(2020) 06 GAU CK 0017

In the Gauhati High Court

Case No : Writ Petition (C) No. 1751 Of 2019

Jayanta Prasad Banik APPELLANT

Vs

Cstate Of Assam And 4 Ors RESPONDENT

Date of Decision : 22-06-2020

Acts Referred:
Assam Excise Rules, 2016 — Rule 289, 294, 295

Citation : (2020) 06 GAU CK 0017

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : N J Khataniar

Final Decision : Allowed

Judgement

1. Heard Mr. N.J. Khataniar, learned counsel for the petitioner. Also heard Mr. P.N. Goswami, learned Counsel for the Excise Department, Assam

and also heard Mr. Pegu, the learned counsel for the Deputy Commissioner, Cachar.

2. The petitioner has been operating an IMFL â??ONâ? shop at Balighat, Niz Joynagar, Borkhola in the Cachar district and for that purpose had

obtained license in the year 2009. The license is stated to have been renewed upto March, 2019. The IMFL â??ONâ? shop was initially located at a

premise at Dalughat (Rampur), Borkhola. But as because of certain restrictions were imposed by the Supreme Court as regards the location of the

IMFL â??ONâ? shops alongside the National Highways, the petitioner was required to shift his shop to the present location. The shifting of the IMFL

â??ONâ? Shop of the petitioner was allowed by the Joint Secretary to the Government of Assam, Excise Department as per the Government

Communication dated 18.09.2017 made to the Deputy Commissioner, Cachar which is extracted below:

â??With reference to the above, I am directed to say that the Governor of Assam under Rule 294 of Assam Excise Rules, 2016 is pleased to allow

shifting of IMFL 'ON' Licence premises of Shri Jayanta Prasad Bonik, S/O. Shri Ajoy Narayan Bonik, Vill. - Boro Rampu, P.O. - Dolu, P.S. -

Borkhola, District â?" Cachar, Assam from its existing site to new site at Balighat, Niz-Joy-Nagar, Borkhola, District Cachar, Assam at the rented

premises of Md. Aftar Uddin Barbhuiya, S/O. - Md. Mahrum Akil Ali Barbhuiya covered by Dag No. 86 & Patta No. 18 & Patta No. 18, under

Balighat, Mouza, District Cachar, Assam. â??

3. After being allowed to shift,the petitioner has been operating the IMFL â?? ONâ? shop at the present location at Balighat, Niz Joynagar, Borkhola

in the Cachar district. When the application was made by the petitioner for renewal of his license for the year 2019-2020, the same was refused on

the basis of an order dated 06.03.2019 by the Deputy Commissioner, Cachar which is extracted as under:

â??Also perused the report dtd. 21/02/2019 submitted by the Superintendent of Excise, Cachar, Silchar wherein it reveals that the respondents No. 5

to 9 in the aforesaid WP(C) and stake holders were heard and also recorded their statement. It is also revealed from the report submitted by the

Inspector of Excise, Silchar (Sadar) that with due permission of the surrounding shops and NOC of the G.P. concerned, the M/S Bela Bar Cum

Restaurant, the IMFL â??ONâ? shops was shifted to present place of its business at Balighat. It is further reported that now some people of the

locality has raised objection on the running of the said shop and some people are in favour of running of the said shop. The objection raised by the

Heads of the Educational Institution of the locality of said shop either outside of the restricted parameters or Non recognized Institution by the

State/Central Board as per rule 289 of Assam Excise Rules' 2016 and at present the Shop in question has legal standing to run the business as per rule

of 295 of Assam Excise Rules' 2016. It is also reported by the Superintendent of Excise, Cachar, Silchar that renewal proposal for the year 2019-2020

was not recommended by the D.C. Cachar on the grounds of public complaints etc.

From the above and on careful examination of all facts I am satisfied that the Bar in question has been running with legal standing at the present

premises till date and the Govt. has also accorded necessary sanction for renewal of the licence for the year 2018-2019 based upon the submitted

enquiry report/documents/recommendations and since the renewal proposal of Shop in question for the year 2019-2020 has not been recommended by

the Deputy Commissioner, Cachar which attracts provision of 294 of Assam Excise Rule' 2016, the Licensee of the concerned Bar cannot continue its

business at the present location after 31st March' 2019.

However, the licensee may continue its business to other alternate suitable sites subject to compliance of other conditions as per law.â??

4. A reading of the first of the aforesaid extracted paragraphs shows that there may have been some objections being raised by the Heads of the

Educational Institution of the locality but a conclusion was arrived that the location of the petitioner shop was outside the restricted parameters

provided.

5. Under Rule 289 of the Assam Excise Rule, 2016 a conclusion was arrived by Deputy Commissioner, Cachar that the present Shop in question has

'legal standing to run the business' as per rule of 295 of Assam Excise Rules' 2016. But the second of the extracted paragraph shows that although the

Deputy Commissioner, Cachar was satisfied that shop in question was running with a 'legal standing' at the present premises and that the Government

has also accorded necessary sanction for renewal of the license for the year 2018-2019, but based upon some enquiry report/

documents/recommendations etc. and the Deputy Commissioner, Cachar had not recommended a renewal of the license of the petitioner for the year

2018-19. In other words, it is to be understood that the refusal of the renewal was based upon some enquiry report, documents/ recommendation etc.

The Deputy Commissioner, Cachar made a communication dated 20.03.2019 to the standing counsel of the Excise Department and states that the

reason for the refusal of renewal were as follows:

â??A) The matter was subjudice

B) The GP Secretary intimated his inability to issue Trade Licence

C) There was complaint/allegation about originally and validity of NOC issued earlier by the GP Secretary.â??

6. The reasons stated by the Deputy Commissioner was that the matter was sub-judiced and the Gaon Panchayat Secretary had expressed its inability

to issue a trade license and there was some complaint/allegation about the validity of the earlier NOC issued by the Gaon Panchayat Secretary.

Regarding the first reason, it is stated that the matter is no longer sub-judiced, although it may have been earlier.

7. When we asked Mr. P.N. Goswami, learned standing counsel for the Excise Department as regards the requirement of the trade license to be

issued by the Gaon Panchayat Secretary, we have told that there is no such requirement other than any such requirement that may be there under

Rule 294 of the Assam Excise Rule, 2016 when the shop in question was shifted in the year 2017. It is submitted that Rule 294 is not applicable to a

subsequent stage where an IMFL â??ONâ?? shop has already been shifted and is operating.

8. For the aforesaid reasons, we do not find the existence of any sustainable reason on the part of the Deputy Commissioner, Cachar not to allow the

renewal of the license of the IMFL â??ONâ?? shop of the petitioner.

9. With the said observations, we dispose of the writ petition directing the Commissioner, Excise Department to take his decision on the claim of the

petitioner for a renewal of their IMFL â??ONâ? shop license and pass a reasoned order thereof. In doing so, the Commissioner may look into all the

relevant aspects as required under the Assam Excise Rules, 2016 and pass a reasoned order thereon. The requirement by the Commissioner, Excise

Department be done within a period of 1 (one) month from the date of receipt of certified copy of the above order.

10. If the Deputy Commissioner, Cachar is of the view that any provision of the Excise Law has been violated by the petitioner, an appropriate report

be called for by him and thereupon be given its consideration while passing the reasoned order.

11. Copy of the instruction dated 20.03.2019 of the Deputy Commissioner, Cachar is kept on record.

12. Writ petition is allowed in the above terms.

