

GAHC010212372024



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

Case No. : WP(C)/5279/2024

NUR ABBAS AND 10 ORS
S/O- LATE HAJI ABDUL HUSSAIN,
VILLAGE- MILANNAGAR TOWN,
P.O.- BALADMARI,
P.S. AND DIST.- GOALPARA, ASSAM,
PIN CODE- 783101.

2: HARAN KR. SARKAR
S/O- LATE KHAGENDRA NATH SARKAR
VILLAGE- KALAPANI PART-1
P.O.- BALBALA
P.S.- AGIA
DIST.- GOALPARA
ASSAM
PIN- 783120.

3: RAKESH SAHA
S/O- JAYANTA SAHA
VILLAGE- BAKIPUR
P.O.- KRISHNAI
P.S.- KRISHNAI
DIST.- GOALPARA
ASSAM
PIN- 783126.

4: ASHRAFUL ISLAM MOLLIK
S/O- LATE ANOWAR UZZAMAN MOLLIK
VILLAGE- AMBARI
P.O. AMBARI BAZAR
P.S.- BAGUAN
DIST.- GOALPARA
ASSAM
PIN- 783129.

5: SAJIDUR RAHMAN
S/O- MOKIBAR RAHMAN
P.O. AND P.S.- GOALPARA
DIST.- GOALPARA
ASSAM
PIN- 783101.

6: KIRAN CHANDRA RABHA
S/O- LOHESOR RABHA
VILLAGE- BARDAK
P.O.- SUWARMARI
P.S.- AGIA
DIST.- GOALPARA
ASSAM
PIN- 783201.

7: HOBIBOR RAHMAN
S/O- NABAHAR ALI
VILLAGE- BORKANDA
P.O.- DOLGUMA
P.S.- MATIA
DIST.- GOALPARA
ASSAM.
PIN- 783125.

8: AMANUL HOQUE
S/O- HABIBAR RAHMAN
VILLAGE- KHOLAIPARA
P.O. AND P.S. MATIA
DIST.- GOALPARA
ASSAM
PIN- 783125.

9: LUTFOR RAHMAN
S/O- LATE SOFIRUDDIN AHMED
VILLAGE- SARDARPARA
P.O.- DHAIGAON
P.S.- KRISHNAI
DIST.- GOALPARA
ASSAM
PIN- 783126.

10: MUZAMMEL HOQUE
S/O- NIDAN ALI
VILL- PAHANISINGPARA
P.O.- DUBAPARA
P.S.- MORNAI
DIST.- GOALPARA

ASSAM
PIN- 783101.

11: JAHANGIR ALOM SIKDAR
S/O- LATE SATTAR ALI SIKDAR
VILL- BALADMARI TOWN
P.O.- BALADMARI
P.S. AND DIST.- GOALPARA
ASSAM
PIN- 783121

VERSUS

THE UNION OF INDIA AND 9 ORS
REPRESENTED BY THE SECRETARY,
MINISTRY OF CHEMICALS AND FERTILIZERS,
GOVERNMENT OF INDIA,
NEW DELHI, PIN- 110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY
FAMILY AND HEALTH WELFARE DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-6.

3:THE DIRECTOR OF HEALTH SERVICES
HENGRABARI
GUWAHATI-36.

4:THE DISTRICT COMMISSIONER
GOALPARA
ASSAM
PIN- 783121.

5:THE ADDITIONAL DISTRICT COMMISSIONER
IN-CHARGE HEALTH SERVICES
GOALPARA
ASSAM
PIN- 783121.

6:JOINT DIRECTOR OF HEALTH SERVICES
GOALPARA
ASSAM
PIN- 783101.

7:THE DRUGS INSPECTOR
GOALPARA

ASSAM
PIN- 783101.

8:JANAUSHADHI KENDRA
GOALPARA CIVIL HOSPITAL
GOALPARA
ASSAM
REPRESENTED BY SRI DEBU DEY
OF WARD NO. 5
TILAPARA
GOALPARA
PRESENTLY RESIDING AT JANAUSHADHI KENDRA
GOALPARA CIVIL HOSPITAL
GOALPARA
ASSAM
PIN- 783101.

9:DEBU DEY
PROPRIETOR OF JANAUSHADHI KENDRA
GOALPARA CIVIL HOSPITAL
RESIDENT OF WARD NO. 5
TILAPARA
GOALPARA
PRESENTLY RESIDING AT JANAUSHADHI KENDRA
GOALPARA CIVIL HOSPITAL
GOALPARA
ASSAM
PIN- 783101.

10:ABHIJIT GHOSH
PARTNER OF JANAUSHADHI KENDRA
GOALPARA CIVIL HOSPITAL
GOALPARA
ASSAM
PIN- 783101

Advocate for the Petitioner : MR. M U MAHMUD, MS. B CHETIA,MS. D BORA,MR S ISLAM,MRS. M SAIKIA,MR S H MAHMUD

Advocate for the Respondent : DY.S.G.I., SC, HEALTH,GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 25.10.2024

Heard Mr. M.U. Mahmud, learned counsel for the petitioners; Mr. D.J. Das, learned Central Government Counsel [CGC] for the respondent no. 1; Ms. S. Sarma, learned Standing Counsel, Health & Family Welfare Department for the respondent nos. 2, 3, 5, 6 & 7; and Ms. M. Barman, learned Junior Government Advocate, Assam for the respondent no. 4.

2. The petitioners, 11 in nos., have joined together to institute this writ petition under Article 226 of the Constitution of India and have sought to invoke the extra-ordinary and discretionary jurisdiction of this Court seeking a direction to cancel the licence issued for setting up a *Janaushadhi Kendra* [Pharmacy] under the *Pradhan Mantri Bhartiya Janaushadhi Pariyojana [PMBJP] Scheme*, framed by the Department of Pharmaceuticals, Ministry of Chemicals & Fertilizers, Government of India [GoI].

3. From the case papers appended to the writ petition, it has emerged that with an objective of making quality generic medicines available at affordable prices to all, the *Pradhan Mantri Bhartiya Janaushadhi Pariyojana [PMBJP] Scheme* was launched by the Department of Pharmaceuticals, Ministry of Chemicals & Fertilizers, Government of India [GoI] in November, 2008. Under the *PMBJP Scheme*, dedicated outlets known as '*Janaushadhi Kendras*' are to be opened to provide generic medicines at affordable prices. The *PMBJP Scheme* is implemented by a society registered under the Societies Registration Act, namely, the Pharma & Medical Bureau of India [PMBI] [erstwhile Bureau of Pharma PSUs of India (BPPI)]. The Scheme is operated by Government agencies as well as by the private entrepreneurs. The provision for one-time incentive of Rs. 2,00,000/- is made under the *PMBJP Scheme* for furniture & fixture and computer & printers to the *Janaushadhi Kendras* opened in North-Eastern States and other areas, mentioned in the *PMBJP Scheme*. Prices of the *Jan Aushadhi* medicines are 50% to 90% less than that of branded medicines prices in the open market and the medicines are procured only from the World Health Organization - Good Manufacturing Practice [WHO-GMP] certified suppliers for ensuring the quality of the products. Each batch of drug is tested at laboratories

accredited by National Accreditation Board for Testing and Calibration Laboratories [NABL] for ensuring best quality. As per the *PMBJP Scheme*, the State Health and associated Government authorities have been requested on regular basis to open *Janaushadhi Kendras* in various Government Hospitals and associated premises by providing rent free spaces. The *PMBJK Scheme* operators for *Janaushadhi Kendras* are located in Government Hospitals/Medical College premises and the sites are to be selected by the State Government.

4. The petitioners have projected that they are owners of various pharmaceuticals/pharmacies located outside the campus of the Goalpara Civil Hospital. No documents, however, are found enclosed with the writ petition to show that the petitioners are owners of pharmacies holding licences.

5. On 26.09.2024, a *Janaushadhi Kendra* has been opened within the premises of the Goalpara Civil Hospital near the main gate. As a result of opening of the *Janaushadhi Kendra* within the premises of the Goalpara Civil Hospital, almost all the patients have started purchasing the generic medicines from the said *Janaushadhi Kendra*. It is the grievance of the petitioners that as a result of opening of the *Janaushadhi Kendra* for selling generic medicines which is at a price 50% to 90% lesser than the branded medicines, the sale of medicines in the pharmacies owned by the petitioners have gone down drastically. It is the further case of the petitioners that the two partners of the Firm, that is, the respondent nos. 9 and 10, who have been granted the licence to set up the *Janaushadhi Kendra* within the premises of the Goalpara Civil Hospital have engaged persons to inform the needy persons to purchase medicines from the said *Janaushadhi Kendra* opened within the premises of the Goalpara Civil Hospital. The petitioners have further averred that in the process, the respondent no. 9 and the respondent no. 10 have been indulging themselves in selling medicines other than the generic medicines as they are owners of another pharmacy located in another location in the town of Goalpara.

6. In so far as the first grievance of the petitioners is concerned, that due to opening of the *Janaushadhi Kendra* within the premises of the Goalpara Civil Hospital the pharmacies owned by the petitioners have caused pecuniary harm and loss of business from competition, the same cannot be espoused as a cause of action to maintain a writ petition under Article 226 of the Constitution of India. It cannot be said that the petitioners have been denied or deprived of any

legal right to maintain such a writ petition and the petitioners do not fall in the category of 'aggrieved persons'. It cannot be said that the petitioners have sustained injury to any of their legally protected interests. In this connection, to the decision in *Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed and others*, reported in [1976] 1 SCC 671, can be appropriately referred to.

7. In so far as the grievance of the petitioner that the respondent nos. 9 and 10 through the *Janaushadhi Kendra* [the respondent no. 8] have resorted to irregularities by selling medicines other than generic medicines, it is found that the petitioners have not approached the appropriate authority, that is, the Bureau of Pharma Public Sector Undertakings of India, set up by the Department of Pharmaceuticals, Ministry of Chemicals & Fertilizers, Government of India [GoI], before approaching this Court. Without ventilating their such grievance before the appropriate authority, who being the licensing authority also has the power and authority to cancel the licence, the petitioners could not have approached this Court to invoke the extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution of India. Seeking the reliefs, mentioned above, as such kind of complaint would necessitate a fact-finding enquiry.

8. In view of the above fact situation, this writ petition is found not maintainable to be entertained and the same is accordingly dismissed.

JUDGE

Comparing Assistant