

(2001) 04 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 1046 of 2001

Tirtha Nath Handique

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-04-2001

Acts Referred:

Assam Excise Rules, 1945 — Rule 191

Citation : (2001) 1 GLT 665

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : C. Baruah, H. Rahman and R.K. Dutta, for the Appellant; Govt. Advocate, for the Respondent

Judgement

D. Biswas, J.—Heard Mr. G.N. Sahewalla, the learned Counsel for the applicant/ Respondent No. 4 and also heard Mr. C. Baruah, the learned Counsel for the Respondent/writ Petitioner.

2. This application has been filed for vacating the interim order passed by this Court on 26.2.2001 in WP (C) No. 1046/2001. The writ petition was filed seeking appropriate orders for shifting of IMFL "off" shop from its existing site at Ward No. 10 of Tinsukia Town to Ward No. 4 of Municipal Market, Nu-pukhuri. This Court passed the following interim order:

Keeping in view of the submission advanced by Mr. Rahman, the learned Counsel for the Petitioner and also Mr. Rahman, learned Govt. Advocate as well as the related observation made by a Division Bench of this Court in Writ Petition (C) (PIL) No. 10/1999 vide order dated 13th March, 2000 and also the report of the Deputy Superintendent of Excise, Tinsukia dated 11.9.2000 as in Annexure-B and C to the Writ petition, I am of the view that a prima facie case has been made out by the writ Petitioner for an appropriate ad-interim order and accordingly I made the following interim order:

The impugned order dated 24.1.2001 bearing letter No. 11-1/90-91/64,303

issued by the Commissioner of Excise, Assam, Silpukhuri. Guwahati-3. Respondent No. 2 herein shifting the IMFL retail "off" shop of the Respondent No. 4 to the new site at Ward No. 4 of Municipal Market, Nu-pukhuri. Tinsukia Town shall remain suspended until further orders of this Court.

3. The provisions for shifting is available in Rule 191 of the Assam Excise Rules, 1945. The relevant part is quoted below:

191. The opening, shifting, amalgamation and closure of any licensed premises shall be done by the District Collector with the previous sanction of the State Government. Such opening, shifting, amalgamation and closure shall not be granted - (a) unless it has been satisfactorily established by local enquiry that the proposed action is necessary in the interest of public; and (b) until any objections, which may have been filed on the subject have been considered by the District Collector.

Objections from local bodies and from the following persons will be considered:

(i) In the case of Corporation, Municipality or Town Committee areas--The Corporation, Municipality or Town Committee concerned to which such proposal relates;

(ii) In the case of areas not situated in a Corporation. Municipality or Town Committee:

(a) The Gaon Panchayat concerned.

(b) The owners or occupiers of the neighbourhood of the premises involved.

(c) Managers of the tea estates or factories in which more than 100 persons are employed:

Provided that the whole or any part of the jurisdiction of the Gaon Panchayat or land owned or occupied by tea estate or factory is situated within 5 Kms of the site of the shop or any of the shops concerned.

4. It appears that even for shifting, the authority will have to make a local enquiry and be satisfied that the proposed action is necessary in the interest of public and for that purpose will also have to consider the objection, if any, received from the members of the public. It appears that the Deputy Commissioner, Tinsukia is going to issue an order permitting shifting on the basis of a communication dated 24.1.2001 from the Commissioner of Excise. The Excise Commissioner in the aforesaid letter approved the proposal for shifting of the said licence subject to the provisions of Rule 191. It appears that this approval was given by the Government without taking into consideration as to whether the proposal forwarded to the Government by the Deputy Commissioner was after necessary enquiry and disposal of objections as envisaged in Rule 191.

I have been taken through the enquiry report as well as the letter dated 11.9.2000 written by the Deputy Superintendent of Excise to the Superintendent

of Excise. It is also not clear from the materials placed on record as to whether the Deputy Commissioner had considered the matter in the light of the above provisions before the approval was sought. Hence the interim order passed on 26.2.2000 needs no modification as shifting cannot be permitted till the requirements of Rule 191 of the Assam Excise Rules, 1945 are duly complied with.

5. As agreed to by the learned Counsel for the writ Petitioner, the petition with connected Miscellaneous Petitions are disposed of with a direction to the Deputy Commissioner, Tinsukia not to accord permission for shifting of the liquor shop from Ward No. 10 to Ward No. 4 without complying with the provisions of Rule 191 of the Assam Excise Rules in its letter and spirit.

6. Before parting with, it may be mentioned here that the Rule does not provide the manner in which the public opinion has to be ascertained while permission for opening, shifting and amalgamation are to be given. In the absence of any specific provision in this behalf, the Deputy Commissioner will have to employ the different functionaries in the District to obtain public opinion and for this purpose it will not be out of place to mention here that the best course will be to invite public opinion by publication in local newspapers. After all the words "public opinion" are not meant for empty formalities.

Misc. petition stands disposed of.