

GAHC010125052017



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

Case No. : WP(C)/1729/2017

BEDANANDA TALUKDAR
S/O. LT. SADANANDA TALUKDAR, R/O. WARD NO. 14, C.D. ROAD, NORTH
LAKHIMPUR, P.S. and DIST. LAKHIMPUR, ASSAM.

VERSUS

THE STATE OF ASSAM and 7 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
EXCISE DEPTT., DISPUR, GUWAHATI-06.

2:THE UNDER SECRETARY TO THE GOVT. OF ASSAM

EXCISE DEPTT.
DISPUR
GHY.-06.

3:THE COMMISSIONER OF EXCISE
ASSAM

HOUSEFED COMPLEX
DISPUR
GUWAHATI-06.

4:THE DY. COMMISSIONER
LAKHIMPUR

DIST. LAKHIMPUR
ASSAM.

5:THE SUPERINTENDENT OF EXCISE

LAKHIMPUR
DIST. LAKHIMPUR
ASSAM.

6:THE REGISTERING OFFICER

ASSAM SHOPS and ESTABLISHMENT
NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM.

7:THE EXECUTIVE OFFICER

NORTH LAKHIMPUR MUNICIPAL BOARD
DIST. LAKHIMPUR
ASSAM.

8:THE CHAIRMAN

NORTH LAKHIMPUR MUNICIPAL BOARD
DIST. LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR.A CHOUDHURY

Advocate for the Respondent : SC, EXCISE DEPTT.

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

24.04.2024

1. Heard Mr. S. Islam, learned counsel for the petitioner. Also heard Mr. R.R. Gogoi, learned counsel appearing for the Excise Department. Mr. S.S. Roy,

learned counsel appears for the respondent No.4.

2. This writ petition has been filed assailing the order dated 14.02.2017 issued by the respondent No.8, which states that at the time of inspection of the IMFL 'ON' Shop of the petitioner, namely Prince Restaurant-cum-Bar, by the Excise Officers, Magistrates and police, it was found that the same was being run in a most illegal manner and in violation of the conditions of the licensee. Accordingly, the trade license for the above mentioned shop was cancelled vide the impugned order.

3. The petitioner's counsel submits that no notice was issued prior to the impugned letter dated 14.02.2017 issued by the respondent No.8. Further, there was no basis for issuing the impugned letter. He accordingly, submits that the impugned letter dated 14.02.2017 should be set aside.

4. Mr. R.R. Gogoi, learned counsel appearing for the Excise Department submits that a raid had been conducted at the petitioner's IMFL 'ON' Shop on 03.02.2017, wherein the following irregularities had been detected-

“1. Prince Restaurant cum Bar used to sell sealed bottle on retail price which is not permissible as per "ON" License condition. A person namely Shri. Bidu Biswas. S/o- Sudhan Biswas of Dolahat, Lakhimpur caught red-handed while procuring 18 nos. of bottles X 180 ml = 3.240 Ltrs from Prince Restaurant cum Bar during the inspection. A case was registered under section 53(1) (A) of Assam Excise Act, 2000 against Shri. Bidu Biswas.

2. Statutory prohibitory warning Board was not displayed properly.

3. The stock of the said Wine Shop (ON) was verified and discrepancies found with the stock register.

4. Condition of the Bar is most filthy quite unfit to operate as 'ON' Bar."

5. The petitioner was accordingly issued a show cause notice dated 07.02.2017, with regard to the irregularities detected in his IMFL 'ON' Shop and he was asked to explain as to why his license for running the IMFL 'ON' Shop should not be cancelled. The petitioner, thereafter, submitted his reply dated 13.02.2017 to the show cause notice, denying the allegations made against him in the show cause notice. Thereafter, vide order No. LC.27/2017/21 dated 21.03.2017 the Deputy Commissioner, Lakhimpur, North Lakhimpur declared the petitioner's wine shop/bar as closed. The said order dated 21.03.2017 further stated that the Commissionerate of Excise, Assam was being moved to cancel the petitioner's IMFL 'ON' Shop License. He further submits that the Deputy Commissioner, Lakhimpur, North Lakhimpur thereafter wrote a letter dated 11.04.2017 to the Commissioner of Excise, Assam, requesting to cancel the IMFL 'ON' Shop of the petitioner.

6. I have heard the learned counsel for the parties.

7. The prayer in the present writ petition is only for setting aside the impugned letter dated 14.02.2017 issued by the respondent No.8, cancelling the petitioner's trade license. No other challenge has been made in the writ petition.

8. The affidavit filed on behalf of the respondent No.4, i.e., the Deputy Commissioner, Lakhimpur, North Lakhimpur, is basically to the effect that a show cause notice was issued to the petitioner with regard to the petitioner selling sealed bottles at retail price, which was not permissible. Further, warning board was not displayed properly and that the stock of the said restaurant/bar after

verification, was found to be having discrepancies vis-à-vis the stock register.

9. The affidavit-in-opposition of the respondent No.4 also states that the petitioner's wine shop/bar was closed by the Deputy Commissioner vide order dated 21.03.2017 and that the Commissioner of Excise had been requested to cancel the IMFL 'ON' Shop License of the petitioner vide letter dated 11.04.2017 issued by the Deputy Commissioner.

10. The above facts go to show that there was no basis for the respondent No.8 to have issued the letter dated 14.02.2017, cancelling the trade license of the petitioner, as no final decision had been made by the authorities that the petitioner had violated the terms and conditions of his IMFL 'ON' License as on 14.02.2017. Further, no notice having been issued by the respondent No.8 to the petitioner, prior to the impugned letter dated 14.02.2017, the same being arbitrary and in violation of the principles of natural justice, the letter dated 14.02.2017 is hereby set aside.

11. With regard to the closure of the petitioner's restaurant/ bar vide order dated 21.03.2017 issued by the Deputy Commissioner, the same has not been put to challenge by the petitioner, even though the affidavit of the respondent No.4 had been filed on 02.06.2017. The above being said, it is seen that no final decision has been taken by the Commissioner of Excise, Assam, as to whether the IMFL 'ON' Shop License of the petitioner should be cancelled, pursuant to the Deputy Commissioner's letter dated 11.04.2017. It is needless to add that if the petitioner's IMFL 'ON' Shop License is cancelled, the petitioner will have the liberty to challenge the same as per law.

12. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant