
(2022) 12 GAU CK 0017
In the Gauhati High Court
Case No : Writ Appeal No. 384 Of 2022

Gauranga Dey

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 14-12-2022

Acts Referred:

Citation : (2022) 12 GAU CK 0017

Hon'ble Judges : R.M. Chhaya, CJ; Soumitra Saikia, J

Bench : Division Bench

Advocate : S.C. Biswas, A. Gayan

Final Decision : Dismissed

Judgement

R.M. Chhaya, CJ

1. Heard Mr. S.C. Biswas, learned counsel for the appellant. Also heard Ms. A. Gayan, learned Central Government Counsel, appearing for all the respondents.
2. Feeling aggrieved and dissatisfied by the judgment and order dated 24.11.2022 passed by the learned Single Judge in WP(C) 326/2021 and other connected writ petitions, the original writ petitioner has preferred this intra-Court appeal.
3. Mr. S.C. Biswas, learned counsel for the appellant has taken this Court to the factual matrix and has contended that as per the policy of the respondent authorities the regimental shops are to be allotted only to war-widows/widows of defence personnel killed while on duty/disabled soldier/ex-servicemen and spouses/widows of ex-servicemen etc. Though the appellant is in possession of the shop since 2001, the authorities have wrongly resorted to eviction proceedings and on that ground it was contended that the appeal be allowed.
4. Mr. S.C. Biswas, learned counsel for the appellant also alternatively submitted that as the appellant is doing his business and earning his livelihood, abruptly to vacate and find out another alternative place would be very difficult for him and

therefore, some reasonable time be granted to vacate the premises occupied by the appellant as an alternative measure. Mr. Biswas contended that this Court may take lenient as well as humanitarian view and grant time of one year to the appellant to vacate the shop.

5. Ms. A. Gayan, learned Central Government Counsel appearing for the respondents has opposed this appeal and has also opposed grant of further time and has contended that the issue is well settled as observed by the learned Single Judge and no leniency deserves to be shown.

6. No other or further contentions/submissions or grounds have been raised by the learned counsel appearing for both the parties.

7. Considering the submissions made and on perusal of the impugned judgment and order, it clearly appears that the guidelines issued by the respondent authorities clearly lays down the eligibility criteria for running a regimental shop including a unit shop or a shopping centre. Learned Single Judge has considered the same and has also taken into consideration the judgment and order of the Hon'ble Apex Court passed in Special Leave to Appeal (C) No(s).5030-5032/2020 which came to be disposed of on 04.02.2021 and has rightly come to the conclusion that the appellants as licensee have no right for further renewal of their licences de hors the policy decision taken by the respondent authorities. The learned Single Judge after considering the aforesaid has observed in paragraphs 12, 13 and 14 as under;

"12. On perusing the licences given to the petitioners for running their shops for a period of 11 months at a time, it is seen that in Clause 2, it is stated that the licence is purely temporary for a period of 11 months and is renewable after 11 months at the discretion of the Administrative Commandant. Clause 21 of the licence states that the licence may be renewed for a further period of 11 months with the consent of both the parties. As such, the renewable of a licence is a discretionary power and has to be done with the consent of both the parties. However, with the issuance of the Notification dated 17.01.2018, providing 100% reservation for allotment of regimental shops which includes a unit shop and a shopping centre/complex to the war-widows/widows of defence personnel killed while on duty/disabled soldier/ex-servicemen and spouses/widows of ex-servicemen etc, it is clear that the 40% reservation for shops, earlier given to the Government agencies and Civilians in terms of the 2006 Rules has been done away with. Further, in view of the Punjab & Haryana High Court judgment and the observation of the Hon'ble Supreme Court in the order dated 04.02.2021, the Notification dated 17.01.2018 is applicable to the facts of these cases.

13. In view of the reasons stated above, this Court is of the view that no case has been made out for this Court to exercise its discretion, especially when the licences of the petitioners have expired more than a year back. In view of the above reasons, this Court is of the view that the order dated 03.11.2022 passed by this Court in WP(C) No.5947/2017, directing the Station Commander, Station

Headquarter, Tezpur to consider the case of the petitioners therein, with regard to their prayer for renewal of the licence, is not applicable to these cases, as the learned Coordinate Bench was not made aware of the judgment of the Division Bench of the Punjab & Haryana High Court, in Civil Writ Petition No.18833/2019 (O&M) and the order passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No(s). 5030-5032/2020.

14. Consequently all the writ petitions stand dismissed. All the interim orders passed earlier in these writ petitions stand vacated. However, the respondent authorities are directed to give the petitioners at least 2 (two) months' time to vacate their allotted shops."

8. We are in total agreement with the observations made by the learned Single Judge. The authorities are duty bound to make allotment as per the policy and the scheme applicable and the appellant has no inherent right to continue in occupation and insisting for renewal of his licence. Hence, this appeal being bereft of merit deserves to be dismissed and is hereby dismissed.

9. However, considering the alternative submission and also taking into account the fact that the appellant is in possession of the shop in question as licensee since the year 2001, we deem it fit to grant time to the appellant to vacate his shop within a reasonable time.

10. Accordingly, while dismissing the appeal, we hereby grant time to the appellant to vacate the shop occupied by him latest by 30.06.2023 on condition that the appellant shall file an undertaking on oath stating that he would vacate the shop occupied by him latest by 30.06.2023. Meanwhile, the appellant shall make any alteration of any kind and shall not transfer the possession to anybody. Such undertaking shall be filed within a period of 2 (two) weeks from today. If no such undertaking is filed, the respondents are at liberty to take appropriate steps against him.

11. With these observations, this appeal stands dismissed. Parties to bear their own costs.