

GAHC010047222019



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

Case No. : WP(C)/1736/2019

MANINDRA KR. DAS
LICENCEE OF IMLF OFF SHOP AND PARTNER OF M/S SUCHITRA STORE,
SON OF LATE BALAHARI DAS, RESIDENT OF LEDU BAZAR, P.O. LEDU,
DIST.- TINSUKIA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EXCISE DEPTT., DISPUR, GUWAHATI-6.

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

3:THE DEPUTY COMMISSIONER
TINSUKIA
DIST.- TINSUKIA
ASSAM.

4:THE SUPERINTENDENT OF EXCISE
TINSUKIA
DIST.- TINSUKIA
ASSAM.

5:THE DEPUTY SUPERINTENDENT OF EXCISE

MARGHERITA
DIST.- TINSUKIA
ASSAM.

6:PUARNENDU BHOWMICK

SON OF LATE PULIN BIHARI BHOUMICK
R/O. MARGHERITA
P.O. MARGHERITA
DIST.- TINSUKIA
ASSAM
PIN- 786182

Advocate for the Petitioner : MR. A SHARIF

Advocate for the Respondent : SC, EXCISE DEPTT.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI
ORDER

06.01.2023

Heard Shri P.K. Roy Choudhury, learned counsel for the petitioner. Also heard Shri R.R. Gogoi, learned Standing Counsel, Excise Department whereas Shri S. Dasgupta, learned counsel appears for the respondent no. 6. Shri N. Goswami, learned State Counsel is also present.

The petitioner is a license holder of a Liquour Shop in the district of Tinsukia Retail "OFF" Shop bearing License No. 13/85. The petitioner claims to have been running the Shop by complying with the conditions of the license. A notice dated 21.04.2016 was issued by the Superintendent of Excise, Tinsukia for removal of the Liquour Shop by 30.04.2016 in compliance of Rule 183 of the Assam Excise Rules. In compliance with the said direction, the petitioner has closed his Shop and submitted the proposal for shifting with necessary documents. It is the claim of the petitioner that his proposal was approved after necessary enquiry and in pursuance to the direction of the Department vide communication dated 27.06.2016, the Deputy Commissioner, Tinsukia had passed an order on 12.07.2016 by which the petitioner was allowed to shift his Liquour Shop to the new approved site. After shifting of the Shop, the Deputy

Superintendent of Excise, however issued another notice dated 31.03.2017 to close his shop.

It is the case of the petitioner that the aforesaid direction was wholly unreasonable and not in accordance with law as there was no violation of the Shop being located in the new site. The petitioner efforts in getting the grievance redressed through submission of representations having failed, he has approached this Court.

Shri Roy Choudhury, the learned counsel for the petitioner submits that the basis of the impugned action appears to be erroneous. He has drawn the attention of this Court to the communication dated 10.01.2019 by the Director of Excise to the Superintendent of Excise, Tinsukia wherein Rule 288 of Assam Excise Rules, 2016 was taken recourse to. The learned counsel, however, submits that the aforesaid Rule has been omitted from the Statute Book vide gazette notification w.e.f. from 01.01.2019 and therefore, the communication dated 10.01.2019, appears to have been issued without any basis and on an incorrect assumption.

Shri Gogoi, the learned Standing Counsel, Excise Department, however, submits that *dehors* the challenge made in this writ petition, another important aspect involved is that the petitioner has not got his license renewed which is a pre-condition for opening of the Shop in question.

Shri Dasgupta, the learned counsel for the private respondents submits that on principle, he would not have any objection in shifting of the Shop of the petitioner, provided it is done by following the existing law in question.

So far as the issue of renewal of license is concerned, the learned counsel for the petitioner rejoins by submitting that applications were indeed filed before

the authorities for renewal of the license which are yet to be considered on the alleged ground of pendency of this case. The said submission is however replied by Shri Gogoi, the learned Standing Counsel by contending that the applications were not filed before the appropriate authority, namely, the Deputy Commissioner and as apparently those were filed before the Superintendent of Excise who is not the competent authority.

The learned Standing Counsel, however, fairly submits that necessary directions may be given to the petitioner to apply before the competent authority namely the Deputy Commissioner who in turn may be directed to consider the application for renewal in accordance with law. He further submits that if the license is renewed in accordance with law, there would not be any difficulty in re-opening of the Shop of the petitioner on the site which was earlier approved.

In view of the aforesaid facts and circumstances and the broad consensus arrived at in the bar, the instant writ petition is disposed of by giving liberty to the petitioner to apply for renewal of his license by filing the necessary application in the prescribed form before the Deputy Commissioner, Excise Department which may be done within a period of 15 days from today and on receipt of the same, the same be disposed of by passing appropriate orders within a further period of 30 days from the date of received. While considering the said application, if any penalty is required to be paid by the petitioner, the same may be imposed if permitted by law. After the license is renewed, the petitioner be allowed to re-open the shop in the approved location made earlier.

JUDGE

Comparing Assistant