

GAHC040005182022



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

Case No. : WP(C) 172/2022

1:Migom H Borang Kepang
A Resident of Nongkho,
PO and PS Mahadevpur, District Namsai, Arunachal Pradesh, a permanent resident of
Siluk Village, PO and PS Mebo, District East Siang, Arunachal Pradesh.

VERSUS

1:THE STATE OF AP and 2 Ors.
Through the Chief Secretary, Govt. of A.P. Itanagar

2:The Commissioner
Tax and Excise
Govt. of AP
Itanagar

3:The Deputy Commissioner
Namsai
District Namsai
Arunachal Pradesh

Advocate for the Petitioner : Muk Pertin, Senior Advocate

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE NANI TAGIA**

ORDER

Date : 26.04.2023

Heard Mr. M. Pertin, learned Senior counsel, assisted by Ms. T. Y. Bhutia, learned counsel for the petitioner. Also heard Mr. S. Tapin, learned Senior Government Advocate for the State respondents.

2. This writ petition has been filed, seeking a direction to the respondent authorities to consider the case of the petitioner for approval of issuance of retail outlet IMPL/Beer wine shop license and a declaration/order to the effect that the rejection of petitioner's application is null and void.

3. According to the petitioner, the petitioner has submitted an application for grant of retail outlet IMPL/Beer wine shop license at Mahadevpur in the District of Namsai. The application submitted by the petitioner for grant of retail outlet IMPL/Beer wine shop license was forwarded by the Deputy Commissioner, District Namsai to the Commissioner (Tax & Excise), Government of Arunachal Pradesh, Itanagar, vide Memo no. NMS/TEN/Ex-25/2019/472, dated 06.01.2021. According to the petitioner, the Deputy Commissioner, District Namsai had forwarded the application of the petitioner vide letter dated 06.01.2021 for grant of retail outlet IMPL/Beer wine shop license at Mahadevpur in the District of Namsai, along with all the requisite documents for grant of such license after the Deputy Commissioner, District Namsai had found that the petitioner has fulfilled all the criteria for grant of such license at Mahadevpur, Namsai.

4. The grievance of the petitioner is that even after the Deputy

Commissioner, District Namsai had recommended the case of the petitioner for grant of retail outlet IMPL/Beer wine shop license as above, the State Government has rejected the application of the petitioner for grant of such a license. The application of the petitioner for grant of such a license is stated to have been rejected by the State Government on the basis of a remark made as "As discussed regret" in the file noting enclosed as (Annexure-4 series) to the writ petition, which is a RTI information furnished to the petitioner by the Joint Commissioner (PIO), Department of Tax & Excise & Narcotic, Itanagar. It is on the basis of the file noting made "As discussed regret", that the petitioner contends that his application for grant of retail outlet IMPL/Beer wine shop license has not been granted to the petitioner.

5. Apart from the file noting furnished to the petitioner pursuant to the information sought for by him under the RTI Act as above, no order/notification issued by the State Government pursuant to the above file noting has been placed before this Court.

6. The respondent no. 2 has contested the case by filing a counter-affidavit, wherein, it has been stated in Paragraph-7 & 11 that the retail outlet IMPL/Beer wine shop license is issued under Rule 30 of Arunachal Pradesh Excise Rules, 1994 by the State Government and the recommendation made by the Deputy Commissioner, District Namsai for grant of such license does not automatically entitle

the petitioner for grant of such a license by the State Government and the same is entirely within the discretion of the State Government for grant of such a license. It is also stated in Paragraph-11 thereof, that if all the applications are to be considered for grant of such excise licenses, the small

market of Arunachal Pradesh will flooded with liquor shops, which will destroy the society and cause law and order problem in the State.

7. Though, the respondents have contested the case of the petitioner in the manner indicated hereinabove through the counter-affidavit filed by the respondent no. 2, but, on perusal of the material placed before this Court, I find that the State Government has not passed an order and communicated to the petitioner either accepting the recommendation made by the Deputy Commissioner, District Namsai for grant of retail outlet IMPL/Beer wine shop license at Mahadevpur, Namsai or rejecting it. The file noting placed before this Court by the petitioner (Annexure-4 series) to the writ petition, wherein, it has been finally noted "As discussed regret" being only the noting made by the respondent authorities on the file, which, under the law, is always considered to be provisional in nature and capable of being changed by the authorities, I am of the view that the authorities concerned in the instant case is required to take a final decision on the recommendation made by the Deputy Commissioner, Namsai District for grant of retail outlet IMPL/Beer wine shop license at Mahadevpur, Namsai in favour of the petitioner.

8. Accordingly, I deem it appropriate to dispose of the writ petition with a direction to the respondent no. 2, the Commissioner (Tax & Excise), Government of Arunachal Pradesh, Itanagar to take a final decision on the letter dated 06.01.2021, written to the Commissioner (Tax & Excise), Government of Arunachal Pradesh, Itanagar, vide Memo no. NMS/TEN/Ex-25/2019/472 by the Deputy Commissioner, Namsai District for grant of retail outlet IMPL/Beer wine shop license at Mahadevpur, Namsai to the petitioner and thereafter pass an appropriate order as may be deemed fit and

communicate the same to the petitioner.

9. In view of the above, the respondent no. 2, the Commissioner (Tax & Excise), Government of Arunachal Pradesh, Itanagar is hereby directed to take a final decision on the letter dated 06.01.2021, written to the Commissioner (Tax & Excise), Government of Arunachal Pradesh, Itanagar, vide Memo no. NMS/TEN/Ex-25/2019/472 by the Deputy Commissioner, Namsai District for grant of retail outlet IMPL/Beer wine shop license at Mahadevpur, Namsai to the petitioner within a period of 20 days from the date of receipt of the certified copy of this order and communicate the same to the petitioner thereof.

10. The writ petition stands disposed of with the above direction.

JUDGE

Comparing Assistant