

(2026) 02 GAU CK 1621
In the Gauhati High Court
Case No : WP(C) Of 3515 Of 2022

Alkas Ali Sheikh

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 26-02-2026

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7
Code of Criminal Procedure, 1973 — Section 173(2)
Indian Penal Code, 1860 — Section 409, 411, 419

Citation : (2026) 02 GAU CK 1621

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : G J Sharma, A Kuddus

Final Decision : Disposed Of

Judgement

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Manish Choudhury, J

1. The present writ petition under Article 226 of the Constitution of India is preferred seeking inter alia setting aside of [i] an Order dated 22.02.2018; [ii] a Show Cause Notice dated 23.04.2018; and [iii] two other Orders dated 25.06.2018 and 10.07.2018. A further direction has also been sought for to direct the respondents to renew the retail license of the petitioner granted under the Assam Public Distribution of Articles [APDA] Order, 1982.

2. The petitioner has stated that he was granted the license under the Assam Public Distribution of Articles [APDA] Order, 1982 on 28.06.2012 by the Licensing Authority. On being granted the license, the petitioner carried on distribution of Public Distribution System [PDS] articles from his Fair Price Shop [FPS] located at Village-Mokrapara, K/Bhotgaon, Kokrajhar. The license was renewed from time to time and the last renewal was up to 31.03.2019.

3. On 12.02.2018, one First Information Report [FIR] came to be lodged by one

Abdul Karim Paramanik, a resident of Mokrapara Village, before the Officer In-Charge, Kokrajhar Police Station alleging that on 10.02.2018, the petitioner was caught red-handed by the villagers while illegally selling around 10 litres of Kerosene from his Fair Price Shop [FPS]. The petitioner was also handed over to Police. On receipt of the FIR, the Officer In-Charge, Kokrajhar Police Station Case registered it as Kokrajhar Police Station Case no. 59/2018 under Section 7

of the Essential Commodities Act, 1955 [‘the EC Act’, for short] and initiated investigation. During the course of investigation, the petitioner was arrested and subsequently, he was released on bail.

4. After investigation, a charge-sheet under Section 173[2] of the Code of Criminal Procedure, 1973 was laid finding a prima facie case to proceed against the petitioner for committing the offences under Sections 409/419/411, Indian Penal Code [IPC]. On submission of the charge-sheet, a charge under Section 409, IPC was framed against the petitioner by the Court of the learned Sub- Divisional Judicial Magistrate [S], Kokrajhar [‘the Trial Court’, for short] in P.R. Case no. 212/2023.

5. Subsequently after registration of the FIR, the respondent no. 4 passed an Order on 22.02.2018 in reference to an Enquiry Report submitted by the Area Officer. By the Order dated 22.02.2018, the beneficiaries/consumers tagged with the Fair Price Shop [FPS] of the petitioner were transferred to another FPS dealer nearby in the interest of public and for the convenience of the beneficiaries/consumers until further order.

6. The Order dated 22.02.2018 was followed by the Show Cause Notice dated 23.04.2018. As per the Show Cause Notice, Enquiry Reports were submitted by an Inspector of Food, Civil Supplies & Consumer Affairs [FCS&CA], Kokrajhar on 21.02.2018 and 20.04.2018. From the Enquiry Reports, it was revealed that the petitioner failed to carry out the instructions laid down in the NFSA 2013 guidelines and the provision of PDS [Control] Order, 2001. Three allegations were made in the Show Cause Notice with a direction to the petitioner to submit his reply within a period of seven days therefrom. In response to the Show Cause Notice dated 23.04.2018, the petitioner submitted a reply on 02.05.2018 wherein the petitioner denied all the three allegations leveled against him in the Show Cause Notice.

7. On 08.05.2018, the respondent no. 4 passed an Order whereby the suspension order passed earlier on 22.02.2018 was withdrawn. In the Order dated 08.05.2018, the respondent no. 4 had recorded that the Order of revocation was passed after perusal of the views of the Inspector, FCS&CA, Kokrajhar and other relevant records.

8. As a result of the Order dated 08.05.2018, the license granted to the petitioner under APDA Order ought to have been revived and the petitioner ought to have been permitted to operate the Fair Price Shop [FPS] for distribution of

PDS articles. But by another Order dated 25.06.2018, the respondent no. 4 based on a Report dated 19.06.2018 submitted by the Inspector, FCS&CA, Kokrajhar under the Area Officer allowed M/s Bhotgaon Cooperative Society to distribute the allotted quotas of PDS/TPDS articles

against monthly allocation of the Fair Price Shop [FPS] of the petitioner till disposal of Kokrajhar Police Station Case no. 59/2018.

9. Subsequently by another Order dated 10.07.2018, the beneficiaries/consumers which were tagged with the Fair Price Shop [FPS] of the petitioner were transferred to the nearest FPS Licensee/dealer, Md. Lalmiya Paramanik of Village – Indra Colony. The Fair Price Shops [FPSs] of the petitioner and Md. Lalmiya Paramanik were allowed to operate under the aegis of M/s Bhotgaon Gaon Panchayat Samabay Samittee [GPSS]. The decision to pass the Order dated 10.07.2018 was made after the Executive Committee of M/s Bhotgaon GPSS passed a resolution expressing its inability to distribute the allotted quota of PDS/TPDS commodities in respect of the beneficiaries/consumers of Mokrapara village due to shortfall of employees in the Society.

10. As after Order dated 08.05.2018, the Order dated 10.07.2018 was allowed to operate for the next four years, the petitioner has preferred this writ petition to assail the afore-stated Orders and seeking the afore-stated reliefs.

11. I have heard Ms. K. Bhattacharya, learned counsel for the petitioner; Mr. S.S. Roy, learned Junior Government Advocate, Assam for the respondent nos. 1, 3, 4 & 6; and Ms. N. Choudhury, learned Standing Counsel, BTC for the respondent nos. 2 & 4.

12. It has been submitted on behalf of the petitioner that since the proceeding earlier initiated by the Show Cause Notice dated 23.04.2018 came to an end with the Order dated 08.05.2018, there could not have been a reason to stop the petitioner from operating the Fair Price Shop [FPS] as the petitioner retail license granted under the APDA Order has neither been expressly suspended nor been cancelled. Yet, the beneficiaries/consumers of his Fair Price Shop [FPS] have been transferred to another Fair Price Shop [FPS] depriving the petitioner from earning his livelihood.

13. When a query is made as regards the outcome of the trial of P.R. Case no. 212/2023, pending before the Trial Court, Ms. Bhattacharya, learned counsel for the petitioner has submitted that the trial has been concluded in the meantime and the learned Trial Court has passed a Judgment and Order dated 26.12.2024 and has placed a copy of the Judgment and Order dated 26.12.2024. By the said Judgment and Order, the Trial Court has convicted the petitioner for the offence under Section 409, IPC and the petitioner has been sentenced to undergo simple imprisonment for a period of three years and to pay a fine of Rs. 30,000/-, in default of payment of fine, to undergo simple imprisonment for a period of nine months. On a further query, M/s Bhattacharya has submitted that an appeal has been preferred against the

Judgment and Order dated 26.12.2024 and the appellate court after admitting the appeal, has allowed suspension of execution of the sentence passed against the petitioner and the petitioner has been allowed to be released on bail. Ms. Bhattacharya has fairly submitted that though the period of sentence has been suspended, the order of conviction passed against the petitioner has not been stayed by the appellate court.

14. Clause 15 of the APDA Order has provided that if any licensee contravenes any of the terms and conditions of the license, then without prejudice to any other action that may be taken under the Essential Commodities Act, 1955 his license may be cancelled or suspended by any Order in writing of the Licensing Authority and an entry will be made in the license relating to such suspension or cancellation. The Order, Assam Public Distribution of Articles Order, 1982 is framed in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955. Clause 15 has provided as under:-

15. [1] If any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms and conditions of the licence, then without prejudice to any other action that may be taken under the Essential Commodities Act 1955 [Central Act 10 of 1955] his licence may be cancelled or suspended by any Order in writing of the Licensing Authority and an entry will be made in his licence relating to such suspension or cancellation.

[2] No order of cancellation shall be made under this Clause unless the licensee has been given reasonable opportunity or stating his case against the proposed cancellation by but during the pendency or in contemplation of the proceedings of cancellation of the license, the license can be suspended for a period not exceeding 90 days without giving any opportunity to the license of stating his case.

15. As the petitioner has been convicted under Section 409, IPC and has been sentenced in the afore-stated manner, this Court in view of such subsequent developments, cannot be extended the reliefs sought for by the petitioner in this writ petition. The petitioner has been convicted for the offence under Section 409, IPC and even if his sentence has been suspended, the order of conviction is in force. A conviction under Section 409, IPC is attracted if one commits criminal breach of trust in a capacity of public servant, banker, merchant, or agent. Whether such a conviction would entail cancellation of the retail license

of the petitioner granted under the APDA Order is a decision which is to be taken by the Licensing Authority under Clause 15 of the APDA Order.

16. In the above obtaining fact situation, this writ petition is disposed of with a direction to the Licensing Authority to take a decision as regards continuation of the retail license of the petitioner granted under the APDA Order within a period of one month from the date of communication of this Order.

17. The Registry is to communicate a copy of this order to the respondent authorities. In addition, a copy of this order is to be furnished to the learned counsel for the petitioner to enable them to communicate the order to the respondent authorities from their ends.