

GAHC010175552023



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

**Case No. : WP(C)/4584/2023**

DIPAK KUMAR KALITA  
SON OF LATE CHANDRA KANTA KALITA,  
RESIDENT OF HOUSE NO. 44, GAON BURA PATH,  
PATHARQUARY, P.O. - PATHARQUARY,  
DISTRICT- KAMRUP(M), ASSAM,  
PIN- 781171.

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE COMMISSIONER OF EXCISE,  
HOUSEFED COMPLEX,  
DISPUR, GUWAHATI- 781006.

2:THE ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM  
EXCISE DEPARTMENT  
DISPUR  
GUWAHATI- 781006.

3:THE SUPERINTENDENT OF EXCISE  
KAMRUP(M)  
GUWAHATI  
ASSAM  
PIN- 781001.

4:THE DEPUTY COMMISSIONER  
KAMRUP(M)  
ASSAM  
PIN- 781335.

5:CHINMOY DEKA  
SON OF LATE JYOTISH CHANDRA DEKA

RESIDENT OF GANGA PATH  
HOUSE NO. 10

ANANDAPUR  
JAPORIGOG

GUWAHATI  
ASSAM- 781006

**Advocate for the Petitioner** : MR. A K BARUAH

**Advocate for the Respondent** : SC, EXCISE DEPTT.

**BEFORE**  
**HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**ORDER**

**Date : 10-08-2023**

Heard Mr. A.K. Baruah, learned counsel for the petitioner; Mr. K.P. Pathak, learned Standing Counsel, Excise Department for the respondent nos. 1, 2 & 3; Mr. S.R. Baruah, learned Junior Government Advocate, Assam for the respondent no. 4; and Mr. U.K. Nair, learned Senior Counsel assisted by Mr. S.M. Sharma, learned counsel for the Caveator/respondent no. 5.

2. Having heard the learned counsel for the parties and in view of the nature of controversy involved in the writ petition, the writ petition is taken up for final adjudication at the stage of motion itself, as agreed to by the learned counsel for the parties.

3. An IMFL 'Off' shop license was originally issued in the name of one Jyotish Chandra Deka. The petitioner was the brother-in-law of Jyotish Chandra Deka, who married the petitioner's elder sister, Bharati Kalita Deka. According to the

petitioner, a Deed of Partnership was executed among Jyotish Chandra Deka, Bharati Kalita Deka and the petitioner on 19.12.2015 for the purpose of carrying on the business under the IMFL 'Off' Shop License under reference. According to the said Deed of Partnership, each of the three partners would have 33% share in the partnership business. After execution of the Deed of Partnership, Jyotish Chandra Deka expired on 05.10.2016 and Bharati Kalita Deka expired on 16.05.2017. Jyotish Chandra Deka and Bharati Kalita Deka left behind two children, Sri Chinmoy Deka [the respondent no. 5] and Ms. Angkita Deka. At the time of death of Jyotish Chandra Deka and Bharati Kalita Deka, none of their children attained the age of 21 years. It was in such situation, the respondent no. 4 pursuant to Government sanction dated 18.07.2018, transferred the IMFL 'Off' license which was earlier standing in the name of Late Jyotish Chandra Deka, in the name of the petitioner, Sri Dipak Kr. Kalita, by an Order dated 01.08.2018 purportedly in terms of the provisions of Assam Excise Rules, 2016. By virtue of the transfer of the IMFL 'Off' license in the name of the petitioner, the petitioner continued to operate the IMFL 'Off' shop.

4. The petitioner has approached the Court by this writ petition under Article 226 of the Constitution of India after he has been served with two letters, dated 17.06.2023 & dated 31.07.2023, by the respondent no. 4 whereby the petitioner has been asked to surrender the IMFL 'Off' license bearing no. 93/2000-2001 immediately upon receipt of the letters. It is stated that the petitioner submitted a Representation before the respondent no. 4 on 07.08.2023 to re-consider the direction to surrender the IMFL 'Off' license transferred in his name earlier on 01.08.2018.

5. Mr. Pathak, learned Standing Counsel, Excise Department has submitted, on the basis of records received by him, that there was a family arrangement on the basis of which the IMFL 'Off' shop license was transferred to the petitioner on 01.08.2018. The petitioner had agreed to carry on the business of IMFL 'Off' shop solely in his name till Sri Chinmoy Deka, son of the original licensee would attain 21 years of age. It was agreed between the petitioner and Sri Chinmoy Deka that after Sri Chinmoy Deka would attain 21 years of age, the business of IMFL 'Off' shop would be carried forward with the petitioner having 33% of share. Sri Chinmoy Deka [the respondent no. 5], son of the original IMFL 'Off' shop licensee has now staked a claim transferring for the IMFL 'Off' shop license in his name, pursuant to which the letters dated 17.06.2023 & dated 31.07.2023 have been issued.

6. Mr. Nair, learned Senior Counsel appearing for the Caveator/respondent no. 5 has submitted in similar lines as Mr. Pathak. He has drawn attention of the Court to an Enquiry Report submitted by the Executive Magistrate & Assistant Commissioner [Annexure-E]. As per the findings in the said Enquiry Report, the petitioner in course of the said enquiry submitted an affidavit wherein he had stated that in future, if the legal heir of the original licensee viz. Sri Chinmoy Deka [the respondent no. 5] and Kumari Angkita Deka would make any claim for the license in their favour on attaining their majority, he would surrender the same.

7. In response, Mr. Baruah, learned counsel for the petitioner has submitted that no opportunity of prior hearing was afforded to the petitioner before issuing the letters, dated 17.06.2023 & dated 31.07.2023, by the respondent no. 4. As

on date, the petitioner is the licensee of the License bearing no. 93/2000-2001 by virtue of the order dated 01.08.2018. The direction to surrender the IMFL 'Off' shop license by the letters, dated 17.06.2023 & dated 31.07.2023, are clearly in violation of the principle of natural justice. Mr. Baruah has, therefore, submitted that before taking any decision as regards surrender of the IMFL 'Off' shop License bearing no. 93/2000-2001, the petitioner ought to have been given prior and adequate opportunity of hearing including personal hearing, to present his side.

8. In response, Mr. Pathak, learned Standing Counsel, Excise Department has submitted that violation of the principle of natural justice does not arise in the case in hand. Though it appears that no prior notice was issued to the petitioner, outcome of any proceedings, had any prior notice been issued, are to be purely as per the provisions of the Assam Excise Act, 2000 and the Assam Excise Rules, 2016.

9. Having regard to the fact situation obtaining in the case and after hearing the learned counsel for the parties, this Court is of the considered view that before taking any final decision as regards surrender of the IMFL 'Off' shop license bearing License no. 93/2000-2001, the petitioner ought to have been given a prior opportunity of hearing to present his case as the petitioner as the present licensee of the IMFL 'Off' shop license bearing no. 93/2000-2001, is likely to be visited with civil consequence, if the petitioner is made to surrender the license. In such view of the matter, this Court is of the considered view that before taking any final decision in respect of the IMFL 'Off' License bearing no. 93/2000-2001, the present licensee i.e. the petitioner must be afforded a prior

and adequate opportunity of hearing. In such view of the matter, the Commissioner of Excise, Assam [respondent no. 1] shall put both the claimants of the IMFL 'Off' shop License bearing no. 93/2000-2001, that is, the petitioner and the respondent no. 4 on notice and both the claimants including the petitioner, should be provided an adequate opportunity of hearing including personal hearing and an opportunity to file a reply in written, as regards the matter of transfer/surrender of the IMFL 'Off' shop license. The respondent no. 1 after such hearing, shall take a fresh decision as regards the respective claims of the claimants in respect of the IMFL 'Off' shop license bearing no. 93/2000-2001 in terms of the provisions of the Assam Excise Act, 2000 and Assam Excise Rules, 2016, after taking into consideration the respective contentions of the claimants. The final decision to be taken by the respondent no. 1 shall be in the form of a speaking order, which should be passed within a period of 4 [four] weeks from the date of receipt of a certified copy of this order and the speaking order is to be communicated to the claimants forthwith thereafter. The decision contained in the letters, dated 17.06.2023 & dated 31.07.2023, shall abide by the speaking order to be passed by the respondent no. 1. Till such final decision is taken, the decision contained in the letters, dated 17.06.2023 & dated 31.07.2023, is therefore, kept in abeyance. The petitioner shall submit a copy of this order at the Office of the respondent no. 1 i.e. the Commissioner of Excise, Assam, who on receipt of the same shall proceed in terms of the directions, made above. This order disposes of the writ petition.

**JUDGE**

**Comparing Assistant**