

M/S Joleswri Enterprise vs The State Of Assam And Anr on 7 April, 2022

Author: Devashis Baruah

Bench: Devashis Baruah

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GAHC010056772022

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

Case No. : WP(C)/2027/2022

M/S JOLESWRI ENTERPRISE
REP. BY BIJUMONI DEORI BHARALI, AGE-41YRS.
D/O- PUNYA SINGH BHARALI, R/O- GANGA PATH, H.NO. 12, ANANDAPUR,
HENGRABARI, DISPUR, KAMRUP (M), PIN-781006, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE SECRETARY, REVENUE AND DISASTER MANAGEMENT
DEPARTMENT, GOVERNMENT OF ASSAM, DISPUR, GUWAHATI-781006

2:THE DEPUTY COMMISSIONER
KAMRUP (M)
GUWAHATI-01
ASSA

Advocate for the Petitioner : MR P P MEDHI

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/2088/2022

M/S YUJJANA AGRO
REP. BY SANJIB BORAH
AGE- 40YRS
S/O- KESHAV BORAH
R/O HOUSE NO. 81
PANJABARI
GUWAHATI

ASSAM
P.O- PANJABARI
P.S- DISPUR

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PIN-781037
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE SECY. REVENUE AND DISASTER MANAGEMENT
DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-781006

2:THE DEPUTY COMMISSIONER

KAMRUP (M)
GUWAHATI- 781001
ASSAM

Advocate for : MR P P MEDHI
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

:: ORDER:

:

Date : 07-04-2022 Heard Mr. P.P. Medhi, the learned counsel for the Petitioners and Mr. B. Deuri, the learned counsel appearing for the Respondents.

2. In both the writ petitions, the Petitioners have assailed the Closure Notice dated 18.02.2022 issued to the respective Petitioners.

3. The facts of both the writ petitions being similar, the same are disposed off by this common order.

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4. Both the Writ Petitioners are engaged in extracting, purifying and bottling of water and carrying out its business activities in the city Guwahati. The case of the Petitioners in both the writ petitions is that the water so bottled by the Petitioners is used in packaged drinking water, distilled water,

battery industry, phenyl industry, hand wash manufacturing, liquid dish wash manufacturing etc. Admittedly the Petitioners do not have any license under the Food Safety and Standards Act, 2006 (for short "the Act of 2006").

5. At this stage, it may be relevant to mention that Section 3(j) of the said Act of 2006 defines the term "food" and the same for the sake of convenience is quoted herein below :-

"3(j) "food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extent defined in clause (ZK) genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;"

Section 3(n) of the said Act of 2006 defines the term "the food business" which is quoted herein below :-

"3(n) "food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, Page No.# 4/6 processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients ; "

6. A conjoint reading of Section 3(j) and Section 3 (n) would mean for the purpose of the instant case that a person carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import including food services, catering services, sale of food or food ingredients would be a food business and from the definition as mentioned in Section 3(j) packaged drinking water will come within the ambit of food business. A further perusal of the said Act of 2006 and more particularly Section 31 would show that no person shall commence or carry on any food business except under a license. It has also been specifically mentioned in Sub-Section (3) of Section 31 that any person desirous to commence or carry on any food business shall make an application for grant of a license to the designated officer in such manner containing such particulars and fees as may be specified by the regulations.

7. Admittedly in the instant cases, the Petitioners do not possess licenses as is required under the said Act of 2006. However, it is the Petitioners' case that the Petitioners have duly applied for the said licenses and such applications are pending before the authorities. But a Closure Notice dated

18.02.2022 issued by the Respondent Authorities to close the entire business unit of the Petitioners on the basis of not having license under the Act of 2006 is illegal and beyond Page No.# 5/6 jurisdiction in as much as the Petitioners' caters the packaged water for various other purposes such as distilled water, battery industry, phenyl industry, hand wash manufacturing, liquid dish wash manufacturing etc. which have no relation to human consumption.

8. This Court had issued notice on 25.03.2022 whereby the Respondent Authorities were directed to apprise this Court with the reasons why the Petitioners' business premises have been closed by the Closure Notice dated 18.02.2022 issued to the respective Petitioners

9. Mr. B. Deuri, the learned counsel appearing on behalf of the Respondents submits upon instruction that when a team of officials along with the Executive Magistrate from the Office of the Deputy Commissioner, Kamrup Metropolitan visited the Petitioners' units on 18.02.2022, the said units could not produce any required documents for which the Closure Notice was issued. It is the specific stand of the Respondents that the Petitioners were duly informed to close operation till such time, documents were not made available and the Respondents have no objection in the Petitioners' carrying on the business provided they have the available documents.

10. I have heard the learned counsels for the parties and given my anxious consideration to the matter.

11. The Act of 2006 categorically mandates that a person carrying on a food business as defined in Section 3(n) is required to have a license. Admittedly the Page No.# 6/6 Petitioners' do not have a license and as such the Petitioners cannot be permitted to carry on the business of packaged drinking water till the Petitioners obtain the necessary license under the Act of 2006. However, if the packaged water extracted, purified and bottled by the Petitioners are being used for manufacturing other goods which are not for human consumption, there is no bar in terms with the Act of 2006. Under such circumstances, the Closure Notices dated 18.02.2022 issued to the Petitioners are set aside and quashed with the observations that the Petitioners can carry on their business of packaged bottled water only for the purpose of activities which have no connection whatsoever to human consumption. It is further made clear that unless and until the Petitioners obtain the necessary licenses under the Act of 2006, the Petitioners shall not carry out any food business as defined in Section 3(n) of the Act of 2006.

12. The Petitioners shall also submit an undertaking before the Respondent No. 2/the Deputy Commissioner, Kamrup(M) that they shall not carry out any food business till they obtain the license under the Act of 2006.

13. With the above observations, both the writ petitions stands disposed off.

14. A copy of the instruction submitted by Mr. B. Deuri is kept on record and marked with the letter "X".

JUDGE Comparing Assistant