

GAHC010107192022



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

Case No. : WP(C)/3704/2022

RAJIB RABHA
S/O- LATE ROBIN RABHA, R/O- VILL.- DAMARA PATPARA, P.S. DUDHNOI,
P.O. DAMARA, DIST. GOALPARA, ASSAM, PIN- 783122.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EXCISE DEPARTMENT, GUWAHATI-06.

2:THE DEPUTY COMMISSIONER
GOALPARA
ASSAM

3:THE SUPERINTENDENT
EXCISE DEPARTMENT
P.O.
P.S. AND DIST. GOALPARA
ASSAM

4:CHANDASMITA BASUMATARY
D/O- SUCHAN BASUMATARY
P.O. AND VILL.- DUDHNOI
PIN- 783124
DIST. GOALPARA

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : SC, EXCISE DEPTT.

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 24-06-2022

Heard Mr. H. Das, learned counsel for the petitioner; Ms. N. Khatun, learned counsel appearing on behalf of Ms. K. Saikia, learned Standing Counsel, Excise Department for the respondent nos. 1 & 3; and Ms. S. Sharma, learned Junior Government Advocate, Assam for the respondent no. 2.

2. Considering the grievances expressed by the petitioner in this writ petition, this Court deems it appropriate to dispose of the writ petition at the motion stage itself.

3. The petitioner has claimed to be the President of Damra Anchalik Rabha Students Union, Damra and an inhabitant of the locality at Damara. Having come to learn that the respondents authorities in the Excise Department have allowed the respondent no. 4 to open an Indian Made Foreign Liquor [IMFL] shop in the locality of Damara Mendi Pather Road, Village – Damara, local people in large numbers and a number of local organisations held a public meeting at the office of the Damra Anchalik Rabha Students Union on 01.09.2021. At the said public meeting held in presence of substantial number of local people, the local people had expressed an apprehension of breach in the locality in the event of location any IMFL shop in the locality, as the locality is in the border region of Assam and Meghalaya and it falls in a rural area. According to the petitioner, the local people and a number of public organisations under the aegis of All Rabha Students' Union had submitted a representation before the respondent no. 2 on 02.09.2021 opposing the opening of the IMFL shop in their locality. The grievance of the petitioner is that despite submission of the

said representation, the respondent no. 2 has not disposed of the said representation after hearing the persons from the locality where the proposed IMFL shop is going to be located.

4. The matter of opening and closure of any IMFL shop is governed by the provisions of Assam Excise Act, 2000 and the Assam Excise Rules, 2016. As per the provisions of sub-Rule [1] of Rule 289 of the Assam Excise Rules, 2016, the liquor shops of any description should not be located at sites to which the neighbours object on ground which upon enquiry appear to be reasonable and free from malice or ulterior motive. A number of other conditions have been mentioned in the other part of Rule 289, Assam Excise Rules, 2016. The provisions of the Assam Excise Rules, 2016 have also contemplated for ascertainment of public opinion regarding number and locations of excise shops. Rule 294, Assam Excise Rules, 2016 has provided that the opening and closure of any licensed premises shall be done by the District Collector with the previous sanction of the State Government. Such opening and closure shall not be granted – [a] unless it has been satisfactorily established by local enquiry that proposed action is necessary in the interest of public; [b] until any objection, which may have been filed on the subject have been considered by the District Collector; and [c] unless the application fee prescribed is paid. Rule 295, Assam Excise Rules, 2016 has provided for objection from local bodies and from persons mentioned therein. In case of areas not situated in a Corporation, Municipality or Town Committee areas, the opinions and objections of the Gaon Panchayat concerned and the owners or occupiers and residents of the neighbourhood of the premises involved are required to be considered. It has further been provided for the purpose of Rule 289[1] and Rule 295, Assam Excise Rules, 2016 that objections from the owners or neighbours and residents

of the neighbourhood located within the radius of 75 meters of the premises involved shall be considered.

5. Since the petitioner has asserted that a representation dated 02.09.2021 has already been submitted before the respondent no. 2, which is yet to be considered by the respondent no. 2, this writ petition is disposed of with a direction to the respondent no. 2 to consider the representation dated 02.09.2021, stated to have been filed by a large number of public organisations of the locality at Damara under the aegis of the local students organization, by taking into purview the provisions of Rule 289, Rule 294 and Rule 295 of the Assam Excise Rules, 2016 and after affording opportunities of hearing to the local public, as envisaged therein. The entire exercise shall be completed as expeditiously as possible, preferably within a period of 2 [two] months from the date of receipt of a certified copy of this order along with a copy of the representation and a copy of the writ petition. The decision so passed on the representation, be also communicated to the petitioner.

6. This order disposes of the writ petition.

JUDGE

Comparing Assistant