

(2004) 08 GAU CK 0037
In the Gauhati High Court
Case No : Writ Petition (C) No. 5776 of 2004

Pallavi Lahkar (Bora)

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-08-2004

Acts Referred:

Assam Trade Articles (Licencing and Control) Order, 1982 — Order 11, Order 11(2), Order 28

Citation : (2005) GLT 545 Supp

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : K.N. Choudhury, S. Shyam and M. Mahanta, for the Appellant; R. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The Petitioner who is a Liquefied Petroleum Gas (hereinafter referred as LPG) dealer has assailed the order dated 12.08.04 passed by the Sub-Divisional Officer (SDO), (Civil), Rangia and licensing authority, suspending the Trade License for alleged contravention of the provisions of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 and terms and conditions of the licence as well as the clauses of the Assam Trade Articles (Licensing and Control) Order, 1982. Along with the order of suspension, the Petitioner has also been issued with a show cause notice asking her to furnish her written reply.

2. The Petitioner was granted the LPG distributorship at Rangia by the Indian Oil Corporation Limited (Assam Oil Division). She obtained a trade licence as required under the provisions of Assam Trade Articles (Licensing and Control) Order, 1982 for the purpose of running the LPG distributorship in the name and style of M/s. Binapani Randhan Gas. The trade licence is dated 29.04.02.

3. According to the Petitioner certain business adversaries of the Petitioner have been making all out efforts to cause loss and injury to the Petitioner by way of

closure of her LPG distributorship. By the impugned order dated 12.08.04 (Annexure-4), aforesaid trade licence of the Petitioner has been put under suspension. The order has been issued by the SDO (Civil), Rangia who is the licensing authority. The order reads as follows:

Government of Assam Office of the Sub-Divisional Officer (Civil), Rangia Food and Civil Supplies Branch

ORDER

Perused the report submitted by Shri G.M. Borah, Inspector, Food and Civil Supplies, Rangia on 03.08.04.

It appears from the report of Shri G.M. Borah, Inspector, Food and Civil Supplies, Rangia that M/s. Bina Pani Randhan Gas, IOC (AOD), LPG distributor of Rangia has violated the Clauses 2 (p), 8(i) and (ii), 9 (a) and (c) and 10 of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 and terms and conditions No. 2 (b), 3(a), (b), 7, 8, 12 of licence as well as Clauses 10, 16(iii), 17 of Assam Trade Articles (Licensing and Control) Order, 1982.

As such considering all aspects of facts, I Dr. M.S. Angamuthu, IAS, Sub-Divisional Officer (Civil) Rangia and licensing authority in the exercise of power conferred upon me by Clause 11(1) of Assam Trade Articles (Licensing and Control) Order, 1982, do hereby suspend the Trade Licence No. ATAO/RL/RNY/169/2002 issued in favour of M/s. Bina Pani Randhan Gas, Rangia for above contravance with immediate effect.

Sub-Divisional Officer (Civil), Rangia and Licensing Authority Memo No. RSL-21/04/22/224-32 Date 12.08.04

4. Simultaneously, a show cause notice has been issued to the Petitioner on 12.08.04 levelling a many as 9 allegations of serious nature. By the said show cause notice, she has been asked to furnish her reply as to why her trade licence should not be cancelled for violation of the clauses of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 as well as the Assam Trade Articles (Licensing and Control) Order, 1982. The allegations made against the Petitioner in the show cause notice are as follows:

(1) Your stock register is not upto date and not tallied with physical stock (i.e. both in Godown as well as office premises. Thus you have violated Clause 10 of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 as well as terms and conditions 3(a), (b) of the licence issued under Assam Trade Articles (Licensing and Control) Order, 1982.

(2) Stored LPG and refill cylinder other than storage point as licence issued by the Chief Controller of Explosive. Thus you have violated Clause 2(p) of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000.

(3) You have not displayed upto date stock and prices of LPG cylinder at your business premises. Thus you have violated Clauses 8(i), (ii) of Liquefied

Petroleum Gas (Regulation of Supply and Distribution) Order, 2000.

(4) The distributor inspite of having stock of LPG refused to sale of LPG to its registered consumers. Further you have not taken any steps for availability of refill cylinder even in crisis period like fold. Thus you have violated the Clauses 9(a), (c) of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 as well as Clause 16 (iii) Assam Trade Articles (Licensing and Control) Order, 1982.

(5) After verification of cash memo book it appears that you have issued only 7 Nos. of cash memo to your consumers w.e.f. SI. No. 5850 dated 02.07.04 to SI. No. 5856 dated 09.07.04 against 2064 Nos. cylinders w.e.f. 01.07.04. Thus you have violated Clause 17 of Assam Trade Articles (Licensing and Control) Order, 1982 as well as terms and conditions 7 of licence.

(6) According Trade licence issued to you, you had been allowed to store trade articles (i.e., LPG Cylinder) near the N.H.-31 Rangia Town (Approved) godown but you have kept trade articles (i.e., LPG cylinder) other than the godown. Thus have violated terms and conditions 2 (b) of licence issued under Assam Trade Articles (Licensing and Control) Order, 1982.

(7) You have not furnished the correct information regarding your business to the licensing authority even you are aware about your stocks (consignment of 300 Nos. LPG which was supplied by Indane bottling plant North Guwahati to you vide challan/invoice No. 6099770 dated 09.07.04). Thus you have violated terms and condition 8 of licence.

(8) You have not taken any adequate measures for storage of trade articles (i.e., LPG Cylinder which is highly explosive) to avoid any other mishaps like fire hazards etc. which may caused in danger of the life and property of patrol pumps as well as public. Thus you have violated terms and conditions 12 of licence issued under Assam Trade Articles (Licensing and Control) Order, 1982.

(9) It appears that you have contravened terms and conditions of licence issued to you under Assam Trade Articles (Licensing and Control) Order, 1982. Thus you have violated Clause 10 of Assam Trade Articles (Licensing and Control) Order, 1982.

5. With the passing of the aforesaid orders dated 12.08.04, more particularly the one relating to the order of suspension of the trade licence, the Petitioner has invoked the writ jurisdiction of this Court. The matter was taken for motion hearing on 16.08.04 and the learned State Counsel was requested to obtain instruction in the matter. The matter was finally taken up on 20.08.04 in the presence of SDO (Civil), Rangia. The learned State Counsel has furnished the instruction and produced the records.

6. Mr. K.N. Choudhury, learned Sr. Counsel assisted by Mr. S. Shyam, learned Advocate strenuously argued that entire action towards issuance of the impugned order dated 12.08.04 suspending the trade licence of the Petitioner is

actuated by malafide and colourable exercise of power. Referring to the averments made in the writ petition, Mr. Choudhury submitted that the action on the part of the Administration is based on false, fraudulent and baseless allegations at the instance of the Respondents No. 7 whom the Petitioner has described as apolitical adversary of the father of the Petitioner. He submitted that there has been no violation of the provisions of the aforesaid orders of 2000 and 1982 as alleged in the impugned orders. Referring to the particular incident dated 10.07.04, he submitted that the Petitioner had no hand in the same.

7. It will be pertinent to make a mention about the incident of 10.07.04. On that day, the truck load of LPG cylinders (300 Nos.) dispatched by the IOC from its bottling plant to the Petitioner reached Rangia. However, the cylinders were not unloaded and the Civil Administration seized the truck along with the LPG cylinders on 11.07.04 from the premises of a patrol pump. Upon such seizure the authorities of the Respondents carried out an enquiry which included visit of the premises of the Petitioner's distributor point. The records etc. were examined.

8. According to the Petitioner she was not even aware of dispatch of the LPG cylinders from the bottling plant of IOC till 13.07.04, when the matter was informed over telephone by the Field Officer of the IOC. She also disowned her responsibility in any act or commission on the part of the Truck Driver and his associates. In paragraph 9 of the writ petition the Petitioner has made a statement that the Driver of the Truck having learnt almost acute flood situation in the entire District of Nalbari, rushed to his native village in the District in which his family resides keeping the truck inside the petrol pump premises and the Truck did not reach the godown, about which the Petitioner was not informed by anyone.

9. Ms. R. Chakraborty, learned State Counsel in reference to the records, on the other hand submitted that the impugned order has been issued in bonafide exercise of power and that the story made out by the Petitioner falls through on the basis of materials available on record.

10. In view of the allegations made in the writ petition, this Court by order dated 16.08.04 directed production of the records which, were accordingly produced on 20.08.04. have gone through the records and the same have made shocking revelation.

11. It will be pertinent to mention here that at the relevant point of time when the aforesaid incident occurred there was acute shortage of LPG cylinders at Rangia, a fact which the Petitioner herself has admitted. The Civil Administration seized the truck on 11.07.04 and an enquiry was carried out. The enquiry report was submitted to the SDO (Civil), Rangia pointing serious irregularities on the part of the Petitioner. As against the plea of the Petitioner that there was no stock of LPG cylinders, the aforesaid truck load of consignment reached her, but the same was diverted as per her instruction. The report also reveals many other serious infirmities which I refrain from reflecting in this orders, lest the case of

the Petitioner gets prejudiced in the proceeding relating to show cause notice.

12. As against the plea of the Petitioner that the Driver of the Truck left for his village leaving the Truck in the premises of the petrol pump of M/s. Agaral Auto Agency, Rangia and that he did not inform the Petitioner regarding arrival of the Truck load of LPG cylinders, the Driver of the Truck made a statement on 13.07.04 in presence of the witnesses that he reached the Petitioner's Agency at 8 O'clock in the morning on 11.07.04, and the Petitioner instructed him not to unload the cylinders but to keep the Truck in the premises of the said petrol pump. Then he kept the Truck there as per her advice. Similarly, the Handyman of the Truck also made statements in tune with the statements made by the Driver. Statements have been made by others also corroborating the-statements of the Driver and the Handyman of the Truck.

13. It is on the above-basis and having found a prima facie case against the Petitioner the impugned action has been taken against the Petitioner. Order 11 of the aforesaid orders of 1982 empowers the licensing authority to cancel or suspend a licence on grounds of contravention of any of the terms and conditions of the licence which necessarily will lead to the provision of the aforesaid orders of 1982 and 2000. The impugned order itself has specified the contraventions on the part of the Petitioner coupled with the revelations made in the show cause notice which include the aforesaid incident also. As per the expressed provisions of Order 11 of the aforesaid Orders of 1982, it is not only the licensee, but his agent or servant or any other persons acting on his behalf who contravenes any of the terms and conditions of the licence will entail the consequence of cancellation or suspension of the licence.

14. Mr. K.N. Choudhury placed reliance on two decisions of the Division Bench of this Court as reported in 1995 (2) GLT 172 /173. K. Daoji Singh v. Yumnam N. Mema @ Memabati Devi. Both the decisions are pertaining to suspension of licence and seizure of goods under the provisions of Assam Public Distribution of Articles, Order 1982. In the said cases the impugned orders having not indicated as to which of he terms and conditions of the licence and for that matter the provisions of the order had been violated it was held that the same reflected non-application of mind. In the second case the impugned seizure was made "for violation of the order". Observing that the reason to believe that the violation of the order has taken place is the precondition of the seizure of the goods it has held that the reasons assigned were not sufficient. In that case the Govt. failed to explain the matter or to place any material relating to violation of the provisions of 1982 Order.

15. I have failed to understand as to how the aforesaid two cases help the case of the Petitioner. In the instant case, the impugned order has clearly spelt out the provisions of licence and the aforesaid orders of 1982 and 2000 which have been allegedly violated by the Petitioner. In the instant case the conditions precedent for suspension of a licence do exist and it can not be said that the power vested with the licensing authority in this regard has in any manner exercised arbitrarily

or illegally. Having regard to the revelations made from the records and even in the show cause notice, I am afraid if the impugned order is not justified, what else could be the situation in which a licence issued under the aforesaid order of 1982 could be suspended.

16. There is another aspect of the matter. There is an alternative remedy open for the Petitioner by way of preferring an appeal against the impugned order. Order 28 provides for appeal to the higher authority against any order passed under the Orders of 1982. However, the Petitioner has invoked the writ jurisdiction on ground of extra-ordinary circumstances and it is on that basis and insistence the writ petition was taken up on merit.

17. The Petitioner has not put to challenge the show cause notice dated 12.08.04 (An- nexure-5). The learned Counsel for the Petitioner during his argument made it very clear that the Petitioner would respond to the said show cause notice by submitting her reply. The provisions of Order 11(2) of the aforesaid Order, 1982 provide that no order of cancellation shall be made unless the licensee has been given a reasonable opportunity of stating his case against the proposed cancellation, but during the pendency or in contemplation of proceedings of cancellation of licence, the licence can be suspended for a period not exceeding 90 days without giving any opportunity to the licensee to state his case. The Petitioner has been issued with the show cause notice asking her to furnish reply as to why the trade licence should not be cancelled.

18. The competent authority of the Respondents has invoked the provisions of Order 11 suspending the licence of the Petitioner on legal and valid grounds. The records do not reveal any political interference in the matter not to speak of any interference on the part of the Respondent No. 7 about which the Petitioner has made statements in the writ petition. The Petitioner has miserably failed to establish the allegations by even remotely connecting the Respondent No. 7.

19. For the foregoing reasons and discussions, I do not find any infirmity in the impugned order of suspension dated 12.08.04. The Respondents shall now proceed with the matter in accordance with law so as to complete the proceeding as has been initiated by the show cause notice dated 12.08.04 expeditiously as possible giving all reasonable opportunity to the Petitioner. The authority will Judge the case on its own merit without being influenced by any of the observations made in this order.

20. The writ petition stands dismissed leaving the parties to bear their own costs.