

GAHC010062402024



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

Case No. : WP(C)/1706/2024

PRASANTA BORAH
S/O- SADHAN CHANDRA BORAH,
R/O- MAJARATI,
P.O-MAJARATI, NAGAON, DIST- NAGAON, ASSAM, PIN-782002

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY, TO THE GOVERNMENT
OF ASSAM, EXCISE DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE COMMISSIONER OF EXCISE

HOUSEFED COMPLEX
DISPUR-BELTOLA ROAD
GUWAHATI-6.

3:THE BID COMMITTEE
REPRESENTED BY THE DISTRICT COLLECTOR CUM CHAIRMAN
BID COMMITTEE
NAGAON
ASSAM
PIN-782002

4:THE DISTRICT COLLECTOR
NAGAON DISTRICT EXCISE BRANCH
NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : MS F BEGUM

Advocate for the Respondent : SC, EXCISE DEPTT.

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

14.06.2024

1. Heard Ms. F. Begum, learned counsel for the petitioner, who submits that the petitioner submitted his bid in pursuance to the NIB dated 14.12.2023 for grant of IMFL Retail Off licence. She submits that just because the petitioner was charge-sheeted in a case under Section 381 IPC, the petitioner's Financial Bid was not opened, even though his Technical Bid was accepted.

2. Mr. R.R. Gogoi, learned counsel for the Excise Department submits that there are two conflicting reasons for not opening the petitioner's Financial Bid. He submits that in the tender document submitted by the petitioner, the petitioner had answered in the negative, to the question whether he had been convicted by a criminal Court for a non-bailable offence. On the other hand, the S.I. of Nagaon Police Station had written an inquiry report dated 03.03.2024 to the S.P., Nagaon, stating that Nagaon P.S. Case No.2201/2015 under Section 381 IPC was registered against the petitioner and that charge-sheet had been submitted on 29.06.2018.

3. I have heard the learned counsels for the parties.

4. The ground on which the petitioner's Financial Bid has not been opened by

the respondents, as stated by Mr. R.R. Gogoi, is Clause 2.2 of the NIT dated 14.12.2023, which states as follows :

“2.2 No person or entity disqualified under rule 296 of the Assam Excise Rules, 2016, shall be allowed to participate in the bld.

["296. Licences for the retail sale of any Intoxicant shall not be granted-

(a) to any person who has been convicted by a criminal court. of a non-bailable offence involving moral turpitude;

(b). to former licensees who are in arrears to Government or whose conduct have been found to be unsatisfactory or who have been found guilty of any serious shop malpractice, or breach of conditions of their licences;

(c) to any person who is in arrear in respect of any Government revenue or dues or is defaulter in respect of repayment of any Government loan;

(d) diseases; to persons suffering from any infectious or contagious

(e) to persons of unsound mind.

(f) to persons below the age of 21 years.""]”

5. A perusal of Clause 2.2 of the NIB dated 14.12.2023 shows that licence for retail sale of any intoxicant shall not be granted to any person, who has been convicted by a Criminal Court, in a non-bailable offence involving moral turpitude. In the present case, it is not the case of the petitioner or the respondents that the petitioner has been convicted by a Criminal Court, in relation to a non-bailable offence involving moral turpitude. Only a charge-sheet has been submitted against the petitioner invoking Section 381 IPC, which pertains to theft by clerk or servant of property in possession of his master or employer. In view of the above reasons, it is clear that Clause 4.2.2 of the NIB is not attracted to the petitioner's case. There is no justification for not opening the petitioner's Financial Bid and as such, the respondents are directed to open

the petitioner's Financial Bid.

6. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant