



GAHC010170852018

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5328/2018

SRI HARA RAM BHAROTI
S/O- LT NAGINA BHAROTI, R/O- LAL BANGAL ROAD, PO AND PS
TINSUKIA, DIST- TINSUKIA, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EXCISE
DEPTT., SACHIVALAYA, DISPUR, ASSAM- 781006

2:THE COMM. OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-6

3:THE COLLECTOR CUM DY. COMMISSIONER
TINSUKIA
DIST- TINSUKIA
ASSAM
786125

4:THE SUPERINTENDENT OF EXCISE
TINSUKIA
DIST- TINSUKIA
ASSAM
78612

Advocate for the Petitioner : MR. S BORTHAKUR

Advocate for the Respondent : GA, ASSAM



BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the petitioner : Mr. S. Borthakur.
Advocate.

For the Respondents : Mr. K.P. Pathak.
Standing Counsel, Excise Deptt.
Mr. R. Talukdar
Advocate.

Date of Hearing : 06.06.2022

Date of Judgement : 06.06.2022

JUDGMENT & ORDER (ORAL)

Heard Mr. S. Borthakur, learned counsel for the petitioner. Also heard Mr. K. P. Pathak, learned Standing Counsel for the Excise Department, State of Assam and Mr. R. Talukdar, learned counsel for the respondent No. 3.

2. The petitioner is a licensee under Rule 82 & 83 of the Medicinal and Toilet preparations (Excise Duties) Rules, 1956 for possession of Rectified spirit. Such license was issued in favour of the petitioner on 13.12.2011 by the Commissioner of Excise, Assam vide order No. III.115/2003-04/301. Subsequently, by another order dated 15.12.2011, the Commissioner of Excise, Assam also issued a license in favour of the petitioner to manufacture medicinal and toilet preparation.
3. Thereafter on 21.06.2017, the Collector cum Deputy Commissioner, Tinsukia i.e. respondent No. 3 had issued the order purportedly in exercise of power conferred upon him under Section 30(1)(c) of Assam Excise Act, 2000, suspending the license of the petitioner with immediate effect. By the said order, the petitioner was directed to show cause within 30 (thirty) days as to why the license of the petitioner should not finally be cancelled from the date of receipt of his order.



4. Mr. Borthakur, learned counsel for the petitioner assails the said order of the Collection cum Deputy Commissioner, on the ground that rule 87 of the Medicinal and Toilet preparations (Excise Duties), Rules, 1956 provides the power and procedure for revocation and suspension of licences. Such power is vested with the licensing authorities and therefore, Mr. Borthakur, learned counsel contends that the Collector cum Deputy Commissioner is not being licensing authority and the Commissioner of Excise, Assam is the licensing authority, the impugned order has been issued without any sanction and authority under law.
5. In support of his contention, Mr. Borthakur, learned counsel for the petitioner relies on the Annexure-F (license) issued in favour of the petitioner by the Commissioner of Excise, Assam and Annexure-G, to show that the said Commissioner of Excise, Assam has issued such license as licensing authority. The further contention of Mr. Borthakur, learned counsel is that even if assuming that the Collector cum Deputy Commissioner was delegated the power of licensing authority then also rule 87 of the Medicinal and Toilet preparations (Excise Duties), Rules, 1956 mandates that before suspension, a reasonable opportunity of showing cause is required to be given to the licensee. He submits that in absence of any show cause, the order impugned is in derogation of rule 87 of the Medicinal and Toilet preparations (Excise Duties), Rules, 1956. Accordingly he submits that such order needs to be struck down.
6. Per contra, Mr. K. P. Pathak, learned Standing Counsel for the Excise Department, Assam submits that the decision to suspend the license was taken by the Commissioner of Excise i.e the licensing authority and same was communicated to the Collector cum Deputy Commissioner vide W.T. Message dated 13.06.2017 and thereafter the Collector cum Deputy Commissioner had only issued the suspension order. Such issuance is a mere formality and the decision has been taken by the licensing authority itself.
7. Countering the second limb of argument of Mr. Borthakur, learned counsel for the petitioner, Mr. K. P. Pathak, learned Standing Counsel for the Excise Department submits that the provision of rule 87 and the suspension thereof is having two fold dimensions; (i) when a suspension is made temporarily pending drawl of proceeding, no notice is

required to be issued to the licensee. However, when the licensing authority had already taken a decision to finally revoke and suspend of such license then only the provision of notice shall arise. He further submits that in the case in hand, suspension was temporary inasmuch as an opportunity to show cause was given to him and therefore, there was no violation of any provision of Rule, 1956.

8. For a bare reading of the Rule 87 of the Rules, 1956 shows that the said rule itself is a code relating to suspension and revocation of license issued under the Rule'1956.

It is clear from the Rule'87 that any license granted under Rules'1956 can be revoked or suspended by the licensing authority by procedure prescribed and for the reasons enumerated in the Rule 87. The same are as follows:

(a) if the holder or any person in his employment is found to have committed a breach:

- i. of the conditions of license,
or
- ii. of any of the provisions of the Act, 1955 or the Rules,1956
or
- iii. has been convicted of an offence under Sec.161, read with Sec.139 or with Sec.116 of the Indian Penal Code (45 of 1860):

Provided that such revocation or suspension shall not be made until the holder of the licence has been given a reasonable opportunity of showing cause against the action proposed to be taken.

9. The Rule'87 further provides that every such order suspending or revoking such licence shall be in writing and shall specify the reasons for the suspension or

revocation and shall be communicated to the licensee. The Rule disentitles the Licensee from claiming any compensation or refund of licence fee from the Central or State Government when a licence is revoked or suspended under this rule.

10. Therefore, from the above, it is clear that the licensing authority is within its jurisdiction and competence to revoke or suspend a license subject to the condition as stipulated under Sub Rule 1 of Rule 87. The second condition of such revocation or suspension is that the licensing authority is to give a reasonable opportunity of showing cause against the licensee when suspension or revocation is proposed/contemplated.
11. In the case in hand, though by the order impugned, the petitioner licensee was allowed 30 days time to show cause as to why his license shall not finally be cancelled, but the licence was suspended forthwith without any reasonable opportunity of hearing. The word "cancellation" shall necessarily mean the revocation of the license in the present context. Accordingly, from the impugned order, it is clear that the licensing authority had proposed to revoke the license of the petitioner. However, by way of the impugned order, the license of the petitioner was suspended forthwith without notice purportedly in exercise of power under Section 30(1)(c) of Assam Excise Act, 2000. Thus sus suspension was in contravention of the Rle'87 of the Rules'1956.
12. Section 30(1)(c) of Assam Excise Act, 2000, empowers the authority to cancel or suspend license, issued under the Assam Excise Act, 2000. Therefore, while issuing the impugned order, in the considered opinion of this Court, the Collector cum Deputy Commissioner could not have exercised his power under 30(1)(c) of Assam Excise Act, 2000 inasmuch as the license in question was not granted under any provision of Excise Act'2000, rather it was issued under the provision of Act 1955 and Rules made there under i.e., Rules 1956. Even if this Court assumes that those Sections were wrongly quoted, in view of the provision of Rule 87 of the Rules, 1956, the Licensing Authority is not having any power under the Rule, 87 of the Rules, 1956 to suspend a license without giving a reasonable opportunity of showing cause against proposed suspension.
13. It is by now well settled that when an action is taken or proposed to be taken against a



person, which affects the right of the person and results in adverse civil consequences, such person should be given an opportunity to show cause. This is the fundamental of rule of principles of natural justice.

14. Cancellation of license has taken away the petitioner's right under Article 19 (1) (G) of the Constitution of India, without adherence to due process of law i.e. without giving him any opportunity of hearing as contemplated under Rule 87 of the Rules, 1956, resulting in adverse civil consequences. Therefore, in the considered opinion of this Court, the action of cancellation of license of the petitioner by way of the impugned order dated 21.06.2017, issued by the Collector cum Deputy Commissioner, Tinsukia is not sustainable under law and therefore, the same is set aside and quashed. And the licence of the petitioner is directed to be restored forthwith.
15. The respondent State has, by way of filing affidavit is trying to substantiate the merit of their decision and the alleged illegality committed by the petitioner while doing its business under the license. However, this Court is not inclined to go into those aspects of the matter as this Court in exercise of its power of judicial review cannot adjudicate the decision but the decision making process. It is made clear that this order shall not preclude the respondent State to take action against the petitioner as provided under law and following due process of law, if the State so desire.
16. Accordingly, this writ petition is allowed with the aforesaid term by setting aside and quashing the order dtd.21.06.2017 issued by the Collector, Tinsukia. Parties to bear their own costs.

JUDGE

Comparing Assistant