

GAHC010137882022



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

Case No. : WP(C)/4606/2022

MD. RAHMAT ALI AND 3 ORS
S/O- LATE CHAND MOHAMMAD,
R/O- SONARI TOWN, WARD NO-5,
P.O- SONARI,
DIST- CHARAIDEO,
ASSAM,
PIN-785690

2: MD. SAMPAT ALI
S/O- LATE CHAND MOHAMMAD
R/O- SONARI TOWN
WARD NO-5
P.O- SONARI
DIST- CHARAIDEO
ASSAM
PIN-785690

3: MD. SHAUKAT ALI
S/O- LATE CHAND MOHAMMAD
R/O- SONARI TOWN
WARD NO-5
P.O- SONARI
DIST- CHARAIDEO
ASSAM
PIN-785690

4: MD. HASMAT ALI
S/O- LATE CHAND MOHAMMAD
R/O- SONARI TOWN
WARD NO-5
P.O- SONARI
DIST- CHARAIDEO
ASSAM
PIN-78569

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
MUNICIPAL ADMINISTRATION DEPARTMENT, ASSAM, DISPUR,
GUWAHATI PIN-781006.

2:THE DEPUTY COMMISSIONER
CHARAIDEO
ASSAM PIN-785690

3:SONARI MUNICIPAL BOARD
SONARI DIST-CHARAIDEO
ASSAM PIN-785690
REP. BY ITS CHAIRMAN

4:THE EXECUTIVE OFFICER
SONARI MUNICIPAL BOARD
SONARI DIST-CHARAIDEO
ASSAM
PIN-78569

Advocate for the Petitioner : MR A DAS

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 13.06.2024

Heard Mr. H. R. A. Choudhury, learned senior counsel, assisted by Mr. A. M. Ahmed, learned counsel for the petitioners and Mr. S. R. Baruah, learned counsel for the State respondents.

2. The petitioners are aggrieved by the notice dated 30.06.2022 issued by the Executive Officer, Sonari Municipal Board, by which the business of selling beef is completely prohibited from the municipal area of Sonari from

15.07.2022, as per Section 8 of the Assam Cattle Preservation Act, 2021 (hereinafter referred to as the Act).

3. The petitioners' counsel submits that the business of the petitioners has been their livelihood since the days of their forefathers in the State of Assam and the Act in question also does not contemplate a complete ban on the selling of beef, but only prescribes the procedure for running the said business.

4. The competency of the Executive Officer (respondent No. 4), in issuing the said notice dated 30.06.2022 has also been questioned, by drawing the attention of this Court to the Act in question, which prescribes that the Government should appoint a competent authority to exercise the powers and functions under the Act. The petitioners' counsel also submits that without completing the formalities prescribed under the Act, which include allotment of an appropriate site to carry out the business of the petitioners, a complete ban is not contemplated, as that would amount to infringing the petitioners' right to carry out their business.

5. The petitioners' counsel submits that the petitioners have submitted a representation dated 03.07.2022 to the District Commissioner, Charaideo to allow them to continue to run their business. However, the same has not been decided till date.

6. Mr. S. R. Baruah, learned Government Advocate submits that the competent authority under the Act is the Deputy Commissioner. He submits that the petitioners were not allowed to carry on their business, as there are many other religious groups in the area and within a 5 K.M. radius, there were more than 90% of other religious groups, like Hindus, Jains, Sikhs, Buddhists, etc. Further, the surrounding area of the slaughter house was found to be

unhygienic and very dirty, which threatened public health. The petitioners had also deposited renewal fees only up to 31.03.2022 and no renewal applications for the trade licence had been made thereafter. As such, the petitioners were running their shops/slaughter houses within the area of Sonari Municipal Board without having any valid licence, which was not permissible.

7. Mr. S. R. Baruah, learned Government Advocate submits that as the petitioners have submitted a representation to the District Commissioner, Charaideu, a direction can be issued to the District Commissioner to consider the petitioners' representation and to take a decision thereon.

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

9. The impugned notice dated 30.06.2022 issued by the Executive Officer, Sonari Municipal Board has given a blanket ban on the selling of beef and beef products in the Sonari Municipality area, as per Section 8 of the Act. No specific reason has been given by the Executive Officer, as to which part of Section 8 of the Act is attracted to the petitioners' case.

10. In the case of ***Commissioner Of Police, Bombay vs. Gordhandas Bhanji*** reported in AIR 1952 SC 16, the Supreme Court has held that public orders in exercise of a statutory authority cannot be construed in the light of explanation subsequently given by the officers making the order, of what he meant or of what was in his mind or what he intended to do. Public orders made by the public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. In the case of ***State of Punjab vs. Bandeep Singh***, reported in ***(2016) 1 SCC 724***, the judgment in ***Gordhandas Bhanji (supra)*** was also

followed at para 4, which is as follows:-

“4. There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any Authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition it can be found in the celebrated decision titled Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi [1978] 2 SCR 272, of which the following paragraph deserves extraction:

“..8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji [1952] 1 SCR 135:

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older”.

11. In the present case, the impugned notice issued by the Executive Officer,

Sonari Municipal Board shows that the prohibition imposed on the petitioner from doing their business is on the basis of Section 8 of the Act, without specifying any reasons. The affidavit filed by the respondent No. 4 is to supplement the absence of reasons in the impugned notice by way of averments made in the affidavit, which cannot be allowed, in terms of the law laid down by the Supreme Court.

12. The above being said, the respondent No. 4 (Executive Officer, Sonari Municipal Board) is not the competent authority under the Act, as he was not appointed by the State Government by way of a notification in the official Gazette, to exercise the powers and functions of the competent authority under the Act.

13. Section 3(d) defines competent authority to mean a person or persons appointed by the State Government by notification in the Official Gazette, to exercise the powers and perform the functions of a competent authority under the Act or the Rules made under the Act, for such area or areas and for such period, as may be specified in the notification.

14. In the present case, there is no notification appointing the respondent No. 4 as the competent authority to issue any order under Section 8 of the Act. Thus, the respondent No. 4 cannot exercise the provisions of the Competent Authority under the Act.

15. In that view of the matter, the respondent No. 4 could not have usurped the powers of the competent authority and as such, the impugned notice barring the petitioners from doing their business is arbitrary and void ab-initio. Further, no prior show cause notice had been issued to the petitioners before issuing the impugned notice dated 30.06.2022. Consequently, in view of the

above reasons, the impugned notice dated 30.06.2022 being without jurisdiction, is hereby set aside. However, as the petitioners' licence for running the business has expired and the renewal application is pending before the Municipal Board, the petitioners shall not continue their business until the renewal of the licence is given by the Municipal Board.

16. This writ petition is accordingly disposed of.

JUDGE

Comparing Assistant