



GAHC010215022023

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

**Case No. : WP(C)/5673/2023**

DWIPEN BANIA  
S/O LATE AJIT BANIA, R/O VILL-NIZDAHI, BARANGABARI, DARRANG,  
ASSAM, PIN-784144

VERSUS

THE STATE OF ASSAM AND 3 ORS.  
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE  
GOVERNMENT OF ASSAM, DEPARTMENT OF FOOD, PUBLIC  
DISTRIBUTION AND CONSUMER AFFAIRS, HAVING ITS OFFICE AT THE  
STATE SECRETARIAT, CAPITAL COMPLEX, DISPUR, GUWAHATI, KAMRUP  
(M), ASSAM, PIN CODE-781006

2:THE DISTRICT COMMISSIONER  
DARRANG  
MANGALDAI  
ASSAM  
PIN-784125

3:THE DEPUTY DIRECTOR  
FOOD  
CIVIL SUPPLIES AND CONSUMER AFFAIRS  
OFFICE OF THE DISTRICT COMMISSIONER  
MANGALDAI TOWN  
DARRANG  
ASSAM  
PIN-784125

4:THE INSPECTOR  
FOOD  
CIVIL SUPPLIES AND CONSUMER AFFAIRS  
OFFICE OF THE DISTRICT COMMISSIONER



MANGALDAI TOWN  
DARRANG  
ASSAM  
PIN-78412

**Advocate for the Petitioner** : MR. H. BURAGOHAIN

**Advocate for the Respondent** : GA, ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT & ORDER**  
**(ORAL)**

**Date : 23-11-2023**

The instant writ petition has been filed by the petitioner challenging the order dated 19.08.2023, passed by the Deputy Director, Food, Civil Supply and Consumer Affairs, Darrang, Mangaldai, whereby the licence of the petitioner, issued under the Assam Public Distribution of Articles Order, 1982 (hereinafter referred to as "Order of 1982"), for running Fair Price retail shop was cancelled on the ground that the petitioner had violated the terms and conditions stipulated in Clause 3(a)(i), (ii), (iii), (iv) and Clause 3(b) of the Order of 1982 and the various provisions of Clauses 10, 14 and 25 of the said Order of 1982.

2. The facts leading to filing of the instant writ petition, as can be discerned from the writ petition and its enclosures are that the petitioner herein was having a fair price retail shop under Dahi Gaon Panchayat Samabai Samity, at Darrang, bearing Licence No. BMS.2/22/PDS/Dahi/2010 (Annexure-1). It is seen from the perusal of the writ petition that the petitioner obtained the licence for Fair Price retail shop only in the month of November, 2022 and, prior to that the petitioner's father was the licence holder for the Fair Price retail shop in respect of the said area. After obtaining the said licence in the month of November, 2022 the petitioner claims to have been

regularly distributing the allotted quota of rice to its 471 ration card holders. However, in the month of April, 2023, during distribution of rice, the petitioner found that some portion of the rice allotted for the month of April, 2023 was damaged and not fit for domestic use. This aspect of the matter was informed by the petitioner to its superior authority, i.e. Secretary of Dahi Gaon Panchayat and the said superior authority was also requested to take back the said undistributed rice and to allot rice fit for domestic use. However, the Secretary, Dahi Gaon Panchayat refused to accept the same. It is also the case of the petitioner that during this period the petitioner fell ill due to post-operative URSL Lithotripsy and was having Catheter inserted for urine extraction. The materials on record, more particularly, Annexure-2 to the writ petition reveals that the petitioner for the purpose of getting better treatment was admitted in the Sanjeevani Hospital, Guwahati, on 24.04.2023 and thereupon he was discharged on 25.04.2023.

3. Subsequent thereto, on 02.05.2023, the Inspector, Food Civil Supplies and Consumer Affairs, Darrang, along with a few other people visited the petitioner's licensed premises for inspection of the Stock Register, Sell Register, etc. and thereafter seized all the Registers, documents and articles from his shop and took his signatures on blank papers. A few days thereafter an order dated 12.05.2023 was served upon the petitioner, issued by the Deputy Commissioner, Darrang, Mangaldai, whereby the licence of the petitioner was suspended for purported violation of Clauses 3(a)(i), (ii), (iii), (iv) and Clause 3(b) of the terms and conditions of the licence issued under the Order of 1982 and various provisions of Clauses 10, 14 and 25 of the said Order of 1982. It was mentioned in the said order dated 12.05.2023 that the suspension of the licence was as per Clause 15(1) of the Order of 1982 and pending drawal of cancellation proceeding. It further transpires that the population of the petitioner's Fair Price retail shop were thereupon attached with nearby Fair Price retail dealer, Sri Kulan Kalita of village Barsatra to avoid dislocation of periodically allotted notified articles.

4. Pursuant to the order of suspension dated 12.05.2023, the petitioner was served with a Show Cause Notice dated 22.06.2023, issued by the Deputy Director of

Food, Civil Supplies & Consumer Affairs, Darrang, Mangaldai. A copy of the enquiry report dated 03.05.2023, submitted by the Inspector, Food, Civil Supplies & Consumer Affairs, Darrang, Mangaldai was also enclosed along with the Show Cause notice. Taking into account the relevance of the said Show Cause notice, the same is reproduced herein-under:

“To,

*Sri Dwipen Bania,  
F.P. Shop Dealer (under suspension),  
Vill. Nizdahi,  
Under M/s Dahi GPSS.*

*Sub: Show cause notice.*

*Ref: This Office Order No. FCS-583/5/2023-FCS-DPR (1/21197/ 2023 dated 12-05-2023)*

*On perusal of the report dated 03.05.2023 submitted by Sri Giridhar Deka, Inspector, Food, Civil Supplies & Consumer Affairs, Mangaldai, following charges have been levelled against your Retail Outlet.*

- 1. Not issuing legitimate quota of Rice for the month of April/2023.*
- 2. Not maintaining books of Accounts like stock register, sale register, etc.*

*Thus it appears that you have violated terms and conditions 2(a)(i), (ii), (iii), (iv) and 3(b) of "The Assam Public Distribution of Articles Order, 1982" and various provisions of clause 10, 14, 25 under the same order.*

*As such, you are hereby asked to show cause as to why your dealing licence vide No. DMS-2/2022/PDS/Dahi/210 issued to you under the Assam Public Distribution of Articles Order, 1982 will not be suspended for above noted violation.*

*Your written reply should reach the office of the undersigned within 7 (seven) days from the date of receipt of this notice.*

*Sd/-*

*Deputy Director,*

*Food, Civil Supplies & Consumer Affairs,  
Darrang, Mangaldai”*

5. The above-quoted Show Cause notice reveals that the authority informed the petitioner that after perusal of the report submitted by the Inspector of Food, Civil Supplies & Consumer Affairs, Mangaldai, two specific charges were levelled against the petitioner's outlet. They were (i) Not issuing legitimate quota of Rice for the month

of April/2023 and (ii) Not maintaining books of Accounts like Stock Register, Sale Register, etc. In the said Show Cause notice it was further mentioned that it appeared from the said report that the petitioner had violated the terms and conditions of Clauses 3(a)(i), (ii), (iii), (iv) and 3(b) of the Order of 1982 and various provisions of Clauses 10, 14 and 25 under the said order. The petitioner was therefore, asked to show cause as to why his dealing licence issued under the Order of 1982 should not be suspended for the above mentioned violation. The petitioner was asked to furnish reply within seven days from the date of receipt of the notice.

6. The petitioner thereupon submitted his reply stating *inter alia* that he had received full quota of rice in the month of April, 2023 against 471 card holders. Thereupon he started distributing the rice to the card holders sincerely. During the period of distribution of rice, a portion of the allotted rice for the month of April, 2023 was found damaged and not fit for domestic use. Under such circumstances, the petitioner decided to return back the undistributed rice to his superior authority, but in due time he fell ill and immediately proceeded to the doctor for medical advice. Thereupon the petitioner was admitted in Sanjeevani Hospital, Guwahati, on 24.04.2023 for a critical operation and he was discharged on 25.04.2023. On his return, he could find that the unused and undistributed rice was still lying in his campus. It was also mentioned in his reply that during that period there was heavy and continuous rain which damaged the rice completely. It was further stated that he had not misappropriated a single portion of rice and it was on account of his illness and unexpected weather for which he failed to return the unused and undistributed rice to the administration. It was also stated that he had been maintaining all the registers and books of accounts sincerely up to March, 2023 and as he was not physically well during the month of April, 2023, he could not maintain the register and used punching machine for distributing the allotted rice to the beneficiaries and the shortage was only because of the damaged rice. The petitioner thereupon requested the licensing authority not to suspend his licence and to give him a chance.

7. Subsequent thereto, the Deputy Director of Food, Civil Supplies and Consumer Affairs, Darrang, Mangaldai issued the impugned order dated 19.08.2023 stating *inter alia* that as per the approval of the District Commissioner, Darrang, and on recommendation of the Area Officer-I, the retail licence of the petitioner had been cancelled for violation of the terms and conditions of Clauses 3(a)(i), (ii), (iii), (iv) and 3(b) of the Order of 1982 and various provisions of Clause 10, 14 and 25 under the same order. It is under such circumstances the instant writ petition was filed.

8. The record reveals that by order dated 27.09.2023, this Court issued notice to the Respondents making it returnable on 11.10.2023 and it was further observed that endeavour shall be made to dispose of the writ petition at the admission stage. On 11.10.2023, when the matter was listed, learned counsel appearing on behalf of the Respondent Authorities submitted that he had not received any instructions. On the very day, the learned counsel appearing on behalf of the petitioner apprised this Court that pursuant to the cancellation of the licence of the petitioner there was a move to issue a fresh licence in respect of the area covered by the petitioner's fair price shop. It is under such circumstances this Court directed that till the next date of listing, the Respondent Authorities shall not issue any new licence in respect of the area covered by the petitioner's Fair Price retail shop. In the above backdrop, let this Court take note of the submissions which have been made by the learned counsels appearing for the parties.

9. Mr. H. Buragohain, learned counsel appearing on behalf of the petitioner, drawing attention of this Court to Clause 15 of the Order of 1982, more particularly to sub-clause (2) of Clause 15 submits that no order of cancellation can be made unless the licensee had been given reasonable opportunity of stating his case against the proposed cancellation. He submits that the Show Cause notice which was issued on 22.06.2023, did not in any manner state that the licence was proposed to be cancelled. He submits that a perusal of the said Show Cause notice would only show that the petitioner was asked to show cause as to why the licence should not be

suspended. He further draws attention of this Court to the order of suspension, wherein it is mentioned that the suspension has been made pending drawal of cancellation proceeding. He submits that there has been no cancellation proceeding initiated prior to issuance of the impugned cancellation order and therefore the impugned order is in violation of Clause 15(2) of the Order of 1982. In addition to the above, he further submits that even on perusal of the impugned Show Cause notice, it would be seen that the impugned Show Cause notice is vague as there is no mention on what basis the licensing authority had formed any opinion that the petitioner had violated the terms and conditions of Clauses 3(a)(i), (ii), (iii), (iv) and 3(b) of the Order of 1982 and various provisions of Clause 10, 14 and 25 under the same order. Further to that, the learned counsel submits that when Clause 15(2) of the Order of 1982 stipulates that there cannot be any cancellation without giving the licensee reasonable opportunity of stating his case, it presupposes that when an order is passed after the reply to the Show Cause has been filed, the order of cancellation should contain reasons for arriving at the decision to cancel the licence. Referring to the impugned order dated 19.08.2012, learned counsel further submits that there is no mention whatsoever as to the basis on which the authority came to the finding that the petitioner had violated the terms and conditions as alleged in the said order. He further submits that the impugned order dated 19.08.2023, therefore, is required to be set aside and quashed.

10. Mr. B. J. Talukdar, learned senior counsel appearing on behalf of the Respondents submitted that the records pursuant to the cancellation of the petitioner's licence have not been forwarded to him. What had been forwarded to him by the Deputy Commissioner, Darrang, Mangaldai were copies of the order of suspension dated 12.05.2023, Show Cause Notice dated 22.06.2023 as well as the impugned order of cancellation dated 19.08.2023. The learned Senior Counsel further submitted that the said Show Cause notice dated 22.06.2023 is a notice coming within the ambit of Clause 15(2) of the Order of 1982. Be that as it may, he submits with candour that

in the said Show Cause notice it was inadvertently mentioned as to why the petitioner's "licence will not be **suspended**", which ought to have been as to why the petitioner's "licence will not be **cancelled**". He further submits that the petitioner was well aware of the reasons for which the Show Cause notice was issued inasmuch as a copy of the enquiry report dated 03.05.2023 had been furnished to the petitioner along with the Show Cause notice.

11. I have heard the learned counsels appearing for the parties and have also perused the materials which are on record.

12. This Court finds it relevant to take note of Clause 15 of the Order of 1982, which is quoted herein-under:

*"15. (1) If any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms and conditions of the licence, then without prejudice to any other action that may be taken under the Essential Commodities Act 1955 (Central Act 10 of 1955) his licence may be cancelled or suspended by any order in writing of the Licensing Authority and an entry will be made in his licence relating to such suspension or cancellation.*

*(2) No order of cancellation shall be made under this Clause unless the licensee has been given reasonable opportunity of stating his case against the proposed cancellation but during the pendency or in contemplation of the proceedings of cancellation of the licence, the licence can be suspended for a period not exceeding 90 days without giving any opportunity to the licensee of stating his case."*

13. From a perusal of the above-quoted clause, it reveals that Clause 15(1) of the Order of 1982 empowers the licensing authority to cancel or suspend the licence by an order in writing. Sub-clause (2) of Clause 15 however puts a check upon the powers of the licensing authority to cancel the licence inasmuch as without offering a reasonable opportunity to the licensee of stating his case, no licence could be cancelled. It further stipulates that the period of suspension of the licence cannot exceed 90 days if there is no opportunity of hearing given to the licensee of stating his case. This aspect of the matter is of utmost relevance for the purpose of deciding the instant dispute.

14. In the above backdrop, if this Court reverts to the facts involved in the instant



case, it would be seen that on 02.05.2023 the Inspector of Food, Civil Supplies and Consumer Affairs, Darrang, had carried out an inspection of the petitioner's Fair Price retail shop. Thereupon, on 12.05.2023, the licence of the petitioner was suspended pending drawal of cancellation proceedings. The suspension order was issued by the Deputy Commissioner, Darrang and not by the Authority who cancelled the licence. On 22.06.2023 a Show Cause notice was issued by the Deputy Director, Food and Civil Supplies, to the petitioner stating *inter alia* as to why the petitioner's licence should not be suspended. The petitioner thereupon submitted his reply on 27.06.2023 and the impugned cancellation order was issued on 19.08.2023. It is interesting to note that the period from 12.05.2023 to 19.08.2023, if calculated, the period of 90 days was already over. In these facts, the provisions of Clause 15(2) of the Order of 1982 quoted above would show that the licensing authority has the power to suspend the licence pending cancellation proceeding, however, such suspension cannot exceed the period of 90 days without granting reasonable opportunity to the licensee concerned of stating his case against the suspension. In that view of the matter, it is the opinion of this Court that the submission of the learned Senior Counsel appearing on behalf of the Respondents that in the Show Cause Notice it was inadvertently mentioned as "*licence will not be suspended*" which ought to have been "*licence will not be cancelled*", is not tenable inasmuch as if the licensing authority proposed to suspend the licence of the licensee for a period more than 90 days, which in fact has been done in the present case, then there is requirement for reasonable opportunity to be given to the licensee to state his case. Moreover, the suspension order dated 12.05.2023 was not issued by the Authority who issued the Show Cause notice as well as the impugned order of cancellation. It is the further opinion of this Court that the submission of the learned counsel for the petitioner that the notice which was issued to the petitioner on 22.06.2023 was only a Show Cause notice for suspension and not for cancellation, therefore cannot be ruled out. This Court is, therefore, of the opinion that Clause 15(2) of the Order of 1982 was not complied with prior to issuance of the

impugned order dated 19.08.2023 for cancellation and, for that reason, the impugned order requires to be interfered with.

15. This Court further finds it relevant to take note that even if considering that there was an inadvertent mistake in the Show Cause notice, as submitted by the learned senior counsel appearing on behalf of the Respondents, a perusal of the said Show Cause notice would reveal that the licensing authority did not apply its mind before issuance of the Show Cause notice inasmuch as merely annexing a report wherein there are certain allegations would not suffice until and unless the licensing authority stipulates as to how the Authority issuing the Show Cause notice comes to an opinion that they were infractions to the terms of the licence as well as the Order of 1982. It is the opinion of this Court that when a Show Cause notice is issued, the noticee has to be informed as to why the issuing authority deems it proper to issue notice and to what violations the noticee is/are required to reply. The said opinion of this Court is based upon the observations of the Supreme Court in the case of **Shri B.D. Gupta vs. State of Haryana**, reported in **(1973) 3 SCC 149**, wherein the Supreme Court observed that it is essential for a Show Cause notice to indicate the precise scope of the notice and also to indicate the points on which the officer concerned is expected to give reply. It is also relevant to take note that merely on the basis of a report of the Inspector, the licence of the petitioner could not have been cancelled. The licence could only be cancelled by the licensing authority upon application of mind on the report submitted by the Inspector and after giving reasonable opportunity to the licensee to show cause or to state his case against the proposed cancellation pursuant to the violations so alleged in the said Show Cause notice. Therefore, this Court is of the opinion that the said Show Cause notice being vague, the impugned cancellation order, which is based upon such vague Show Cause notice, is required to be interfered with.

16. This Court also finds it relevant to take note that when the Order of 1982 provides for giving an opportunity to the licensee to state his case or, for that matter,

to show cause against the proposed cancellation, and the licensee states reasons why his/her licence should not be cancelled, it is obligatory for the licensing authority to mention the reasons in the order of cancellation as to why the cause so shown by the licensee is not satisfactory inasmuch as it is well settled principle of law, as was held by the Supreme Court long back in the case of **Commissioner of Police, Bombay vs. Gordhandas Bhanji**, reported in **1952 AIR 16**, that public orders publicly made in exercise of a statutory authority having consequences must be construed and judged on the basis of the language used in the order and on the basis of the reasons assigned in the order itself and not in the light of the explanations subsequently given by the officer making the order as to what he meant, or what was in his mind, or what he intended to do. The non-recording of reasons in the impugned order also makes the order unreasonable and arbitrary which is a facet of violation of Article 14 of the Constitution. This Court finds that the impugned order of cancellation does not, in any manner, state the reasons as to why the causes so shown by the licensee were not satisfactory. In the opinion of this Court, the said impugned order dated 19.08.2023 is also liable to be set aside on this count also.

17. Accordingly, this Court sets aside and quashes the impugned cancellation order dated 19.08.2023 for the reasons mentioned above. Be that as it may, as this Court has interfered with the impugned order on the ground of violation of Clause 15 of the Orders of 1982 as well as on the ground of violation of the principle of natural justice and has not dealt with the merits of the case, this Court grants liberty to the licensing authority to take appropriate steps as per the provisions of the Order of 1982. It is made clear that if any such steps are initiated, same be completed within a period of 90 days from today. As this Court has set aside the impugned order dated 19.08.2023, the licence of the petitioner stands restored. This Court further observes that the suspension of the petitioner's licence shall continue for a further period of 90 days from today, if not revoked earlier by the Licensing Authority.

18. At this stage, Mr. H. Buragohain, learned counsel appearing on behalf of the



petitioner prays for extension of the interim order passed earlier in this writ petition till finalisation of the cancellation proceeding, if so initiated by the licensing authority. With regard to the above submission made by the learned counsel appearing on behalf of the petitioner, it is the opinion of this Court that as the licence of petitioner is restored, the question of issuance of fresh licence in respect of the area covered by the petitioner's Fair Price Retail Shop would not arise till the same is cancelled as per law.

19. With the above observations and directions the instant writ petition stands disposed of.

**JUDGE**

**Comparing Assistant**