

GAHC010109802024



2026:GAU-AS:3119

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

**Writ Petition [Civil] no. 2873/2024**

Champa Das, wife of Shri Chandra Kishor Das,  
resident of Siddhinathpur, P.O.- Siddhinathpur,  
P.S.- Tamulpur, District - Baksa, BTAD, Assam.

.....**Petitioner**

**-VERSUS-**

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Food and Civil Supplies and Consumer Affairs Department, Dispur, Guwahati - 6.
2. The Director, Food and Civil Supplies and Consumer Affairs, Guwahati.
3. The Assistant Director, Food and Civil Supplies and Consumer Affairs, Tamulpur, District – Baksa, BTAD, Assam.
4. Amit Sarkar, S/o - Nishikanta Sarkar, R/o – Village & P.O.- Siddhinathpur, P.S. – Tamulpur, PIN – 781368, District - Baska (BTAD), Assam.

.....**Respondents**

**BEFORE**  
**HON'BLE MR. JUSTICE MANISH CHOUDHURY**

**Advocates :**

Petitioner : Mr. Y.S. Mannan, Advocate  
Respondent nos. 1 & 2 : Mr. G. Bakalial, Jr. Govt. Advocate  
Respondent no. 3 : Ms. N. Choudhury, Standing Counsel, BTC  
Date of hearing : 24.02.2026

Date of pronouncement of judgment : 24.02.2026

Whether the pronouncement is of the Operative part of the judgment ? :

Whether the full judgment has been Pronounced ? : Yes

**JUDGMENT & ORDER**

The present writ petition under Article 226 of the Constitution of India is preferred against prolonged suspension of the petitioner's Sub-Wholesaler / Retailer License granted under the Assam Public Distribution of Articles Order, 1982 [the APDA Order', for short].

2. The case projected by the petitioner and as emerges from the materials on record, in brief, is that the petitioner was granted a Sub-Wholesaler / Retailer License on 04.03.2013 under the provisions of the APDA Order. The Sub-Wholesaler / Retailer License was renewed from time to time and it was last renewed up to 31.03.2024.

3. On 30.03.2023, a public complaint was lodged by the respondent no. 4 and others as

residents of Village - Siddhinathpur, Police Station – Tamulpur, District – Baksa before the Additional Deputy Commissioner, Tamulpur Sub-Division making complaint about irregularities allegedly committed by the petitioner as a Fair Price Shop [FPS] licensee. On receipt of the complaint, the Additional Deputy Commissioner, Tamulpur Sub-Division forwarded the complaint to the Assistant Director, In-Charge, Food, Civil Supplies & Consumers Affairs, Tamulpur on 05.04.2023 to conduct an enquiry into it by the concerned Area Inspector for submission of a report within 10.04.2023 and thereafter, to take necessary action accordingly. The Area Inspector made an enquiry on 06.04.2023 and thereafter, submitted a Report on 10.04.2023. In the Report, the Area Inspector reported that the beneficiaries made a demand to collect the Public Distribution System [PDS] articles from the nearest Fair Price Shop [FPS] dealer, Bhim Bahadur Chetry in place of the petitioner. As there was another allegation that the petitioner was a Government employee, the Area Inspector caused an enquiry on the said issue and reported that the petitioner was not a Government employee. After submission of the Report by the Area Inspector, the respondent no. 3 passed an Order on 10.04.2023 whereby the beneficiaries enlisted with the petitioner's Fair Price Shop [FPS] were tagged with the nearest Fair Price Shop [FPS] of Bhim Bahadur Chetry of the same village, as a temporary measure, in the interest of uninterrupted supply of the PDS articles to the consumers until further order.

4. Based on the Report of the Area Inspector, the petitioner was served a Show Cause Notice dated 07.08.2023 by the Assistant Director, Food, Supplies & Consumer Affairs, Tamulpur, BTR [the respondent no. 3] asking the petitioner to show cause as to why the petitioner's Fair Price Shop [FPS] Sub-Wholesaler / Retailer license should not be cancelled under the provisions of Clause 15[2] of the APDA Order, 1982. In the Show Cause Notice, it was mentioned that as per the Report of the Investigating Officer, the petitioner had failed to comply with the terms and conditions of the APDA Order. The petitioner was asked to submit her Reply within a period of five days from the date of receipt of the Show Cause Notice.

5. On receipt of the Show Cause Notice, the petitioner submitted her Reply to the Show Cause Notice on 11.08.2023 asserting that there was no irregularity on her part in distribution of PDS articles. The petitioner asserted that she had been maintaining all records

regarding distribution of the PDS articles and in support of her claim, she annexed all the supporting documents along with the Reply to the Show Cause Notice. Though no specific order suspending the license of the petitioner was passed, the respondent no. 3 in the Show Cause Notice dated 07.08.2023 had mentioned that the petitioner's license had already stood suspended. After submission of the Reply to the Show Cause Notice on 11.08.2023, there was no order in the matter of suspension or revocation of suspension or cancellation of the license.

6. On 10.07.2023, one Sri Kaushik Pathak, Food, Civil Supplies & Consumer Affairs, Tamulpur submitted a Report to the respondent no. 3 stating inter alia that on verification of the records, it was found that the issue register was not maintained properly by the petitioner. When he verified e-POS transactions, it was noticed that the petitioner had not issued the PMGKAY rice properly to the beneficiaries and had thereby, committed violation of the terms and conditions of the APDA Order and the Targeted Public Distribution Control Order. It was suggested that the FPS license of the petitioner should be cancelled and a new FPS dealer should be appointed by transfer of the license of the petitioner.

7. It is stated that subsequently, another complaint as regards irregularities in the functioning of the Fair Price Shop [FPS] of the petitioner was received by the Additional District Commissioner [Supply], Tamulpur on 08.12.2023 and the Additional Deputy Commissioner [Supply], Tamulpur ordered an enquiry through an Assistant Commissioner & Executive Magistrate, Tamulpur. As per the said order, one Assistant Commissioner –cum- Executive Magistrate, Tamulpur conducted an enquiry and submitted an Enquiry Report on 21.03.2024. In the Enquiry Report, it was reported that the petitioner exhibited lack of proper record keeping regarding rice distribution and the concerned register was incomplete lacking crucial information such as the quantity of rice distributed. There were other irregularities reported. Having reported the irregularities, it was recommended that the petitioner should be precluded from further involvement in rice distribution and it was proposed that the existing arrangement with the owners of the Fair Price Shop licensee, Sri Bhim Bahadur Chetry should be continued. The earlier instance of issuance of the Show Cause Notice on 07.08.2023 was mentioned in the Enquiry Report dated 21.03.2024.

8. On receipt of the Enquiry Report dated 21.03.2024, the Council Head of Department, Food, Public Distribution & Consumer Affairs, BTC, Kokrajhar wrote to the respondent no. 3 vide an Office Letter dated 22.04.2024 in reference to the Enquiry Report dated 21.03.2024 that the Assistant Commissioner –cum- Executive Magistrate, Tamulpur reported irregularities committed by the petitioner in distribution of NFSA rice – both regular and PMGKAY. The respondent no. 3 was requested to initiate legal action against the petitioner under the provisions of the APDA Order as the respondent no. 3 deemed fit and proper.

9. Subsequent to the request made through the Letter dated 22.04.2024, the impugned Order dated 25.04.2024 came to be passed by the respondent no. 3. The impugned Order has been passed in reference to the Office Letter dated 22.04.2024 from the Council Head of Department, Food, Public Distribution & Consumer Affairs, BTC, Kokrajhar. By making such reference, the respondent no. 3 had suspended the Fair Price Shop [FPS] Sub-Wholesaler / Retailer License of the petitioner with effect from 25.04.2024 in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955; the Targeted Public Distribution System [Control] Order, 2021; and Clause 15 of the Assam Public Distribution of Article Order, 1982.

10. I have heard Mr. Y.S. Mannan, learned counsel for the petitioner; Mr. G. Bakalial, learned Junior Government Advocate, Assam for the respondent nos. 1 & 2; and Ms. N. Choudhury, learned Standing Counsel, BTC for the respondent no. 3. None has appeared for the respondent no. 4 despite service of notice.

11. Mr. Mannan, learned counsel for the petitioner has submitted that as per Clause 15[1] and Clause 15[2] of the APDA Order, if an order of suspension is passed in contemplation of any proceeding for cancellation of license, then such proceeding is to be initiated within a period of ninety days and in the event of failure to initiate such proceeding, the order of suspension would not survive.

12. On the other hand, Ms. Choudhury, leaned Standing Counsel, BTC has submitted that

from the various reports, it is evidently clear that there were many irregularities committed by the petitioner while operating the Fair Price Shop [FPS] on the basis of the license granted under the APDA Order and as such, no interference is called for in the case in hand.

13. Clause 15 of the APDA Order has provided for suspension and cancellation of a Sub-Wholesaler / Retailer license granted under the APDA Order. For ready reference, Clause 15 is quoted hereunder :-

[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 or 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.

14. Clause 15[1] of the APDA Order has envisaged that cancellation or suspension is one of the actions that may be taken without prejudice to any other action that can be taken under the Essential Commodities Act, 1955. Clause 15[1] has provided for the course of actions available under the APDA Order in the event of contravention of the terms and conditions of the license by a licensee. Clause 15[2] has provided that no order of cancellation shall be made unless the licensee has been given reasonable opportunity of stating his / her case against the proposed cancellation. However, during the pendency or in contemplation of the proceeding of cancellation of the license, license can be suspended for a period not exceeding ninety days without giving any opportunity to the licensee of stating his / her case.

15. In the afore-stated provisions it is clear that a license cannot be kept suspended beyond a period of ninety days without affording opportunity of stating his / her case. In other words, a license cannot be kept suspended beyond ninety days unless notice is issued requiring the licensee to show cause as to why his / her license shall not be cancelled. If during the period of ninety days no show cause notice is issued initiating a proceeding for cancellation requiring the licensee to state his / her case, the suspension order would automatically spend its force.

16. This Court in **Md. Sirajul Islam vs. The State of Assam, [2017] 1 GLT 499**, has held that the underlying object is that the licensee must be given an opportunity to show cause and it is in that perspective the last portion of Clause 15[2], namely, 'without giving any opportunity to the licensee of stating his case' has to be understood. In case of every contemplation or pendency of the cancellation proceeding, it is not necessary that recourse to suspension of the license has invariably to be taken. Suspension cannot be treated as a mere ritual. The suspension order has to be passed on evaluation of the attending facts and circumstances, more particularly, having regard to the kind of allegations made against the licensee.

17. Mr. Mannan, learned counsel for the petitioner has submitted that despite the Order dated 22.04.2024, he could not lay his hand on any Order named as Targeted Public Distribution System [Control] Order, 2021. He has submitted that there is Targeted Public Distribution System [Control] Order, 2015 with subsequent amendments in 2024 and 2025. Ms. Choudhury, learned Standing Counsel, BTC has submitted that she is unable to lay her hands on any control order by the name Targeted Public Distribution System [Control] Order, 2021.

18. In absence of the Targeted Public Distribution System [Control] Order, 2021, this Court has looked into the provisions of the Targeted Public Distribution System [Control] Order 2015 ['the Control Order, 2015', for short], framed in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 and in supersession of the Public Distribution System [Control] Order, 2001. The Control Order, 2015 has been framed for maintaining supplies and

securing availability and distribution of essential commodity, namely, foodgrains under the Targeted Public Distribution System.

19. As per Clause 2[i], 'designated authority' means any officer not below the rank of Food and Civil Supplies Inspector in the State Government. As per Clause 2[j], 'fair price shop owner' means a person and includes a cooperative society or a body corporate or a company of a State Government or a Gram Panchayat or any other body in whose name a shop has been licensed to distribute essential commodities under the Targeted Public distribution System. Clause 9 of the Control Order, 2015 has provided for licensing and regulation of fair price shops. Clause 10 has prescribed for the operation of fair price shops. As per sub-clause [7] of Clause 10, the designated authority shall take prompt action in respect of violation of any condition of license including any irregularity committed by the fair price shop owner, which may include suspension or cancellation of the fair price shop owner's license. Sub-clause [8] therein has laid down to the effect that the State Government shall prescribe the maximum period within which proceedings relating to enquiry into irregularities committed by the fair price shop owner shall be concluded, resulting in any action under sub-clause [7]. Sub-clause [9] of Clause 10 has envisaged for alternative arrangement by providing that in case of suspension or cancellation of the license, the State Government shall make alternative arrangements for ensuring uninterrupted supply of foodgrains to the eligible households.

20. On a combined reading of the afore-stated provisions of the Control Order 2015, it is found that it is only after conclusion of an enquiry, the action for suspension or cancellation of the Fair Price Shop [FPS] owner's license can be taken by the designated authority. In other words, neither an action for suspension nor for cancellation of the license can be taken by the designated authority prior to conclusion of the enquiry. It is accordingly found from the afore-stated Clause 15 of the APDA Order that if after an order of suspension no proceeding is initiated for cancellation of license within a period of ninety days therefrom, then such order of suspension would not survive beyond a period of ninety days from the date of its issuance.

21. The affidavit-in-opposition on behalf of the respondent no. 3 was filed on 20.01.2025, that is, after more than eight months from the date of suspension order dated 25.04.2024

and it has maintained silence about initiation of any proceeding within ninety days from 25.04.2024.

22. In the above obtaining fact situation, suspension of the license ordered on 25.04.2024 by the respondent no. 3 has spent its force under Clause 15 of the APDA Order and therefore, it is observed that the Order of suspension dated 25.04.2024 is no longer in force.

23. The fact of non-survival of the Suspension Order would not, however, preclude the respondent authorities to proceed for cancellation of the license of the Fair Price Shop [FPS] Sub-Wholesaler / Retailer license of the petitioner in view of the allegations made against the petitioner as the licensee, but such proceeding shall be strictly in accordance with law and a reasonable opportunity is to be afforded to the petitioner by way of a show cause notice, thereby, allowing the petitioner / licensee to submit an effective reply to the show cause notice.

24. In view of the observations made with regard to the suspension order dated 25.04.2024, the Fair Price Shop [FPS] Sub-Wholesaler / Retailer license of the petitioner stands revived and the respondent authorities shall accordingly take immediate and necessary steps for allowing the petitioner to run the Fair Price Shop [FPS] in accordance with law.

25. With the observations made and the direction given above, the writ petition stands allowed to the extent indicated above. There shall, however, be no order as to cost.

**JUDGE**

**Comparing Assistant**

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