

GAHC010202442018



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

Case No. : WP(C)/6780/2018

TAHIR KHAN
SON OF LATE TAYAB KHAN AND LATE ROSON JHAN @ ROSON JAHAN @
ROUCCHONJAHAN KHAN, RESIDENT OF HOUSE NO. 84, ISLAND COLONY,
DIMAPUR, NAGALAND.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE MINISTRY OF RAILWAYS, RAIL BHAWAN, NEW
DELHI- 110001.

2:GENERAL MANAGER
N.F. RAILWAY
MALIGAON
GUWAHATI- 781011

3:CHIEF COMMERCIAL MANAGER

N.F. RAILWAY
MALIGAON
GUWAHATI- 781011

4:THE DIVISIONAL RAILWAY MANAGER

N.F. RAILWAY
LUMDING
ASSAM.

5:SENIOR DIVISIONAL COMMERCIAL MANAGER (DCM)

N.F. RAILWAY
LUMDING

ASSAM.

6:STATION SUPERINTENDENT

N.F. RAILWAY
DIMAPUR
NAGALAND.

7:COMMERCIAL INSPECTOR

N.F. RAILWAYS
DIMAPUR
NAGALAND

For the Petitioner (s) : Ms. B. Goyal, Advocate.
Mr. A.J. Hazarika, Advocate.

For the Respondent (s) : Mr. D.J. Das, Advocate.

Date of hearing & Judgment : 29.11.2023

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed seeking the following reliefs :-

- (i) A direction be issued to the Respondents to allot sufficient space to the Petitioner for the tea stall for sale of puri, chapatti, sweets etc. as was held by the Petitioner prior to shifting of the Petitioner to the present site in the year 1986.

- (ii) A direction be issued to the Respondents to allow the Petitioner to continue to run the tea stall for sale of puri, chapatti, sweets etc.

And

- (iii) a Writ in the nature of certiorari be issued for setting aside and quashing the impugned instruction/order issued by the Inspector (Commercial), Lumding (CMI/DMV) to the OC/RPF/DMV and OC/GRPS/DMV dated 15.08.2018.

2. The facts involved in the instant case as could be discerned from the writ petition is that early in 1950's the Railway Authorities had granted a vending permission to the Petitioner's grandfather one Late Isha Khan. The licence was issued initially for tea stall for sale of tea, puri, sweetmeat, chapatti etc. The said vending permission continued without any break. Subsequently, another vending permission for 'Dallah' for selling pan, biri, cigarette at Dimapur Railway Station was also issued.

3. It is the specific case of the Petitioner that the Petitioner's grandfather had two vending permission. One for sale of tea, puri, sweetmeat, chapati etc and another for sale of pan, biri, cigarette etc. at Dimapur Railway Station. It is claimed by the Petitioner that the last renewal of the tea stall vending licence was issued on 17.08.2018

and the Petitioner have been paying all rents, charges, electricity bills etc. till the filing of the writ petition. It is also relevant to take note of that the Petitioner to the instant writ petition have enclosed the renewal licence/permission to the tea stall as Annexures- 1A, 1B, 1C, 1D, 1E, 1F & 1G.

4. This Court upon perusal of the said enclosures finds that the Annexures enclosed as Annexures- 1A to 1E shows renewal of license No. 106 granted on 15.9.81 to Md. Tayeb Khan and the last of such renewal was for the period from 1.4.2008 to 31.3.2009. Annexure-1 F as well as Annexure 1 G are however not documents evidencing the renewal of the licence No.106. Rather, Annexure-1 F is a Communication issued by the Station Superintendent, NF Railway, Dimapur intimating the various Vending/Catering contractors at Dimapur Station to submit GST Registration number and Annexure 1 G is a Vending Stall License Fee of an amount of an amount of Rs.14,432/-.

5. It further reveals from the records that in August, 1999, the Station Superintendent, NF Railway, Dimapur issued notice dated 4.8.1999 directing removal of the pan shop of the Petitioner within 24 hours. The father of the Petitioner, Late Tayeb Khan filed a Declaratory Suit being DS No. 7/1999 alongwith an application for injunction being Misc. Case No. 22/1999. It further relevant to take note of that during the pendency of the said suit, the father of the

Petitioner expired and the Petitioner was substituted alongwith the other legal representatives of Late Tayeb Khan. However, the said suit was dismissed and the injunction order which was also passed was also vacated on 16.6.2017. The learned counsel for the Petitioner however submits that she has no knowledge as to whether the said proceedings were revived or not even as on today.

6. Be that as it may, on 15.8.2018 on the ground that the suit filed by the Petitioner being DS No.7/99 was dismissed, the impugned order dated 15.8.2018 was issued by the Inspector (Commercial), Lumding (CMI/DMV) to the OC/RPF/DMV and OC/GRPS/DMV to remove both the tea shop and the pan counter and it is under such circumstances the Petitioner approached this Court seeking the reliefs as aforestated.

7. This Court vide an order dated 28.9.2018 had issued notice and further directed the Respondents to allow the Petitioner to continue his tea stall in Dimapur, Railway Station until further orders. The record reveals that though the writ petition was listed on various occasions and the Railways had sought for time but they have not till date filed the affidavit-in-opposition even after a passage of more than 5 years had elapsed.

8. Taking into account that no affidavit-in-opposition have been filed by the Railway Authorities even after such a passage of time, this

Court have proceeded to dispose off the writ petition on merits on the basis of the records available before this Court. This Court at the outset finds it relevant to take note of the submission of Ms. B. Goyal, the learned counsel appearing on behalf of the Petitioner, who submits that the Petitioner is not pressing the reliefs as enumerated at (i) & (ii) hereinabove i.e. the reliefs pertaining to direction upon the Respondents to allot sufficient space to the Petitioner for the tea stall for sale of puri, chapatti, sweets etc. as was held by the Petitioner prior to shifting of the Petitioner to the present site in the year 1986 and the direction upon the Respondents to allow the Petitioner to continue to run the tea stall for sale of puri, chapatti, sweets etc. The learned counsel for the Petitioner submits that the Petitioner here is only pressing as regards the order dated 15.8.2018 taking into account that the said order have been passed in respect to the two stalls which were being run by the Petitioner although the decree so passed in DS No. 7/99 was only in respect to the pan stall of the Petitioner and not the tea stall.

9. Taking into account that the two reliefs have been abandoned by the Petitioner in the instant proceedings and the limited question to be decided by this Court which is in respect to the illegality and validity of the order dated 15.8.2018, this Court therefore finds it relevant to take note of the plaint in Declaratory Suit No. 7/99 which have been enclosed as Annexure- 7 A to the writ petition. From a

perusal of the plaint in the said Declaratory Suit No. 7/99, it would show that the said suit was against the order of the Station Superintendent, Dimapur Railway Station dated 4.8.99 directing the Plaintiff to suspend the sale of pan and to remove the pan shop within 24 hours. It is therefore the opinion of this Court that the dismissal of the said suit i.e. Declaratory Suit No. 7/99 and the vacation of the injunction order passed in the said suit would only be relatable to the order dated 4.8.99 which was in relation to the pan shop and not the tea stall.

10. In the backdrop of the above, if this Court takes into account the order 15.8.2018, it would be seen that the said order is not clear as to whether the direction so issued by the Inspector (Commercial), Lumding (CMI/DMV) was in respect to the pan shop or the tea stall or to both. However, in the said order dated 15.8.2018, the word has been mentioned as shop. Under such circumstances, taking into account the Declaratory Suit No. 7/99, it is observed that the said suit being a suit only in respect to the order dated 4.8.99 which was in relation to the pan shop and not the tea stall, the Respondent Authorities would be at liberty to take such course of action in terms with the order dated 15.8.2018 only in respect to the pan shop and not the tea stall.

11. In that view of the matter, the instant writ petition stands disposed off with the above observations and directions.

12. This Court further observes that this Court have not dealt with the rights of the petitioner in respect to the tea stall of the Petitioner and it shall be within the scope and ambit of the Railway administration to take a call on the tea stall as per its applicable Circulars. The interim order dated 28.9.2018 no longer survives in view of the disposal of the instant writ petition.

JUDGE

Comparing Assistant