

GAHC010032382018



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

Case No. : WP(C)/1146/2018

PRODIP KUMAR BISWAS
VILL GHARIALDANGA PT.II, PO- MAHAMAYAHAT, PS GOLOKGANJ, DIST.
DHUBRI, ASSAM, PIN-783335

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, CO-OPERATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
KHANAPARA
ASSAM
GUWAHATI-22

3:THE DEPUTY COMMISSIONER
DHUBRI
DIST. DHUBRI
ASSAM

4:THE DEPUTY DIRECTOR
FOOD AND CIVIL SUPPLIES
DHUBRI
DIST. DHUBRI
ASSAM

5:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
DHUBRI
DIST. DHUBRI
ASSAM

6:THE HALAKURA S.S. LTD.

REPRESENTED BY IT'S CHAIRMAN
VILL-HALAKURA
PO-MAHAMAYAGHAT
DIST. DHUBRI
ASSAM
PIN-783335

7:KRISHNA BALA ADHIKARY
VILL- GHARIALDANGA PT.II
PO-MAHAMAYAHAT
PS-GOLOKGANJ
DIST. DHUBRI
ASSAM
PIN-78333

Advocate for the Petitioner : MR. J PATOWARY

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE NELSON SAILO

O R D E R

16.05.2024

1. Heard Mr. J. Patowary, learned counsel for the petitioner. Also heard Mr. S.R. Barua, learned counsel for the respondent nos.3 & 4 and Mr. S. Dey learned counsel for the respondent no.7. None appears for the remaining respondents.

2. The issue involved in the instant writ petition is the selection for a Fair Price Shop dealer under M/s Halakura S.S. Ltd. in the district of Dhubri. One Sri Kalipada Biswas was the licensee but he expired on 02.09.2017. According to the petitioner, he is the nephew of Late Kalipada Biswas and therefore his name was recommended by M/s Halakura S.S. Ltd., vide their Resolution dated

15.11.2017 for being granted the licence for the Fair Price Shop. Despite the recommendation, the respondent no. 7 was instead granted the licence, vide the order dated 05.02.2018 (Annexure-6), which has been challenged by the petitioner in the instant writ petition.

3. Mr. J. Patowary, learned counsel for the petitioner submits that during the lifetime of Sri Kalipada Biswas, the petitioner used to assist him in running the Fair Price Shop and he is well experienced with the work. The people of the locality have also recommended him to be appointed as the new licensee which can be seen from the signatures given by the 369 beneficiaries of the Fair Price Shop out of the total 402 beneficiaries. The learned counsel also submits that although the petitioner may not have an indefeasible right to be appointed as the new licensee but having regard to the recommendation made in his favour, the respondent authority concerned ought to have taken the same into consideration before issuing the impugned order dated 05.02.2018. He therefore submits that the impugned order be set aside and the respondent authorities be directed to re-consider to grant of licence by also considering the case of the petitioner.

4. The learned State Counsel Mr. S.R. Barua submits that the issuance of licence for Fair Price Shop is governed by the Assam Public Distribution of Articles Order, 1982, wherein all that is prescribed is that the Licencing Authority may issue licences in Form 1 to such appointed dealers as may be considered necessary from time to time specifying sub-wholesalers or retailers and area of operation of each appointed dealers at Clause 3 of the said Order. He otherwise submits that no particular procedure has been laid down for appointment of Fair Price Shop dealer. Referring to the affidavit-in-opposition filed by the official

respondents, the learned counsel submits that as per the office record it was found that the Managing Committee of M/s Halakura S.S. Ltd. on 15.11.2017 had recommended the name of the petitioner through a Resolution for his appointment as the new licensee of the Fair Price Shop concerned and the Resolution was duly approved by the Assistant Registrar of Cooperative Societies, Dhubri. In respect of the respondent no.7, she had applied for the licence to run the Fair Price Shop by submitting her application on 09.10.2017 before the Chairman/Secretary of M/s Halakura S.S. Ltd. and another application on 11.10.2017 to the Deputy Director, Food, Civil Supplies & Consumer Affairs, Dhubri. The application submitted on 09.10.2017 was forwarded by the Secretary and Chairman of M/s Halakura S.S. Ltd. to the then Deputy Director, Food, Civil Supplies & Consumer Affairs, Dhubri with an endorsement dated 22.12.2017 for taking necessary action from his end. However, no resolution was forwarded by the Managing Committee proposing the name of the respondent no.7. As the then Area Officer of M/s Halakura S.S. Ltd. had submitted a report in favour of the respondent no.7 for issuing the licence to run the Fair Price Shop, the same was granted to her vide the order dated 05.02.2018. The learned counsel further submits that pursuant to the interim order passed by this Court, all the ration cards of the Fair Price Shop has been tagged with the nearest Fair Price Shop dealer Shri Bimal Ch. Roy. Thereafter on 12.01.2021 the ration cards were retagged with the Fair Price Shop of Jinkata Community Development Centre and the consumers are lifting their rations from there till date.

5. Mr. S. Dey, learned counsel for the respondent no.7 submits that no illegality has been committed by the respondent authority concerned in issuing the Fair Price Shop licence to the respondent no.7. He submits that from a

perusal of the impugned order dated 05.02.2018, it is clear that licence was granted to the respondent no.7 on perusal of the report of the Area Officer of M/s Halakura S.S. Ltd. and therefore, without there being any illegality, the same may not be interfered with by this Hon'ble Court. The learned counsel submits that there is no requirement for a recommendation by the ration card holders recommending the name of a particular person to get the licence for the Fair Price Shop. Therefore, just because the petitioner has been given some preference by the 369 signatories, who are the beneficiaries of the Fair Price Shop, no right has been created in favour of the petitioner. Further, the respondent no.7 had made her applications on 09.10.2017 and 11.10.2017 before the appropriate authority, whereas the resolution was made by M/s Halakura S.S. Ltd. only on 15.11.2017. As such, the order dated 05.02.2018 issued in favour of the respondent no.7 should not be set aside.

6. I have considered the submissions made the learned counsel for the parties and have also perused the materials available on record.

7. There is no dispute to the fact that there is no prescribed procedure laid down under the Assam Public Distribution of Articles Order, 1982 prescribing the manner in which selection is to be made for appointing a licensee to run the Fair Price Shop. However, even if there is no detailed procedure prescribed, any procedure or step taken by the authority in making such appointment should be fair and just. In other words, all the persons interested who may have been recommended or who have applied should be taken into consideration. It goes without saying that the appointed person should be ideally a resident of the area covered by the Fair Price Shop. In the instant case, there is no dispute that both the petitioner and the respondent no.7 are residing in the area concerned.

Although the affidavit-in-opposition of the respondent authority provides that the recommendation of M/s Halakura S.S. Ltd. is available on the records, but there is no specific statement made therein that before issuance of the licence to the respondent no.7, all the materials available on record were considered. Therefore, this Court is of the considered view that the respondent authority concerned should one again undertake the fresh consideration for allotting the licence to run the Fair Price Shop concerned by considering the case of the petitioner along with the case of the respondent no.7. Having regard to the fact that the beneficiaries of the Fair Price Shop concerned are now drawing their ration as per the temporary arrangement made by the Food & Civil Supplies Department, this Court considers it appropriate that the respondent authority concerned, i.e. respondent no.4 should take a decision in the matter expeditiously at any rate within the outer limit of one month from the date of receipt of a certified copy of this order. It is ordered accordingly.

8. It is needless to provide that the impugned order dated 05.02.2018 (Annexure-6) and the licence issued to the respondent no.7 (Annexure-7) are hereby set aside. Before parting the records, it is also provided herein that both the petitioner as well as the respondent no.7 will be at liberty to submit any documents, testimonials in support of their application to turn the Fair Price Shop. The interim order passed earlier stands merged with this order.

JUDGE

Comparing Assistant