

GAHC010046562023



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

Case No. : WP(C)/1190/2023

MAHENDRA DEKA
S/O LT. MATIRAM DEKA R/O VILL. HATIBANDHA PO. PURANA TANGLA P.S
TANGLA DIST. UDALGURI ASSAM PIN 784528

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DISPUR GUWAHATI 6

2:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX DISUR GUWAHATI-6

3:THE DEPUTY COMMISSIONER
UDALGURI
ASSAM PIN 78410006

4:THE SUPERINTENDENT OF EXCISE
UDALGURI
ASSAM PIN 784509

5:THE INSPECTOR OF EXCISE
UDALGURI
ASSAM PIN 78450

Advocate for the Petitioner : MR. N J KHATANIAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 11-08-2023

Heard Mr. N.J. Khataniar, learned counsel for the petitioner; Mr. N. Goswami, learned Standing Counsel, Excise Department for the respondent nos. 1, 2, 4 & 5; and Mr. S.R. Baruah, learned Junior Government Advocate, Assam for the respondent no. 3.

2. The case of the petitioner, in brief, is that he is a licensee of an IMFL 'On' license shop. The petitioner was running his business of IMFL 'On' license shop previously on a plot of land, covered by Dag no. 141 & Patta no. 7, situated at Kukurakata, Tangla, Mouza – Dakua, District – Udalguri since the year 2012. It is stated that due to some exigencies, the owner of the said land wanted to discontinue the rental agreement with the petitioner and as a result, the petitioner had to find an alternative site to shift his licensed premises to run his business of IMFL 'On' license shop. The petitioner made an application, along with all the necessary documents received for such shifting, before the Deputy Commissioner, Udalguri to grant him permission to shift his IMFL 'On' licence shop from the earlier site at Kukurakata, Tangla to a new site at Gerua, Kalaigaon. The petitioner has claimed that he submitted requisite No Objection Certificate [NOC] from the local people as well as from the local Gaon Panchayat in support of such shifting. After consideration of his application of shifting, the Commissioner of Excise, Assam had also accorded prior approval for the shifting of the IMFL 'On' license shop from the earlier site at Kukurakata, Tangla to the new site at Gerua, Kalaigaon, which will be on a plot of land, covered by Dag no. 248 & Periodic Patta no. 99, Mouza – Kalaigaon, Police Station – Kalaigaon, District – Udalguri, Assam. The fact of prior approval was communicated to the Deputy Commissioner, Udalguri vide a Communication bearing no. III-17/2017-18/164 dated 21.09.2022 by the Commissioner of Excise, Assam. Pursuant to the said Communication dated 21.09.2022, the Deputy Commissioner, Udalguri passed an Order under memo no. UEX-19/2011-12/42/179 dated 28.09.2022, allowing the petitioner to shift his IMFL 'On' license shop to the new site at Gerua, Kalaigaon. The grievance of the petitioner is that even after approval of the Commissioner of Excise, Assam and passing of the order dated

28.09.2022, he has not been allowed to shift his IMFL 'On' license shop to the new site at Gerua, Kalaigaon on the pretext that in the meantime, some complaints have been received from various organizations and local people.

3. Mr. Khataniar, learned counsel for the petitioner by drawing attention to the documents annexed to the writ petition, has submitted that the organizations, which had allegedly submitted complaints earlier against shifting of the IMFL 'On' license shop to the new site, have since withdrawn their complaints. He has submitted that the inhabitants nearby the new site at Gerua, who had earlier submitted complaints, have also withdrawn their complaints in writing.

4. Mr. Baruah, learned Junior Government Advocate, Assam has drawn attention of the Court to the statements and averments made in the affidavit-in-opposition filed by the respondent no. 3. In the said affidavit-in-opposition, it is mentioned that a number of organizations viz. [i] All Assam Bengali Youth Students Federation, [ii] Kalaigaon Anchalik Committee and [iii] Brihattar Asomiya Yuva Mancha had submitted complaints against shifting of the IMFL 'On' shop license to the new site at Gerua, Kalaigaon. Moreover, three inhabitants of the said locality who are residents within 75 metre radius of the proposed new site of the IMFL 'On' license shop had raised objections against opening of a IMFL 'On' licence shop at Gerua, Kalaigaon. On receipt of such complaints, an enquiry was caused through a Magistrate on 28.11.2022. After completion of enquiry, an Enquiry Report was submitted by the Magistrate and the same was forwarded to the Commissioner of Excise, Assam on 07.01.2023. A direction was made from the office of the Commissioner of Excise, Assam on 14.02.2023 to take necessary action as per rules in view of the objections made against shifting of the IMFL 'On' license shop of the petitioner. It is averred that in view of such findings made in the Enquiry Report and the order of the Commissioner of Excise, Assam, the petitioner has not been allowed to open his IMFL 'On' license shop at the site Gerua, Kalaigaon.

5. In response, Mr. Khataniar, learned counsel for the petitioner has submitted that in the affidavit-in-opposition of the respondent no. 3, it is mentioned that three inhabitants within

the 75 metre radius of the new site had withdrawn their objections on 16.02.2023.

6. The documents annexed to the writ petition at Annexure – A to Annexure – H go to *prima facie* indicate that the three organizations namely [i] All Assam Bengali Youth Students Federation, [ii] Kalaigaon Anchalik Committee and [iii] Brihattar Asomiya Yuva Mancha have, in the meantime, submitted No Objection in writing on 20.12.2022. The Annexure – I is a Communication dated 23.01.2023, stated to have been made by the three local persons who had earlier submitted objections against shifting of the IMFL 'On' license shop. It appears that by the said Communication dated 23.01.2023, the said three persons have withdrawn their objections on 23.01.2023. Thus, it *prima facie* appears that the organizations, which had allegedly submitted their objections regarding setting up/shifting of the IMFL 'On' license shop to the new site at Gerua, Kalaigaon earlier, have submitted their no objection in writing in the meantime. Thus, the contention made on behalf of the petitioner that the entire basis for not allowing to shift the IMFL 'On' license shop at Gerua, Kalaigaon has since been removed has some force.

7. Taking into consideration of the rival submissions of the learned counsel for the parties and the documents available in the case records, referred above, this Court is of the considered view that the respondent no. 3 in consultation with the respondent no. 2, is required to revisit his earlier decision of not allowing to open the IMFL 'On' license shop at the new site at Gerua, Kalaigaon by taking into consideration of the factum of withdrawal of the objections made earlier by the organizations and the local people, as contended by the petitioner. In such view of the matter, this Court is of the considered view that instead of keeping this writ petition pending, the same can be disposed of with a direction to the respondent no. 3 to take a final decision as regards the matter of opening of the IMFL 'On' license shop of the petitioner in terms of the prior approval of the Commissioner of Excise, Assam dated 21.09.2022 and shifting Order dated 28.09.2022 by ascertaining, if necessary by causing further enquiry, as to whether the organizations and the local inhabitants have withdrawn their complaints, in the meantime. The writ petition is accordingly disposed of with a direction to the respondent no. 3 to arrive at a final decision as regards granting of permission to open the IMFL 'On license shop of the petitioner at the site at Gerua, Kalaigaon

in consultation with the respondent no. 2, by ascertaining the matters regarding existence or withdrawal of objections by the organizations/local inhabitants in respect of shifting/opening of the IMFL 'On' license shop at Gerua, Kalaigaon and such final decision is to be taken within a period of 1 [one] month from the date of receipt of a certified copy of this order from the petitioner.

8. This order disposes of the writ petition.

JUDGE

Comparing Assistant