

GAHC010245352023



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

Case No. : WP(C)/6804/2023

SMT. SONALI DEY
W/O SRI CHANDAN DEY, A R/O VILL AND P.O.-KALINAGAR PART-III, P.S.-
PANCHGRAM, PIN-788802, DIST-HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EXCISE DEPARTMENT, DISPUR, GUWAHATI-781006, ASSAM

2:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI
PIN-781006

3:THE DISTRICT COMMISSIONER
HAILAKANDI
PIN-788151

4:THE SUPERINTENDENT OF EXCISE
HAILAKANDI
HAILAKANDI
PIN-788151

5:THE EXECUTIVE ENGINEER
P.W.D. RURAL ROADS DIVISION
HAILAKANDI
PIN-788151

6:THE INSPECTOR OF EXCISE

HAILAKANDI
PIN-78815

Advocate for the Petitioner : MR. S D PURKAYASTHA

Advocate for the Respondent : SC, EXCISE DEPTT.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

02-02-2024

- 1.** Heard Mr. S. D. Purkayastha, learned counsel for the petitioner. Also heard Mr. R. R. Gogoi, learned counsel for the respondent nos. 1, 2, 4 & 6 and Mr. K. Gogoi, learned counsel for the respondent no. 3. Mr. B. Gogoi, learned counsel appears for the respondent no. 5.
- 2.** The grievance of the petitioner is with the direction passed by the Office of the respondent no. 3 in the order dated 11.08.2023, whereby the petitioner has been asked to relocate/shift the M/s Marine, IMFL 'OFF' shop from the Kalinagar Part-III, P. O. Kalinagar, Dist-Hailakandi to a site which conforms to the Excise Rules & Norms within 90 days.
- 3.** The petitioner's counsel submits that the petitioner has been running an IMFL 'ON' shop since 2014 and in the year 2017, the petitioner applied for shifting the IMFL 'ON' shop to a new location, i.e. in the premises of Shri Rathindra Dey & Sri Jatindra Dey of vill-Kalinagar Part-III, PO Kalinagar, Dist-Hailakandi covered by Dag No. 139 of Patta No. 12.
- 4.** The new site was inspected and verified by the then Inspector of Excise,

Hailakandi who submitted his report on 28.08.2017, stating that the proposed site was located at more than 220 meters away from the outer edge of National Highway & State Highway. Further, there was no IMFL shop within 3 Kms. Further, there existed no religious and educational institutions or hospital or nursing home within a distance of 150 mtrs from the proposed site, as required in Rule 289 (2) of the ***Assam Excise Rules, 2016***. The petitioner's IMFL wine shop was thus relocated to the new site and the IMFL 'ON' shop was subsequently changed into IMFL 'OFF' shop, with the permission of the authorities.

5. The petitioner has now been issued the impugned order dated 11.08.2023, asking her to shift her IMFL 'OFF' shop on the ground that the report dated 13.05.2022 submitted by the Inspector of Excise, Hailakandi states that the petitioner's IMFL 'ON' shop is within a range of 100 mtrs. from 2 Kalimandirs and 1 Mosque, which violates Rule 289 (1) & (2) of the ***Assam Excise Rules, 2016***. Moreover, as per report of the Executive Engineer, PWD Rural Roads Division, Hailakandi, the IMFL 'OFF' shop is located at a distance of 198 mtrs. from the outskirts of the National Highway.

6. The petitioner's counsel submits that the impugned order dated 11.08.2023 should be set aside, as no notice was issued to the petitioner prior to issuance of the impugned order and neither was the petitioner made a part of any enquiry/verification team, before the respondents took a decision stating that the petitioner's IMFL 'OFF' shop was in violation of the ***Assam Excise Rules, 2016***.

7. The counsels for the respondents fairly admit that the principles of natural justice has been violated, as no notice was issued to the petitioner, prior to the

issuance of the impugned order. They however submit that a fresh verification may be held by the authorities concerned, in the presence of the petitioner.

8. On considering the fact that the earlier report made by the Inspector of Excise, Hailakandi on 28.08.2017 had stated that the petitioner's IMFL 'OFF' shop location was in consonance with Rule 289 (1) & (2) of the ***Assam Excise Rules, 2016***, it is not understood as to how the same shop could now be in violation of the same Rules. In any event, no opportunity of hearing has been provided to the petitioner, prior to the issue of the impugned order dated 11.08.2023, which is in violation of the principles of natural justice. In that view of the matter, this Court is of the view that the impugned order dated 11.08.2023 is not sustainable in law and the same is accordingly set aside. The report dated 13.05.2022 is also set aside. In the event, the State respondents are of the view that a fresh verification should take place, they should ensure that the petitioner is made a part of the verification team and prior notice should be given before any order is issued, which prejudices her.

9. Writ petition is accordingly disposed of.

JUDGE

Comparing Assistant