



GAHC010008092013

Page No.# 1/9



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3457/2013

BARAKPAR CO-OPERATIVE SOCIETY LTD. and ANR
MADHURBAND, SILCHAR-1, CACHAR, ASSAM, REPRESENTED BY
FAKRUL ISLAM MAZUMDAR, CHAIRMAN, S/O LT. AFTABUDDIN
MAZUMDAR, R/O MADURBAND, SILCHAR-1

2: MUSTAFA AHMED HAZARI
APPOINTED SECRETARY OF THE SOCIETY
S/O LT. ALHAJ ASSADAR ALI HAZARI
MADHURBAND
SILCHAR-

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY FOOD AND
CIVIL SUPPLIES DEPARTMENT, DISPUR, GHY-6

2: THE DIRECTOR OF FOOD and CIVIL SUPPLIES DEPARTMENT
ASSAM
BHANGAGARH
GHY-7

3: THE DY. COMMISSIONER
CACHAR
SILCHAR SUPPLY BRANCH
SILCHAR-788001

4: THE ASSTT. DIRECTOR
FOOD AND CIVIL SUPPLIES and CONSUMER AFFAIRS
SILCHAR
P.O. SILCHAR
PIN-788001

5: THE AREA OFFICER



FOOD AND CIVIL SUPPLIES and CONSUMER AFFAIRS
SILCHAR
P.O. SILCHAR
PIN-788001

6:LUTFUR RAHMAN CHOUDHURY
PRESIDENT BARAKPAR CO-OP. SOCIETY'S AGENTS ASSOCIATION
REPRESENTING THE AGENTS
S/O LT. MAKKADAS ALI CHOUDHURY
R/O MADHURBAND END ROAD
SILCHAR-788001
DIST- CACHAR

7:ABDUL MUKID LASKAR
S/O LT. MADARIS ALI LASKAR
R/O MADHURBAND KANDIGRAM
SILCHAR-788001
DIST- CACHA

Advocate for the Petitioner : MD.M H RAJBARBHUIYAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri MH Rajbarbhuiyan

Advocate for respondents : Shri G. Bokalia, GA-Assam
Shri LR Mazumdar, R-6

Date of hearing : 12.12.2023

Date of judgment : 12.12.2023

JUDGMENT & ORDER

Heard Shri MH Rabjarbhuiyan, learned counsel for the petitioners. Also heard Shri G. Bokalia, learned State Counsel. Shri L.R. Mazumder, learned counsel has appeared for the respondent no. 6.

2. The present writ petition has been instituted by the petitioners against an order dated 07.09.2012 by which the PDS license in the name of the petitioner no. 1 – Society has been cancelled. The petitioners are also aggrieved by an order dated 04.05.2013 by which the appeal preferred by them has been dismissed.

3. Before going to the issue and the grounds urged on behalf of the petitioners, the facts of the case may be narrated in brief.

4. There are two petitioners in this writ petition. While the petitioner no. 1 is a Cooperative Society of the district of Cachar and is represented by the Chairman, the petitioner no. 2 is the Secretary of the Society. As per the facts projected, after coming into the Office in the year 2011, the Chairman of the Society had taken steps for removal of anomalies and corruption which according to the petitioners were going on in the functioning of the Society, more particularly in the subject of distribution of PDS commodities. It is apprehended that such steps / action was not to the liking of certain agents including the respondent no. 6, who accordingly had conspired and lodged a false complaint. Allegation of conspiracy has also been made involving the respondent no. 7, who was the In-charge Secretary of the Society. It is submitted that apart from lodging of a criminal complaint, an order of suspension was also issued on 11.06.2012 which was based upon an Enquiry

Report. Subsequently, vide the impugned order dated 07.09.2012, the PDS license of the petitioner no. 1 was cancelled. As indicated above, the petitioners were unsuccessful in the appeal preferred before the Appellate Authority, who had rejected the appeal vide an order dated 04.05.2023.

5. Shri Rajbarbhuiyan, learned counsel for the petitioners has urged the following grounds in support of the present challenge-

- i. The impugned action is based upon an enquiry, the Report of which has not been furnished to the petitioners.
- ii. The petitioner Society was represented by the Chairman, who at the relevant point of time was out of station in connection with his medical treatment and therefore he was deprived of a reasonable opportunity to defend his case.
- iii. The seizure list would reveal that one of the witnesses was an Officer of the Food and Civil Supplies Department, who had passed the impugned order.
- iv. The impugned action is vitiated by bias and *mala fide* and therefore the same is liable to be interfered with.

6. In support of his submissions, the learned counsel for the petitioners has relied upon the following decisions-

- i. ***State of W.B. and Ors. Vs. Shivananda Pathak and Ors. [(1998) 5 SCC 513];***
- ii. ***G.N. Nayak Vs. Goa University & Ors. [(2002) 2 SCC 712] and***
- iii. ***Sukheto Chishi Vs. State of Nagaland and Ors. [2002 (2) GLT 216]***

7. In the case of **Shivananda Pathak** (supra), the concept of bias has been explained. In paragraphs 25 and 26, it has been stated as follows:

“25. Bias may be defined as a preconceived opinion or a predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the judge unable to exercise impartiality in a particular case.

26. Bias has many forms. It may be pecuniary bias, personal bias, bias as to subject-matter in dispute, or policy bias etc. In the instant case, we are not concerned with any of these forms of bias. We have to deal, as we shall presently see, a new form of bias, namely, bias on account of judicial obstinacy.”

8. In the case of **G.N. Nayak** (supra), it has been clarified that not every act of bias would vitiate the action which is the subject matter of challenge. For ready reference, the relevant paragraph is extracted hereinbelow-

“34. It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest — whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred.”

9. In the case of ***Sukheto Chishi*** (supra), this Court had referred to the case of the Hon'ble Supreme Court of ***Managing Director, ECIL, Hyderabad etc. Vs. B. Karunakar Etc. [AIR 1994 SC 1074]*** wherein the importance of furnishing of a copy of the Enquiry Report has been laid down.

10. The learned counsel for the petitioners accordingly submits that the present is a fit case for interference and an order be passed for restoration of the PDS license in the name of the Society.

11. *Per contra*, Shri Bokalia, learned State Counsel by referring to the affidavit-in-opposition filed on 07.11.2013 has submitted that there are no grounds for interference in the present case. He submits that the entire action had emanated from public complaints regarding the functioning of the Society in the field of distribution of PDS commodities. He submits that the impugned order of cancellation was preceded by a due process of law. By referring to the order of suspension which has been annexed to the writ petition and the show-cause notice, the learned State Counsel submits that ample opportunity was granted to the petitioners, who had availed of such opportunity and replied to the show-cause notice. With regard to the allegation of non-furnishing of an Enquiry Report, he submits that at no point of time such allegations have been made. He submits that the petitioners had replied to the show-cause notice and also filed the appeal in which such grounds have not been taken. He otherwise submits that the Enquiry Report pertains to a discreet inquiry based upon which the show-cause notice has been issued and therefore there is no question of sufferance of any prejudice by the petitioners. As regards the ground of bias, it is submitted that the concerned incumbent had not been made a party by name in this proceeding and therefore that ground is not available to the petitioners.

He otherwise submits that in the seizure list, apart from the signature of the Officer of the Department, there are two other witnesses including an independent witness.

12. Shri Bokalia, learned State Counsel further submits that the grievance, if any is of the petitioner no. 1, which is the Society and in whose name the license was allotted. Therefore, absence of the Chairman at the relevant time would not make any difference as the Secretary and other Office Bearers of the Society were present. It is clarified that the allegation was pertaining to that of the petitioners' Society. By referring to the affidavit-in-opposition, learned State Counsel submits that nature of allegations is also serious as the shortage detected was huge. By drawing the attention of this Court to the averments made in paragraph 16 of the affidavit-in-opposition, the learned State Counsel has submitted that 51.80 quintals and 95 KGs of sugar were found to be short and in this regard a police case has also been registered. In paragraph 26, there are specific averments with regard to the manipulations done with the stock for making wrongful gain for which the public in general had to suffer.

13. Shri LR Mazumder, learned counsel for the respondent no. 6 submits that noticing that the Chairman of the Society was indulging in malpractice, complaints were made which gave rise to the present action. He submits that the enquiry proceedings including the orders passed would reveal that there are admissions made by the President. In this regard, both the impugned order dated 07.09.2012 and the appellate order dated 04.05.2013 have been pressed into service to show that there are admissions by the President. The learned counsel for the respondent no. 6 while endorsing all the submissions made by the learned State Counsel have emphasized that the petitioner Society was all along being represented and therefore the question of suffering any prejudice in

defending its case will not arise in this case.

14. The rival contentions have been duly considered and the materials placed before this Court have been carefully perused.

15. With regard to the first submission of non-furnishing of the Enquiry Report, this Court has noticed that such enquiry was done even prior to the order of suspension dated 11.06.2012. In fact, the aforesaid order of suspension mentioned about such Enquiry Report. In the opinion of this Court, such enquiry was a discreet fact finding enquiry and therefore, non-furnishing of the same may not be a ground to vitiate the entire action which is the subject matter of challenge. The aforesaid opinion of this Court is fortified by the fact that before the impugned order of cancellation dated 07.09.2012, notice was issued to the affected party on 29.08.2012 which itself has been annexed to the writ petition. The impugned order clearly reflects that the affected parties were given opportunity of hearing. Such observation has also been endorsed by the Appellate Authority which had rejected the appeal vide an order dated 04.05.2013.

16. In that view of the matter, the ground of non-affording opportunity or violation of principles of natural justice does not appear to be sustainable. The learned counsel has also urged about bias in passing the impugned order. The aspect of bias, as has been explained by the Hon'ble Supreme Court in the aforesaid case of **Shivananda Pathak** (supra) and **G.N. Nayak** (supra) has to be understood in the sense that such apprehension is to be based on the materials on record from which a conclusion can be drawn regarding likelihood of such bias. Here in this case, no such materials have been placed on record except for a statement that the respondent no. 6, who is an agent, was unhappy with the functioning of the Chairman of the Society. With regard to the



allegation of bias vis-à-vis the Officer of the Department, this Court has noticed that the said individual had not been made a party respondent in the proceedings and therefore, it would not be proper on the part of this Court to delve into that aspect of the matter in his absence. This Court has further noticed that the seizure list had to be prepared in the Office of the Department which consisted only of documents and since the particular Officer was present, doctrine of necessity would also be available. The ratio laid down in the case of **M.D. ECIL** (supra) was in the context of a departmental proceeding against an employee and would have no manner of application in the present case.

17. This Court has also noticed that the allegation against the petitioner's Society is serious which involves shortage of essential commodities namely, 51.80 quintals of rice and 95 KGs of sugar. In a case of this nature involving the rights of a particular Cooperative Society vis-à-vis the rights of the public in general, it is the interest of public which will override and be considered as a relevant factor in a decision making process.

18. In that view of the matter, this Court is of the opinion that no case for interference is made out and accordingly this writ petition is dismissed.

19. No order as to cost.

JUDGE

Comparing Assistant