

GAHC010025512017



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

Case No. : WP(C)/3367/2017

ZAKARIA HAQUE CHOUDHURY
S/O. MAFIZUDDIN CHOUDHURY, R/O. RUPOHIHAT, P.O. SAIDARIA, P.S.
RUPOHIHAT, DIST. NAGAON, ASSAM.

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, FOOD AND
CIVIL SUPPLY DEPTT., AND CONSUMER AFFAIRS, DEPTT..

2:THE COMMISSIONER OF CENTRAL

ASSAM DIVIAION
PANBAZAR
CAMP. GHY.-781001.

3:THE ADDL. DY. COMMISSIONER
I/C. KALIABOR SUB-DIVISION
NAGAON
ASSAM
PIN-782125.

4:THE AREA INSPECTOR
FOOD AND CIVIL SUPPLY KALIABAOR
NAGAON
ASSAM
PIN-782137.

5:THE SUB-DIVISIONAL OFFICER
C
KOLIABOR
NAGAON
ASSAM
PIN-782137.

6:SIRAJUL ISLAM
S/O. LT. AYUB ALI
R/O. PUB-SINGIRAMARI
P.O. SINGIMARI
P.S. RUPOHIHAT
DIST. NAGAON
ASSAM
PIN-782125

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri A. Mohammad, Advocate.
Advocates for respondents : Shri M. Chetia, GA.
Shri N. Hoque, Advocate, (R-6).

Date(s) of hearing : 06.03.2024

Date of judgment : 06.03.2024

JUDGMENT & ORDER

Heard Shri A. Mohammad, learned counsel for the petitioner. Also heard Shri M. Chetia, learned State Counsel whereas Shri N. Hoque, learned counsel has appeared for the respondent no. 6, who has also filed an affidavit-in-opposition on 20.07.2023.

2. The subject matter of challenge in this writ petition is an order dated 20.04.2017 passed by the Commissioner, Central Assam Division, Nagaon as the Appellate Authority whereby the appeal preferred by the respondent no. 6 in respect of suspension of his fair price shop license has been allowed.

3. As per the projected case of the petitioner, the respondent no. 6 is a fair

price shop owner against whom the petitioner and some other consumers had lodged complaints. Based on the said complaints, enquiry was conducted by the Area Inspector, who had arrived at a finding of violation/contravention of the ***Assam Public Distribution of Article Orders of 1982*** (hereinafter referred to as the Orders of 1982). Based on the said findings of the Enquiry Report, an order was passed on 12.09.2016 by which the license of the respondent no. 6 was suspended. Against the aforesaid order of suspension of licence, the respondent no. 6 had preferred an appeal on 14.10.2016. The Appellate Authority, namely, the Commissioner, Central Assam Division, Nagaon, after consideration of the appeal had passed an order dated 20.04.2017 allowing the appeal and accordingly, the license of the respondent no. 6 was restored.

4. Shri Mohammad, the learned counsel for the petitioner has submitted that the Enquiry Report having found that the respondent no. 6 was indulging in malpractice in running the fair price shop, the appeal should not have been allowed and therefore the instant challenge has been made.

5. Shri M. Chetia, learned State Counsel however submits that the Orders of 1982 itself provides for preferring an appeal and the appellate authority by exercise of powers and on perusal of the facts and circumstances has passed the order dated 20.04.2017 which does not appear to be suffering from any legal infirmity.

6. Shri Hoque, the learned counsel for the respondent no. 6 while endorsing the submission of the learned State Counsel has raised a serious questions on the *bona fide* of the present petitioner in filing the present writ petition. By referring to the affidavit-in-opposition, more particularly the averments made in

paragraph 4 thereof, he submits that the petitioner is neither a consumer nor a resident of the area in question and therefore does not have any locus to maintain the present challenge. He submits that the petitioner is a political person and only for political reasons, the complaint was filed by him which triggered into the enquiry followed by the suspension order which was ultimately interfered with by the appellate authority.

7. The rival submissions made by the learned counsel have been duly considered.

8. The petitioner has annexed the complaint lodged by him against the respondent no. 6. A perusal of the complaint would show that the petitioner was the District President at that point of time of a political party and the complaint itself was made in his official pad. Though another complaint containing three more names have been annexed, those persons are not before this Court challenging the appellate order dated 20.04.2017. This Court has also noticed that the categorical submission made by the respondent no. 6 in the affidavit-in-opposition dated 20.07.2023 that the petitioner is not a consumer and not even a resident of the area in question have not been denied or refuted by the petitioner by filing any rejoinder affidavit.

9. The order dated 20.04.2017 would reveal that the appellate authority had taken note of the appeal and also the orders of this Court passed in earlier round of litigation. The appellate authority had also come to a finding that there was nothing on record to demonstrate that the appellant (present respondent no. 6) had violated the terms and conditions of the license or the Orders of 1982. The appeal being provided under the Orders of 1982 and powers

exercised by the appellate authority can be interfered with only when a case is made out that there was no consideration of the relevant factors which does not appear from the order dated 20.04.2017.

10. This Court is also of a considered view that there is no *bona fide* on the part of the petitioner to institute the present challenge. The petitioner who appears to be a political person is not even a consumer or a resident of the area in question. Though another complaint of certain persons said to be consumers have been annexed to the writ petition, those persons are not the petitioners in the instant case.

11. A Writ Court being a Court of equity, the *bona fide* of a person is of paramount importance wherein there is a basic requirement to approach this Court with clean hands which does not appear to be so in the instant case.

12. Accordingly, the writ petition is dismissed.

13. Further considering the background which has been discussed above, this Court imposes a cost of Rs.10,000/-(Rupees Ten Thousand) only upon the petitioner. The cost has to be paid in the name of the Gauhati High Court Bar Association Welfare Fund.

JUDGE

Comparing Assistant