

GAHC010224152022



2026:GAU-AS:821

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

Case No. : WP(C)/7100/2022

HEM BAHADUR PRADHAN @ NEWAR AND ANR.
S/O- LATE MOTILAL NEWAR,
RESIDENT OF BOGIBEEL CHAULKHUWA,
P.O.- BOGIBEEL, P.S.- BARBARUAH,
DIST.- DIBRUGARH, ASSAM,
PIN- 786004.

2: LAL BAHADUR PRADHAN
S/O- SRI HEM BAHADUR PRADHAN @ NEWAR
RESIDENT OF BOGIBEEL CHAULKHUWA
P.O.- BOGIBEEL
P.S.- BARBARUAH
DIST.- DIBRUGARH
ASSAM
PIN- 786004

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
FOOD, CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DEPUTY COMMISSIONER
DIBRUGARH DISTRICT
DIBRUGARH
ASSAM
PIN- 786001.

3:THE DEPUTY DIRECTOR
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT

DIBRUGARH
DIST.- DIBRUGARH
ASSAM
PIN- 786001.

4:THE SUB-INSPECTOR
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
DIBRUGARH
DIST.- DIBRUGARH
ASSAM
PIN- 786001

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri B. Sinha.

Advocates for the respondents : Shri S.R. Baruah, GA, Assam

Date on which judgment is reserved : NA

Date of pronouncement of judgment : 22.01.2026

Whether the pronouncement is of the operative part of the
judgment? : NA

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

Heard Shri B. Sinha, learned counsel for the petitioners. Also heard Shri S.R. Baruah, learned State Counsel for the respondents.

2. The challenge in this petition instituted under Article 226 of the Constitution of India is with regard to an order dated 02.09.2022 issued by the Deputy Director (I/C), Food Civil Supplies & Consumer Affairs whereby the PDS License of the petitioners have been cancelled.

3. As per the facts projected, the petitioners were issued a Fair Price Shop license and were running the same in accordance with law. However, certain allegations were levelled against them and an enquiry was done on those allegations leading to an order of suspension of license dated 11.06.2018. The same was followed by a Show Cause Notice dated 19.06.2018. Subsequently, on 05.08.2018, an additional Show Cause Notice was issued by the Additional Deputy Director (I/C). The petitioners had responded to the same on 08.11.2018 and after completion of the proceeding, the impugned order dated 02.09.2022 has been passed which is the subject matter of challenge.

4. Shri Sinha, the learned counsel for the petitioners has submitted that the petitioners were not given any opportunity at the stage of such enquiry. He has further submitted that from the materials on record, it appears that the ADC (I/C) had a role in the proceeding which is in conflict with the law and unfair inasmuch as the Deputy Commissioner is the Appellate Authority under Order 30 of the Assam Public Distribution of Articles Order, 1982. He has also submitted that the allegations are not correct and the petitioners were deprived of a fair opportunity to defend themselves.

5. *Per contra*, Shri Baruah, the learned State Counsel has submitted that all procedural safe guards were afforded to the petitioners to defend themselves in the proceeding. By refuting the submission regarding any prejudice caused to the petitioners, the learned State Counsel has submitted that under Order 29, it is the Deputy Commissioner, who would be the Appellate Authority if the order is made by any Officer, who is lower in rank and the present order being passed by the Deputy Director, there would be no prejudice caused to the petitioners for preferring an appeal. He has also highlighted that the additional Show Cause Notice was not issued by the Deputy Commissioner but by the Addl. Deputy

Commissioner only to clarify certain factual aspects and full opportunity was granted to the petitioners to file their response to the same. He has also drawn the attention of this Court to an earlier Writ Petition being WP(C)/1431/2019 instituted by the petitioners challenging the suspension order dated 11.06.2018 in which this Court had passed an order dated 15.03.2019 directing conclusion of the proceeding. The State Counsel has highlighted the aspect that certified copy of the said order was supplied to the authorities only on 10.08.2022 whereafter the impugned action could be taken. He, accordingly, submits that the writ petition is liable to be dismissed.

6. The rival contentions advanced have been duly considered and the materials placed before this Court have been carefully perused.

7. The Show Cause Notice issued on 19.06.2018 was preceded by an order of suspension which was the subject matter of challenge in WP(C)/1431/2019. This Court, while disposing of the said writ petition had directed for conclusion of the proceeding within 3 (three) weeks from the date of receipt of the certified copy of this order. The certified copy however appears to have been served on the authorities only on 10.08.2022 whereafter the impugned order has been passed. This Court has also noticed that the suspension order, as such was not interfered with by this Court in the order dated 15.03.2019.

8. The aspect that the petitioners were prejudiced for preferring an appeal as provided under Order 29 has also been examined. Order 29 lays down a provision for preferring appeal against any orders that may be passed. Under Order 29 (1) (b), it is provided that, if the order is made by any Officer lower in rank than the Deputy Commissioner, the appeal would lie before the Deputy Commissioner. This Court is unable to accept the submission advanced on behalf of the petitioners that the Additional Show Cause Notice issued by the Additional

Deputy Commissioner (I/C) would in any way come in the way of preferring an appeal or its fair consideration by the Deputy Commissioner as it is not in dispute that the Additional Deputy Commissioner cannot be equated in rank with the Deputy Commissioner.

9. This Court has also noticed that due opportunity was granted to the petitioners and they had in fact filed the response on 08.11.2018 which was duly considered by the disciplinary authority as reflected in the impugned order dated 02.09.2022. A perusal of the impugned order would show that the defence of the petitioners was duly considered and all the relevant factors have been taken into consideration.

10. The certiorari jurisdiction to be exercised by this Court under Article 226 of the Constitution of India is to be confined to the decision making process and not to the merits of the decision. In other words, the examination is on the aspect as to whether the relevant factors have been taken into consideration or as to whether the impugned decision is based on extraneous factors and irrelevant consideration. The aspect of jurisdiction of the authority passing the order may also be examined which is not the case in hand. There are also no allegations of *mala fide* in passing of the impugned order.

11. Law is well settled in this field. The Hon'ble Supreme Court, after discussing the previous case laws on the jurisdiction of a Writ Court *qua* the writ of certiorari, in the case of ***Central Council for Research in Ayurvedic Sciences and Anr. Vs. Bikartan Das & Ors*** reported in ***2023 INSC 733*** has laid down as follows:

“49. Before we close this matter, we would like to observe something important in the aforesaid context: Two cardinal principles of law governing exercise of

extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

50. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.”

12. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that no case for interference is made out.

13. Accordingly, the writ petition stands dismissed.

JUDGE

Comparing Assistant