

GAHC010030532016



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

Case No. : WP(C)/7020/2016

DIPAK KUMAR ROY @ RAY
S/O LT. PUSPA NATH ROY R/O VILL- DUKHISUKHI PART-II, P.O.
MOTERJHAR UNDER KAZIGAON POLICE STATION DIST. KOKRAJHAR,
BTC, ASSAM- 783334

VERSUS

STATE OF ASSAM and ORS.
REP. BY THE SECRETARY, DEPARTMENT OF FOOD AND CIVIL SUPPLY,
DISPUR, GUWAHATI - 781006.

2:THE SECRETARY

FOOD
CIVIL SUPPLIES and CONSUMAR AFFAIRS
BTC
KOKRAJHAR
ASSAM.

3:DEPUTY COMMISSIONER

KOKRAJHAR
BTC
ASSAM.

4:SUB-DIVISIONAL OFFICER CIVIL
KAJIGAON
KOKRAJHAR
BTC
ASSAM.

5:COUNCIL HEAD OF DEPARTMENT

FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS
BTC
KOKRAJHAR
ASSAM.

6:JOINT DIRECTOR

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BTC
KOKRAJHAR
ASSAM.

7:ASSISTANT DIRECTOR

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
BTC
KOKRAJHAR
ASSAM.

8:DISTRICT DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES

BTC
KOKRAJHAR
ASSAM.

9:SUPERINTENDENT

FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS
PARBATJHORA KAZIGAON
BTC
KOKRAJHAR
ASSAM.

10:PARBAT JOWAR SMABAY SAMITY LIMITED
REP. BY ITS CHAIRMAN
P.O. BASHBARI
KOKRAJHAR
BTC
ASSAM- 783337.

11:SHRIMATI SWAPNA ROY PRADHANI
W/O SHRI NIVASH ROY PRADHANI R/O VILL- DUKHISUKHI PART-I
P.O. MOTERJHAR UNDER KAZIGAON POLICE STATION
DIST. KOKRAJHAR
BTC

ASSAM- 783334

Advocate for the Petitioner : MR.D DAS, MS.K M SARMA,MR.K SARMA

Advocate for the Respondent : SC, BTC, GA, ASSAM,MR.M GARODIA(R-11),MR.Y S MANNAN(R-11),MS.P TAYE(R-11),MS.S GOHAIN(R-11)

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

11.09.2024.

Heard Shri K Sarma, learned counsel for the petitioner as well as Shri RK Mushahary, learned Standing Counsel, BTC. Also heard Shri YS Mannan, learned counsel for the respondent no. 11.

2. The grievance raised in this petition is towards a decision to allot a fair price licence to the respondent no. 11 and tagging 46 nos. of households which were initially with the petitioner.

3. As per the facts projected, the petitioner is a licence holder for a fair price shop, being Licence No. KZSM-20/2009/PDS/(R/S)/ 123. The same was issued by the Superintendent, Food, Civil Supplies and Consumer Affairs, Prabatjhora, Kazigaon, BTC in the district of Kokrajhar. It is submitted that the petitioner was running his business smoothly and without any complaint and the licence had incorporated both Part-I and Part-II of the Dukhisukhi village. It, however, transpires that on the basis of certain complaints, the respondent no. 11 was issued a licence for a fair price shop and vide an order dated 24.10.2016, 46 nos. of households were tagged with the fair price shop of the said respondent no. 11.

4. Shri Sarma, learned counsel for the petitioner has submitted that the petitioner

was running the business without any complaints and the aforesaid action is wholly arbitrary and irrational. He has also submitted that it appears that the impugned action is a result of certain alleged complaints where he was not given any opportunity of hearing before the impugned action. It is also submitted that no copies of the complaint, whatsoever was furnished to the petitioner. He has clarified that initially 1814 nos. of consumers were attached to the petitioner and by the impugned action, 126 nos. of consumers are sought to be separated which constitutes 46 nos. of households. He has also submitted that when this writ petition was moved, this Court vide an order dated 07.12.2016 while issuing notice had passed an interim order suspending the impugned order dated 24.10.2016.

5. Shri Mushahary, learned Standing Counsel, BTC has, however, submitted that the impugned action has been taken in the larger interest of public. By referring to the affidavit-in-opposition filed on 13.03.2019, he has submitted that there was complaint in the functioning of the petitioner and therefore, a decision was taken to tag the complainants from the petitioner to the respondent no. 11 who was granted licence to run a fair price shop. It is submitted that the number of consumers tagged with the petitioner being substantial which is 1814, the impugned action will not have a major impact on the business of the petitioner.

6. Shri Mannan, learned counsel for the respondent no. 11 has submitted that the said respondent was selected to be allotted a fair price shop licence in the Dukhisukhi Part-II village after making a selection wherein, there were 3 numbers of aspirants. It is submitted that his selection is not even the subject matter of challenge and the decision to tag certain numbers of households with his client is only for the benefit of the villagers. He has also highlighted that the village in which the respondent no. 11 has been granted the fair price shop, namely, Dukhisukhi Part-I is about a distance 2/3 kilometres from the Dukhisukhi Part-II village. The learned counsel for the respondent

no. 11 has, however, submitted that though the licence was issued, due to the interim order passed by this Court, the consumers are still attached to the shop of the petitioner.

7. The rival submissions have been duly considered.

8. The impugned action of tagging 46 nos. of households from the petitioner's fair price shop to the shop of the respondent no. 11 is apparently based on certain complaints. Though the numbers involved in the process of such tagging may not be substantial *vis-a-vis* the total number of the consumers, a right which was vested upon the petitioner to run his fair price shop with certain numbers of households which constitutes 1814 consumers would undoubtedly be adversely affected. The minimum requirement was to afford a show cause notice to the petitioner, including furnishing of a copy of the complaint so that he gets a chance to explain the matter which, admittedly has not been done. Though a fair price shop owner/licence holder would not have a indefeasible right to demand a particular number of consumers to be attached to him, the authorities can, for the interest of justice, tag certain consumers to another licence holder for sake of convenience and public interest which, however, is required to be done in a manner prescribed by law. This Court has also taken note of the fact that vide the aforesaid interim order dated 07.12.2016, the impugned order dated 24.10.2016 has been suspended.

9. In view of the above, this Court is of the opinion that interest of justice would be served and the equities would be balanced by interfering with the impugned order dated 24.10.2016. The interim order dated 07.12.2016 is accordingly made absolute. It is, however, made clear that the interference is only on the aspect of violation of the principles of natural justice and if the authorities so desire, due opportunity be given to the petitioner before taking any action for detagging any consumer from his shop

and attaching the same to any other shop, including that of the respondent no. 11.

10. The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant