

GAHC010203092023



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

Case No. : WP(C)/5393/2023

ATOWAR BHUYAN AND 4 ORS
S/O- ABDUL BHUYAN,
R/O- VILAGE AND P.O- JATRADIA,
DIST- BARPETA, ASSAM

2: JAHUR KHAN
S/O- LATE HAKIN KHAN

R/O- VILAGE GOMA FULBARI P.S- TARABARI

DIST- BARPETA
ASSAM

3: MULAM KHAN
S/O- LATE BIRIS KHAN

R/O- VILAGE FULBARI P.S- TARABARI

DIST- BARPETA
ASSAM

4: SHAHADAT ALI
S/O- LATE JOYAD ALI

R/O- VILAGE DAKSHIN GODHUNI P.S- TARABARI

DIST- BARPETA
ASSAM

5: KHABIR UDDIN
S/O- LATE BABUR ALI

R/O- VILAGE DOOMDOMA P.S- TARABARI

DIST- BARPETA
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
COOPERATION DEPARTMENT
DISPUR, GUWAHATI-06

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI- 781022.

3:THE DEPUTY COMMISSIONER
BARPETA

4:THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
BARPETA
ASSAM.

5:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
BARPET

Advocate for the Petitioner : MR. J M A CHOUDHURY

Advocate for the Respondent : SC, CO OP

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

19.01.2024

Heard Shri JMA Choudhury, learned counsel for the petitioners. Also heard Shri G. Bordoloi, learned Standing Counsel, Cooperation Department.

It is the case projected by the petitioners that they are shareholders and elected members of the Board of Directors of M/s Uttar Baguribari GPSS Limited in the district of Barpeta.

The grievance is against suspension of the PDS license which was done on 10.01.2023.

The challenge has been structured on a primary point of law pertaining to the Assam Public Distribution of Article Orders, 1982. It is submitted that Clause 15 of the said orders of 1982 pertains to suspension and cancellation. While Clause 15 (1) vests powers to the appropriate authority to suspend or cancel, Clause 15 (2) makes it clear that in case of cancellation, a proper opportunity is to be given to the concerned parties. As regards suspension, it has been laid down though an order of suspension is not necessarily required to be preceded by an opportunity, such an order would remain valid for a period of 90 days, if no proceeding for cancellation is drawn up in the meantime.

It is the specific case of the petitioners that the impugned order of suspension dated 10.01.2023 was not followed by any order or proceeding towards cancellation of the license within 90 days from the said date.

This Court is also of the view that under the Articles Order of 1982, a cancellation is not necessarily required to be preceded by a suspension as suspension itself can be construed to be a penalty. The aforesaid view of this Court is fortified by use of the expression "or" which is disjunctive or in between the terms "suspension" and "cancellation".

Shri Bordoloi, the learned Standing Counsel has fairly submitted that as per oral instructions received by him, the order of suspension has been continuing beyond the period of 90 days and the show cause notice was issued after the period of 90 days.

Considering the aforesaid submissions and the law holding the field, this Court is of the opinion that since the period of 90 days is over since the date of the suspension and the show cause notice was not served within that period the same cannot be sustained in law and accordingly the impugned order dated 10.01.2023 is set aside. It is however clarified that setting aside of the impugned order will not have any effect in

the proceeding initiated for cancellation vide the show cause notice which is required to be brought to a logical conclusion, as per law.

Writ petition accordingly stands allowed in the terms indicated above.

JUDGE

Comparing Assistant