

Sri Umesh Chandra Deka Vs The State of Assam and Others

Court: Gauhati High Court

Date of Decision: Nov. 22, 1984

Citation: (1985) 1 GLR 76

Hon'ble Judges: K.M. Lahiri, Acting C.J.; R.K. Manisana Singh, J

Bench: Division Bench

Advocate: Y.K. Phukan and G. Sahewalia, for the Appellant; S.N. Bhuyan, General and B.B. Narzary, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Lahiri, A.C.J.

1. Although this petition has come up for admission we propose to dispose it today as the matter can be disposed of without calling for records

and without resorting to the prolonged procedure of lodgment of affidavits, on the basis of the admitted facts and circumstances of the case

appearing from the writ petition itself. Early disposal would uphold the cause of justice and minimise or curtail costs, expenses of both the parties.

There is no purpose in keeping alive the matter for a couple of years and to deliver the fame order as we propose to make to-day.

2. Mr. Y.K. Phukan, learned Counsel for the Petitioner as well as Mr. S.N. Bhuyan, learned Advocate General, Assam who has been assisted by

Mr. B.B. Narzary, Govt. Advocate, also agree that the matter can be disposed of in the manner proposed by us.

3. The sole point for determination is whether Respondent No. 2 the Commissioner of Lower Assam Division, Gauhati, has failed to exercise

jurisdiction vested in him by law in holding that the order impugned before him was not appellable under Clause 29(c) of the Assam Public

Distribution of Articles Order 1982, ""the Order of 1982"" for short.

4. To get a grip of the matter let us set out the relevant facts. The Petitioner had a licence ""for dealing with the fair price articles"" granted by the

competent authority. The licence was issued under the Assam Food Stuff (Distribution and Control) Order, 1958, for short ""the Order of 1958"".

The Order of 1858 was repealed by "the Order of 1982". However, certain acts, rights, privilege etc. were saved by the repealing and saving

Clause 33 of "the Order of 1982". After "the Order of 1958" was repealed, the Petitioner had to apply for a licence under "the Order of 1982".

The Petitioner filed an application dated 31.3.82 in the office of the Deputy Commissioner, Kamrup and deposited security amount, licence fee

and renewal fee for the year 1983-84. The Petitioner was informed by the Special Officer, Food and Civil Supplies, Gauhati by his letter dated

2.5.83 that the Petitioner was to produce Security Deposit form. Treasury Challans deposited for (1) Licence fee, and, (2) Renewal fee for the

year 1983-84. The Petitioner complied with the requirements and produced them with the application dated 24.5.83, which was received by the

Accounts Officer, Food and Civil Supplies Branch, Gauhati, it is thus seen that the competent authority had asked for security as well as licence

fee for obtaining the licence and renewal fee for renewing the old licence which the Petitioner had. Thereafter by letter dated 16th June, 1983 the

Petitioner was asked to show cause why his dealership not be cancelled as he had committed some irregularities while running his business "as

appointed retailer in G.M.C. Ward No. 29". The Petitioner showed cause. Upon hearing the Petitioner, the Deputy Commissioner passed an

order holding that the Petitioner, a retailer, had been reported to have violated the clauses of "the Order of 1982" by showing false issue of notified

articles and the retailer had been asked to show cause. The Deputy Commissioner held that the Petitioner had stated that he was unable to manage

the shop personally due to his ailment and as such the shop was being managed by his employees. However, we do not find any such statement in

the show cause. Be that as it may, the Deputy Commissioner held (1) that the Petitioner had violated the provisions of "the Order of 1982", and,

(2) that the Petitioner had not yet been granted a formal licence under "the Order of 1982" and, therefore, cancellation of the licence did not arise.

However, the Deputy Commissioner directed that notified articles, which were being supplied to the Petitioner should be stopped with immediate

effect. Further the Deputy Commissioner held that fresh licence should not be issued to the Petitioner. Against this order the Petitioner appealed

under Clause 29(c) of "the Order" and the appellate authority by a short order held that as no licence had been issued to the Petitioner, the

provisions of "the Order of 1982" were not applicable. The Deputy Commissioner did not cancel any licence but stopped allotment which was

merely on internal administrative order of the Deputy Commissioner against which no appeal lay.

5. There is no wrangle that the Petitioner had applied for a fresh licence as well as asked for renewal of his licence which, had been granted under

the Order of 1958". He had paid the licence fee as well as deposited security amount. From the order of the Deputy Commissioner it appears that

pending disposal of his application for renewal/grant of licence under "the Order of 1982" the Petitioner was being supplied with notified articles.

As such, it appears clear that the Petitioner was permitted to run his Fair Price shop on the basis of the licence issued under "the Order of 1958

and the authorities issued notified articles to the Petitioner. The order of the Deputy Commissioner clearly stated that no fresh licence should be

granted to the Petitioner. The Petitioner had applied for a licence and the prayer was turned down by the impugned order. As such, he was

aggrieved and he could appeal against such order under Clause 29 of "the Order of 1982". Clause 29(1)(c) reads as follows:

29. (1) Any person aggrieved by an Order made by any officer under this Order may:

(a) ***

(b) ***

(c) if the order is made by the Deputy Commissioner appeal to the Commissioner.

The Petitioner was aggrieved by the order of refusal to grant him licence and he had a right of appeal under Clause 29(1)(c) to the Commissioner

as the order had been rendered by the Deputy Commissioner. As such, the impugned order of the Commissioner holding that the Petitioner had no

right to prefer the appeal and consequently he had no jurisdiction to hear and dispose the same, is an erroneous decision. It is liable to be quashed,

which we hereby do. Further the positive finding reached by the Deputy Commissioner was that the Petitioner had violated the provisions of "the

Order of 1982". If the Petitioner had not violated the provisions no penal action could have been taken against him. An order holding that the

Petitioner had violated the provisions of "the Order of 1982" is certainly appealable as it affects his civil rights and stigmatises him. Under these

circumstances, the Petitioner had a right of appeal under Clause 29(1)(c). Further it was for the Commissioner to consider whether the licence

issued under "the Order of 1958" continued and saved by Clause 33 of "the Order of 1982". The rights, privileges and obligations acquired under

the Order of 1958" continued under Clause 33 of "the Order of 1982" and the Petitioner might be entitled to renewal. In fact, the licensing

authority had asked him not only to deposit licence fee but also asked him to deposit renewal fee for the year 1983-84. The question of deposit of

renewal fees could not have arisen if the Petitioner had no right to renew his old licence. The authorities demanded renewal fee for renewing his

licence under "the Order of 1958" in accordance with the provisions of "the Order of 1982". As such, although the Deputy Commissioner had held

that the Petitioner had no licence it was for the appellate authority to consider whether the Petitioner's right under the licence granted under "the

Order of 1958" continued and whether the Petitioner had a right to have the licence renewed and in fact the impugned order of the Deputy

Commissioner was an order cancelling the old licence as he directed that notified articles should not be issued to the Petitioner, which the

authorities were issuing to the Petitioner on the basis of the licence granted under "the Order of 1958". It will be for the appellate authority to

consider whether the Petitioner's right to obtain a fresh/renewed licence was taken away by the order of the Deputy Commissioner. It will be for

the Commissioner to consider whether the right of the Petitioner under the old licence continued until the order was rendered by the Deputy

Commissioner. None of these questions which touches jurisdiction of the Commissioner of Lower Assam Division was considered by him.

6. Under these circumstances, we are constrained to hold that the impugned order dated 21.11.83 is illegal and void and accordingly it is set aside.

We direct that the matter may be remitted to the Commissioner of Lower Assam Division for disposal of the appeal in the light of observation

made above and strictly in accordance with law.

7. In the result, the petition is accepted to the extent indicated above. However, there will be no order as to costs.