

(2024) 01 GAU CK 0025

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3778 Of 2023

M/S Mohanpur Gpss Ltd. And 2 Ors.

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 18-01-2024

Acts Referred:

Indian Penal Code, 1860 — Section 240, 468
Essential Commodities Act, 1955 — Section 7

Citation : (2024) 01 GAU CK 0025

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : P. K. Roychoudhury, M. Chetia

Final Decision : Allowed

Judgement

1. Heard Shri P. K. Roychoudhury, learned counsel for the petitioners. Also heard Shri M. Chetia, learned State Counsel appearing for all the respondents.

2. The present writ petition has a chequered history which includes previous litigations also.

3. The petitioner no. 1 is a Samabai Samity which was granted a Fair Price License being License No.HS.PDS/H/W/5 under the Assam Public Distribution of Articles, Order, 1982 . In connection with an incident in delay in distribution of NFSA rice to 21 numbers of Fair Price Shop Agents and some seizure made, Algapur PS Case No. 356/2021 under Sections 240/468 IPC read with Section 7 of the Essential Commodities Act was registered. Apprehending arrest in the said case, the petitioner no. 2, who is the Secretary of the petitioner no. 1, Samity had approached this Court by filing AB No.4311/2021 and this Court vide order dated 07.02.2022 had granted anticipatory bail to the petitioner no. 2. It is also averred that in the said police case, Final Report (FR) was submitted.

4. In connection with the aforesaid incident, the Department had issued an order dated 14.12.2021 suspending the license of the petitioner no. 1, Society and the

consumers were attached to a nearby Society. It was alleged that there were violations of Clause-4, 7 & 8 (1) of the license.

5. The aforesaid order of suspension was the subject matter of challenge in WP(C) No. 7224/2021 filed before this Court. However, during the pendency of the said writ petition, an order was passed on 10.03.2021 whereby the license of the petitioner no. 1 was cancelled. The aforesaid order of cancellation was the subject matter of the second writ petition i.e. WP(C) No. 2332/2022.

6. This Court had disposed of the said two writ petitions vide order dated 09.03.2023 by directing reconsideration of the appeal by the appellate authority, namely, the Deputy Commissioner, Hailakandi. This Court had however noticed that the allegation was in connection with not making timely delivery of the PDS articles and wherein the delivery which was to be made within 31st November, 2021 was not found to be complete. The appellate authority on such remand had passed an order dated 12.05.2023 rejecting the same and the orders of suspension as well as cancellation were upheld.

7. Shri Roychoudhury, the learned counsel for the petitioners has submitted that the order of cancellation is absolutely harsh and shockingly disproportionate to the nature of allegations leveled. It is specifically contended on behalf of the petitioners that the allegation is not of any mis-appropriation or defalcation of funds or misuse but only relates to a slight delay in distributing the PDS articles. He submits that for such allegation, the order of cancellation of the license as a whole is not at all reasonable as it would amount to adversely affecting the means of livelihood of the petitioners and the members concerned with the petitioner no. 1, Samity. He submits that the commission received from such license is one of the main source of income and there was never any intention on the part of the petitioners to cause delay in distributing the items.

8. Coming to the explanations projected by the petitioners, it is submitted that there were bona fide reasons for which the delay has been caused and such reasons includes illness of two workers of the petitioner no. 1, Society who were engaged in loading and unloading of articles and also the reason that the daughter of the petitioner no. 2 was seriously ill for which she was required to be shifted to Guwahati for advanced/better treatment. He submits that the appellate authority on both the occasions has failed to apply his judicious mind to the causes shown and have rather taken a hyper technical approach by coming to a conclusion that the stand taken by the petitioners was not consistent.

9. By drawing the attention of this Court to the replies dated 24.12.2021 and 12.05.2023, it is submitted that there is no inconsistencies in the said replies and the cause connected with the illness of the daughter which was inadvertently left out in the first reply was also taken up in the second reply and there is no questions raised on the correctness/truthfulness of the said cause.

10. On the aspect of the disproportionality of the punishment, it is submitted that cancellation of the license is not only harsh but the situation prevailing in

this case would also not justify such a penalty. The learned counsel reiterates that the allegations are not of that serious nature whereby the severe most penalty should be imposed. On the aspect that the Assam Public Distribution of Articles Order, 1982 (hereinafter the Articles Order of 1982) does not prescribe for any other penalty, Shri Roychoudhury, the learned counsel by referring to Clause-15 of the said Order submits that under Clause-15 (1), the authority is empowered to impose the penalty of either suspension or cancellation and Clause-15 (2) only lays down the prescription in case an order of cancellation is contemplated. He submits that unlike the concept of suspension in a departmental proceeding concerning the service rendered by a delinquent employee which is passed in contemplation of a departmental proceeding, suspension under the Articles Order of 1982 itself can be construed to be a penalty.

11. In support of his submission, the learned counsel has referred to the cases of Om Kumar and Ors. Vs Union of India reported in (2001) 2 SCC 386 and Deputy Commissioner, Kendriya Vidyalaya Sangthan Vs J. Hussain reported in (2013) 10 SCC 106. Reference is also made to a judgment of this Court reported in 2014 3 GLT 253 (Santanu Medhi Vs State of Assam & Ors).

12. In the case of Om Kumar (supra), the Hon'ble Supreme Court has considered the aspect of proportionality of the penalty imposed wherein the Wednesbury principle was also taken into account. The aforesaid case however pertained to a disciplinary action against certain officials of the Delhi Development Authority (DDA).

13. In the case of J. Hussain (supra), the Hon'ble Supreme Court has laid down the extent of judicial review in disciplinary matters by taking into account the principles of proportionality and reasonableness.

14. In the case of Santanu Medhi (supra), this Court had observed that the power conferred under Clause 15 of the Articles Order, 1982 is drastic in nature as it affects the life and livelihood of the licensee.

15. Per contra, Shri M. Chetia, the learned State Counsel submits that this Court exercising writ jurisdiction would confine its examination only to the decision making process and not the merits of the decision. He submits that there is no allegation made by the petitioners regarding any procedural irregularity as admittedly, before issuing the impugned order of cancellation, the same was preceded by issuing a show-cause notice. He submits that such procedure is consistent with the requirement of Clause-15 of the Articles Order of 1982 . He submits that both the cancellation order and the impugned order passed by the Appellate Authority have assigned grounds which appear to be reasonable and have been taken by considering all the relevant aspects of the matter. He submits that the replies dated 24.12.2021 and 12.05.2023 are prima facie inconsistent as a new ground has been sought to be added with regard to the illness of the daughter. He accordingly submits that no fault can be attributed to

the decision making process which has culminated in the order of cancellation of the license.

16. With regard to the submissions made on behalf of the petitioners on the severity of the penalty imposed whereby a ground of disproportionality has been tried to be made out, the learned State counsel submits that the allegations cannot be termed to be simple in nature. He submits that distribution of PDS articles are mainly for the consumers who belong to the lower strata of the society, both economically and socially and even a slight delay would have adverse affect on their livelihood and therefore the submissions made on behalf of the petitioners that only in case of misappropriation or defalcation that license can be cancelled. The learned State Counsel further submits that no other penalty other than cancellation of license is prescribed in the Articles Order of 1982 and therefore the penalty imposed is justified and is consistent with the prescription of the law governing the field.

17. The rival submissions made by the learned counsel for the parties have been duly considered.

18. Before going to the issue which has arisen for determination, it would be necessary to note the observations made by this Court in the earlier round of litigation. While disposing of the earlier writ petitions being WP(C) Nos. 7224/2021 and 2332/2022 vide order dated 09.03.2023, this Court has made the following observations:-

“ The allegation ultimately appears to be one related to timely delivery of the PDS articles to the Fair Price Shops. To be more specific, the delivery which was to be made within 31st November, 2021 was not found to be completed. It is however not the case of the authority that the delivery was not done at all but was done beyond the time stipulated for such purpose”

19. The remand was made taking into consideration that under Clause-29, an appeal is prescribed which was in fact preferred and was pending consideration. Pursuant to the said order of remand, the impugned order has been passed by the Deputy Commissioner, Hailakandi as the Appellate Authority on 12.05.2023.

20. The learned Appellate Authority while considering the case of the petitioners has taken into account that the written version submitted by the petitioners on two occasions were not consistent. It has been specifically recorded that in the written statement, the Secretary and the Chairman of the petitioner no. 1 while admitting the delay in distribution of the NFSA rice had cited that his daughter had fallen ill on 13.11.2021 and for which she was required to be taken to Guwahati for better treatment and had returned only on 19.11.2023 and therefore the delay had occurred. However, it is recorded that in the reply dated 24.12.2021, the reasons cited was that two labourers were unwell.

21. The aforesaid observations of the learned appellate authority does not, per se appear to be unreasonable or arbitrary as such observations are based on the

materials on record. This Court has also noticed that the petitioners have been afforded a proper opportunity to defend their case as admittedly, a show-cause notice was issued and the petitioners had submitted replies on two occasions. In fact it is not even the case of the petitioners that no proper opportunity was granted.

22. This brings this Court to consider the aspect on the proportionality of the penalty imposed vis-à-vis the nature of the charges. The charge in the instant case is delay in distribution of the NFSA rice for the Month of November, 2021. This Court in the earlier proceeding has already recorded that there was no dispute to the fact that the rice was ultimately distributed in the month of December. Though timely distribution of PDS items which are meant mainly for the economically and socially downtrodden class of the society is of importance, the penalty imposed of cancellation of the license which is the severe most form appears to be disproportionate. This Court has also noticed that in the connected police case, FR has been submitted. Though that itself may not be an absolute bar for proceeding under the Articles Order of 1982, the said fact would certainly be a relevant factor for consideration.

23. This Court has noticed that Clause-15 of the Articles Order of 1982 contains two parts and under Clause-15 (1), a license can be cancelled or suspended. The provisions of Clause-15 (2) is only in connection with the procedure to be adopted if an order of cancellation is required to be passed. Unlike a disciplinary proceeding concerning a delinquent employee, suspension of a license can itself be construed to be a penalty under the Articles Order of 1982. In that view of the matter and moreso when the said Order does not prescribe for any other penalty, this Court is of the view that the order of cancellation can be substituted only by an order of suspension which was already passed and the license of the petitioner no. 1, Society was under suspension for the prescribed period.

24. In view of the aforesaid facts and circumstances and the discussions made, this Court is of the view that on the ground of proportionality, the impugned action which has culminated in the order dated 12.05.2023 would need interference which is accordingly done. The cancellation order accordingly stands interfered with and the license of the petitioner no. 1, Society is directed to be restored.

25. Consequently, the consumers, who were attached to the petitioner no. 1, Society are directed to be again attached after restoration of the aforesaid license.

26. Writ petition accordingly stands allowed in terms of the observations made above.

27. No order as to cost.