

GAHC010015342023



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

Case No. : WP(C)/401/2023

DOOMDOOMA PLANTERS SUPPLY STORES AND 2 ORS
HAVING ITS PLACE OF BUSINESS AT ROTARY PATH, DOOMDOOMA TOWN,
P.O. AND P.S. DOOMDOOMA, DIST.- TINSUKIA, ASSAM, PIN- 786151 REP. BY
ITS PARTNER, PRAVANJAN GUHA

2: PRAVANJAN GUHA
S/O- LT. PARITOSH CH. GUHA
R/O- GNB ROAD
DOOMDOOMA TOWN
P.O. AND P.S. DOOMDOOMA
DIST.- TINSUKIA
ASSAM
PIN- 786151

3: BITHIKA GUHA
W/O- LT. SHYAMAL KUMAR GUHA
R/O- MAIN ROAD
DOOMDOOMA BANGIYA DURGABARI
DOOMDOOMA
P.O. AND P.S. DOOMDOOMA
DIST.- TINSUKIA
ASSAM
PIN- 78615

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EXCISE
DEPTT., DISPUR, GHY-6

2: THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR

GHY-06

3:THE DY. COMMISSIONER
TINSUKIA
ASSAM
PIN- 786151

4:THE SUPERINTENDENT OF EXCISE
TINSUKIA
ASSAM
PIN- 78615

Advocate for the Petitioner : MR. N J KHATANAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

18.10.2023

Heard Mr. N.J. Khataniar, learned counsel for the petitioners and Mr. N. Goswami, learned Standing Counsel, Excise Department and Junior Government Advocate, Assam for all the respondents.

2. The instant writ petition under Article 226 of the Constitution of India is preferred by the 3 [three] petitioners. The petitioner no. 1 is a partnership firm by the name and style of M/s Doomdooma Planters Supply Stores and it is being represented by the petitioner no. 2 as one of its partners. It is stated that the petitioner no. 1 firm is having its principle place of business at Doomdooma.

3. From the pleadings in the writ petition and from the impugned order dated 14.10.2022 passed by the respondent no. 3, it transpires that the respondent authorities in the Excise Department had granted a license to trade in Indian Made Foreign Liquor [IMFL] 'Off' being License no 06/53 originally in the name of one Naresh Chandra Guha. Naresh Chandra Guha had a partnership firm by the name and style of M/s Doomdooma Planters Supply Stores [the

petitioner no. 1 firm] with his brothers - Paritosh Chandra Guha and Shaymal Kumar Guha - as partners. After the demise of the original licensee i.e. Naresh Chandra Guha, the license was transferred in the name of his wife, Bela Rani Guha on 20.06.1989. On 26.08.1989, the license was transferred to the registered partnership firm, M/s Doomdooma Planters Supply Stores [the petitioner no. 1 firm].

3.2. It is projected that there were removals of the names of the partners on their demises and/or inductions of new partners, with the consent of the existing partners, on a number of occasions, in terms of the provisions of the Indian Partnership Act, 1932, in the petitioner no. 1 firm, registered with the Registrar of Firms and Societies, Assam. As per a certified copy of the Registrar of Firms, Assam, Guwahati issued on 09.03.2016 in respect of the petitioner no. 1 firm, which has been registered with Registration no. RF/TSK/162/A/31 of 2015-2016, there were 4 [four] partners as on 09.03.2016 in the petitioner no. 1 firm viz. [i] Smti. Bela Rani Guha; [ii] Sri Prabhanjan Guha; [iii] Sri Anjan Kumar Guha; and [iv] Smti. Bithika Guha.

3.3. After the demise of Bela Rani Guha, one of the partners of the petitioner no. 1, firm on 30.11.2017, the then three remaining partners of the petitioner no. 1 firm, submitted an application through the petitioner no. 1 before the respondent no. 3 on 01.12.2017, stating that the three of the remaining partners of the petitioner no. 1 firm were active and were capable of carrying the business of IMFL 'Off' license business on behalf of the petitioner no. 1 firm. An order bearing no. TEX 180/93/470 came to be passed by the respondent no. 3 on 04.12.2017 whereby after consideration of the provisions of the then extant Act and Rules, the petitioner no. 1 firm was allowed to continue the operation of the IMFL 'Off' license business till making of new arrangements, subject to the condition that the IMFL 'Off' licensee would move the Government with the relevant documents for change or alteration of the license as per the provisions contained in Rule 300 of the Assam Excise Rules, 2016 at the earliest. The order dated 04.12.2017 had further observed that such arrangement was made to continue on exigency and in the interest of not disrupting loss to the State exchequer. The business of running the IMFL 'Off' license business continued thereafter for a substantial period of time with such arrangement.

3.4. After the demise of Anjan Kumar Guha on 12.05.2022, the remaining partners of the petitioner no. 1 firm, that is, the petitioner no. 2 and the petitioner no. 3 sought induction of the

wife of Late Anjan Kumar Guha viz. Kumkum Guha as the 3rd partner of the petitioner no. 1 firm. A Re-constituted Deed of Partnership had been executed and registered before the Senior Sub-Registrar, Tinsukia on 29.06.2022 for induction of Kumkum Guha as the 3rd partner of the petitioner no. 1 firm and mention has been made therein to continue the business of the firm, M/s Doomdooma Planters Supply Stores by three of them.

3.5. The impugned order dated 14.10.2022 has mentioned about receipt of a petition from Kumkum Guha as the partner of M/s Doomdooma Planters Supply Stores [petitioner no. 1 firm] requesting to stop operation of the IMFL 'Off' license business held in the name of M/s Doomdooma Planters Supply Stores [petitioner no. 1 firm] with a claim that her share in the partnership firm is 51%.

4. Mr. Khataniar, learned counsel for the petitioners has submitted that though there are number of other litigations as regards percentage of share in the petitioner no. 1 firm, this writ petition is preferred against the impugned order dated 14.10.2022 whereby the respondent no. 3 has placed the IMFL 'Off' license held by the petitioner no. 1 firm under suspension with immediate effect on the premise that no approval from the competent authority has been taken for the petitioner no. 1 firm as per the provisions contained in Rule 300 of the Assam Excise Rules, 2016.

5. On perusal of the impugned order dated 14.10.2022, it is noticed that it has referred to the order dated 04.12.2017 passed earlier by the respondent no. 3 whereby the respondent no. 3, subsequent to demise of one of the partners of the petitioner no. 1 firm viz. Bela Rani Guha, had allowed the petitioner no. 1 to continue the business of the IMFL 'Off' license business, with the then existing arrangement, in the interregnum, till new arrangement is made in compliance of the provisions contained in Rule 300 of the Assam Excise Rules, 2016, by specifically observing that such continuance was allowed in the interest of State exchequer. In the impugned order dated 14.10.2022, the respondent no. 3 has observed that the IMFL 'Off' licensee i.e. the petitioner no. 1 firm, had not complied with the directions made in the order dated 04.11.2017 by taking necessary measures as regards re-constitution of the partnership firm after the demise of Bela Rani Guha. The impugned order has further mentioned that the respondent no. 3 had taken prior approval from the respondent no. 2 before placing the IMFL 'Off' license of the petitioner no. 1

firm under suspension. The pleadings in the writ petition as well as in the affidavit-in-opposition filed by the respondent no. 4 have referred to the above fact situation, expounded above.

6. During the pendency of the writ petition, it has been brought on record, on behalf of the petitioners, that necessary application for recording changes in the constitution of the petitioner no. 1 firm registered under Section 63[1] of the Indian Partnership Act, 1932, has already been made before the Registrar of Firms, Assam on 22.09.2023. After the submission of such application for recording the changes in the constitution of the petitioner no. 1 firm, the petitioners through the petitioner no. 2, have also submitted a Representation before the respondent no. 2 on 07.10.2023 bringing to the notice of the said authority about the changes/re-constitution of the petitioner no. 1 firm, by submitting a copy of the registered/re-constituted partnership deed dated 29.06.2022 with a receipt of acknowledgment of the application filed for recording the changes in the constitution of the petitioner no. 1 firm before the Registrar of Firm, Assam.

7. Mr. Khataniar, learned counsel for the petitioner by bringing the fact of pendency of the aforesaid two applications before the Registrar of Firms, Assam and before the Commissioner of Excise, Assam [the respondent no. 2], has submitted that as soon as the requisite certificate recording the changes in the constitution of the petitioner no. 1 firm is received from the office of the Registrar of Firms, Assam, the same will be submitted before the respondent no. 2 and the respondent no. 3 to effect the necessary changes in the IMFL 'Off' license of the petitioner no. 1 firm, in terms of the provisions contained in Rule 300 of the Assam Excise Rules, 2016. He has, thus, submitted that a direction may be issued to the effect that in the event of submission of such certificate from the office of the Registrar of Firms, Assam regarding re-constitution of the petitioner no. 1 before the respondent no. 2 and the respondent no. 3, the said two authorities shall proceed to consider the matters regarding effecting the necessary changes in the IMFL 'Off' license of the petitioner no. 1 firm and to pass necessary order in the matter of revocation of suspension of the IMFL 'Off' license within a reasonable period of time from the date of such receipt certificate.

8. Mr. Goswami, learned Standing Counsel, Excise Department & Junior Government Advocate, Assam appearing for the respondents has submitted that the writ petition can be

disposed of in line of the submissions made by the learned counsel for the petitioners and a period of outer limit of 6 [six] weeks would be reasonable for the respondent authorities in the Excise Department including the respondent no. 2 and the respondent no. 3 to undertake and complete the exercise.

9. In view of the broad consensus arrived at by the learned counsel for the parties, in the afore-stated manner, this Court is of the considered view that instead of keeping this writ petition pending, the same can be disposed of with the following directions :-

[i] The petitioner shall submit a copy of the certificate issued by the Registrar of Firms, Assam recording changes in the constitution of the petitioner no. 1 firm immediately after receipt of the same from the office of the Registrar of Firms, Assam, along with a representation, at the offices of the respondent no. 2 and the respondent no. 3.

[ii] On receipt of such a certificate issued by the Registrar of Firms, Assam along with a representation from the petitioner no. 1 firm, the respondent authorities in the Excise Department, more particularly, the respondent no. 2 and the respondent no. 3 shall, in consultation with each other, proceed to consider the matter of [a] effecting necessary changes in the IMFL 'Off' license standing in the name of the petitioner no. 1 firm in terms of Rule 300 and other governing provisions of the Assam Excise Rules, 2016, and [b] revocation of suspension of the IMFL 'Off' license, as expeditiously as possible, but within a outer limit of 6 [six] weeks from the date of such receipt, along with a certified copy of this order.

10. This order disposes of the writ petition.

JUDGE

Comparing Assistant