

GAHC010201822016



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

Case No. : WP(C)/364/2016

NIRANJAN BORO

S/O. SRI GOPAL BORA, VILL KALCHENI, P.O. KALCHRNI, P.S. TAMULPUR,
DIST. BADSA, ASSAM, PIN-781368.

VERSUS

BODOLAND TERRITORIAL COUNCIL and 8 ORS

REP. BY THE PRINCIPAL SECY. TO THE BODOLAND TERRITORIAL
COUNCIL, BODAFI NWGWR, KOKRAJHAR, PIN-783370.

2:THE JOINT SECRETARY

FOOD

CIVIL SUPPLIES and CONSUMER AFFAIRS DEPTT.

BTC

KOKRAJHAR

ASSAM

PIN-783370.

3:THE COUNCIL HEAD OF DEPTT.

FOOD

CIVIL SUPPLIES and CONSUMER AFFAIRS DEPTT.

BTC

KOKRAJHAR

ASSAM

PIN-783370.

4:THE SUPDT.

FOOD

CIVIL SUPPLIES and CONSUMER AFFAIRS DEPTT.

BTC

TAMULPUR

ASSAM

PIN-781367.

5:THE STATE OF ASSAM
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
FOOD
CIVIL SUPPLIES and CONSUMER AFFAIRS DEPTT.
DISPUR
GHY.-06
ASSAM
PIN-781006.

6:THE DY. COMMISSIONER
MASHALPUR
DIST. BAKSA BTC
ASSAM
PIN-781346.

7:THE SUB-DIVISIONAL OFFICER C
TAMULPUR
DIST. BAKSA BTC
ASSAM
PIN-781367.

8:THE CIRCLE OFFICER
TAMULPUR
DIST. BAKSA BTC
ASSAM
PIN-781367.

9:SRI RATAN BORO
S/O. LT. KATI RAM BORO
VILL. KALCHENI
P.O. KALCHENI
P.S. TAMULPUR
DIST. BAKSA BTC ASSAM
PIN-781368

Advocate for the Petitioner : MR.S U AHMED

Advocate for the Respondent : SC, BTC

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 31.03.2023

The petitioner has instituted the present writ petition under Article 226 of the

Constitution of India seeking inter alia a direction to the respondent authorities in the Bodoland Territorial Council [BTC] to issue a licence to him as a dealer to operate a Fair Price Shop [FPS] to deal in PDS articles in place of his uncle, Thaneswar Boro under the Assam Public Distribution of Articles [APDA] Order, 1982.

2. The case projected by the petitioner, in brief, is that the petitioner is the nephew of one Thaneswar Boro, who was granted a retail licence for a Fair Price Shop [FPS] bearing licence no. FST-241/Pachim-Defeli/06/25 under M/s Pachim Defeli Bahumukhi Samabai Samity [B.S.S.] Limited at Kalcheni Village, within Tamulpur Sub-Division of Baksa District. During the life time of the licensee i.e. Thaneswar Boro, when he was ill, an application was made on 16.03.2015 for transfer of the licence in favour of the nephew i.e. the petitioner. The original licence holder, Thaneswar Boro died on 28.03.2015 and thereafter, the petitioner formally applied for transfer of the licence under the APDA Order, 1982. The petitioner has claimed that his application was supported by the co-villagers and others. According to him, the respondent Bodoland Territorial Council [BTC] authorities had also approved the appointment of the petitioner as a PDS retail dealer against the deceased agent, Late Thaneswar Boro, as can be noted from the communication bearing no. BTC/FCS&CA-67/2007-278 dated 09.10.2015. The communication bearing no. BTC/FCS&CA-67/2007-278 dated 09.10.2015 was from the Joint Secretary, Bodoland Territorial Council [BTC], Kokrajhar to the Council Head Department, Food, Civil Supplies & Consumer Affairs Department, BTC whereby it was informed that as per the Enquiry Report of the Superintendent, Tamulpur, the BTC authorities had approved the case of the petitioner for appointment as an agent to deal in PDS articles under M/s Pachim Defeli B.S.S. Limited against the vacancy due to death of the earlier agent, Late Thaneswar Boro and the Council Head Department, Food, Civil Supplies & Consumer Affairs Department, BTC was thereby, requested to arrange to issue necessary licence of agent to the deal in PDS article under M/s Pachim Defeli B.S.S. Limited as per the existing rules. As the necessary exercise for issuance of the retail licence was delayed despite completion of the formalities including furnishing of the requisite security by the petitioner, the petitioner had approached this Court by the instant writ petition.

3. Heard Mr. H. Medhi, learned counsel for the petitioner; Ms. R.B. Bora, learned Standing

Counsel, BTC for the respondent nos. 1, 2, 3 & 8; and Mr. K. Gogoi, learned Additional Senior Government Advocate, Assam for the respondent nos. 5, 6 & 7.

4. This Court on 29.01.2016, had issued notices to the respondents by making the notice returnable in 4 [four] weeks. On 29.01.2016, Ms. R.B. Bora, learned Standing Counsel, BTC accepted notice for the respondent nos. 1 – 4 while the learned Government Advocate, Assam accepted notice for the respondent nos. 5 – 8. The petitioner was directed to ensure service on the respondent no. 9 by registered post with A/D. While issuing notice on 29.01.2016, this Court directed to maintain status quo on 29.01.2016 in respect of the application for the PDS dealership at the Kalcheni Village in the meantime.

5. As per office note dated 07.09.2019, A/D Card from the respondent no. 9 had been received back after service.

6. Mr. Medhi, learned counsel for the petitioner has submitted that in respect of the same FPS retail licence, there was one more applicant i.e. Sri Ratan Boro [the respondent no. 9]. The respondent no. 9 had approached this Court by another writ petition, W.P.[C] no. 6528/2015. Drawing contention to the order dated 16.10.2015 [Annexure-XV] passed in the writ petition, W.P.[C] no. 6528/2015, Mr. Medhi has submitted that in the said writ petition, the respondent no. 9 as the writ petitioner, had projected that there was non-consideration of his representation dated 02.06.2015 wherein he sought for transfer of the retail licence earlier existing in the name of Thaneswar Boro. The order dated 16.10.2015 reflected that the father of Ratan Boro was one Kaliram Boro, who was originally running the Fair Price Shop [FPS] under licence no. FST-241/Pachim-Defeli/06/25. Noticeably, it was projected that the retail PDS licence originally belonged to Late Thaneswar Boro and after the death of Thaneswar Boro and the father of Ratan Boro i.e. Katiram Boro, Ratan Boro made a representation before the respondent no. 5 therein on 02.06.2015 to transfer the retail licence in his favour so as to enable him to continue with the business of Fair Price Shop, which he claimed to be running after the deaths of Thaneswar Boro and Ratan Boro.

7. A reading of the order dated 16.10.2015 passed in the writ petition, W.P.[C] no.

6568/2015 goes to show that the writ petition was disposed of at the motion stage itself with a direction to the respondent no. 5 therein to consider the representation dated 02.06.2015 submitted by the petitioner therein i.e. the respondent no. 9 herein and to dispose of the same by passing a speaking order within a period of 2 [two] months from the date of receipt of a certified copy of the order dated 16.10.2015.

8. The direction made in the order dated 16.10.2015 [supra] was a direction simpliciter to consider the representation dated 02.06.2015 submitted by Mr. Ratan Boro without adverting to the merits of the claim of Mr. Ratan Boro [the respondent no. 9] and to pass a speaking order after consideration of the representation.

9. Ms. Bora, learned Standing Counsel, BTC has submitted that a retail licence under the APDA Order, 1982 has been issued in the meantime in favour of the respondent no. 9 herein [Mr. Ratan Boro] on 10.10.2019 for Village Kalcheni. It is seen that the retail licence in favour of the respondent no. 9 has been issued when the operation of the order dated 29.01.2016 of this Court to maintain status quo as on date 29.01.2016 in respect of an application for the PDS licence dealership at Kalcheni Village was in operation.

10. The issuance of the retail licence in favour of the respondent no. 9 during the pendency of this writ petition with the effect of the order dated 29.01.2016 was still in operation, is **prima facie** suggestive of violation of the order dated 29.01.2016.

11. In this connection, it is of relevance to refer to the decision of the Hon'ble Supreme Court in **A.P. SRTC and others vs. G. Srinivas Reddy and others**, reported in [2006] 3 SCC 674 wherein the Hon'ble Supreme Court has examined the significance and meaning of a direction given by the Court to 'consider' a case. When a court directs an authority to 'consider', it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. Taking note of the fact that there are reasons for a large number of writ petitions filed in the High Courts being disposed of with a direction to 'consider', the Hon'ble Supreme Court has made the following observations : -

“14. We may, in this context, examine the significance and meaning of a direction given by the court to "consider" a case. When a court directs an authority to 'consider', it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in High Courts being disposed of with a direction to "consider" the claim/case/representation of the petitioner[s] in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/ irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to 'consider' and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision making process, rather than the decision itself.

16. The High Courts also direct authorities to 'consider', in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of power of judicial review, directs the authority to 'consider' and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs 'consideration' without examining the facts or the legal question[s] involved and without recording any findings on the issues. The High Court may also direct the authority to 'consider' afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to 'consider' the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the

authority to 'consider' the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.”

12. After noticing the observations of the Hon'ble Supreme Court of India in **A.P. SRTC** [supra], the Hon'ble Supreme Court of India in **Commissioner of Police, New Delhi vs. Narender Singh**, reported in [2006] 4 SCC 265 has reiterated that a direction to 'consider' without adverting to the merits of the claim is not a positive direction.

13. The issue herein is a competing claim of the petitioner who is a nephew of the original retail licensee, Late Thaneswar Boro on one hand vis-à-vis the respondent no. 9, who was the son of the one Katiram Boro, who stated to be an employee under the original retail licensee, Late Thaneswar Boro on the other hand. When the order dated 29.01.2016 of this Court is to maintain status quo as on 29.01.2016 in respect of the application for the PDS dealership for Kalcheni Village is in operation, the retail licence had been issued to the respondent no. 9 on 10.10.2019 by the office of the respondent no. 4.

14. Having regard to the fact situation projected in this Court deems it fit and prefer to direct the Licensing Authority, who had issued the licence to the respondent no. 9 to appear before the Court in person, along with the relevant records pertaining to issuance of the licence in favour of the respondent no. 9.

15. List the case on 19.04.2023 for personal appearance of the said licensing authority.

16. A copy of the order be furnished to Ms. R.B. Bora, learned Standing Counsel, BTC for doing the needful from her end.

JUDGE

Comparing Assistant