

GAHC010164752024



2026:GAU-AS:2673

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

Case No. : **W.P.[C]. NO. 4346/2024**

1. Joy Kumar Hazam, S/o Late Shibnarayan Hazam, Resident of Village - Dilkhosh T.E., Police Station - Lakhipur, District - Cachar, Assam.
2. Bushan Bakti S/o Late Santi Bakti, resident of Village - Dilkhosh T.E., Police Station – Lakhipur, District – Cachar, Assam.

.....Petitioners

-VERSUS-

1. The State of Assam to be represented by the Secretary to the Government of Assam, Foods & Civil Supplies and Consumer Affairs Department, Dispur, Guwahati-06.
2. The Director of Foods, Civil Supplies &

Consumer Affairs, Assam, Bhangagarh,
Guwahati-05.

3. The Deputy Commissioner (Supply Branch), Cachar, Silchar, District – Cachar, Assam, Pin- 788001.
4. The Sub-Divisional Officer (Civil), Lakhipur, District – Cachar, Assam, Pin- 788103.
5. The Superintendent, Food, Civil Supplies & Consumer Affairs, Lakhipur, District – Cachar, Assam, Pin – 788103.
6. The Inspector, Food, Civil Supplies & Consumer Affairs, Lakhipur-cum-Area Officer, District – Cachar, Assam, Pin- 788103.

.....**Respondents**

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

For the Petitioners

: Mr. L.R. Mazumder, Advocate

For the Respondent

: Ms. U. Das, Additional Senior Government
Advocate, Assam

Date on which judgment is reserved : Not applicable

Date of Hearing : 17.02.2026

Date of pronouncement of judgment : 17.02.2026

Whether the pronouncement is of the
Operative part of the judgment ? : No

Whether the full judgment has been
Pronounced ? : Yes

JUDGMENT & ORDER

1. The two petitioners have joined together to institute the present writ petition under Article 226 of the Constitution of India to assail a common Order dated 06.11.2023 passed by the respondent no. 4, that is, the Sub-Divisional Officer [Civil], Lakhipur, Cachar whereby the Fair Price Shop [FPS] licenses issued to the petitioners under the Assam Public Distribution of Articles [APDA] Order, 1982 have been cancelled with immediate effect.

2. The two petitioners were holders of Fair Price Shops [FPS] licenses and they both were retailers under M/s Jiri-Fulertal Gaon Panchayat Samabay Samittee [GPSS]. On the basis of a public complaint regarding non-distribution of NFSA rice an inspection was carried out in the Fair Price Shop [FPS] of the petitioner no. 1 on 08.06.2023 and a few rice bags were seized. A similar inspection was also carried out in the Fair Price Shop [FPS] of the petitioner no.

2 on 08.06.2023 and a few rice bags were seized. By executing zimmanamas of even date, the seized rice bags were again given in the custody of the petitioners by the respondent no. 6 on undertakings from the petitioners that they would not dispose of the seized rice without an order of the Area Officer and would keep the seized rice in good condition. Subsequently on 12.06.2023, the respondent no. 6 vide an Office Order of even date, allowed the petitioners to distribute the seized NFSA rice to the beneficiaries with immediate effect in the interest of the general consumers.

3. On 15.06.2023, the respondent no. 5 passed two Orders whereby the FPS licenses of the two petitioners were suspended with immediate effect and their consumers were tagged with the respective nearest Fair Price Shop.

4. In respect of the petitioner no. 1, the Order of Suspension dated 15.06.2023 had inter alia mentioned that it was reported that the petitioner no. 1, a retailer under M/s Jiri-Fulertal GPSS, did not distribute NFSA rice in the month of June, 2023 to the consumers till 08.06.2023 though he received the rice on 03.05.2023. It was mentioned that the petitioner no. 1 intended to divert the allotted rice for personal gain and he did not maintain stock register of allotted articles. The petitioner no. 1 had failed to hang the beneficiary list in his Fair Price Shop [FPS] and he also failed to submit the monthly performance reports. It was mentioned that the petitioner no. 1 had thereby, contravened the provisions of Clause 6[4] of the PDS [Control] Order, 2001; Clauses 18, 20 & 21 of the APDA Order, 1982; and violated the Clauses 3[a], 4, 5 & 8[1] of the terms and conditions of the FPS license under the APDA Order, 1982. While suspending the FPS license of petitioner no. 1 by Order dated 15.06.2023, he

was also asked to show cause as to why his FPS license should not be cancelled for violation of the afore-stated clauses of the FPS License and the provisions of the APDA Order, 1982. The petitioner no. 1 was directed to file his show cause reply within a period of ten days therefrom.

5. By the Order of Suspension dated 15.06.2023, the petitioner no. 2 was informed that it was reported that he, a FPS retailer under M/s Jiri-Fulertal GPSS, received the NFSA rice for the month of June, 2023 on 05.06.2023. While other FPS licenses lifted the same in the first week of May, 2023, the petitioner no. 2 collected the rice from other sources on 07.06.2023. It was mentioned that the petitioner no. 2 intended to divert the allotted rice for personal gain. He also did not display stock and price board in his Fair Price Shop [FPS] and further did not maintain monthly stock register of the allotted commodities and did not hang the beneficiary list in the shop apart from non-submission of monthly performance reports. It was alleged that the petitioner no. 2 had thereby contravened Clause 6[4] of PDS [Control] Order, 2001; Clauses 10, 14, 18, 20 & 21 of the APDA Order, 1982; and violated the Clauses 3[a], 4, 5 & 8[1] of the terms and conditions of the FPS license under the APDA Order, 1982. While suspending the FPS license of petitioner no. 2 by Order dated 15.06.2023, he was also asked to show cause as to why his FPS license should not be cancelled for violation of the afore-stated clauses of the FPS license and the provisions of the APDA Order, 1982. The petitioner no. 2 was directed to file his show cause reply within a period of ten days therefrom.

6. On 19.06.2023, the respondent no. 5 had informed the petitioners that after distribution of the seized NFSA rice for the month of June, 2023, it

appeared that the petitioner no. 1 had shortage of rice to the extent of 4.03 quintals and the petitioner no. 2 had shortage of 10.00 quintals of rice for distribution to the beneficiaries. The petitioners were directed to arrange the said quantities of rice and hand over the same to the dealer to whom their Fair Price Shops [FPSs] were tagged.

7. On receipt of the Order of Suspension and the direction to submit show cause reply, both the petitioners had submitted their show cause replies before the respondent no. 5 on 23.06.2023 and 26.06.2023 respectively. In their show cause replies, the petitioners had explained the reasons regarding the alleged deficiencies mentioned in the Order of Suspension / Show Cause Notice dated 15.06.2023.

8. On 03.10.2023, notices were issued to the petitioners by the respondent no. 4 to attend his office on 12.10.2023 for a hearing in connection with the proceedings initiated against them with an observation that in the event of failure on their part to attend the personal hearing, decision would be taken ex-parte without prejudice to any action that might be necessitated under the Essential Commodities [EC] Act, 1955. The petitioners have claimed that they had attended the office of the respondent no. 4 on the scheduled date of hearing.

9. It was after personal hearing, the impugned common Order dated 06.11.2023 came to be passed under the hand of the respondent no. 4. Aggrieved by the impugned common Order of Cancellation whereby the FPS licenses of the petitioners were cancelled, the petitioners preferred appeals

under Order 29 of the APDA Order, 1982 before the Appellate Authority, that is, the respondent no. 3 on 19.02.2024. The petitioners were afforded personal hearing by the Appellate Authority in terms of a direction given by this Court on 15.03.2024 in a writ petition, W.P.[C] no. 1489/2024 preferred by these two petitioners and they appeared accordingly before the Appellate Authority on 03.07.2024 pursuant to a Notice, dated 29.06.2024, by the Appellate Authority.

10. Thereafter, by separate Orders, both dated 10.07.2024, the Appellate Authority dismissed the two appeals by upholding the decision of the Licensing Authority regarding cancellation of the FPS licenses of the two petitioners. Aggrieved by and dissatisfied with the impugned common Order of Cancellation dated 06.11.2023 of the Licensing Authority and the Orders, dated 10.07.2024, passed by the Appellate Authority, the petitioners are before this Court by the present writ petition.

11. I have heard Mr. L.R. Mazumder, learned counsel for the petitioners and Ms. U. Das, learned Additional Senior Government Advocate, Assam for all the respondents.

12. The primary contention advanced on behalf of the petitioners is that the Licensing Authority in the impugned common Order dated 06.11.2023 did not assign any specific reason for cancellation of the FPS license of the petitioners and as a result, the same being a non-speaking order, cannot stand the scrutiny of law. The Appellate Order having affirmed such non-speaking order is also liable to be set aside and quashed.

13. The State Counsel has, on the other hand, submitted that from the show cause replies submitted by the petitioners it could be evident that the petitioners as FPS licensee had contravened a number of provisions of the APDA Order. The natural consequence for such contravention was suspension followed by cancellation of the FPS licenses. The learned State Counsel has, thus, supported the decision of cancellation of the FPS licenses of the petitioners by the Licensing Authority, followed by affirmation of the said decision by the Appellate Authority.

14. I have considered the submissions of the learned counsel for the parties and have gone through the materials brought on record.

15. The Fair Price Shop [FPS] licenses are issued under the provisions of the Assam Public Distribution of Articles [APDA] Order, 1982, an Order made in exercise of powers conferred by Section 3 of the Essential Commodities Act, 1955. The petitioners were appointed dealers of PDS articles by grant of Fair Price Shop [FPS] Licenses and they were running Fair Price Shops [FPSs] on the basis of the FPS licenses, License no. 84 of 1982-1983 and License no. 85 of 1982-1983 respectively under M/s Jiri-Fulertal GPSS. From the FPS licenses, it can be noticed that the petitioners were running their Fair Price Shops since a nos. of decades after being granted licenses in the year : 1982-1983.

16. The APDA Order has contained provisions for suspension and cancellation of the licenses issued. As per Order 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 his license may be cancelled or suspended by any Order in writing of the Licensing Authority and an entry will be made in his license relating to such suspension or cancellation. As per Order 15[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 license, the licence can be suspended for a period not exceeding ninety days without giving any opportunity to the licensee of stating his case.

17. In the show cause notices issued to the petitioners, references were made of a number of clauses of the PDS [Control] Order, 2001, the APDA Order, 1982 and the terms and conditions of the FPS license issued under the APDA Order, 1982. In the replies to the show cause notices, the petitioners had sought to provide explanations justifying the alleged deficiencies reported against them.

18. But, on perusal of the impugned common Order dated 06.11.2023, it is found that the Licensing Authority while deciding to cancel the FPS licenses of the petitioners did not assign any specific reason for which he found the necessity to exercise the power of cancellation available under Clause 15 of the APDA Order, 1982.

19. An order of cancellation of the license issued under the APDA Order, 1982 visits the person with civil consequences. An Order which visits a person with serious and adverse consequences must contain the reasons wherefrom it can be known to the concerned person that the Licensing Authority had after due

application of mind had found justified reasons for cancellation of the license. An administrative authority has to adhere to the principles of natural judicial and fairplay and it has a duty to act judicially and fairly, if its decision is going to bring adverse effect on any person like the petitioners herein as the licensees. The recording of reasons in the order of cancellation passed by the Licensing Authority is a necessity as the Order of Cancellation passed by the Licensing Authority as the original authority is an appealable order. An order which affects the right of a person, requires recording of reasons as the reasons recorded would aid the Appellate Authority to see whether the Licensing Authority as the original authority had acted fairly and judicially to the aggrieved person. The recording of reasons in the order of cancellation, more particularly, when the adverse order has the possibility of impacting a person adversely is necessary as then only the person aggrieved can have the knowledge of the reasons as to why the order has been passed and he then only can have a proper opportunity to demonstrate before the Appellate Authority that the reasons which impelled the Licensing Authority to pass the adverse order against him, are erroneous, arbitrary, untenable or unjust.

20. A speaking order is one which expressly states the reasons for the decision. In other words, a speaking order speaks for itself by assigning the reasons behind the conclusion. If an order is passed without giving a reason by the concerned authority, more particularly, when the authority is the statutory authority, then the order is a non-speaking one which does not provide a clear reason for its decision. The authority exercising the statutory power must record the reasons unless such obligation is not expressly or impliedly dispensed with. It is implicit in the principles of natural justice and fair play that an authority

which has been vested power should record reasons as it is part of fair procedure, more particularly, when the decision is likely to affect the person concerned. The obligation to record reasons is a possible check against arbitrary action on the part of the authority invested with the statutory power to take a decision which is likely to affect the right of the person concerned and to amplify that there was due application of mind.

21. Having regard to the aforesaid aspects, when the impugned common Order of Cancellation dated 06.11.2023 is examined, the impugned common Order of Cancellation dated 06.11.2023 is evidently a non-speaking order and the same cannot stand the scrutiny of law and the same is found clearly in violation of the principles of natural justice and fairplay. The law is well settled that public orders publicly made in exercise of the statutory authority cannot be construed in the light of explanation subsequently given by the officer making the order of what he meant or what was in his mind or what he intended. Therefore, explanations sought to be provided in the affidavit-in-opposition filed by the respondent no. 3 are not to be considered.

22. In view of the above fact situation, the impugned common Order of Cancellation dated 06.11.2023 passed by the Licensing Authority is found not sustainable in law. Consequently, the Orders dated 10.07.2024 passed by the Appellate Authority based on such non-speaking order of the Licensing Authority are also found not sustainable in law and the same are also liable to be set aside and quashed. They are accordingly set aside and quashed.

23. With the above Orders being set aside and quashed, the proceedings

initiated by the show cause notices shall stand restored to the file of the Licensing Authority. The Licensing Authority shall now proceed now from the stage of consideration of the show cause replies submitted by the petitioners. After affording an opportunity of personal hearing to the noticees and upon due consideration, the Licensing Authority shall pass a speaking order each in case of each of the petitioners by taking into account the provisions of the PDS [Control] Order, 2001, APDA Order, 1982 and the terms and conditions of the FPS licenses under the APDA Order, 1982 on its own merits and in accordance with law. The speaking orders shall be duly communicated to the petitioners forthwith thereafter. As the proceeding against the petitioners were initiated as far back as on 15.06.2023, the Licensing Authority shall bring the proceedings in case of both the petitioners to logical conclusion within a period of one month from the date of submission of a certified copy of this Order by the petitioners at his office.

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

JUDGE

Comparing Assistant