

GAHC010142322017



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

Case No. : WP(C)/5885/2017

KHAGEN SENSUA

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
FOOD, CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT, GHY-6,
ASSAM

2:THE DIRECTOR
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
ASSAM
BHANGAGARH
GHY
KAMRUPM
ASSAM

3:THE DEPUTY COMMISSIONER
SIVASAGAR
DIST- SIVASAGAR
ASSAM

4:THE DEPUTY DIRECTOR
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
SIVASAGAR
ASSA

For the Petitioner(s) : Mr. R. Phukan, Advocate
For the Respondent(s) : Mr. S. R. Baruah, Standing Counsel
Date of Hearing : 19.01.2024
Date of Judgment : 19.01.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

1. The instant writ petition has been filed by the Petitioner being aggrieved by the order dated 17.03.2017 passed by the Deputy Director-cum-Issuing Authority, Food, Civil Supplies and Consumer Affairs, Sivasagar whereby the license of the Petitioner was cancelled.
2. The facts as could be seen from a perusal of the writ petition are that the Petitioner herein was issued a license under the provisions of the Assam Public Distribution of Articles Order, 1982 (for short "the Order"). The said license was renewed from time to time as would be apparent from a perusal of Annexure-1 to the writ petition. Be that as it may, on 14.02.2017 at 10:30 AM, the Deputy Commissioner, Sivasagar had made an inspection and found the shop of the Petitioner to be closed and there was also no display board showing the present stock. Under such circumstances, a notice was issued on 23.02.2017 asking the Petitioner to show cause for the violation mentioned in the said notice and to submit a reply within 3 (three) days before the Deputy Director-cum-Issuing Authority, Food, Civil Supplies and Consumer Affairs, Sivasagar failing which legal action would be taken. The Petitioner on receipt of the said Show Cause notice submitted a reply on 27.02.2017 stating inter alia that he had to go to

Demow Hospital for the treatment of his wife on that day when the inspection was carried out for which the shop was kept closed. He further stated that he had submitted the register in the office and the incident occurred due to the illness of his wife.

3. The record further reveals that to the said reply, the Petitioner also had submitted the medical certificate as well as the prescription dated 12.02.2017 of the Demow Primary Health Centre cum Community Health Centre. Pursuant thereto, the record reveals that vide an order dated 17.03.2017, the Deputy Director-cum-Issuing Authority, Food, Civil Supplies and Consumer Affairs, Sivasagar passed an order holding that the reply submitted by the Petitioner was not satisfactory for which vide the said order dated 17.03.2017 which have been impugned in the instant proceedings, the license of the Petitioner was cancelled.

4. The record further reveals that the Petitioner had duly submitted a representation before the Deputy Commissioner, Sivasagar, however, the said representation having not been taken note of, the instant writ petition was filed.

5. This Court have also taken note of the fact that vide an order dated 20.09.2017 notice of motion was issued. The record also reveals that even after a passage of more than 6 (six) years, the Respondents have not filed their affidavit-in-opposition. This Court has also heard the learned counsels appearing on behalf of both the parties.

6. The learned counsel appearing on behalf of the Petitioner had assailed the impugned order dated 17.03.2017 primarily on two grounds. First, as per Clause 15(2) of the Order of 1982, there can be no cancellation of the license without granting an opportunity to the licensee to state his case against the proposed

cancellation. The learned counsel for the Petitioner therefore submitted that the notice which was issued on 23.02.2017 did not at all mention that the said notice was issued in terms with Clause 15(2) and against a proposed cancellation. The learned counsel for the Petitioner further submitted that the license which has been issued to the Petitioner gives a right to the Petitioner to trade in the commodities mentioned in the said license. He further submitted that a perusal of the impugned order dated 17.03.2017 would clearly show that there is no reason so assigned in the said order to the effect that as to why the Petitioner's reply was not satisfactory. The learned counsel therefore submitted that it is a well settled principle of law that when an authority passes an order without assigning any reasons, the said order on the face of it would be arbitrary and accordingly, in violation of Article 14 of the Constitution.

7. I have also heard Mr. S. R. Baruah, the learned Standing Counsel appearing on behalf of the Respondents who submitted that the Petitioner had not replied to the various other violations which were clearly pointed out in the notice except assigning the reasons why the Petitioner's shop was closed.

8. This Court upon hearing the learned counsels for the parties is of the opinion that a perusal of Clause 15(2) of the Order of 1982 clearly stipulates that the licensee has to be intimated with a notice as regards the proposed cancellation. This Court had duly perused the said notice which was issued on 23.02.2017 wherein there was no mention that the said notice was issued against the proposed cancellation rather it only stated that legal action would be initiated. Secondly, this Court had also perused the impugned order dated 17.03.2017 wherein the Respondent Authorities did not deal with the reply by giving reasons as to why the said reply was not satisfactory.

9. From a perusal of the impugned order, it only reveals that the reply so

submitted by the Petitioner was found to have been made in a routine manner for which the Show Cause reply was not satisfactory. Under such circumstances, this Court interferes with the order dated 17.03.2017 by which the Petitioner's license was cancelled. The Respondent Authorities are granted the liberty to issue a fresh Show Cause Notice in terms with Clause 15(2) of the Order of 1982 and thereby calling upon the Petitioner to submit the reply. Upon such reply being submitted, the Respondent Authorities would be at liberty to take such action as deem fit in accordance with law. However, in doing so, the Respondent Authorities have to pass a reasoned order.

10. This Court further makes it clear that for a period of 90 days from today, the license which has been issued to the Petitioner shall remain suspended and the Respondent Authorities would be at liberty to take such action as deem fit within the said period.

11. Before parting with the records, this Court makes it clear that this Court had not decided on the merits. The interference have been made on the ground of violation of the principles of natural justice as well as on the ground that the order dated 17.03.2017 is not a reasoned order. Consequently, the Respondent Authorities would be at liberty to decide as regards the fate of the Petitioner's license without being influenced to the observations made in the instant order.

12. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant