRI ASHOK GHOSE
S/O LATE HARILAL GHOSH
R/O VILL- MANAJULI GAON
P.O. DHEKIAJULI
DIST. SONITPUR
ASSAM
PIN-78411

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,

FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT, DISPUR,
GUWAHATI-781006.

2:THE COMMISSIONER
FOOD CIVIL SUPPLIES CONSUMER AFFAIRS AND LEGAL METROLOGY
ASSAM
GUWAHATI-07

3:THE DIRECTOR
FOOD CIVIL SUPPLIES CONSUMER AFFAIRS AND LEGAL METROLOGY
ASSAM
GUWAHATI-05

4:THE DEPUTY DIRECTOR
FOOD CIVIL SUPPLIES CONSUMER AFFAIRS AND LEGAL METROLOGY
SONITPUR
ASSAM
PIN-784001

5:THE ADDL. DEPUTY COMMISSIONER
FOOD CIVIL SUPPLIES CONSUMER AFFAIRS AND LEGAL METROLOGY
SONITPUR
ASSAM
PIN-784001

6:THE SUPPLY INSPECTOR
FOOD CIVIL SUPPLIES CONSUMER AFFAIRS AND LEGAL METROLOGY
SONITPUR
ASSAM
PIN-78400

Advocate for the Petitioner : MR. S K ROY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

19.06.2024

1. Heard Mr. S.K. Roy, learned counsel for the petitioners. Also heard Ms. U. Das, learned counsel for all the respondents.

- 2.** The petitioners are aggrieved with the order dated 07.07.2023, by which the petitioners fair price shop dealerships have been suspended, on account of they having been put under judicial custody, in connection with Chief Minister's Special Vigilance Cell Case No.4/2023 under Sections 120B/420/406/409 IPC read with Section 13(1)(a)/13(2) of the PC Act.
- 3.** The petitioners' counsel submits that the petitioners were arrested in connection with the above Chief Minister's Special Vigilance Cell Case No.4/2023 and subsequently released on bail, vide order dated 03.08.2023 passed by the Special Judge, Assam, Guwahati. The petitioners' counsel submits that though the petitioners have submitted an application to the respondents on 03.10.2023 for revocation of their suspension order, the same has not been considered till date.
- 4.** The learned counsel for the petitioners submits that in terms of Order 15 (2) of the Assam Public Distribution of Articles Order, 1982 (hereinafter referred to as the "1982 Order"), a licence cannot be suspended for a period exceeding 90 days, without giving any opportunity to the licensee of stating his case. He submits that the petitioners have till date not been given any show-cause-notice or an opportunity to state their case, pursuant to Order 15(2) of the 1982 Order. He accordingly submits that the suspension order should be set aside.
- 5.** Ms. U. Das, learned counsel for all the respondents submits that the licence/dealerships issued to the petitioners for running their fair price shops,

were suspended vide office order dated 07.07.2023, as they were under judicial custody in relation to Chief Minister's Special Vigilance Cell Case No.4/2023. She submits that the matter is under investigation before the Chief Minister's Special Vigilance Cell and as such, the respondent authority have not taken any action against the petitioners till date.

6. I have heard the learned counsels for the parties.

7. Order 15 of the 1982 Order states as follows :

"15. (1) If any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms and conditions of the licence, then without prejudice to any other action that may be taken under the Essential Commodities Act 1955 (Central Act 10 of 1955) his licence may be cancelled or suspended by any Order in writing of the Licensing Authority and an entry will be made in his licence relating to such suspension or cancellation.

(2) No Order of cancellation shall be made under this Clause unless the licensee has been given reasonable opportunity or stating his case against the proposed cancellation by but during the pendency or in contemplation of the proceedings of cancellation of the licence, the licence can be suspended for a period not exceeding 90 days without giving any opportunity to the licensee of stating his case."

8. A perusal of Order 15(2) shows that in contemplation of the proceedings of cancellation of a licence, the licence can be suspended. However, the licence cannot be suspended for a period exceeding 90 days, without giving any opportunity to the licensee for stating his case. Order 17 of the 1982 Order provides that when a licensee convicted by a Court of Law or contravenes of

any order made under Section 3 of the Essential Commodities Act, the Licencing Authority shall by order in writing, cancel the licence, without giving an opportunity to the licensee for stating his case.

9. Order 2 (l) defines "Wholesaler", Order 2(m) defines "Sub-Wholesaler" and Order 2(n) defines "Retailers". Order 3 of the 1982 Order defines Licencing Authority and the licences to be issued by them, specifying some Wholesaler or Retailers and the area of operation of each of the appointed dealers.

10. In the present case, it is an admitted fact that the respondents have not given the petitioners any opportunity for stating their case against the suspension of their licence as fair price shop dealers. No show-cause notice has been issued by the respondents to the petitioners till date for cancelling their licences also

11. In view of the above reasons, this Court finds that the suspension of the petitioners licence as fair price shop dealers is not sustainable beyond 90 days, in terms of Order 15(2) of the 1982 Order. Consequently, the impugned order dated 07.07.2023 issued by the Deputy Director, Food Civil Supplies Consumer Affairs & Legal Metrology, Sonitpur is set aside. The petitioners should be allowed to continue to operate their fair price shops, as per the arrangement that was in place prior to their suspension. This is of course subject to the condition that no new or further proceedings are taken up against the petitioners.

12. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant