

(2023) 09 GAU CK 0058

In the Gauhati High Court

Case No : Writ Appeal No. 44, 51, 91, 92, 95, 96, 100, 113, 115, 118, 123, 238, 271 Of 2023

Baluram Das And 13 Ors

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 29-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 38, 39, 226

Citation : (2023) 09 GAU CK 0058

Hon'ble Judges : Sandeep Mehta, CJ; Susmita Phukan Khaund, J

Bench : Division Bench

Advocate : Dr. R.C. Borpatra Gohain, S. Borpatra Gohain, D. Borgohain, K. Boruah, B. Kaushik, K. Kalita, L. Sangtam, M. Dutta, B.J. Mukherjee, R. Saha, K. Phukan, R.K. Borah, N. Das

Final Decision : Dismissed

Judgement

S. Mehta, CJ

1. The instant bunch of intra-Court writ appeals, led by WA 51/2023, takes exception to the judgment and final order dated 22.12.2022 passed by the learned Single Judge rejecting a bunch of writ petitions, led by W.P.(C) 5470/2021 (Bijoy Bora and Another vs. The State of Assam and others), involving identical controversy and issues.

2. Heard learned counsel appearing for the parties and perused the material placed on record.

3. The appellants herein (writ petitioners) were granted licences for operating Fair Price Shops ('FPS' for short) in different districts of the State of Assam. Each licence holder (appellants herein) was having 50 or less than 50 ration cards attached to the respective FPS. A communication dated 30.05.2020 came to be issued by the Assistant Director, Food, Civil Supplies & Consumer Affairs Department, requiring the appellants/writ petitioners to attach their FPS to the

nearest FPS having more than 50 ration cards tagged to it or to surrender their licences within three days of receiving such notice. Another Notification dated 07.08.2021 came to be issued by the Director, Food, Civil Supplies & Consumer Affairs, Department of Government of Assam, with the direction that the ration cards of those FPS having 50 or less than 50 ration cards would be attached to the nearest FPS having more than 50 ration cards.

The appellants filed the above mentioned bunch of writ petitions for challenging the communication dated 30.05.2020 and the notification dated 07.08.2021 on numerous grounds amongst others which can be briefly enumerated hereinbelow:

i) that the implementation of the impugned communication/notification would lead to violation of the fundamental rights of the petitioners/writ appellants guaranteed by the Constitution of India. It would also be against the directive principles of State policy enshrined in Articles 38 and 39 of the Constitution of India.

ii) That there is no reasonableness in classification of FPS into two categories, one- having more than 50 ration cards and the other having less than 50 ration cards. The policy decision so taken is absolutely illegal and violative of the constitutional provisions guaranteeing the rights of the citizens under the chapter pertaining to the fundamental rights.

iii) That the State Government cannot unilaterally, in the name of policy decision, encroach upon the policy decision of the Central Government in making the One Nation One Ration Card (ONORC) applicable throughout the country. As per the appellant/writ petitioners, under the said scheme of the Central Government, there is no proposal to make a distinction/classification qua FPS on the basis of number of ration cards.

4. The respondents filed their affidavits-in-opposition to the writ petitions supporting the decision of the State to close down the FPS having 50 or less than 50 ration cards. It is stated in the affidavit that as per the National Food Security Act, 2013, the State Government is primarily responsible to ensure supply of free/concessional food grains to the poor and needy beneficiaries and not for ensuring the financial gains/employment to the FPS dealers. The decision to close down the FPS having 50 or less than 50 ration cards and to tag the respective cardholders to the nearest FPS having more than 50 ration cards does not affect the beneficiaries in any manner. The decision aforesaid was sought to be justified on the ground that the same will minimise the total project cost for FPS automation. It was further stated in the affidavits that the policy decision has been formulated for ensuring smooth/uninterrupted food supply to the needy and entitled persons rather than having focused on employment generation. Thus, there is no obligation of the State to take a policy decision for protecting the interests of the FPS owners. The policy decision focused on minimising the total project cost for implementation of FPS automation which is necessary to introduce the ONORC in the larger public interest. It is further stated that the

power to issue or revoke the licence exclusively vests in the Government and the order dated 30.06.2021 and notification dated 19.10.2021 were issued as a part and parcel of the State policy for smooth implementation of the National Food Security Act, 2013. It is also stated that while taking the impugned decision, the FPS having 50 or less than 50 ration cards tagged with them, the owners whereof are widows and specially-abled persons have been excluded from the operation of the scheme/policy. On these grounds, the submissions of the petitioners were controverted.

5. Dr. R.C. Borpatra Gohain, learned senior counsel assisted by Mrs. S. Borpatra Gohain, learned counsel leading the batch of appeals and learned counsel Ms. D. Borgohain, Mr. B. Kaushik, Mr. M. Dutta and Mr. B.J. Mukherjee, representing the other appellants, vehemently and fervently contended that there is no logic, rational or legality behind the decision taken by the State Government in cancelling/revoking the licences of FPS dealers having 50 or less than 50 ration card holders tagged to them. It was vehemently contended that the decision so taken is wholly arbitrary, illegal and contrary to the constitutional scheme and framework and that the same is violative of the fundamental rights of the appellants/writ petitioners. Learned senior counsel further urged that the appellants/writ petitioners themselves are ready to purchase and install the e-PoS machines in their shops so as to reduce the project cost towards the National Food Security Act. It was further submitted that if the FPS of the petitioners are discontinued, the ration card holders attached to the shops will be seriously inconvenienced and would suffer grave difficulties in procuring the food grains.

Dr. Borpatra Gohain, learned senior counsel referred to Rule 15 of the Assam Public Distribution of Articles Order, 1982 (for short the 'Order of 1982') reproduced below and urged that the licence issued under the Order of 1982 to run and operate the FPS can only be cancelled on the conditions set out in the provision.

"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 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 licence, the licence can be suspended for a period not exceeding 90 days without giving any opportunity to the licensee of stating his case.

3.(a) The licensee shall maintain daily stock register for the notified articles

showing correctly:-

- (i) the opening stock on each day;
- (ii) the quantities received on each day showing the place from where and the source from which received;
- (iii) the quantities delivered or otherwise removed on each day showing the place of destination;
- (iv) the closing stock on each day.

EXPLANATION:-

(a) The licensee may maintain more than one stock register for various notified articles. In case the purchased notified articles are not received physically by the licensee on the date of entering into any transaction or sold notified articles are not removed physically, by the purchaser on the date of entering into any transaction, a note should be recovered in this behalf- in Stock Register.

(b) The licensee should complete the entries in the Stock Register for each day by the beginning of the transaction on the following day, unless prevented by reasonable cause, the burden of proving which shall be upon him."

He contended that since there is not a whisper of an allegation that any of the licence holders, i.e. the appellants herein contravened the terms and conditions irrespective of the licence or the conditions stipulated in clause 15 referred to (supra) and hence, the decision to cancel/non-renewal of the licences of the appellants/writ petitioners is absolutely arbitrary, illegal and unjustified. He further urged that as per the Notification dated 17.08.2015, issued by the Ministry of Consumer Affairs, Food and Public Distribution under the Food Security (Assistance to State Governments) Rules, 2015, the State Government has been given flexibility to choose the model for installation of point of sale ('POS' for short) device. Under clause 6(c) of the Rules, the FPS dealers have been given liberty to purchase, install and maintain the POS device. He urged that the entire expenditure of transportation of the food grains is to be borne by the Central Government and thus, the State Government does not stand to incur any extra expenditure on account of continued operation of the FPS licences granted to the appellants/writ petitioners. He urged that the FPS in question are the only source of livelihood of the appellants/writ petitioners and hence, the impugned decision whereby these licences are sought to be revoked/discontinued would tantamount to deprivation of opportunity to earn livelihood to the appellants herein merely on the irrational ground of number of attached ration cards and thus, the same is violative of the mandate of Articles 14 and 19 (1) (g) of the Constitution of India. Learned senior counsel, Dr. Borpatra Gohain also referred to sub-clauses 5 and 6 of clause 9 of the Targeted Public Distribution System (Control) Order, 2015 and urged that the impugned decision is violative of the said Control Order as well. On these grounds, Dr. Borpatra Gohain, learned senior counsel and other learned counsel representing the appellants implored

the Court to accept the writ appeals and set aside the impugned orders passed by the learned Single Bench and so also the order dated 30.06.2021 and notification dated 19.10.2021 issued by the State Government.

6. Per contra, Ms. K. Phukan, learned Central Government Counsel, Mr. R.K. Borah, learned Additional Senior Government Advocate, Assam and Mr. N. Das, learned Junior Government Advocate, Assam vehemently and fervently opposed the submissions advanced by the appellants' counsel. They urged that the policy decision of the State Government to discontinue the FPS having 50 or less than 50 ration cards was arrived at after objective and thorough consideration of the National Food Security Act, 2013, the policies framed by the Central Government thereunder and the relevant Control Orders governing the field. Detailed statistics were collected and it was found that there was no viability to operate the FPS having 50 or less than 50 ration cards and the viability could be worked out only if the shops having 50 or less than 50 ration cards were tagged with the FPS having 51 or more ration cards. The policy decision to grant licences for running the FPS keeping in view the viability factor is exclusively within the domain of the State Government. It was submitted that the plea advanced by the appellants' counsel that the Central Government would be bearing the entire project cost towards transportation of food grains to the FPS and that the State Government would not incur the financial liability is misconceived because the financial burden of such schemes is ultimately borne by the tax payers and hence, which Government i.e. the Centre or the State would finally bear the extra burden is irrelevant for arriving at a just and prudent policy decision aimed at reducing the loss to the public exchequer. The respondents have demonstrated by referring to the statistical data that while taking the policy decision concerning implementation of the NFSA, 2013 and the rules framed thereunder, detailed deliberations were held and the criterion of transportation cost and the quantum of earnings by the FPS owners based on the number of ration cards were discussed and ultimately the considered decision was taken not to renew the licences of those FPS dealers which had 50 or lesser ration cards tagged. It has been demonstrated in the additional affidavit filed by the Joint Secretary to the Government of Assam, Food, Civil Supplies and Consumer Affairs Department (Annexure-6) that there were as many as 930 FPS which had no ration card tagged and 581 FPS had only 1-24 ration cards. On these submissions, learned counsel for the respondents implored the Court to dismiss the writ appeal and affirm the impugned judgment of the learned Single Judge.

7. We have given our thoughtful consideration to the submissions advanced at Bar and have carefully gone through the impugned judgment; the impugned order dated 30.06.2021; the notification dated 19.10.2021 and the other material placed on record. At the outset, we may note that the decision not to renew the licences of the FPS dealers based on the number of ration card attached thereto is unquestionably a policy matter and the scope of interference by a Court exercising extra-ordinary writ jurisdiction into such a policy decision is extremely limited. Law is well settled that unless the policy decision taken by the

State can be demonstrated as being absolutely arbitrary, mala fide and contrary to the Constitutional provisions, there would hardly be any scope for interference in such policy decision in exercise of the power of judicial review under Article 226 of the Constitution of India. Reference in this regard may be made to the decision of the Hon'ble Supreme Court in the case of *M.P. Oil Extraction and another vs. State of Madhya Pradesh and others*, reported in AIR 1998 SC 145. Keeping in view said principle, we now proceed to consider the submissions of the learned counsel appearing for the parties.

8. At the outset, it may be stated that the licences to run the FPS had been issued to the appellants/writ petitioners under the Assam Public Distribution of Articles Order, 1982. The licences are issued for a fixed period which can be renewed further. Under clause 3 of the Control Order, 1982, the licensing authority is empowered to issue a licence in Form-I to the appointed dealer as may be considered necessary from time to time. The application for renewal of licence is to be filed in Proforma- B under Clause 2(j) of the Order of 1982. Hence, it is clear that the licence once granted is not perpetual and is subject to renewal by the competent authority. There cannot be two views on the aspect that the licensing authority cannot be compelled to extend the licence once granted at any cost. The licence holder can also not claim an indefeasible right to have the licence renewed because recognising such a right would set at naught the power of licence renewal conferred upon the authority by the Order of 1982. The appellants/writ petitioners have themselves stated in the writ petitions that their licences were valid up to 31.03.2022 and have not been renewed any further. The licensing authority has been given a discretion to be exercised within the four corners of law for extension of licences granted to the FPS dealers.

The State Government having taken a well-reasoned and objective policy decision not to continue with the FPS having 50 or less than 50 ration cards tagged to them, it is apparent that the petitioners would not be entitled to claim renewal of licences issued to them by the competent authority. Thus, it is not a case wherein the licences earlier issued to the petitioners have been cancelled by taking recourse to the provisions contained in clause 15 of the Order of 1982 but on the contrary, it is a clear situation of non-renewal of licences in view of the policy decision adopted by of the State Government after objective consideration of the National Food Security Act and the relevant statistical data and the logistic factors by keeping in mind the best interest of the consumers, the ONORC scheme and the possibility of loss to public exchequer by continued operation of non-viable FPS.

9. Having gone through the impugned judgment rendered by learned Single Judge, we find that the Writ Court has duly adverted to the prevailing facts, circumstances and statutory provisions referred to (*supra*) and arrived at a just, apropos and only permissible view that the State Government as the policy making authority has the jurisdiction and authority to frame a policy for proper implementation of the National Food Security Act, 2013. The decision to

discontinue the FPS having 50 or less than 50 ration cards is a part and parcel of the policy decision so taken vide order dated 30.06.2021 and notification dated 19.10.2021 and such decision cannot be held to be violative of any of the clauses of the Assam Public Distribution of Articles Order, 1982 or the Targeted Public Distribution System (Control) Order, 2015 so as to call for interference in exercise of the writ appellate jurisdiction.

10. As per the additional affidavit dated 20.04.2022 filed by the Joint Secretary to the Government of Assam, Food, Civil Supplies and Consumer Affairs Department (Annexure-6) before taking the policy decision, review was made of the various FPS dealers and it was found that there are as many as 930 FPS having no ration card tagged and 581 FPS are having 1-24 ration cards tagged. It cannot be conceived as to how a FPS with no ration card tagged to it would be a viable business so as to warrant renewal of the licence thereof. It is beyond comprehension of this Court as to how and why these FPS are being allowed to continue. We are thus of the considered view that the policy decision taken by the State Government to discontinue/not to renew the licences of the FPS having 50 or less than 50 ration cards tagged thereto while excluding the widows and the specially-abled persons, was taken with the highest degree of objectivity. The foundation of the said decision is to reduce the logistic complications and the cost factors involved in transportation of food grains to such FPS, where the number of consumers is extremely low. In addition thereto, there is the important factor in play regarding the feasibility of earnings of the FPS dealers with such a minuscule number of ration cards tagged to them.

11. We further find that while taking the policy decision, the Cabinet has given due regard to the specially-abled persons and widows whose licences have been left out from the operation of the policy decision taken vide order dated 30.06.2021 and notification dated 19.10.2021. The learned Single Judge has already directed the State Government to renew the licences of the petitioners belonging to these two categories. Thus, the decision of the State Government apart from being within the constitutional framework is also just and logical and has been taken after considering the hardships likely to be faced by the widows and differently-abled persons. The other appellants being able-bodied persons cannot claim the same privilege.

12. The impugned judgment dated 22.12.2022 as rendered by the learned Single Judge does not suffer from any infirmity warranting interference. The writ appeals thus fail and are dismissed being devoid of merit.

No order as to cost.