



GAHC010182182020

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

Case No. : WP(C)/4440/2020

DIGANTA SAIKIA AND ANR.
S/O SRI AMBESWAR SAIKIA
R/O AMGURI TOWN
W/NO.4
P.S. AND P.O. AMGURI
DIST- SIBASAGAR
ASSAM
PIN-785680

2: DULAL KALITA
S/O LT. BISHNU KALITA
R/O AMGURI TOWN
W/NO.2
P.S. AND P.O. AMGURI
DIST- SIBASAGAR
ASSAM
PIN-785680
VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
DEPARTMENT OF EXCISE
DISPUR
GHY-6

2: THE DY. COMMISSIONER
SIBASAGAR DISTRICT HEADQUARTER
P.S. SIBASAGAR SADAR
P.O. SIBASAGAR
ASSAM
3: THE DISTRICT COLLECTOR
SIBASAGAR DISTRICT
P.S. SIBASAGAR SADAR
P.O. SIBASAGAR
ASSAM



4:THE SUPERINTENDENT OF EXCISE
SIBASAGAR DISTRICT
P.S. SIBASAGAR SADAR
P.O. SIBASAGAR
ASSAM

5:THE INSPECTOR OF EXCISE
AMGURI
P.S. AND P.O. AMGURI
DIST- SIBASAGAR
ASSAM

6:THE PRESIDENT
AMGURI GAON PANCHAYAT
P.S. AMGURI
P.O. AMGURI
DIST- SIBASAGAR
ASSAM

7:SHANTANU DUTTA
S/O LT. BIREN DUTTA
R/O AMGURI TOWN
W/NO.10
P.S. AND P.O. AMGURI
DIST- SIBASAGAR
ASSAM
PIN- 785680

Advocate for : MR. P SAIKIA
Advocate for : SC
EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 6 ORS.

And I.A.(Civil)/2218/2020

SHANTANU DUTTA
S/O. LATE BIREN DUTTA, R/O. AMGURI TOWN, W/NO.10, P.O. AND P.S.
AMGURI, DIST- SIBASAGAR, ASSAM, PIN- 785680

VERSUS

DIGANTA SAIKIA AND 7 ORS.
S/O. SRI AMBESWAR SAIKIA, R/O. AMGURI TOWN, W/NO.4, P.O. AND P.S.
AMGURI, DIST. SIBASAGAR, ASSAM, PIN-785680

2:DULAL KALITA
S/O LT. BISHNU KALITA
R/O AMGURI TOWN
W/NO.2
P.S. AND P.O. AMGURI



DIST- SIBASAGAR
ASSAM
PIN-785680

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REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
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7:THE INSPECTOR OF EXCISE
AMGURI
P.S. AND P.O. AMGURI
DIST- SIBASAGAR
ASSAM

8:THE PRESIDENT
AMGURI GAON PANCHAYAT
P.S. AMGURI
P.O. AMGURI
DIST- SIBASAGAR
ASSA

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : GA, ASSAM



Date of hearing : 29/01/2021.
Date of Judgement : 29/01/2021.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGEMENT AND ORDER (ORAL)

Heard Mr. K.K. Mahanta, learned senior counsel assisted by Mr. P. Saikia, learned counsel appearing for the writ petitioner. Also heard Ms. M. Bhattacharjee, learned Government Advocate, Assam, appearing for the respondent nos. 2 and 3 and Mr. K.P. Pathak, learned Standing Counsel, Excise Department, Assam, appearing for the respondent nos. 1, 4 and 5. Mr. K. N. Choudhury, learned senior counsel assisted by Mr. B.P. Borah, learned counsel appears for the respondent no. 7.

2. The instant writ petition has been filed by the two petitioners, viz. Sri Diganta Saikia and Sri Dulal Kalita, being aggrieved by the move on the part of the Sivasagar District administration to issue IMFL "ON" license in favour of the respondent no. 7.

3. From the pleadings contained in the writ petition, it appears that the basic grievance of the petitioners are two fold. Firstly, that the IMFL "ON" shop is being sought to be established inside 100 mtrs from the midpoint of the national highway in violation of the orders passed by the Supreme Court of India and secondly that the proposed site is also within the prohibited distance of a place of worship and place of educational institution as prescribed by Rule 289(2) of the Assam Excise Rules, 2016.

4. Taking note of the pleadings in the writ petition and after hearing the petitioners' counsel, this Court had passed an interim order dated 06/11/2020, directing *status quo* to be maintained as regards the IMFL "on" license. In view of the interim order dated 06/11/2020,



no license has been issued to the respondent no 7 till date. As such, IA(C) No. 2218/2020 has been filed by the respondent no. 7 as applicant seeking vacation/alteration/modification of the interim order dated 06/11/2020 passed by this Court.

5. As agreed to by the learned counsel for both the parties, the writ petition as well as the IA is being taken up for disposal by this common order.

6. Mr. Mahanta, learned senior counsel for the writ petitioners submits that Rule 289 read with Rule 294 of the Assam Excise Rules, 2016, casts a duty upon the authorities to make proper verification of all public complaints and only thereafter, IMFL "ON" license can be issued. But in this case, submits Mr. Mahanta, no such process has been followed by the authorities.

7. Contending that the provisions contained in the Assam Excise Rules, 2016 have the force of a statute and that the respondent no. 7 does not have any legal right to obtain the IMFL "ON" license, Mr. Mahanta submits that his clients have rightly opposed the move to issue the IMFL "ON" license on justifiable grounds but those complaints have not been considered till date. Therefore, interference in this case is called for by this Court.

8. Mr. Choudhury, learned senior counsel for the respondent no. 7/applicant, on the other hand, contends that the writ petitioners herein being residents of Ward No. 4 and 2, do not even have any locus standi to maintain this writ petition since they reside more than 100 mtrs away from the proposed site of the IMFL "ON" license shop which fall in Ward No. 10 of Amguri Town. That apart, by referring to the enquiry report dated 21/09/2020 as well as the subsequent report on public complaints dated 07/10/2020 submitted by the Inspector of Excise, Amguri, Mr. Choudhury submits that the complaints of the petitioners have been

found to be completely baseless. Mr. Choudhury submits that it has been found that the proposed site is beyond the prohibited limits under Rule 289(2) of the Excise Rules, 2016 and it does not also in any manner violate the orders dated 15/12/2016 and 31/03/2017 passed by the Hon'ble Supreme Court. It is also the submission of Mr. Choudhury that the authorities have complied with all the procedural formalities for issuing the IMFL "ON" license and that the complaint made by the petitioners is not bonafide. Therefore, the writ petition deserves to be dismissed by this Court. Mr. Choudhury further submits that his client has already deposited a sum of Rs. 3 lakhs as license fee and all necessary formality has been completed for issuing the license.

9. Ms. M. Bhattacharjee, learned Government Advocate, Assam, has produced the records to submit that the public complaints in this case have been duly considered by the authorities and have been found to be baseless.

10. Since the basic grievance of the petitioners comes within the ambit of Rule 289(2) of the Assam Excise Rules, 2016, it would be appropriate to quote the said provision for ready reference :-

“(2) No IMFL and Beer retail 'OFF' licence or retail 'ON' licence shall be established in Municipal corporation areas within a distance of 50(fifty) meters, in Municipality and Town Committee areas within a distance of 100 (one hundred) metres and in Gaon Panchayat or equivalent body areas within a distance of 150 (one hundred fifty) metres from any place of public worship or educational institution or hospitals. No licence for retail sale of liquor or any other intoxicants shall be granted at a site situated within 100 (one hundred) metres from the midpoint of any National or State Highway.”

11. Explanation to Rule 289 makes it clear that for the purpose of the Rule, part of

national highway or State highway, which is situated within the limits of any Municipal Corporation or Municipality or Town Committee, shall not be treated as restrictions. By referring to such explanation, Mr. K.N. Choudhury has argued that the national highway involved in the present case admittedly falls within the Amguri Municipal Board area and, therefore, Rule 289(2) would have no application in the facts and circumstances of this case.

13. A perusal of the report dated 07/10/2020 submitted by the Inspector of Excise, Amguri, indicates that the authorities have duly considered the public complaints made in this case and found them to be baseless. The contents of the report dated 07/10/2020 would be relevant and, therefore, is being extracted herein below for ready reference :-

“Sir,

With reference to the subject above I have the honour to inform you that I have made an enquiry regarding the public complain received from Mrs. Krishna Dutta Saikia and others against the opening of IMFL ON SHOP at Amguri Town, Ward No. 10 applied by Sri Santanu Dutta. On enquiry it was found that all the complainer except one person name Sri Utpal Sharma have their residences outside 100 mtrs from the proposed site. Firstly, as mentioned in the complain the proposed site is not on the First Floor but it is on the Ground Floor. Secondly, Natya Mandir is not a religious place but a cultural place which is situated at a distance of about 138 mtrs from the proposed site. Thirdly, the Girls School is situated at a distance of about 400 mtrs. from the proposed site. Lastly, some of the complainers in the said complain has given a declaration that they have no objection of opening the proposed IMFL ON SHOP at the proposed site if the license is granted according the Excise terms and conditions. So it looks like there is a vested interest behind the said public complain.

This is for favour of your kind information and necessary action.”

14. Further, from the report dated 21/09/2020 submitted by the Inspector of Excise, Amguri, following findings of facts are apparent :-

3. Distance of the proposed site from Educational institution/hospital/ public Worship as per Rule 289(2) of Assam Excise Rules 2016	a) From Educational Institution. b) From Hospital c) from Public Worship	Distance of the proposed site from a) Educational Institution-400 mtrs. b) Hospital-800 Mtrs. c) Public place of Worship-500 Mtrs.
4. Photograph of premises with seal & sig. Of the enquiry officer	Enclosed and verified	
5. Distance of the proposed site from the National highway as per Supreme Court Order 15-12-2016 and 31-03-2017	Not applicable as the proposed site falls under Amguri Municipal Board.	

15. From the above report, it is clear that the proposed site of the IMFL "ON" business of the petitioner does not in any manner violate the provisions of Rule 289(2) of the Assam Excise Rules, 2016. There is also nothing on record to indicate that contents of the report are not correct. Although, Mr. Mahanta has disputed the veracity of the report submitted by the Inspector of Excise, Amguri, yet, the materials available on record, *prima facie*, indicate that the reports reflect the correct position. If that be so, I do not find any justifiable ground for this Court to interfere with the process initiated by the respondents for issuance of IMFL 'ON' license to the applicant/respondent no. 7. Therefore, this writ petition is held to be devoid of any merit.

16. However, having observed as above, this Court finds sufficient force in the submission of Mr. Mahanta that while issuing the IMFL "ON" license, the authorities would be duty bound to strictly adhere to the provisions of Rule 294 of the Assam Excise Rules, 2016 and follow the prescribed procedure.



17. In view of the above, I dispose of the writ petition as well as the IA(C) No. 2218/2020 by vacating the interim order dated 06/11/2020, thereby granting leave to the respondent authorities to process the IMFL "ON" license in accordance with law. The respondent Nos. 2 and 3 shall, however, ensure that the provisions of Rule 294 of the Assam Excise Rules, 2016 is adhered to in letter and spirit.

Writ petition and the connected IA stand disposed of.

JUDGE

Sukhamay

Comparing Assistant