
(1988) 06 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 788 of 1988

Sikmik Rajkhowa

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-06-1988

Acts Referred:

Assam Excise Rules, 1945 — Rule 234, 234

Citation : (1988) 2 GLR 100

Hon'ble Judges : A.Raghuvir, C.J. and S.P.Rajkhowa, J

Bench : Division Bench

Advocate : S.S.Dey, P.Prasad, M.Nath, A.M.Mazumdar, Advocates appearing for Parties

Judgement

A. Raghuvir, C.J.

Sikmik Rajkhowa is the writ petitioner. Her spouse was a liquor contractor. He was a contractor for foreign liquor for the period March 31, 1985 and March 30, 1988. It appears on January 8, 1987 he was murdered. The petitioner became a widow. The liquor that was left over with her deceased husband on his death could not be sold. Immediately (after the death of her husband) the petitioner approached the appropriate authority for sanctioning the license in her name under Rule 234 of the Assam Excise Rules, which reads as under :

"234. Transfer of Licence on death of licensee. On the death of a licensee the Collector may with the previous sanction of State Government renew the licence for the remainder of the lease on the same term in favour of a representative of the deceased if he be satisfied that such representative is fit to hold it and on the condition that any arrears due from the deceased licensee are recovered before the licence is so renewed. In such a case no fresh deposit need be called for."

The Government on May 23, 1988 passed the following order :

"I am directed to say the Govt. have received an application from Smt. Sikmik Rajkhowa for renewal of India Made Foreign Liquor Licence in her favour under

rule 234 of the Assam Excise Rules, 1945 for the remaining period of the licence i. e. upto 30.8.88. Under the said rule, such renewal can be made by the Collector (Deputy Commissioner) only with the previous sanction of the State Government provided the Collector (Deputy Commissioner) is satisfied that the representative is fit to hold the licence on condition mentioned in the rule. The Inspector of Excise in his report dated 28.2.87 has stated that Smti. Rajkhowa is found to be suitable for running the Foreign Liquor shop on transfer of the licence in her favour. The Collector (Deputy Commissioner) by his letter dt. 9.3.87 has simply forwarded the report of the Inspector of Excise and has not mentioned anywhere in his report that he is satisfied that Smt. Rajkhowa is fit to hold the licence. As such the Government holds the view that the satisfaction expressed by the Inspector of Excise cannot be accepted to be the satisfaction of the Collector (Deputy Commissioner).

Further, rule 239 of the Assam Excise Rules is also relevant in this context for consideration as to whether the licence of the deceased can be transferred to his wife. The said rule has prohibited employment of women in foreign liquor shop without permission from the Excise Commissioner. When a woman is prohibited from being employed in a foreign liquor shop, she cannot be allowed to run the foreign liquor shop by transferring a licence in her favour.

Under the above circumstances, the Govt. is of the opinion that it is not a fit case where the State Govt. should give its previous sanction for renewal of licence in favour of Smti. Rajkhowa for remaining period of the term of licence."

The Government in the above order rightly held the Collector (Deputy Commissioner) was to be satisfied and the satisfaction of the Inspector of Excise is not a substitute for the satisfaction of the former.

We are however unable to agree with the conclusion reached by the Government as to sequence indicated in the order that they should be satisfied first and the Deputy Commissioner later. We understand the meaning of Section (sic, Rule) 234 the Collector be satisfied first whether licence can be renewed or not but before it is finally ordered the license must be sanctioned by the Government. We hold that sequence to be followed.

The learned counsel for the petitioner argued in view of numerous events that have had transpired the Deputy Commissioner be informed that he should reach his satisfaction uninfluenced by the direction of the Government including the note sheet (Annexure 8 to the petition) which is subscribed by the Minister of Excise on March 16, 1988. The apprehensions entertained in this regard we are unable to hold are unfounded.

We direct the District Collector to consider the facts, take into consideration all circumstances, record his satisfaction as to whether or not the licence should be renewed to the spouse of the deceased licensee. Thereafter the Government is free to scrutinise the subject matter if recommended by the Deputy Commissioner and pass orders in accordance with law.

The petition is ordered as indicated above. No costs.