

GAHC010174072022



2026:GAU-AS:5230

THE GAUHATI HIGH COURT

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

WRIT PETITION [C] NO. 5702/2022

Sri Sudipto Sekhar Paul, aged about 37 years, son of
Dipon Kumar Paul, resident of N.S. Avenue, Bhuban
Sarani Rangirkhari, Dist – Cachar, Silchar – 788005,
Assam

.....**Petitioner**

-VERSUS-

1. State of Assam represented by Commissioner & Secretary,
Excise Department to the Govt. of Assam, Dispur, Guwahati
– 781006 in the Kamrup Metropolitan District, Assam.
2. Deputy Commissioner, Cachar, Silchar, Assam, PIN - 788001.
3. Addl. Deputy Commissioner, Cachar i/c Excise, Silchar,
Assam, PIN - 788001.
4. Superintendent of Excise, Cachar, Silchar, Assam, PIN –
788001
5. Shri Navneet Sharma Son of Rameswar Sharma, Resident of
Sonai Bazar, P.O. Sonai, District – Cachar, Assam, PIN –
788119
6. The Selection Committee of IMFL 'OFF' shop licence Sonai,
O/o Principal Secretary, Excise Department, P.O.- Assam

Sachivalaya, Dispur, Guwahati – 781006, District – Kamrup
[M].

.....**Respondents**

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Advocate for the Petitioner	:	Mr. A. Khanikar, Advocate
Advocate for the respondent nos. 1 & 4	:	Mr. R.R. Gogoi, Standing Counsel, Excise Department
Advocate for the respondent nos. 2, 3 & 6	:	Mr. M. Chetia, Junior Government Advocate
Advocate for the respondent no. 5	:	Mr. G.N. Sahewalla, Senior Advocate and Mr. H.K. Sharma, Advocate
Date of hearing	:	25.03.2026 & 31.03.2026
Date of pronouncement of judgment	:	31.03.2026
Whether the pronouncement is of the Operative part of the judgment ?	:	No
Whether the full judgment has been Pronounced ?	:	Yes

JUDGMENT & ORDER

Invoking the extra-ordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has preferred the instant writ petition for a

direction to the respondent authorities in the Excise Department, Government of Assam to complete the process of issuance of Indian-Made Foreign Liquor [IMFL] 'Off' retail licence for Sonai area of District – Cachar, Assam in compliance with the terms and conditions laid down in a Public Notice dated 12.11.2021 in a fair and transparent manner and strictly in terms of the provisions of the Assam Excise Act, 2016, as amended, and the Assam Excise Rules, 2016, as amended.

2. The genesis of the lis is a Public Notice bearing no. CXE.09/2017/194 dated 12.11.2021 published under the hand of the respondent no. 3. The Notice was published in daily newspapers vide Janasanyog/D/9489/2021. By the Notice, applications were invited from interested and intending eligible persons in the prescribed format for issuance of fresh IMFL 'Off' retail licences at two localities, namely, [i] Dholai and [ii] Sonai in the district of Cachar, Assam.

3. The case of the petitioner is that in response to the Notice, he being an inhabitant of Silchar Town, submitted the application for retail IMFL 'Off' licence for the advertised location, Sonai at Silchar with all the relevant documents as per the terms and conditions laid down in the Notice and in conformity with the Check-List contained in the prescribed format prepared by the Excise Branch, O/o the District Commissioner, Cachar, Silchar.

4. It is the further case of the petitioner that he came to learn that the respondent no. 5 had also submitted his application for the licence for the location at Sonai, Silchar. When the petitioner came to learn that the Office of the District Commissioner, Cachar forwarded the application of the respondent no. 5 for approval to the higher authorities, the petitioner submitted an Objection before the respondent no. 2 on 29.06.2022 as the respondent no. 2 being the District Collector, is the Licencing Authority for issuance of IMFL 'Off' retail licences under the provisions of the Assam Excise Rules, 2016, as amended. When the Objection dated 29.06.2022 requesting not to allot the IMFL 'Off' retail licence to the respondent no. 5 at Sonai did not evoke any response, the petitioner submitted an application under the Right to Information Act, 2005 [the RTI Act, for short] before the respondent no. 2 on 21.07.2022 seeking status of his application for grant of the IMFL 'Off' licence at Sonai submitted pursuant to the Public Notice dated 12.11.2021. In response to the RTI Application of the

petitioner, the respondent no. 4 provided the Information under the RTI Act vide an Office Letter no. CXE.[P].23/2007/Pt/171 dated 17.08.2022.

5. In the Information provided on 17.08.2022, it was mentioned that the application of the petitioner and two other applications were forwarded to the Secretary to the Guardian Minister of Cachar District, Dispur vide an Office Letter dated 14.12.2021 as per a Government Letter bearing no. EX.145/2017/82 dated 25.10.2021 for appraisal and necessary approval of the Guardian Minister. It has further mentioned that the Guardian Minister had recommended the application of the respondent no. 5 for IMFL 'Off' retail licence shop at Sonai area vide an Office Letter no. Min[AS]49/2021/7 dated 06.01.2022. Aggrieved by the recommendation made by the Guardian Minister in favour of the respondent no. 5, the petitioner has preferred the instant the writ petition, seeking the above relief.

6. I have heard Mr. A. Khanikar, learned counsel for the petitioner; Mr. R.R. Gogoi, learned Standing Counsel, Excise Department for the respondent nos. 1 & 4; Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 2, 3 & 6; and Mr. G.N. Sahewalla, learned Senior Counsel assisted by Mr. H.K. Sharma, learned counsel for the respondent no. 5.

7. Mr. Khanikar, learned counsel for the petitioner has submitted that under the Assam Excise Rules, 2016, the jurisdictional District Collector is the Licensing Authority for IMFL 'Off' retail licences and there was no statutory role assigned to any elected functionary including a Guardian Minister to select any licensee for grant of a IMFL 'Off' retail Licence. He has contended that in the present case, the Licensing Authority did not discharge its statutory role and had merely obeyed the dictate of the Guardian Minister. There were three applicants who submitted their applications in response to the Public Notice. But, no evaluation of those applications was done on merits and the recommendation was made and sanction for IMFL 'Off' retail licence had been granted in favour of the respondent no. 5 merely at the behest of an authority who had no role in the entire process, and in an impermissible manner.

8. Mr. Gogoi, learned Standing Counsel, Excise Department has produced the relevant records pertaining to the recommendation and sanction of the IMFL 'Off' retail licence in

favour of the respondent no. 5. He has submitted that a Standard Operating Procedure [SOP] for grant of new IMFL 'Off' Licences was in vogue at the time the applications received in response to the Public Notice for grant of IMFL 'Off' retail licence for the area at Sonai, were being processed. In the SOP, there was a role of the Guardian Minister and it was the Guardian Minister who had recommended the name of the respondent no. 5 for sanctioning the IMFL 'Off' retail licence for the area at Sonai. Accordingly, the application of the respondent no. 5 was processed for sanction and on being forwarded, the Government had accorded sanction for grant of the IMFL 'Off' retail licence for the area at Sonai, District – Cachar, in favour of the respondent no. 5.

9. Mr. Sahewalla, learned Senior Counsel appearing for the respondent no. 5 has submitted that there was no deficiency in the application of the respondent no. 5, submitted in response to the Notice dated 25.10.2021. When the matter was forwarded to the Guardian Minister as per the SOP, the name of the respondent no. 5 was recommended. Accordingly, the application was forwarded to the State Government in the Excise Department. Sanction was accorded by the State Government on 12.09.2023. Thereafter, the IMFL 'Off' retail licence was issued to the respondent no. 5. The respondent no. 5 has, in the meantime, made huge investment and is running the IMFL 'Off' retail shop without any complaint till date and as such, no interference is called for at this stage.

10. I have duly considered the submissions of the learned counsel for the parties and have also gone through the materials brought on record by the parties to their pleadings. The relevant records, produced by the learned Standing Counsel of the Excise Department, relating to the matter of grant of the IMFL 'Off' retail licence at Sonai are also perused. The learned counsel for the contesting parties have also been allowed to examine the records.

11. When the writ petition was moved on 02.09.2022, the court while issuing notice to the respondents, also heard on the prayer for interim relief. It was observed that any licence issued in favour of the respondent no. 5 would be subject to the outcome of the writ petition. During the pendency of the writ petition, the State Government in the Excise Department on 12.09.2023 accorded sanction for the IMFL 'Off' retail licence in favour of the respondent no. 5 and the said decision was conveyed to the respondent no. 2 vide an Office Letter no.

227285/135 dated 12.09.2023.

12. After such sanction, the respondent no. 5 moved an interlocutory application, I.A.[C.] no. 3359/2023 seeking a direction to the respondents to issue the IMFL 'Off' retail licence to him pursuant to the sanction granted on 12.09.2023 by the State Government or for an appropriate order on that basis. The interlocutory application, I.A.[C.] no. 3359/2023 was taken up for consideration on 07.02.2024. After hearing the learned counsel for the parties and taking note of the observations made in the Order dated 02.09.2022, the Court in its Order dated 07.02.2024 while disposing of the interlocutory application, had observed that there would be no impediment for the respondent authorities to issue the licence to the applicant-respondent no. 5, as the same would, in any event, be subject to the outcome of the writ petition.

13. It is stated that subsequent to grant of sanction on 12.09.2023 and the Order dated 07.02.2024, the respondent no. 4 has been issued the IMFL 'Off' Shop licence for the Sonai area and as on date, the respondent no. 5 is operating an IMFL 'Off' retail shop at Sonai are on the basis of the Licence.

14. The Assam Excise Rules, 2016 were framed in exercise of the powers conferred by Section 84 of the Assam Excise Act, 2000. Clause [ii] of Rule 114 of the Assam Excise Rules, 2016 has prescribed that, subject to Rule 279, the licence for retail sale of foreign liquor 'Off' or 'On' the premises shall be granted by the District Collector with the previous sanction of the State Government on payment of the annual licence fee as may be prescribed by the State Government from time to time. Rule 279 has provided that licence for the sale of foreign liquor for consumption 'On' or 'Off' vendor's premises is to be granted only in places where there is proven demand on the part of a class of drinkers accustomed to foreign liquor e.g. in large industrial and business centers, or in urban areas where there is a class of consumers specially accustomed to drinking such liquor. Rule 113 has mentioned about the prescribed form and the application fee which are to be submitted and deposited for grant of an Excise licence.

15. The records reveal that vide an Office Letter dated 25.10.2021, the Secretary to the

Government of Assam, Excise Department wrote to the respondent no. 2 on the subject – “Issue of fresh IMFL ‘Off’ licence”. It was informed to the respondent no. 2 that the Cabinet in its Meeting held on 26.08.2021 approved for issuance of one fresh IMFL retail ‘Off’ licence under the Assam Excise Rules, 2016 in each of the two localities [i] Dholai; and [ii] Sonai in the Cachar District. The respondent no. 2 was also informed that the Cabinet had directed that such licences were to be issued based on need and proper justification and in consultation with the Guadian Minister of the District. The respondent no. 2 was thereby requested to submit proposals for IMFL ‘Off’ retail licences as per the Standard Operating Procedure [SOP] enclosed therewith and in consultation with the Guardian Minister.

16. In pursuance of the Government Letter dated 25.10.2021, the respondent no. 3 published the Public Notice inviting applications from interested and intending eligible persons in the prescribed format enclosing all relevant particulars as applicable under the Assam Excise Rules, 2016 for issuance of fresh IMFL ‘Off’ retail licences at the two localities – [i] Dholai; and [ii] Sonai. The applicants were directed to submit the applications strictly in accordance with the provisions of the Assam Excise Rules, 2016. The proposed site shall be as per required specifications and it should not be located within the specified distance limit of educational & religious institutions, hospitals and National Highways. The applicants were directed to collect the prescribed format of application and the list of particulars from the Excise Branch, O/o the Deputy Commissioner, Cachar, Silchar. The Notice mentioned that the duly filled up application form along with relevant documents in all aspects was to be dropped in the specified box on or before 26.11.2021. It was further mentioned that the drop box would be opened on 26.11.2021 in presence of the respondent no. 3. The Notice was published in newspapers for wide publication and participation.

17. In response to the Public Notice, total six nos. of applications were received – three each for each of the two localities. As the subject-matter of the present lis is with regard to issuance of the IMFL ‘Off’ retail licence at Sonai, the discussion is made limited to the applications received for Sonai only.

18. After receipt of the applications, a Committee consisting of the respondent no. 3 made

scrutiny of the three applications received in connection with issue of fresh IMFL 'Off' retail licence at Sonai. The Committee, after scrutiny of the applications and the documents submitted therewith, recorded its remarks whether the documents required to be submitted by the applicants were submitted or not. Its remarks were recorded in a Compilation Sheet. Apart from the petitioner and the respondent no. 5, the third applicant was one Sri Ashim Deb.

19. After preparing the Compilation Sheet for both Sonai and Dholai, the respondent no. 3, as per the instruction of the respondent no. 2, forwarded the applications along with the Compilation Sheet prepared for Sonai to the Guardian Minister vide an Office Letter dated 14.12.2021 for kind appraisal and necessary approval. A copy of the Government Letter dated 25.10.2021 along with the SOP was also enclosed for ready reference.

20. After the Office Letter dated 14.12.2021, the Guardian Minister on 06.01.2022 vide Letter no. Mim [AS].49/2021/7 wrote to the respondent no. 2 intimating that he had recommended the name of the respondent no. 5 for sanctioning the IMFL 'Off' retail licence at Sonai, Cachar and further necessary action shall be initiated for issuance of the license as per the SOP.

21. The records further reveal that immediately after receipt of the recommendation from the Guardian Minister, the respondent no. 4 directed the Circle Officer, Sonai Revenue Circle vide an Office Letter dated 11.01.2022 to submit a Report as regards the proposed site of the IMFL 'Off' retail licence shop of the respondent no. 5. In response, the Circle Officer, Sonai Revenue Circle submitted a Report to the respondent no. 4 vide an Office Letter dated 17.01.2022. The respondent no. 4 by an Office Letter dated 11.01.2022 also instructed the Inspector of Excise, Silchar Sadar Circle to cause an enquiry by visiting the proposed site of the IMFL 'Off' retail licence shop of the respondent no. 5 and to submit an Enquiry Report. The Inspector of Excise, Silchar Sadar Circle visited the proposed site on 17.01.2022 and thereafter, submitted an Enquiry Report on 31.03.2022.

22. On 14.07.2022, the respondent no. 2 forwarded a proposal in favour of the respondent

no. 5 to the Commissioner of Excise, Assam vide an Office Letter no. CXE.27/2021/241 on 14.07.2022. Along with the proposal, the Report dated 17.01.2022 of the Circle Officer, Sonai Revenue Circle and the Enquiry Report dated 31.03.2022 of the Inspector of Excise, Silchar, Sadar Circle were also forwarded. It was also informed that the Enquiry Report was also recommended by him and the respondent no. 4. It was highlighted that the Guardian Minister had recommended the name of the respondent no. 5 for sanctioning the IMFL 'Off' retail licence vide his Letter dated 06.01.2022.

23. The State Government in the Excise Department had accorded sanction of the IMFL 'Off' retail licence shop in favour of the respondent no. 5 on 12.09.2023 purportedly under Clause [ii] of Rule 114 of the Assam Excise Rules, as amended. After the Government's sanction, the respondent no. 5 was asked to deposit the licence fee and security money. The licence was issued in favour of the respondent no. 5 subsequent to the Order dated 07.02.2024 of this Court.

24. At this juncture, a reference to the Standard Operating Procedure [SOP] is necessary. The SOP for grant of new IMFL 'Off' licences was circulated by the Commissioner of Excise, Assam. The SOP is stated to have been issued in order to streamline and ensure uniformity in the process of granting IMFL 'Off' retail licences and the procedure laid down is to be adhered to by all concerned. As per the SOP, the Licensing Authority, that is, the jurisdictional District Collector shall publish an Advertisement in the Notice Board specifying the locality for which applications are invited. The SOP has mentioned about the notice period and the particulars to be mentioned in the Advertisement / Public Notice.

25. The SOP has inter alia laid down a selection procedure in the following manner :-

3. Selection procedure :-

- a. The Licencing Authority i.e. the District Collector shall scrutinize all applications received for the proposed retail IMFL Off shop and upon consultation with the Guardian Minister, shall recommend the most suitable application to the Excise Commissioner.

- b. The Excise Commissioner shall forward such application so recommended by the District Collector with his comments to the State Government.
- c. The State Government shall reserve the right to sanction the IMFL retail 'Off' licence for the particular location.
- d. On receipt of such sanction, the Licencing Authority i.e. the District Collector shall issue the licence on payment of prescribed licence fee and security deposit.

26. The SOP has attributed a role to the Guardian Minister in the matter of issuance of an IMFL 'Off' retail licence. It has submitted at the Bar that a Guardian Minister oversees the implementation of development projects and Government welfare schemes in the assigned district. As per the SOP, the Licensing Authority, after scrutiny of the applications, is to have a consultation with the Guardian Minister. Thereafter, the Licensing Authority shall recommend the most suitable application to the Commissioner of Excise, Assam who, in turn, shall forward the application / proposal recommended by the Licensing Authority with his comments to the State Government. In the Assam Excise Rules, 2016, as amended, more particularly, Rule 114 thereof, there is no mention of a Guardian Minister in the processing of applications received for grant of IMFL 'Off' retail licence and to make recommendation.

27. Consultation is an action or process of formally consulting or discussing, as per *Oxford Dictionary of English, Third Edition*. As per *Black's Law Dictionary, Tenth Edition*, consultation is the act of asking the advice or opinion of someone. As per the SOP, the District Collector is the Consultor and the Guardian Minister is the Consulatee. Though no role has been attributed to a Guardian Minister under the statute, the Guardian Minister as a Consulatee had a duty to give the best of opinion to the Consultor and the opinion has to be tendered after due deliberation and after taking into consideration the relevant materials and records relating to the matter in issue. The Guardian Minister cannot act arbitrarily while giving its opinion to the Consultor. If the opinion of the Guardian Minister is not based on any material on record and is arbitrary in character and it is rendered merely on his whims, it

carries no value at all for the Licensing Authority.

28. In the above backdrop and standpoint, the contents of the Letter dated 06.01.2022 of the Guardian Minister addressed to the District Collector, Cachar – cum – Licensing Authority have been examined. On examination, it is found that the recommendation made by the Guardian Minister in favour of the respondent no. 5 was without any reason. There were no remarks on the Compilation Sheet forwarded to the Guardian Minister as regards eligibility or ineligibility of the applicants. It is noticeable that after the preparation of the Compilation Sheet by the Committee, the District Collector – cum – Licensing Authority did not examine the matter further to find out which of the three applicants complied with all the conditions to become eligible for issuance of the IMFL 'Off' retail licence and which out of them, was the most suitable one for grant of the licence for the locality at Sonai.

29. By forwarding the applications of the three applicants with the Compilation Sheet to the Guardian Minister on 14.12.2021, the District Collector – cum – Licensing Authority had sought for the approval of the Guardian Minister. After receipt of the recommendation from the Guardian Minister in favour of the respondent no. 5, the District Collector – cum – Licensing Authority without doing anything further perceivably to find out the most suitable candidate amongst the three applicants, proceeded further to call for the Reports from the jurisdictional Circle Officer and the jurisdictional Inspector of Excise for the location at Sonai, in order to process the application of the respondent no. 5 for the sole reason to grant the IMFL retail 'Off' licence in favour of the respondent no. 5.

30. It is settled that executive instructions which are issued for guidance and to implement any scheme under a statute, do not have the force of law. The executive instructions are issued to provide guidelines to all concerned, who are bound by it. Executive instructions can supplement a statute or over areas to which the statute does not extend, but it cannot run contrary to and supplant the statutory provisions or whittle down the statutory prescription. The law is settled that no higher authority in the hierarchy can exercise the power of the statutory authority and can direct the statutory authority to act in a particular manner. A statutory authority shall not abdicate the obligation cast upon him by the statute and shall

not merely carry out a direction of an authority who has no role to play under the statute.

31. After discussing a number of precedents, the Hon'ble Supreme Court of India in the case of **Joint Action Committee of Air Line Pilots' Association of India [ALPAI] and others vs. Director General of Civil Aviation and others, [2011] 5 SCC 435**, has summarized in the following manner :-

26. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal...

27. Similar view has been reiterated by this Court in observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.

32. Under the prescriptions of the Assam Excise Rules, 2016, as amended, and even

under the SOP, which does not have any statutory force, it is the District Collector as the Licensing Authority, who has been vested with the power to recommend and grant the IMFL 'Off' retail licence to the most eligible applicant with the previous sanction of the State Government. In the process of consultation, the Guardian Minister is found to have recommended the name of the respondent no. 5 even though under the SOP also, he did not have the power to recommend.

33. After the recommendation of the Guardian Minister, the Licensing Authority had proceeded to concur with the recommendation of the Guardian Minister without reaching any finding of his own as regards the most eligible applicant out of the three applicants. The decision taken by the Licensing Authority in the case in hand is found to be one taken at the behest and on the recommendation of the Guardian Minister, who has no statutory role to play in the process. As the Licensing Authority had abdicated his statutory obligation by mortgaging his decision-making authority to the Guardian Minister, the entire process from that stage stands vitiated and as a result, the decisions taken in the process subsequent thereto leading to the sanction of the IMFL 'Off' retail licence in favour of the respondent no. 5 is patently illegal.

34. In the process of granting the IMFL 'Off' retail licence to the respondent no. 5, the other two applicants who had submitted applications for the IMFL retail 'Off' licence at Sonai, have been treated in an arbitrary and discriminatory manner in clear infraction of the principle of equality deeply embedded in Article 14 of the Constitution. The contention of the respondent no. 5 its application was compliant of the terms and conditions might be correct, but, at the same time, the other two applications might also be compliant. With no evaluation done by the Licensing Authority adjudging the application of the respondent no. 5 as the only compliant one and the other two applications are not compliant, no privilege in the form of grant of the licence could have been extended to the respondent no. 5.

35. Summing up, in view of the observations made, the findings reached at and for the reasons assigned above, the writ petition is found merited. The entire process leading to the grant of the IMFL 'Off' retail licence in favour of the respondent no. 5 at Sonai is found to be

vitiated and consequently, the decision of the respondent authorities in the Excise Department to grant of the licence in favour of the respondent no. 5 is set aside and quashed. Resultantly, the licence issued in favour of the respondent no. 5 is to be cancelled with immediate effect. The writ petition stands allowed to the extent indicated above. The respondent authorities may initiate the process for issuance of the IMFL 'Off' retail licence at Sonai afresh if there is a need for such a licence at Sonai. There is no order as to cost.

36. The records placed before the Court are returned to the learned Standing Counsel, Excise Department.

**Simanta
Das**

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JUDGE

Comparing Assistant