(1987) 12 GAU CK 0012

In the Gauhati High Court

Case No : Civil Rule No. 1370 of 1987

Smti. Sikmik Rajkhowa — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 16-12-1987

Acts Referred:

Assam Excise Rules, 1945 — Rule 234
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1988) 1 GLR 131

Hon'ble Judges : K.N. Saikia, C.J;J.M. Srivastava, J

Bench : Division Bench

Advocate : A.M. Mazumdar and S.S. Dey, for the Appellant; P. Prasad, Sr. Government Advocate, for the Respondent

Judgement

K.N. Saikia, C.J.—Heard the learned Counsel for the Petitioner Mr. A.M. Mazumdar. Heard also Mr. P. Prasad, learned Senior Government Advocate, Assam.

2. The Petitioner is the widow of late Rajiv Rajkhowa, who held the Foreign Liquor Retail Off License No. 6/85 of Jorhat for a period of 3 years from 31.8.85 to 30.8.88. Rajiv Rajkhowa died on 8.1.87 being survived by his wife, the Petitioner. It is stated that at the time of his death the foreign liquor shop had a stock valued t rupees more than 3 (three) lakhs and that as a consequence of his death the foreign liquor shop was closed on 9.1.87. On 12.1.87 the Petitioner submitted an application to the Deputy Commissioner, Jorhat, (Excise Branch) praying for transfer of ownership of the aforesaid license No. 6/85 in her name, vide Annexure-2 to the petition. Failing to receive any reply the Petitioner served notice of demand u/s 80 of the CPC dated 23.7.87. The Petitioner received a letter from the Superintendent of Excise, Jorhat dated 4.8.37 with reference to the aforesaid notice stating that the matter had been taken up with the Secretary, Excise, Government of Assam for necessary action and that action would be taken on receipt of the order from the Government. It is the case of the

Petitioner that till date no action towards transfer of the license has been taken and as a result the Petitioner has been without income from the shop since 9.1.87.

3. Rule 234 of the Assam Excise Rules, 1945 provides for transfer of licensee on death of licencee. It reads:

234. Transfer of licence on the death of a 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 license are recovered before the licence is so renewed. In such case no fresh deposit need be called for.

This provision takes care of the unfortunate circumstances that the members of the lessee''s family bad to face on death of a licensee. It embodies the principle that the licence may be renewed by the Collector with the previous sanction of the State Government in favour of a representative of the deceased if he be satisfied that such representative is fit to hold it and on the condition laid down in the Rules.

4. In the instant case the Petitioner admittedly being the wife of the deceased licensee and the licence being a foreign Liquor Retail off Licence, it is for the Deputy Commissioner to consider her fitness. The fact that the matter has been taken up with the Secretary, Excise, Government of Assam prima facie shows that the Petitioner has not been considered unfit and in such a matter there ought not to be unreasonable delay in taking a decision in as much as on the death of the licensee there is abrupt cessation of income or source of livelihood to the representative of the deceased. In view of the provision of Rule 234 and the reasons underlying them we are of the view that such an application ought to be expeditiously disposed of. As almost a year has already elapsed and only about 8 months of the tenure of the licence are left, we consider it just and expedient to issue direction for expeditious action on the Petitioner''s application for renewal. Mr. Prasad is not opposed to the idea of such a direction being issued. We accordingly direct the State Government of Assam to expedite the question of giving its previous sanction as envisaged under Rule 234 of the Assam Excise Rules, 1945 within and in no case beyond more than 3 (three) weeks from the date of receipt of this order. We also direct the Deputy Commissioner (Excise Branch) to act in accordance with the provision of the aforesaid Rule 234 in the matter of transfer of the licence to the Petitioner in accordance with the Rule as expeditiously as possible, in no case beyond one week of receiving previous sanction of the State Government under the Rule.

5. In the result with the above directions and observation this petition is disposed of.

