

GAHC010189262024



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

Case No. : WP(C)/4732/2024

JAYFUL NESSA
W/O- ABDUL BATEN AHMED,
VILL.- BHATNAPAITY,
PO- KADAMTOLA,
PS- ALOPATI CHAR,
DIST.- BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
FOOD, CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
ASSAM
GUWAHATI-05.

3:THE DEPUTY COMMISSIONER
BARPETA
BARPETA
ASSAM- 781302.

4:THE SUB DIVISIONAL OFFICER (SADAR)
BARPETA
ASSAM.

5:THE SUPTD. OF FCS AND CA
BI(EO)
ASSAM
SRIMANTAPUR

GHY-32.

6:THE DEPUTY DIRECTOR
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BARPETA
ASSAM- 781301.

7:THE SUPPLY INSPECTOR
FOOD
CIVIL AND CONSUMER AFFAIRS
BARPETA
ASSAM.

8:THE AREA OFFICER
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BARPETA
ASSAM- 781301.

9:THE SECRETARY
M/S BAGHMARA CHAR GPSS LIMITED
VILL- BAGHMARA
P.S.- ALOPATI CHAR

DIST.- BARPETA
ASSAM- 781328

Advocate for the Petitioner : MR. A M KHAN, MR S PRODHANI,MR T T MONI

Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 18.09.2024

Heard Mr. S Islam learned counsel for the petitioner.

The petitioner's Fair Price Shop license for village Bhatnapaity char under M/S Baghmara Char GPSS Ltd in the district of Barpeta was

cancelled by the SDO (Sadar) Barpeta by an order dated 05.01.2024.

In the aforesaid backdrop, though appeal of the petitioner ought to have been preferred before the Deputy Commissioner under clause 29(b), however, the petitioner had preferred an appeal under clause 29(c) before the Commissioner. Such appeal has not yet been decided and it is the grievance of the petitioner. Mr. Gogoi learned counsel submits that the order being passed by the SDO generally should lie to the Deputy Commissioner under clause 29(b).

Per contra, the learned counsel for the petitioner submits that when the Deputy Commissioner had already approved the decision of the SDO, it will be a futile exercise.

The impugned order dated 05.01.2024 reflects that prior to passing of the aforesaid impugned order approval of the Deputy Commissioner, Barpeta was taken. In terms of the Assam Public Distribution Order, 1982, hereinafter referred to as "Order 1982", prescribes a remedy of appeal under Clause 29(b) before the Deputy Commissioner from a order of SDO (Sadar), Barpeta and under clause 29(c) of the Public Order, 1982 an appellate provision is given against order of Deputy Commissioner to the Commissioner of Food and Civil Supplies and Consumer Affairs and Legal Metrology Department.

This court is of the considered opinion that once the Deputy Commissioner had applied its mind to the decision of the SDO (Sadar) and approved such decision, though appeal generally lies to the Deputy Commissioner under Clause 29(b) of the Order 1982, however, such appeal shall not be an efficacious remedy and in the considered opinion of this court, the approval of the Deputy Commissioner to the order dated 05.01.2024 issued by the SDO (sadar) can be treated in the given facts as

the approval/decision of the Deputy Commissioner itself. Therefore the learned counsel for the petitioner is correct in arguing that an appeal before the Deputy Commissioner shall be futile.

This court has also not found any provision prescribing approval by the Deputy Commissioner under Order 1982 or under any order/provision.

Be that as it may, in the aforesaid backdrop, it is now the commissioner is required to consider the appeal of the petitioner as an appeal under clause 29(c) of Order, 1985. Accordingly, the present writ petition stands allowed by directing the commissioner, Food and Civil Supplies Consumer Affairs and Legal Metrology to consider the appeal preferred by the petitioner (Annexure- 8) and pass a speaking order within a period of four weeks from the date of receipt of a certified copy of this order to be furnished by the petitioner.

This disposes the writ petition.

JUDGE

Comparing Assistant