

GAHC010111162023



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

Case No. : WP(C)/2971/2023

MONIKA MUCHAHARY
W/O- RAJIB MUCHAHARY, VILL. NO. 3 BHUTIACHANG SOJOBARI, P.O.
PANERIHAT, P.S. PANERI, DIST. UDALGURI, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF FOOD, CIVIL SUPPLIES AND CONSUMER
AFFAIRS, DISPUR, GUWAHATI-06.

2:THE BODOLAND TERRITORIAL COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY (BTC)
KOKRAJHAR
ASSAM
PIN- 783370.

3:THE DIRECTOR

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BHANGAGARH
GUWAHATI-05.

4:THE COUNCIL HEAD OF DEPARTMENT
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BTC
KOKRAJHAR
ASSAM
PIN- 783370.

5:THE DEPUTY COMMISSIONER
UDALGURI
ASSAM
PIN- 784509.

6:THE ASSISTANT DIRECTOR

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BHERGAON SUB-DIVISION
DIST.UDALGURI
ASSAM
PIN- 784528.

7:M/S PANERI SAMABAY SAMITY LTD.

REPRESENTED BY ITS SECRETARY
P.O. PANERYHAT
DIST. UDALGURI
ASSAM
PIN- 784523

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

05.02.2024

1. Heard Ms. F.N. Zaman, learned counsel for the petitioner. Also heard Mr. M. Chetia, learned counsel for the State respondent no.1, 3, 5 & 6 and Mr. B. Choudhury, learned counsel for the respondent nos.2 & 4.

2. Ms. F.N. Zaman, learned counsel for the petitioner submits that the suspension order dated 14.08.2021, by which the petitioner's PDS licence had

been suspended under Article Order 15(1) of the Assam Public Distribution of Articles Order 1982 (hereinafter referred to as "Order, 1982") should be set aside, in view of the fact that under Article Order 15(2) of the Order, 1982, there cannot be suspension of licence beyond 90 days, without issuing a notice to the licence holder within 90 days period from the date of issuance of the suspension order.

3. The petitioner's case is that he is a PDS licence holder under Order, 1982. In view of an FIR being lodged against the petitioner, which resulted in the registration of Paneri P.S. Case No.65/2021 under Section 379/411 IPC read with Section 7 of the Essential Commodities Act, alleging irregularities in the distribution of PDS articles, an inquiry was conducted. On the basis of the Inquiry Report, the licence of the petitioner was suspended, vide order dated 14.08.2021 issued by the respondent no.6. The police submitted a charge-sheet in Paneri P.S. Case No.65/2021, which resulted in G.R. Case No.974/2021 being registered in the Court of the Judicial Magistrate First Class, Udalguri. However, the G.R. Case No.974/2021 had been allowed to be withdrawn, vide order dated 10.01.2023 passed by the Court of the Judicial Magistrate First Class, Udalguri. The petitioner has accordingly been acquitted of the charge under Section 379/411 IPC read with Section 7 of the Essential Commodities Act.

4. The petitioner's counsel submits that while the suspension of the petitioner's PDS licence had been made vide order dated 14.08.2021, Show-Cause-Notice was issued to the petitioner with respect to the suspension of the petitioner's licence only on 07.12.2021, i.e, after 115 days. As such, in view of the Article Order 15(2) of the Order, 1982, the suspension order could not have

survived beyond 3 (three) months, from the date of issuance of the suspension order.

5. The counsels for the respondents submit that they have no quarrel with the submission made by the counsel for the petitioner. However, as the petitioner has made a reply to the Show-Cause-Notice, the respondent no.5 should take a decision on the Show-Cause-Notice and the petitioner's reply made to the Show-Cause-Notice.

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

7. As can be seen from the documents on record, the petitioner's PDS licence had been placed under suspension, vide order dated 14.08.2021, on the basis of an FIR which resulted in the registration of Paneri P.S. Case No.65/2021. The resultant criminal case registered in the Court of the Judicial Magistrate First Class, Udalguri was withdrawn on the basis of a decision taken by the Government of Assam. The Show-Cause-Notice issued to the petitioner on 07.12.2021 asking for a reply, as to why the petitioner's PDS licence should not be cancelled, had been issued beyond 90 days of the issuance of the suspension order. In terms of Article Order 15(2) of the Order, 1982, an order of suspension cannot be valid beyond a period of 90 days, unless an opportunity is given to the licensee for stating his/her case against the proposed cancellation of the PDS licence.

8. As the Show-Cause-Notice had been issued beyond 90 days from the date of issuance of the suspension order, this Court is of the view that the suspension

order would not have survived beyond 90 days from the date of issuance of the same. Further, the reason for suspending the petitioner's licence has also been withdrawn, as can be seen from the order dated 10.01.2023 passed by the Judicial Magistrate First Class, Udalguri in G.R. Case No.974/2021. Accordingly, the impugned order dated 14.08.2021 issued by the respondent no.5 suspending the petitioner's PDS licence cannot survive and is hereby set aside. However, as the petitioner has apparently replied to the Show-Cause-Notice, the respondent no.5 shall take a decision on the same and communicate his decision to the petitioner, provided a decision has not been taken earlier. If a decision has already been taken by the respondents on the Show-Cause-Notice and reply, the same should be communicated to the petitioner.

9. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant