

GAHC010058412023



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

**Case No. : WP(C)/1515/2023**

MONJURUL HAQUE BARBUIYA  
S/O- LATE BADAR UDDIN BARBUIYA,  
R/O- VILLAGE- UTTARKRISHNAPUR PART-II,  
P.O.- UTTARKRISHNAPUR, P.S.- SILCHAR,  
DISTRICT- CACHAR, ASSAM,  
PIN- 788006.

VERSUS

THE STATE OF ASSAM AND 6 ORS  
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVT. OF ASSAM,  
FOOD, CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT,  
DISPUR, GUWAHATI- 781006, ASSAM.

2:THE DIRECTOR  
FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS  
ASSAM  
BHANGAGARH  
GUWAHATI- 781005  
KAMRUP(M)  
ASSAM.

3:THE DEPUTY COMMISSIONER  
CACHAR  
P.O.- SILCHAR  
DISTRICT- CACHAR

ASSAM  
PIN- 788001.

4:THE DEPUTY DIRECTOR

FOOD CIVIL SUPPLIES AND CONSUMER AFFARIS  
CACHAR  
P.O.- SILCHAR  
DISTRICT- CACHAR

ASSAM  
PIN- 788001.

5:THE ASSISTANT COMMISSIONER AND EXECUTIVE MAGISTRATE  
CACHAR  
SILCHAR  
P.O.- SILCHAR

DISTRICT- CACHAR  
ASSAM

PIN- 788001.

6:THE SUPERINTENDENT  
FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS  
SILCHAR  
P.O.- SILCHAR  
DISTRICT- CACHAR

ASSAM  
PIN- 788001.

7:THE AREA OFFICER-CUM-INSPECTOR  
FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS  
CACHAR  
SILCHAR  
P.O.- SILCHAR

DISTRICT- CACHAR  
ASSAM

PIN- 788001

**Advocate for the Petitioner : MR H I CHOUDHURY**

**Advocate for the Respondent : GA, ASSAM**

**BEFORE  
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

**ORDER**

**Date : 13.06.2024**

Heard Mr. B. Kaushik, learned counsel for the petitioner. Also heard Mr. M. Chetia, learned Government Advocate for the State respondents.

2. The petitioner by filing the instant petition under Article 226 of the Constitution of India is challenging the order dated 22.02.2023, issued by the respondent No. 6, i.e. Superintendent, Food Civil Supplies and Consumer Affairs, Silchar, whereby the Fair Price Shop License of the petitioner was cancelled.
3. The facts of the case is that the petitioner is a Fair Price Shop Agent under the Meherpur-Krishnapur Co-operative Society Ltd in Cachar district of Assam.
4. The Fair Price Shop license of the petitioner being License No. 2007/1993-94, was issued by the respondent No. 7 under the provisions of Assam Public Distribution of Articles, Order, 1982, herein after referred as "APDA Order, 1982".
5. By order dated 14.06.2022, the respondent No. 6 issued show cause to the petitioner on the basis of a report submitted by Inspector FCS and CA, Silchar that it is observed from records showing in the online that the petitioner is not issuing PDS commodities through e-POS machine.

6. Pursuant to such show cause notice the petitioner on 16.06.2022 submitted its written reply stating inter-alia that since the petitioner has no knowledge regarding the utilization of e-POS machine, the said machine could not be used.
7. Thereafter the petitioner was placed under suspension by order dated 05.09.2022 on the basis of the enquiry which reveals that :-
  - “1. During the visit the Fair Price Shop was found closed, after opening the shop it was found that there was no stock and price board displayed inside the shop.
  2. A large quantity of schematic rice in bags were found lying in the Fair Price Shop.
  3. The Fair Price Shop Agent unable to produce books of accounts.
  4. A large numbers of beneficiaries tagged with his Fair Price Shop are yet to be seeded with their ration cards along with their Aadhar numbers.
  5. In spite of instruction given earlier on several times and lastly on 10/08/2022, the Fair Price Shop Dealer failed to submit Aadhar details, till date a large numbers of beneficiaries are yet to be seeded with their ration cards along with their Aadhar numbers.
  6. The Fair Price Shop Dealer did not issue schematic Rice through e-POS machine to the beneficiaries in spite of repeated instructions given to him from time to time. But, no commodities found against earlier month remains undistributed at his Fair Price Shop.
  7. The Dealer concerned intentionally doing above activities availing benefit against bogus beneficiaries for his personal benefit.”

8. Thereafter on 05.09.2022, another show cause notice was issued to the petitioner to show cause as why the license issued in favor of the petitioner under the APDA order 1982, shall not be cancelled.
9. Thereafter a written reply was submitted by the petitioner on 13.09.2022.
10. A hearing also was conducted in connection with the suspension of the petitioner's retail license of Fair Price Shop on 20.10.2022 at 2:30 P.M.
11. Pursuant to such hearing the respondent No. 6 by order dated 22.02.2023 cancelled the retail license of the petitioner.
12. Mr. B. Kaushik submits that the aforesaid cancellation of the retail license of the subject Fair Price Shop of the petitioner is in contravention of sub-clause 2 of clause 15 of APDA Order, 1982.
13. He further submits that the APDA Order, 1982 contemplates that a full opportunity be provided to the petitioner before issuance of the cancellation of the retail license.
14. He specifically submits that the enquiry report based on which show cause notice was issued was not furnished to the petitioner for which there has been a gross violation of the principles of natural justice.
15. Mr. M. Chetia, learned Government Advocate concedes that the enquiry report was not submitted to the petitioner. However, he

submits that non furnishing of enquiry report shall not prejudice the petitioner in as much as findings of the enquiry report were mentioned in the show cause notice dated 05.09.2022.

16. I have heard the submissions made at the bar and perused the materials available on record.

17. In order to appreciate the rival contention of the parties, it is pertinent to refer to sub-clause 2 of clause 15 of the APDA Order, 1982 which is reproduced herein below for ready reference:-

*“(2) No Order of cancellation shall be made under this Clause unless the licensee has been given reasonable opportunity or stating his case against the proposed cancellation by but during the pendency or in contemplation of the proceedings of cancellation of the license, the license can be suspended for a period not exceeding 90 days without giving any opportunity to the licensee of stating his case.”*

18. A perusal of the said provision indicates that before cancellation of the license, the authorities have to give the licensee a reasonable opportunity of stating his case against the proposed cancellation by an order.

19. In the present case, admittedly the enquiry report based on which the show cause notice dated 05.09.2022, was issued to the petitioner to show cause as why the petitioner's license shall not be cancelled was not furnished to the petitioner.

20. Pertinent to refer to paragraph 2 and 3 of the additional affidavit filed on behalf of respondent No. 6 on 23.11.2023 in terms of the

order passed by this Court on 12.10.2023 which is reproduced herein below for ready reference:-

*“2. That vide order dated 12.10.2023 this Hon’ble Court allowed the deponent to bring the enquiry report on record by way of an additional affidavit with further averment as to whether the copy of the enquiry report was served upon the petitioner-noticee prior to passing of the impugned order. Accordingly, present affidavit is being filed complying with the aforesaid order dated 12.10.2023 of this Hon’ble Court.*

*3. That the deponent states that the Executive Magistrate, Cachar after conducting the hearing, had submitted an enquiry report dated 17.01.2023. The deponent further states that before passing the impugned order copy of the said enquiry report was not furnished upon the petitioner.”*

21. Therefore it is an admitted fact that before passing the cancellation order, the said enquiry report was not furnished to the petitioner.

22. Pertinent to refer to the decision of this Court in the case of ***Santanu Medhi Versus State of Assam reported in 2014 (3) GLT 253.***

23. Paragraph 20 and 21 of the aforesaid judgment is reproduced hereunder for ready reference:-

*“(20) Cancellation of license is a drastic power directly affecting the life and livelihood of the licensee. Unless the violation of statutory provisions by the licensee are serious and proved in course of enquiry, such a course of action should not be resorted to hastily. Order 15 (2) of the 1982 Order clearly mandates that no order of cancellation shall be made without giving the licensee reasonable opportunity of hearing but also*

*provides that during such proceedings the Licensing Authority can suspend the license for a period not exceeding 90 days. In other words, what the said provision visualizes is a comprehensive enquiry into the allegations brought against the licensee before resorting to the drastic power of cancellation, during which period the license can also be suspended.*

*(21) In the present case, it is seen that the entire case against the petitioner was built up on the basis of the inspection report submitted by respondent No. 4 to respondent No. 3 dated 19. 3. 2013. The record does not indicate that copy of such report was furnished to the petitioner. Unless the licensee is confronted with the allegation as appearing in the inspection report, an effective reply may not be possible. However, even in the absence of a copy of such report, the petitioner had submitted his reply. But neither the record nor the impugned order discloses any consideration of the said reply. Non-consideration of such reply has vitiated the impugned order dated 4. 4. 2013. Impugned order is also very vague and devoid of any particulars save and except making a general statement of violation of the two mentioned provisions of the 1982 Order."*

24. In the present case, it is apparent that the entire case against the petitioner is on the basis of the enquiry report.
25. However, the said report was admittedly not furnished to the petitioner. Mere mentioning of the findings of the enquiry in the body of the suspension order is of no consequence in as much as until and unless the petitioner is informed of the materials based on which, the finding has been arrived, during such enquiry, an effective reply may not be possible.

26. Accordingly this Court is of the considered opinion that non furnishing of the enquiry report to the petitioner has caused prejudice and is in gross violation of the principles of natural justice as well as the provisions of the APDA Order 1982.

27. Resultantly the cancellation order dated 22.02.2023, issued by the respondent No. 6 is illegal and is accordingly set aside and quashed.

28. The writ petition is allowed.

29. Disposed of.

30. Needless to clarify that the respondent are at liberty to proceed against the petitioner in accordance with law.

31. Needless further to clarify that the respondent are at liberty to renew the retail license of the petitioner's Fair Price Shop in accordance with law.

**JUDGE**

**Comparing Assistant**