

GAHC010259012017



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

Case No. : WP(C)/4572/2017

MAHIBUR RAHMAN CHOUDHURY
S/O LATE SIRAJUL ISLAM CHOUDHURY, R/O DOBOKA TOWN, PO-
DOBOKA, PS-DOBOKA, DIST. HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
FOOD, CIVIL SUPPLIES AND CONSUMER AFFAIRS, DISPUR, GUWAHATI-6

2:THE DEPUTY COMMISSIONER
HOJAI
SHANKARDEV NAGAR
DIST. HOJAI
ASSAM

3:THE ASSISTANT DIRECTOR
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
HOJAI
SHANKARDEV NAGAR
ASSA

Advocate for the Petitioner : MR.D TALUKDAR, MR.D BARMAN,MR.D DAS,MR.K H
KHANDAKAR,MR.K M HASSAN

Advocate for the Respondent : , GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 07.08.2024

Heard Mr. K. H. Khandakar, learned counsel for the petitioner. Also heard Mr. N. Goswami, learned Government Advocate, appearing on behalf of all the respondents.

2. The petitioner, herein, by way of instituting the present proceeding, has presented a challenge to an order, dated 28.06.2017, issued by the Deputy Commissioner, Hojai, cancelling the Sub-Wholesale Licence for Blue Dyed S.K. Oil, as granted to the petitioner, on the basis of the allegations so coming on record against him.

3. As projected in the writ petition; the petitioner, herein, was granted a Licence, in the name of his Firm viz. "M/s. Nilbagan Auto Sales Centre, Nilbagan Bazar, Nilbagan", by the concerned authority, bearing No. HJS(PDS)K.51/95, under the provisions of the Assam Public Distribution of Articles Order, 1982, to function as a Sub-Wholesaler in relation to PDS items. The petitioner Firm was also appointed as a dealer, by the Indian Oil Corporation Limited(IOCL), for Nilbagan, for retail sale or supply of Kerosene Oil for domestic purposes and Light Diesel Oil(LDO).

4. The petitioner contends that on account of certain unavoidable circumstances; he was unable to run his dealership and by way of a power-of-attorney, one Billaluddin Barbhuyan, was engaged to manage and look after the affairs of the dealership under the said Licence.

5. During the conduct of business under the said Licence, certain

allegations of malpractice came to be levelled against the Licencee and accordingly, the Bureau of Investigation (Economic Offences) proceeded to seize the Blue Dyed S.K. Oil kept in the premises of the Licencee and investigation in the matter, was so conducted. It was found during the inquiry that the Licencee was running the business without valid storage Licence under the Petroleum Act, 1934. It was further noticed that the petitioner was not displaying the price and stock of the materials allotted to him. The said materials having coming on record, in the inquiry; a Show Cause Notice came to be issued to the petitioner, herein, on 05.04.2017, by the Deputy Commissioner, Hojai, directing him to reply to the allegations so contained therein. The petitioner, accordingly, submitted his reply in the matter, on 18.04.2017. Thereafter, vide order, dated 05.10.2017; the Deputy Commissioner, Hojai, proceeded to direct seizure of the Blue Dyed S.K. Oil from the premises of the Licencee.

6. The Show Cause Notice as issued to the petitioner and the reply submitted by the petitioner to the said Show Cause Notice was, thereafter, taken into consideration and after affording an opportunity of hearing to the petitioner in the matter; the Deputy Commissioner, Hojai, vide order, dated 28.06.2017, considering the issues so arising in the matter and drawing a conclusion that the petitioner, herein, had been operating the dealership of Blue Dyed S.K. Oil in clear violations of the terms and conditions of the Licence issued to him under the Assam Public Distribution of Articles Order, 1982; proceeded to cancel the Licence was so issued to the petitioner, without prejudice to the any action that may be taken by the Bureau of Investigation (Economic Offences) in the matter, under the relevant Acts.

7. The petitioner, herein, has also contended that the criminal proceedings

as instituted in the matter on the basis of the inquiry made by the Bureau of Investigation (Economic Offences) authorities, is presently pending in its trial stage before the criminal Court.

8. Being aggrieved by the issuance of the order, dated 28.06.2017; the petitioner has instituted the present proceeding.

9. Mr. Khandakar, learned counsel for the petitioner, submits that he was not operating the said dealership and in terms of the power-of-attorney, dated 10.07.2018; the activities of the said dealership was being managed by his power-of-attorney holder Billaluddin Barbhuyan.

10. Mr. Khandakar, learned counsel, also submits that the allegations so levelled against the petitioner, are clearly perverse and the petitioner, in his reply, had dealt with the matter and clarified the position. However, the respondent authorities, without a proper consideration of the matter; proceeded to issue the order, dated 28.06.2017, cancelling the Licence, in question.

11. Per contra, Mr. Goswami, learned Government Advocate, appearing for the State respondents, submits that the petitioner, herein, had virtually transferred the said Licence to one Billaluddin Barbhuyan without obtaining permission from the Licence issuing authority and it was the said Billaluddin Barbhuyan who was carrying-out the business under the said Licence which is contended to be, in gross violation of the Assam Public Distribution of Articles Order, 1982.

12. Mr. Goswami, learned Government Advocate, further contends that the inquiry as carried-out by the Bureau of Investigation (Economic Offences) had revealed that the petitioner was storing the excess quantity of Blue Dyed S.K. Oil in his premises and the same was not accounted for. It was presumed that such huge quantity of Blue Dyed S.K. Oil was so stored for selling in the market at a higher price.

13. Mr. Goswami, learned Government Advocate, also submits that the authorities of the Indian Oil Corporation Limited (IOCL), had clarified that there was no approval granted by the Corporation for the operation of the dealership by said Billaluddin Barbhuyan. Accordingly, the learned Government Advocate submits that the respondent authorities, noticing the illegalities committed in the matter of operation of the said dealership by the petitioner, herein; had issued the said order, dated 28.06.2017, and the said order being a well-reasoned order, would not call for any interference of this Court.

14. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

15. At the outset, it is to be noted that basing on the allegations levelled against the petitioner, herein, in pursuance of the inquiry conducted by the Bureau of Investigation (Economic Offences) authorities; the criminal proceeding as instituted against him, is stated to be pending trial. Independent of the said criminal proceeding; the Food, Civil Supplies and Consumer Affairs Department, Assam, had proceeded to issue a Show Cause Notice to the petitioner, herein, on 05.04.2017, levelling against him, allegations pertaining to the illegalities committed by him in running the dealership, in question. The petitioner submitted his reply in the matter and

thereafter, he was required to appear before the Deputy Commissioner, Hojai, for a personal hearing. On conclusion of the hearing and on consideration of the Show Cause Notice as well as the reply submitted by the petitioner therein; the Deputy Commissioner, Hojai, vide order, dated 28.06.2017, had cancelled the Sub-Wholesale Licence issued to the petitioner's Firm viz. M/s. Nilbagan Auto Sales Centre, Nilbagan Bazar, Nilbagan.

16. A perusal of the order, dated 28.06.2017, goes to reveal that the petitioner, herein, was found to have violated the various provisions of the Assam Public Distribution of Articles Order, 1982, and accordingly, he was found to have been irregularly running the Blue Dyed S.K. Oil dealership, as allotted to him.

17. The petitioner, in the personal hearing, so conducted in the matter; has been held to have not brought on record any materials to dispute the allegations so levelled against him and accordingly, the allegations as levelled against the petitioner in the Show Cause Notice, dated 05.04.2017, was held to have been established.

18. It is to be noted that this being a departmental inquiry; the standard of proof would be preponderance of probability and the departmental authorities having, on consideration of the materials placed before it; come to a conclusion that the petitioner was guilty of the allegations so levelled against him in the Show Cause Notice, dated 05.04.2017, the distribution of Blue Dyed S.K. Oil being one of public importance; this Court would not in exercise of power of judicial review, proceed to substitute its own views in place of the views reached by the authorities in the order, dated 28.06.2017.

19. In addition to the above position; it is to be noted that the petitioner, without any approval obtained from the Indian Oil Corporation Limited(IOCL); had handed over the operation of the dealership, in question, to one Billaluddin Barbhuyan which is again a violation of the agreement so entered into by the petitioner with the said Corporation.

20. In that view of the matter, this Court is of the considered view that the order, dated 28.06.2017, being an independent exercise carried-out by the departmental authorities to ascertain as to whether the allegations levelled against the petitioner vide the Show Cause Notice, dated 05.04.2017, were so established basing on the materials coming on record; the order, dated 28.06.2017, issued by the Deputy Commissioner, Hojai, would not call for any interference. Consequently, this writ petition is held to be devoid of merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant