

GAHC010213322015



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

Case No. : WP(C)/6226/2015

NAREN KURMI
S/O LT. KUNWUA KURMI VILL- MULUKGAON, MIRIGAON, P.O.
MULUKGAON, P.S. CHABUA DIST. DIBRUGARH, ASSAM, PIN - 786189.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
FOOD, CIVIL SUPPLIES and CONSUMER AFFAIRS, DISPUR, GUWAHATI-6.

2:THE DIRECTOR

FOOD
CIVIL SUPPLIES and CONSUMER AFFAIRS
GOVT. OF ASSAM
BHANGAGARH
GUWAHATI-5.

3:THE DEPUTY COMMISSIONER-CUM- DEPUTY
DIRECTOR
I/C
FOOD
CIVIL SUPPLIES and CONSUMER AFFAIRS
DIBRUGARH
DIST. DIBRUGARH
ASSAM.

4:THE INSPECTOR

FOOD
CIVIL SUPPLIES and CONSUMER AFFAIRS
DIBRUGARH

DIST. DIBRUGARH
ASSAM.

5:THE SECRETARY

BOGDUNG GPSS LTD.
CHABUA
P.O. CHABUA
DIST. DIBRUGARH
ASSAM
PIN - 78786189.

6:SRI SANTALAL SAHANI
S/O SRI KANAI SAHANI R/O GEREKI GAON P.O. MULUKGAON
P.S. CHABUA DIST. DIBRUGARH
ASSAM
PIN - 78618

Advocate for the Petitioner : MS.P BARUAH

Advocate for the Respondent : MR.S K BARKATAKIR-6

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

13.02.2024

1. Heard Mr. S.A. Ahmed, learned counsel for the petitioner. Also heard Mr. G. Bokaliyal, learned counsel for the respondents No. 1, 2, 3 and 4. Mr. S.K. Barkataki, learned counsel appears for the respondent No.6. No one appears for the respondent No. 5.

2. The petitioner, who is a Public Distribution System (PDS) licensee at Gereki Nepali Gaon under Bogdung GPSS of Chabua Block of Dibrugarh district, has prayed for setting aside the impugned order dated 14.08.2015 passed by the Deputy Commissioner-cum-Deputy Director, I/C, Food, Civil Supplies and Consumer Affairs, Dibrugarh, by which the petitioner's PDS licence has been

cancelled.

3. The petitioner's case, as can be seen from the documents annexed, is that the petitioner's PDS licence was initially suspended on 22.01.2015, vide order dated 22.01.2015, issued by the Deputy Director, I/C, Food, Civil Supplies and Consumer Affairs, Dibrugarh. The suspension had been made in view of the complaint made against the petitioner that he had not lifted and distributed the PDS/Targeted PDS commodities for the last 3(three) months to consumers, thereby violating Clause 14 and 26 read with the licensing terms and condition 8(1) of the Assam Public Distribution of Articles Order, 1982 (hereinafter referred to as 'the APDA Order, 1982')

4. Being aggrieved with the suspension of his PDS licence, the petitioner approached this Court vide WP(C) No.1425/2015. This Court disposed of WP(C) No.1425/2015, vide order dated 17.03.2015, by agreeing with the stand taken by the State Government's counsel that there was an alternative remedy available by way of an appeal under Clause 29 of the APDA Order, 1982. As such, liberty was given to the petitioner to file an appeal.

5. In pursuance to the order dated 17.03.2015 passed in WP(C) No. 1425/2015, the petitioner submitted an appeal, which was disposed of by the Deputy Commissioner and Appellate Authority, Dibrugarh vide order No.DSC.2/2015/161 dated 14.08.2015. Vide the order dated 14.08.2015, the appeal petition of the petitioner was rejected and the PDS licence of the petitioner was also cancelled.

6. The petitioner has, by way of this writ petition, put the impugned order

dated 14.08.2015 issued by the Deputy Commissioner and Appellate Authority, Dibrugarh under challenge.

7. The petitioner's counsel submits that the impugned order dated 14.08.2015 could not have been passed by the Deputy Commissioner, as the suspension order dated 22.01.2015, which was under challenge in the appeal, was also issued by the Deputy Commissioner.

8. The counsels for the respondents, on the other hand, submit that the suspension order dated 22.01.2015 was issued by the Deputy Director, I/C, Food, Civil Supplies and Consumer Affairs, Dibrugarh and not by the Deputy Commissioner. As such, there was no bar on the Deputy Commissioner to decide the appeal against the suspension order issued by an officer, lower in rank than the Deputy Commissioner.

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

10. The issue herein is whether the suspension order dated 22.01.2015 and the rejection of the appeal and cancellation of the petitioner's PDS licence, vide the impugned order dated 14.08.2015, had both been issued by the same authority, i.e., the Deputy Commissioner.

11. A perusal of the suspension order dated 22.01.2015 shows that the same has been issued by the Deputy Director, I/C, Food, Civil Supplies and Consumer Affairs, Dibrugarh and not by the Deputy Commissioner. There is nothing to show that the Deputy Commissioner, Dibrugarh was also holding the charge of Deputy Director, I/C, Food, Civil Supplies and Consumer Affairs, Dibrugarh at the time of issuance of the suspension order.

12. The impugned order dated 14.08.2015 rejecting the appeal filed by the petitioner and cancelling his PDS licence has been issued by the Deputy Commissioner, Dibrugarh. There is nothing to indicate in the order dated 14.08.2015 that the Deputy Commissioner, Dibrugarh was also the Deputy Director, I/C, Food, Civil Supplies and Consumer Affairs.

13. Though the petitioner in his prayer in the writ petition has prayed for setting aside the impugned order passed by the Deputy Commissioner-cum-Deputy Director, I/C, Food, Civil Supplies and Consumer Affairs, Dibrugarh, as stated earlier, there is nothing to indicate that the impugned order dated 14.08.2015 had been issued by the Deputy Commissioner-cum-Deputy Director, I/C, Food, Civil Supplies and Consumer Affairs, Dibrugarh.

14. Clause 29 of the APDA Order, 1982 provides as follows:-

“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."

15. A perusal of the above Clause 29 clearly shows that an order made by any officer lower in rank than the Deputy Commissioner can be appealed against before the Deputy Commissioner. As the order of suspension had been issued by the Deputy Director, I/C, Food, Civil Supplies and Consumer Affairs, who is lower in rank than the post of Deputy Commissioner, there is no infirmity with the Deputy Commissioner issuing the impugned order dated 14.08.2015 in appeal.

16. Clause 29(1)(c) of the APDA Order, 1982 provides that an order made by the Deputy Commissioner can be appealed against before the Commissioner. As the impugned order dated 14.08.2015 can be put to challenge before the Commissioner, this Court is of the view that the petitioner should be given the liberty to approach the Commissioner, Upper Assam Division, Jorhat, by way of an appeal against the impugned order. Though there is a limitation period in filing an appeal under Clause 29(2), this Court is of the view that in the event the petitioner files an appeal in terms of Clause 29(1)(c) of the APDA Order, 1982, the Commissioner, Upper Assam Division, Jorhat should consider the fact that the present writ petition had been filed on 18th September, 2015 and as such, should consider the application of the petitioner for condonation of delay, in terms of Section 14 of the Limitation Act.

17. The writ petition is accordingly disposed of, with liberty being given to the petitioner to avail the alternative remedy available. In the event the petitioner files an appeal and the condonation of delay application is allowed, the Commissioner, Upper Assam Division, Jorhat should attempt to dispose of the

appeal expeditiously and preferably within a period of 4(four) months from the date of receipt of a certified copy of this order, after giving an opportunity of hearing to the respondent No.6, who has been issued a fair price shop dealer licence.

JUDGE

Comparing Assistant