

GAHC010157772023



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

Case No. : WP(C)/4106/2023

RONGPUR CO OPERATIVE SOCIETY LTD AND ANR
REPRESENTED BY THE SECRETARY,
G.M. TUZFIQUER AHMED LASKAR,
S/O- AHMED RAJA LASKAR,
P.O.- GOSSAIPUR, DIST- CACHAR,
ASSAM, PIN- 788030.

2: G.M. TUZFIQUER AHMED LASKAR
S/O- AHMED RAJA LASKAR

THE SECRETARY

M/S RONGPUR CO-OPERATIVE SOCIETY LTD.

P.O.- GOSSAIPUR PART-III

P.S.- UDHARBOND

DIST.- CACHAR
ASSAM

PIN- 788030

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
FOOD AND CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY
GOVERNMENT OF ASSAM
CO-OPERATION DEPARTMENT

DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR
ASSAM- 788001.

4:THE SUPERINTENDENT
FOOD AND CIVIL SUPPLIES AND CONSUMER AFFAIRS
SILCHAR
DIST.- CACHAR
ASSAM.

5:THE ASSTT. REGISTRAR OF COOPERATIVE SOCIETIES
SILCHAR
ASSAM- 788001

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

07.02.2024

Heard Mr. M.U. Mahmud, learned counsel for the petitioners; Mr. B. Goswami, learned Additional Advocate General, Assam assisted by Mr. P. Kataki, learned counsel and Mr. R.B. Goswami, learned counsel for all the respondents.

2. The petitioner no. 1, M/s Rongpur Cooperative Society Ltd. is a cooperative society registered under the provisions of the Assam Co-operative Societies Act, 2007 and the petitioner no. 2 has stated that he is the appointed secretary of the petitioner no. 1 society. The petitioner no. 1 society was granted a sub-wholeseller licence under the provisions of the Assam Public Distribution of Articles Order, 1982 [‘the APDA Order, 1982’, for short]. By an Order dated 10.09.2021 passed by the respondent no. 4, the licence [sub-wholesale] issued in favour of the Secretary of the petitioner no. 1 society under the APDA Order, 1982 was

placed under suspension with immediate effect alleging gross violation of a nos. of provisions of the APDA Order, 1982, the TPDS [Control] Order, 2015, the NFSA Act, 2013 and few licence conditions. By the said Order, the secretary of the petitioner no. 1 society was asked to show cause as to why the licence issued in the name of the secretary of the petitioner no. 1 society should not be cancelled. The noticee was thereby, asked to show cause in writing within a period of 7 [seven] days from the date of receipt of the Order dated 10.09.2021.

2.1. The petitioners have stated that a Reply to the said show cause notice was duly submitted. When despite submission of the Reply to the show cause notice, the matter of suspension of the licence of the petitioner no. 1 society was not brought to any conclusion, the petitioners had preferred a writ petition, W.P.[C] no. 5603/2021. The said writ petition was disposed of by an Order dated 31.08.2022 directing the respondent no. 4 to pass a reasoned order after following due procedure of law within a period of 2 [two] months from the date of receipt of a certified copy of the said Order. Pursuant thereto, the respondent no. 4 had passed an Order on 28.10.2022 cancelling the sub-wholeseller licence issued in the name of the secretary of the petitioner no. 1 society, finding materials in respect of the allegations brought against the petitioner no. 1 society. The Order dated 31.08.2022 was passed in exercise of powers conferred under Article 15[2] of the APDA Order, 1982. Aggrieved thereby, the petitioners had preferred an appeal before the Deputy Commissioner, Cachar, Silchar on 14.11.2022.

3. The instant writ petition was filed on 21.07.2023 seeking a number of directions including a direction to the Deputy Commissioner, Cachar, Silchar [the respondent no. 3] to dispose of the appeal pending before him. A counter affidavit on behalf of the respondent no. 3 and the respondent no. 4 has been filed on 20.09.2023 stating *inter alia* that the appeal preferred on behalf of the petitioners was received on 14.11.2022. It has been mentioned that hearing was undertaken by the Executive Magistrate, Cachar on 03.03.2023 and thereafter, the appeal is under process at the level of the Executive Magistrate. After hearing the parties at some length and upon perusal of the materials brought on record by the parties through their pleadings, it transpires that a determination on a number of disputed questions of fact would fall for consideration. For determination of such disputed questions of fact, a

writ proceeding is not a proper remedy.

4. The APDA Order, 1982, framed in exercise of the powers conferred under Section 3 of the Essential Commodities Act, 1955, has provided for appeal under Order 29. For ready reference, the provisions of Order 29 are reproduced hereinbelow in its entirety :-

Order 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.

5. The respondent no. 3 and the respondent no. 4 have admitted that the appeal was presented by the petitioners on 14.11.2022. Thus, the appeal is found to be in compliance of Clause [2] of Order 29 of the APDA Order, 1982 which requires to prefer an appeal within a period of 30 days from the date of receipt of the order appealed against. As per Order 29[a] [b], if the Order of cancellation is made by any officer lower in rank than the Deputy Commissioner, the appeal lies to the Deputy Commissioner. Since the appeal is stated to be pending before the jurisdictional Deputy Commissioner as the appellate authority since 14.11.2022, this Court is of the considered view that the appellate authority shall proceed to consider the appeal, if not already disposed of, with utmost expedition. As Clause [3] of Order 29 has provided that any person who is likely to be affected should be provided a reasonable opportunity of being heard, the appellate authority should provide reasonable opportunities of

being heard to all the stakeholders including the petitioners herein, who are likely to be adversely affected if the Order of cancellation of sub-wholeseller licence appealed against is likely to be affirmed. It is settled proposition of law that 'one who decides must hear'. In such view of the matter, the appeal preferred by the petitioners should be heard and disposed of by the appellate authority under Order 29[1][b] of the APDA Order, 1982. Since the matter involves cancellation of sub-wholeseller licence of the petitioner no. 1 society, it is further observed that the appeal, stated to be presently pending before the appellate authority should be disposed of with utmost expedition, but not later than an outer limit of 45 [forty-five] days from the date receipt of a certified copy of this order from the petitioners at the office of the respondent no. 3. It is further observed that this court has not observed anything as regards the merits of the respective claims of the parties and the appellate authority shall decide the appeal on its own merits and as per law.

6. With the observations made and the direction given above, the writ petition is disposed of. No cost.

JUDGE

Comparing Assistant