

GAHC010013542016



2024:GAU-AS:9086

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

Case No. : WP(C)/2383/2016

TAPADHIR KANTI DAS
PROP. OF M/S SRISH CHANDRA SERVICE CENTRE, LAKHIPUR AND
PAILAPOOL, S/O LT. SISHIR KUMAR DAS, R/O LAKHIPUR, P.O. and P.S.
LAKHIMPUR, DIST- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECY., FOOD AND CIVIL SUPPLIES DEPTT., DISPUR, GHY-6,
ASSAM

2:THE DY. COMMISSIONER
DIST- CACHAR
ASSAM

3:THE SUB-DIVISIONAL OFFICER CIVIL
LAKHIPUR SUB-DIVISION
CACHAR
ASSAM

4:THE DIVISIONAL COMMISSIONER
HILLS AND BARAK VALLEY DIVISION
ASSAM
DISPUR
GHY-6

5:K. OIL HAWKER KALYAN SAMITI
LAKHIPUR
CACHAR
ASSAM
REP. BY ITS CHAIRMAN
SHRI BONOBIHARI ROY

VILL. RONGPUR
SILCHAR-9
P.O. and P.S. SILCHAR
DIST- CACHAR
ASSA

Advocate for the Petitioner : MS.P BORAH, MR.S BARTHAKUR

Advocate for the Respondent : MS.F BEGUM R-5, GA, ASSAM,MR.A M BARBUIYA(R-5),MR.J N ISLAM(R-5)

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri S. Dey

Advocate for the respondents : Shri M. Chetia, GA.Assam
Shri AM Barbuiya, for R.5

Date of hearing : **12.09.2024**

Date of Judgment : **12.09.2024**

JUDGMENT & ORDER

An order dated 01.04.2013 of cancellation of the PDS license in the name of the petitioner is the subject matter of challenge in this petition. The said order was upheld by the appellate authority as well as the second appellate authority and thereafter, the writ petition has been filed.

2. As per the facts projected, the petitioner was the license holder for distribution of SK Oil. Initially such distribution was done in the ratio of 70:30 through PDS and through Hawkers. In the course of this business, there were complaints by the Hawkers Association on the issue that the petitioner was not allotting adequate materials to them and was rather allotting the materials to certain non-license holders. On the aforesaid allegation, initially an order was

passed on 24.03.2009, whereby the license of the petitioner was suspended. A show-cause notice was also issued to him, which the petitioner had replied. Thereafter, on 10.08.2009, the suspension order was revoked by the SDO (Civil). Such revocation was however restricted to 70% of the distribution which was to be done through PDS and so far as the 30% was concerned, which was to be done through Hawkers, the same was given to a third party. The Hawkers' Association, which has been arrayed as the respondent no. 5, had filed a writ petition against the order of revocation dated 10.08.2009. The said writ petition was disposed of by remanding the parties to take the recourse of preferring an appeal, as provided in law. The appeal, so preferred by the respondent no. 5 - Association, was allowed and the suspension was restored. Being aggrieved, the petitioner had filed WP(C)/5603/2009, which was disposed of vide an order dated 04.05.2010 allowing the same. The said the writ petition was allowed mainly on the grounds that the documents pertaining to the allegations were not provided to the petitioner and that he was deprived of a reasonable opportunity to defend. Be that as it may, the respondent no. 5 – Association had preferred WA/179/2010. The Hon'ble Division Bench however, vide order dated 01.10.2012 had allowed the appeal and remanded the matter to the Deputy Commissioner. On such remand, the Deputy Commissioner, after consideration of the matter, had ultimately passed the order dated 01.04.2013 of cancellation of the license. As indicated above, both the appeal and the second appeal of the petitioner have been dismissed.

3. I have heard Shri S. Dey, learned counsel for the petitioner. I have also heard Shri M. Chetia, learned State Counsel whereas Shri AM Barbhuiya, learned counsel is present for the respondent no. 5 – Association.

4. Shri Dey, learned counsel for the petitioner has formulated his submissions

in the following manner:

- i. The initial writ petition filed by the petitioner being WP(C)/5603/2009 was allowed by the learned Single Judge on 04.05.2010 on certain specific grounds. Though, the Hon'ble Division Bench in its order dated 01.10.2012 had remanded the matter for fresh consideration by the Deputy Commissioner, there were no specific interference with the findings arrived at by the learned Single Judge and therefore, those have attained finality.
- ii. In view of the findings of the learned Single Judge in the order dated 04.05.2010 having attained finality, the scope of the Deputy Commissioner in reconsidering the matter after its remand was a limited one wherein only those matters which were outside the findings could have been considered.
- iii. In the remand, a new ground was taken by the respondent no. 5 - Association involving serious allegation of monetary transaction for an amount of Rs.2.24 lakhs approximately. It is submitted that the aforesaid could not have been taken as it was not within the scope of the remand order. It is also submitted that the aforesaid aspects was not taken into consideration either by the first appellate authority or the second appellate authority and therefore, there is a necessity for interference with the impugned order of cancellation.
- iv. It is submitted that even the equity would require restoration of the license at least for 70% of the distribution system which is to be done through PDS.

5. Shri Dey, learned counsel for the petitioner emphasizes that the complaint

was only by the Hawkers' Association pertaining to 30% of the total distribution and therefore, there was no complaint at all regarding the remaining 70%. He accordingly submits that the cancellation has been done on the basis of irrelevant factors and extraneous consideration.

6. *Per contra*, Shri Chetia, learned State Counsel has submitted that the matter is governed by the Assam Public Distribution of Articles Order, 1982 which lays down the mechanism to be followed for grant of license and penal measures. It is submitted that all the procedures laid down have been followed meticulously and there is no allegation from the side of the petitioner of not granting him a reasonable opportunity to defend himself. It is submitted that before the cancellation order dated 01.04.2013, the petitioner was given all reasonable scope and opportunity and he was heard. He has also submitted, on instructions that the distribution through Hawkers is almost abolished and only in certain areas a small quantity is being distributed through such system. He has also referred to the order passed by the Appellate Authority dated 26.05.2015 wherein the aspect of the petitioner being involved in similar misdeeds on earlier occasion has been taken into consideration. He accordingly submits that in view of the aforesaid facts and circumstances and also the development, there is no live cause of action to be adjudicated and accordingly the writ petition is liable to be dismissed.

7. Supporting the submission of the learned State Counsel, Shri Barbhuiya, learned counsel for the respondent no. 5 – Association has submitted that the complaint was lodged by the respondent no. 5 on genuine grounds. It has been alleged that the petitioner, during his time as a license holder did not allot the materials to the Hawkers and had allotted to certain third parties by encouraging selling of the materials in black market. It is also submitted that

the observation made by the learned Single Judge in the order dated 04.05.2010 automatically stood interfered with by the Writ Appellate Court which had passed the order dated 01.10.2012 when the appeal filed by his client was allowed and the matter was remanded back to the Deputy Commissioner. It is submitted that on such remand, it cannot be held that any findings of the learned Single Judge would still be binding. The learned counsel has also referred to the order of the Appellate Authority dated 26.05.2015 wherein 4 nos. of earlier occasions have been taken into consideration wherein the petitioner had indulged in misdeeds. It is also submitted that after the license was cancelled in the year 2013, some other persons have been appointed who is taking care of the distribution system.

8. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

9. Though at one point of time, the distribution of SK Oil was done through the Hawker which was restricted to 30%, the said practices has almost come to an end and presently all the distribution is done through the PDS. Be that as it may, the suspension order dated 24.03.2009 was revoked on 10.08.2009 so far as the 70% of the distribution was done by the petitioner. The said revocation was however the subject matter of challenge in which there was a remand by this Court as there was an appellate provision. The appellate authority had however restored the suspension which was again challenged by the petitioner in WP(C)/5603/2009. The said writ petition was allowed on 04.05.2010. However, the decision of the learned Single Judge was the subject matter of challenge in an appeal WA/179/2010 preferred by the respondent no. 5 - Association. The Writ Appellate Court, vide order dated 01.10.2012 had remanded the matter to the Deputy Commissioner to go into the same afresh

and pass appropriate order after giving the opportunity. Since a submission has been made that the findings of the learned Single Judge would still subsist, it would be convenient to extract the observation of the Hon'ble Division Bench in the order it is 01.02.2012-

“7. Learned counsel for the appellants submitted that in case adequate opportunity had not been given to the writ petitioner, the Deputy Commissioner could have been required to pass a fresh order after giving of opportunity instead of quashing the said order without permitting a fresh order.

8. Learned counsel for the writ petitioner has not been able to show how the Deputy Commissioner could be debarred from considering the matter after giving due opportunity. Such a course ought to be followed in view of law laid down by the Hon'ble Supreme Court in Managing Director, ECIL, Hyderabad and ors. B. Kar unakar and others, (1993) 4 SCC 727.

9. Accordingly, we allow this appeal to the extent of directing that the Deputy Commissioner may go into the matter afresh and pass appropriate order after giving due opportunity of being heard to the parties.”

10. It is seen that the appeal was allowed and the matter was directed to be gone into afresh by the Deputy Commissioner. In view of such direction, this Court is not able to accept the submission that the findings of the learned Single Judge would still remain. When the Hon'ble Division Bench had directed that the matter should be gone into afresh, no restrictions could have been imposed on the scope of such reconsideration.

11. With regard to the submission that a new ground has been taken by the Association, though apparently a ground of involvement of monetary transaction amounting to Rs.2.24 lakh is there, such ground is directly concerned with the nature of the complaints of corruption and would be within the scope of examination. It would be wholly impractical to direct another enquiry on the aforesaid ground when the parties were given full opportunity to defend their respective cases. The cancellation order dated 01.04.2013 passed by the Sub-Division Officer (Civil) has been perused, there is no challenge on the jurisdictional aspect of the said authority. The order would show that the relevant factors have been taken into consideration in details and the parties were given adequate opportunity of hearing. The said authority had also taken into consideration that there has been a number of similar detection of irregularities and has also given the dates. For any reference, the said observation is extracted hereinbelow-

“On the other hand, on perusal of the record, it was detected that the licence of both the depots suspended/cancelled earlier for several times on detection for similar irregularities i.e. on 23/11/94, 06/4/96, 30/12/97, 31/3/2001, 19/4/2006, 29/2/2008, 24/3/2009, 03/11/2009 and 02/08/2012. It is clear from the above observation that Sri Tapadhir Kanti Das, Prop. M/S.SCSC, Lakhipur & Pallapool is a habitual offender, involving in misappropriation of huge quantity of S.K. Oil meant for PDS violating the provision of APDA order 1982 along with APDAS (C) order 2001 liable for prosecution under Section 7 of the E.C. Act, 1955 (Act X of 1955).”

12. The findings arrived at by the SDO towards cancellation of the license is based on reasons which are cogent. The first appellate authority and the second

appellate authority while dismissing the respective appeals have also taken into account the relevant materials.

13. The scrutiny under Article 226 of the Constitution of India is only on the aspect of the decision making process and in the instant case, the impugned order is based on cogent reasons and relevant materials. This Court has also taken into consideration that the aspect of distribution through Hawkers has almost been abolished and in fact, the distribution of SK Oil is also being reconsidered. The aspect of a third party right having accrued in the meantime, as pointed out by the learned counsel for the respondent no.5 has also been taken into consideration.

14. In view of the above, this Court is of the considered opinion that there is a hardly any scope for interference. The writ petition accordingly stands dismissed.

JUDGE

Comparing Assistant