



GAHC010208572016

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

**W.P.(C) No. 6863/2016**

M/S Future Retail Ltd.

***...Petitioner***

***-versus-***

The State of Assam & Ors.

***...Respondents***

**B E F O R E**  
**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

**JUDGMENT & ORDER**

Advocates for the petitioner : Shri K. Agarwal, Sr. Advocate;  
Shri A.K. Sahewalla, Advocate.

Advocates for respondents : Ms. S. Sarma, GA, Assam.

**Date of hearing : 14.03.2024**

**Date of judgment : 28.03.2024**

**1.** The writ jurisdiction of this Court conferred by Article 226 of the Constitution of India has been sought to be invoked in this petition wherein a challenge has been made against an order dated 21.10.2016 passed by the Deputy Commissioner, Jorhat ordering for sale of the seized goods of the petitioner. A further prayer has been made for a direction to issue a license under the Assam Trade Articles (Licensing and Control Order) 1982 pursuant to an application submitted by the petitioner on 28.10.2016. There is also a prayer to allow the petitioner to re-purchase the seized goods by deposit of bond in lieu of cash.

**2.** When this writ petition was moved, this Court vide order dated 16.11.2016 while issuing notice, was apprised of the fact that the seized goods were in the meantime sold through various outlets of "Amar Dukan" of Jorhat in terms of an order dated 21.10.2016 of the Deputy Commissioner and an amount of Rs.1,53,000/- (Rupees One Lakh Fifty Three Thousand) only was deposited in the Treasury on 10.11.2016. This Court, accordingly, while issuing notice of motion had made it clear that pendency of the writ petition shall not be a bar for consideration of the application submitted by the petitioner on 24.10.2016 for grant of license under the Assam Trade Articles (Licensing and Control Order), 1982. It was also observed that the amount deposited in the Treasury would be subject to the final decision taken by the Court in this case.

**3.** Before going to the issue which has arisen for a consideration, a brief narration of the facts would be beneficial.

**4.** The petitioner herein is a Company in the name and style Future Retail Ltd. which had one of its stores at Jorhat. On 24.09.2016, a notice was issued by the Food and Civil Supplies Department, Assam seeking the documents relating to pulses. It is the case of the petitioner that on the same date itself, certain documents were handed over. However, not being satisfied, the articles (pulses) were seized and an inventory was prepared. Accordingly, a quantity of 25.2 quintals were seized by the Department and the store in-charge was given the zimma. On 15.10.2016, the petitioner had made a representation to the Deputy Commissioner, Jorhat for releasing the seized articles. However, without heeding to the said representation, on 25.10.2016, the seized pulses were disposed of and the sale proceeds were deposited in the Treasury.

**5.** I have heard Shri K. Agarwal, learned Senior Counsel assisted by Shri A. K. Sahewalla, learned counsel for the petitioner. I have also heard Ms. S. Sharma learned Government Advocate Assam.

**6.** At the outset, Shri Agarwal, the learned Senior Counsel for the petitioner has fairly submitted that there are many developments in this case as a result of which there may not be a requirement of this Court to enter deep into the merits of the case. He has also submitted that certain reliefs prayed for have been rendered otiose in view of such developments.

**7.** It is submitted by the learned Senior Counsel that there has been violation of the Order of 1982. By referring to Clause 2 (u) it is submitted that "retailer" has been defined and Clause 3 relates to licensing of dealers. Reference has also been made to Schedule I which deals with food articles and pulses is

included in part B. Schedule III deals with the quantity and so far as pulses is concerned, the quantity has been fixed as 10 quintals. It is submitted that on 10.11.2016, Rs.1,53,000/- (Rupees One Lakh Fifty Three Thousand) only which was the sale proceeds, was deposited in the Treasury and in terms of the order dated 16.11.2016 of this Court, the deposit has been made subject to the final decision.

**8.** The learned Senior Counsel has also submitted that vide a notification dated 06.01.2017, the requirement of license has been removed and there is a direction for declaration of stocks.

**9.** In the meantime, an FIR was lodged in connection with the said incident leading to registration of Jorhat P.S. Case No. 2667/2016 under Section 420 IPC r/w Section 7 of the EC Act, 1955. It is however submitted that against the said proceeding, an application under Section 482 of the Cr.P.C. has been filed for quashing of the entire proceedings before this Court which have been registered as Crl. Pet. No. 1037/2016. The said petition has been filed by (i) Sayan Bose, the concerned Store Keeper, (ii) the petitioner and (ii) the Board of Directors of the petitioner. This Court vide an order dated 23.12.2016 while issuing notice, had directed that further proceedings of the G.R. No. 3702/2016 arising out of Jorhat P.S. Case No. 2667/2016 shall remain suspended. It is submitted that the said interim order is continuing. In this connection, reference has been made to the affidavit-in-reply dated 04.08.2017 filed on behalf of the petitioner in this case.

**10.** The learned Senior Counsel for the petitioner has further informed this

Court that there are certain other developments in the form of fresh notifications issued from time to time which may even touch upon the jurisdictional aspect of the impugned action. However, it is submitted that instead of going into the merits of this case, since the entire proceedings connected with the seizure is the subject matter of the petition filed under Section 482 of the Cr.P.C. in Crl. Pet. No. 1037/2016, the same would be decided in the said case. However, the aspect of passing any directions, pursuant to the deposit of the sale proceeds can be considered in this petition.

**11.** The learned Senior Counsel for the petitioner has also referred to the decisions of the Hon'ble Division Bench of this Court in the cases of **Premier Roller Flour Mill vs. State of Assam** reported in **(2013) 1 GLR 927** and the case of **Nomal Baruah vs. Jamatul Islam** reported in **(2013) 5 GLR 679**. In the case of **Premier Roller Flour Mill** (supra), the Assam Trade Articles (Licensing and Control) Order, 1982 has been declared *ultra vires* the Removal of (Licensing Requirements Stock Limits and Movement Restrictions) on Specified Food Stuffs Order, 2002 insofar as its relation to commodities covered by the 2002 Order. In the case of **Nomal Baruah** (supra), it has been held that prior concurrence of the Central Government under Section 3(2)(a)(c),(d) and (f) of the Assam Public Distribution of Articles Order, 1982 is mandatory and failure to do so would render any action taken as *non-est* in law.

**12.** Ms. S. Sharma, learned Government Advocate, fairly submits that the principal issue is the subject matter of adjudication in the petition filed under Section 482 of the Cr.P.C. by the petitioner which would be decided in that case and therefore no decision on merits is required to be given in the present case.

**13.** In his rejoinder, the learned Senior Counsel for the petitioner has submitted that as on date, the concerned store in-charge as well as the store at Jorhat is no longer existing. The petitioner has urged certain grounds in support of the challenge and the relief prayed for. However as indicated above some of the reliefs have become otiose in view of the subsequent development. It is however not in dispute that the seized pulses were put to sale and there was a sale proceed of Rs.1,53,000/- (Rupees One Lakh Fifty Three Thousand) only which was deposited in the Treasury. This Court has also noticed that an order was passed by this Court on 16.11.2016 whereby the aforesaid deposit was made subject to the outcome of this petition. It is further not in dispute that the entire proceeding is the subject matter of challenge in a petition filed under Section 482 of the Cr.P.C. by the petitioner being Crl. Pet. No. 1037/2016 in which there is an interim order passed by this Court.

**14.** Under such circumstances, this Court is of the considered opinion that instead of going into the merits of the challenge, in the fitness of things, interest of justice would be served if the existing issues in this case which are also covered in Crl. Pet. No. 1037/2016 are left to be decided in the said case as any observations made by this Court in this case may cause prejudice to either of the parties. However, the aspect of deposit of the sale proceeds can be taken care of in this petition.

**15.** As regards the issue of deposit of sale proceeds, from the notifications placed on record and also taking into consideration that on *prima facie* satisfaction, the criminal case against the petitioner was stayed by this Court



vide order dated 23.12.2016 which is continuing, a case for conditional refund of the sale proceeds is made out by the petitioner.

**16.** In view of the aforesaid facts and circumstances, this Court is of the considered opinion that interest of justice would be served if the contentious issues raised in this petition, which is also the subject matter in the petition filed under Section 482 of the Cr.P.C. is decided in the said case registered as Crl. Pet. No. 1037/2016. However, as regards the deposit of the sale proceeds of an amount of Rs.1,53,000/- (Rupees One Lakh Fifty Three Thousand) only of the pulses seized which is lying in the Treasury, it is directed that the same be released to the petitioner with a condition that such release would however be subject to the final outcome of Crl. Pet. No. 1037/2016 in this Court. Accordingly, for such release, the petitioner will have to submit a Bond that in case the challenge made by the petitioner in the Crl. Pet. No. 1037/2016 filed under Section 482 of the Cr.P.C. in this Court is decided against the petitioner, the said amount would have to be refunded to the Department.

**17.** Ordered accordingly.

**18.** The Writ petition accordingly stands disposed of.

**JUDGE**

**Comparing Assistant**