

(2023) 12 GAU CK 0024

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2414 Of 2014

Ahsim Sinha

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 14-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 12 GAU CK 0024

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : A R Sikdar

Final Decision : Dismissed

Judgement

1. Heard Shri AR Sikdar, learned counsel for the petitioner. Also heard Shri G. Bokaliyal, learned State Counsel appearing for the respondents.
2. The challenge in this writ petition is with regard to cancellation of a Fair Price Shop license of the petitioner vide order dated 27.09.2011 and also the order dated 20.11.2013 by which the appeal has been rejected.
3. As per the facts projected, the concerned license was initially in the name of the father of the petitioner and was later transferred to the petitioner. By referring to the grounds / allegations, the learned counsel for the petitioner has submitted that one of the grounds was a discrepancy with regard to issuing a memo for lifting of certain commodities and the date of actually lifting. To be more specific, while the memo was dated 05.02.2011, the actual lifting was on 15.02.2011. The allegation per se has not been denied. However, there is an explanation that since the entry was done during the time of the father of the petitioner, the same happened due to some inadvertence and there was no lack of bona fide.
4. The second allegation is with regard to running the Fair Price Shop from the residence of the petitioner. However, according to the petitioner, though the

allegation is not denied, the explanation given is that it was done for safety of the goods and the concerned public were also properly notified in a Notice Board which was displayed in the residence. A contention has also been made with regard to non-furnishing of a report which appears to have been done after a field enquiry. Learned counsel for the petitioner accordingly submits that the impugned action be interfered with and the Fair Price Shop license be directed to be restored to the petitioner.

5. Per contra, Shri Bokalial, learned State Counsel, by referring to the affidavit-in-opposition filed on 22.07.2014 has submitted that impugned action has been taken by following the due process of law and by giving all adequate opportunities to the petitioner and therefore there is no procedural irregularity in passing the orders.

6. Coming to the merits of this case, it is the submission of the learned State Counsel that the allegations are grave in nature which concerns distribution of essential commodities to the public in general especially to the marginalized section. It is further contended that none of the allegations are as such denied by the petitioner and the explanation sought to have been given for such allegation are not acceptable in law. By referring to the impugned order dated 27.09.2011 as well as appellate order dated 20.11.2013, it is submitted that apart from the contention advanced, there are other allegations which concerns the distribution of 2 quintals of Rice.

7. The rival contentions advanced by learned counsel for the parties have been duly considered.

8. From the materials on record, more particularly the impugned orders, it is apparent that the action was taken after giving adequate opportunity to the petitioner. In fact, the cancellation order dated 27.09.2011 specifically mentions that the petitioner was heard in person and his reply to the show-cause notice was also duly considered. In that view of the matter, the aspect of adherence to the principles of natural justice appears to have done.

9. Coming to the merits of the allegations and the explanation given, this Court is reminded of the self imposed restriction upon a Writ Court which is required to examine only the lawfulness of the decision making process and not the soundness of the decision. One may gainfully refer to the decision of the Hon'ble Supreme Court in the case of Jagdish Mandal v. State of Orissa reported in (2007) 14 SCC 517 wherein the following has been laid down in the context of the powers of judicial review.

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding

contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

10. In the instant case, the decision making process appears to have been done by following the due process of law i.e. by giving adequate opportunity to the petitioner and by consideration of the relevant materials. This Court has also noticed that the allegations are not denied as such and only explanations have been given which according to the authorities are not acceptable. Such decisions of the respondent authorities are plausible decisions which this Court will not like to substitute. In the later part, there are allegations of not entering into the register a sizable quantity of rice and also not distributing 2 quintals of Rice which are grave allegations. The very purpose of granting of license to operate Fair Price Shop is to facilitate the marginalized section of the society and action of this nature will not be towards advancing the said cause. This Court has also been informed that the essential items are being distributed to the concerned citizens through another nearby Fair Price Shop.

11. In view of the above, this Court is of the opinion that there is no merits in this case which requires interference by this Court. Accordingly, this writ petition is dismissed.