

Prasanta Barpatra Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Mar-18-2002

Judge : R.S. Mongia, C.J. and Amitava Roy, J.

Acts : Assam Excise Act, 1910

Appeal No. : W.A. No. 346 of 2001 in WP(C) No. 1946 of 2001

Appellant : Prasanta Barpatra

Respondent : State of Assam and ors.

Advocate for Def. : A. Hazarika, Adv.

Advocate for Pet/Ap. : P.J. Saikia, Adv.

Judgement :

R.S. Mongia, C.J.

1. Heard Mr. P.J. Saikia, learned counsel for the appellant and Mrs. A. Hazarika, learned Addl. Sr. Govt. Advocate, Assam for the respondents.

2. One Shri Padmeswar Das had filed a writ petition, i.e., WP(C) No. 4923 of 2000, in this court with a prayer for issuing directions to the official respondents not to take steps to grant IMFL Off licence in favour of anybody at Chowkidinghee (T.R. Phukan Road), Milan Nagar (Mancotta Road) and Convey Road in Dibrugarh Town. In that case, a representation had been made by the petitioner therein and

some other citizens to the Deputy Commissioner, Dibrugarh requesting him not to allow any IMFL shop on the aforesaid roads in Dibrugarh town as there are various schools, colleges, including, Govt. Boys' Higher Secondary School, Don Bosco, temple and namghar situated in and around the aforesaid area.

3. Earlier to the filing of that writ petition, in a batch of PILs, i.e., PILs Nos. 10, 28 and 3393 of 1999 and Nos. 9, 10, 11 of 2000, a Division Bench of this court had delivered a judgment on 13.3.2000 in relation to issue of licences for IMFL shops under the Assam Excise Act, 1910 and the Assam Excise Rules, 1945. The judgment is now reported as 2000 (2) GLT 460. In the said judgment, the authorities have been directed to act strictly in accordance with the provisions of the Assam Excise Act, 1910 and the Assam Excise Rules, 1945 before issuing any licence in favour of any shop. WP(C) No. 4923 of 2000 was also disposed of in terms of the Division Bench judgment reported as 2000 (2) GLT 460.

4. Another writ petition, i.e., WP(C) No. 1946 of 2001 was filed by Shri Prasanta Borpatra, inter alia, praying that the respondents authorities be restrained from issuing any licence for IMFL retail off shops at Mancotta, Mancotta Road (DDA Complex) and Milannagar (Mancotta Road) in Dibrugarh town. In the said writ petition, it has been mentioned that in the aforesaid area there is Indoor Stadium, besides prominent sports clubs like Milan Jyoti Sangha, Asomi Sangha, educational institutions like Dibrugarh Govt. Boys' Higher Secondary School, Dibrugarh City College, D.J.M. Primary School, and also the District Library of Dibrugarh district. There is a children park of Dibrugarh town within the vicinity of the area. It has further been stated that apart from the educational institutions, there are several namghars, masjids and other religious institutions situated in the said area.

The writ petitioner goes on to say that despite the above, the respondents have granted IMFL Off licences to three different persons in the area, though they did not belong to that locality. This was resented to by the residents of the area and a request was made that the said shops be shifted from the area. Apprehending that more shops of IMFL Off licences were going to come up in the area, WP(C) No. 1946 of 2001 was filed. The learned Single Judge passed the following order on

4.4.2001 :

'Heard Mr. P.J. Saikia, learned counsel for the petitioner and Mr. Goswami, learned Government Advocate, Assam.

Let a notice of motion be issued calling upon the respondents to show cause as to why a Rule should not be issued as prayed for or why such further or other order should not be passed as to this court may seem fit and proper.

No formal notice need be sent as Mr. Goswami, learned Govt. Advocate accepted notice on behalf of respondents Nos. 1 and 2. However, petitioner shall take steps for service of notice upon respondent Nos. 3 and 4 within 48 hours.

In the meantime, no licence for running Indian made Foreign Liquor shop in the area at Mancotta, Mancotta Road (DDA Complex and Milannagar) of Dibrugarh Town concerned shall be issued by the official respondents concerned without complying the related provisions of the Act and Rules. It is also made clear that the authority concerned shall duly comply with the earlier related Court's order including the order dated 8th September, 2000 passed in WP(C) No. 4923/2000. List it after three weeks for further order. In the meantime, learned Govt. Advocate shall obtain instruction from the appropriate authority.'

5. A Misc. Case was filed by one Smt. Banti Pegu (Misc. Case No. 808/ 2001) in the writ petition, which was disposed of on 1.8.2001 by passing the following order by a learned Single Judge :

'If the applicant Smt. Banti Pegu is otherwise eligible to get a licence in terms of Rule 191, licence may be granted to her.

Pendency of the writ petition shall be no bar for the authority to grant licence.

Misc. Case stands disposed of.'

6. The writ petitioner filed the present appeal against the aforesaid order dated 1.8.2001.

7. The attack by the learned counsel to the aforesaid order was that, firstly, the writ petitioner was asking in the writ petition that the official respondents should not give any licence to run IMFL Off licence shops in the area concerned ; and, secondly, it was urged that the aforesaid order of the learned single Judge dated 1.8.2001 really meant that if Smt. Banti Pegu was otherwise eligible to grant of licence, she should be granted a licence.

While issuing notice of motion, a Division Bench of this Court on 14.9.2001 asked the State Government to consider, in accordance with law, the cases of all the applicants, including that of Smt. Banti Pegu, and apprise this Court as to whether anyone was eligible and suitable to get a licence and further, whether the State Government at all wanted to give any licence for running a liquor shop in the aforesaid area. Mrs. A. Hazarika, learned Addl. Sr. Govt. Advocate has placed on record a communication dated 29.11.2001 from the Under Secretary to the Govt. of Assam, Excise Department, to the Commissioner of Excise, Assam, Silpukhuri, Guwahati, This letter indicates that the Government has decided for the time being that opening of huge number of IMFL retail shops had deleterious effect on the society and it is unnecessarily creating unhealthy competition amongst the licensees. Accordingly, the State Government had reviewed the matter of issue of further licences for IMFL retail shops. It has been decided not to issue any further licences and even the licence fee that might have been deposited by the intending licensees has been ordered to be refunded.

8. All the aforesaid facts have been mentioned in this case simply for the reason to emphasise that to get a licence for running a retail shop of IMFL is not a matter of right. Not only for the issuance of the licence the authorities are to comply with the provisions of the Assam Excise Act, 1910 and the Assam Excise Rules, 1945, as mentioned above, it is also to be seen by the official respondents as to what is in public good. It may be re-emphasised here that even if a person is eligible under the Rules for the grant of licence, but in the larger interest of the society, such licence may be refused. Of course, such a matter may be subject to judicial review.

9. In the present case, we find that in the larger interest of the society it has been decided not to issue any further licence for IMFL retail shop, with which we find no fault.

10. This, according to us, not only renders the writ appeal infructuous, but it also renders the WP(C) No. 1946/2001 infructuous. Both Writ Appeal No. 346/2001 as well as WP(C) No. 1946/2001 are disposed of as such.

11. A copy of this judgment and order be placed on the record of WP(C) No. 1946/2001 as well.

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