

**(2007) 08 GAU CK 0066**  
**In the Gauhati High Court**

Nilu Singha Roy and Another

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

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**Date of Decision :** 30-08-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2008) 1 GLT 493

**Hon'ble Judges :** Iqbal Ahmed Ansari, J;A.B. Pal, J

**Bench :** Division Bench

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## Judgement

I.A. Ansari, J.—By Notice Inviting Tender (for short "NIT"), issued on 18.1.2006, by the Collector of Excise, West Tripura, tenders were invited for settlement of retail vend of Foreign liquor and Country liquor in respect of various shops/locations as mentioned in the NIT with the MRF fixed for the year 2006-07.

2. The appellant herein, who was a licensee for retail vend of India made Foreign liquor/Country liquor in respect of the shop/location, in question, has put to challenge, on various grounds, the said NIT by filing a writ petition under Article 226 of the Constitution of India, which gave rise to W.P.(C) No. 118 of 2006, one of the grounds of challenge being that the Tripura Excise Act and Tripura Excise. Rules do not permit granting of settlement of retail vend of India made Foreign liquor/country liquor by taking resort to tender process.

3. The respondents herein resisted the writ petition by contending, inter alia, that the NIT, issued by the respondents, is in accordance with law. As the writ petition has been dismissed by judgment and order, dated 4.8.2006, the writ petitioner is, now, before this Court with the present appeal.

4. We have heard Mr. Somik Deb, learned Counsel for the writ petitioner-appellant, and Mr. N.C. Paul, learned Govt. Advocate as well as Mr. A. Ghosh, learned Counsel for the State respondents.

5. While considering the present appeal, what needs to be noted is that according to Section 2(m) of the Tripura Excise Act, 1987 (for short "the Act"),

"Intoxicant" means

(i) any liquor, or

(ii) any substance from which liquor may be distilled and which is declared by the State Government by notification in the Tripura Gazette to be an intoxicant for the purpose of this Act or

(iii) any intoxicating drug;

Under Section 2(0) of the Act "Liquor" means--

Intoxicating liquor and includes all liquid consisting of or containing alcohol and any substance which the State Government, by a notification may declare to be liquor for the purpose of the Act.

6. u/s 18 of the Act, no intoxicant can be sold except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector in conformity with the general instructions issued by the State Government in respect of settlement of any class or classes of vend licenses. Section 18, thus, shows that no intoxicant, which, in the light of Section 2(m), includes any liquor i.e. even a foreign liquor-whether India made foreign liquor or otherwise- can be sold except as indicated hereinbefore.

7. Section 20 of the Act empowers the State Government to grant exclusive privilege for manufacture and sale of Country liquor or intoxicating drugs.

8. The appellant herein was granted exclusive privilege for sale of country liquor/ India made Foreign liquor in terms of Section 20.

9. It is contended by the respondents that under Rule 29A of the Tripura Excise Rules, 1990 (for short "the Rules") license for the sale of Foreign Liquor, may with the previous sanction of the Excise Commissioner, be granted by the Collector either by selection or by auction or by tender and, hence, the respondents are wholly justified in offering to settle the liquor shops, in question, by tender process. There can be no doubt that Foreign Liquor, according to Rule 29A, can be granted by way of selection or auction or tender.

10. What is, however, of immense important to note is that under Rule 154, license, in respect of Country liquor and India made Foreign liquor, can be granted by auction, though, in exceptional cases, the Collector, may, with the previous sanction of the Excise Commissioner, Government of Tripura, settle shops generally, or a particular shop, by selection and without resorting to auction method.

11. In the present case, since the appellant was a licensee of the Country liquor/ India made Foreign liquor, it logically follows that in terms of Rule 154, the requisite license for retail vend could have been granted, preferably, by auction method and, in exceptional cases, by way of selection. As the impugned NIT seeks to make settlement of retail vend of India made Foreign liquor and Country

liquor by resorting to tender process, such a process is not permissible under Rule 154 of the Rules.

12. What also follows from the above discussion is that though the Excise Commissioner has, under Rule 29A, the power to grant license by tender process too, the fact remains that Rule 29A does not apply to Country liquor and since a specific provision for granting of license in respect of India made Foreign liquor has been made under Rule 154, even settlement of retail vend of India made Foreign liquor cannot be done except, as in the case of Country liquor, by way of auction method and, in exceptional cases, by way of selection. To put it a little differently, Rule 29A is a general power given to the Commissioner of Excise to grant license for sale of Foreign liquor, which includes both India made Foreign liquor and also foreign liquor, imported from outside India, by method of Selection, auction or tender. But when Rule 154 has prescribed specific method, such as, auction and selection as the basis for granting license in respect of India made Foreign liquor and Country liquor, the general power vested in the Excise Commissioner by Rule 29A, cannot be invoked. Unless Rule 154 permits grant of license in respect of India made foreign liquor by resorting to tender process, tender process cannot be adopted for sale of India made Foreign liquor.

13. In view of what have been indicated above, the impugned NIT was clearly in contravention of the provisions of Rule 154 and could not have been sustained. These aspects of the writ petition appears to have escaped the attention of the learned single Judge, when the learned single Judge declined to interfere with the impugned NIT. Viewed thus, it is clear that this NIT cannot be allowed to stand good on record. We have, therefore, no option, but to allow this appeal and direct that the settlement of the shop, in question, be made in accordance with law.

14. For the conclusions that we have reached above, we are not inclined to enter into the merit of the various grounds on which the NIT stands challenged in the present writ petition.

15. Considering the matter in its entirety and in the interest of justice, the impugned judgment and order, dated 4.8.2006, passed, in W.P.(C) No. 118 of 2006, is hereby set aside and in consequence thereof, the impugned NIT, which involves the present writ petitioner-appellant and also the settlement, granted pursuant thereto, are hereby set aside and quashed. In view, however, of the fact that the respondents have already granted settlement in terms of the said NIT and have also granted extension of the settlement so made, a reasonable period needs to be allowed to the respondents to make settlement of the shop, in question, afresh by taking resort to the relevant provisions of law and in the light of the discussion held hereinabove.

16. Because of what have been discussed and pointed out above, we allow the settlement, which may have been granted by the respondents pursuant to the impugned NIT in respect of the shop/location, in question, to continue till 31st

December, 2007, and during the period so given, the State respondents shall make the settlement, if so advised, in accordance with law. When the process for making settlement afresh is initiated by the respondents, the appellant shall be at liberty to challenge the same, if the appellant is so aggrieved, on such grounds as may be permissible in law including the grounds on which the said NIT stood challenged in the writ petition, which has given rise to the present appeal.

With the above observations and directions, this writ appeal stands disposed of.

No order as to cost.