

GAHC010049222024



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

Case No. : WP(C)/1377/2024

PUSHPALOTA JIMEY DOLEY
W/O- LATE RANJIT DOLEY, R/O- VILL.- NO. 2 MECHAKI TONANI, P.S.
SILAPATHAR, DIST. DHEMAJI, ASSAM, PIN- 787059.

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, EXCISE DEPARTMENT, JANATA BHAWAN,
DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER OF EXCISE
ASSAM HOUSEFED COMPLEX
DISPUR GHY-781006.

3:THE DISTRICT COLLECTOR
DHEMAJI DISTRICT ASSAM PIN- 787057.

4:THE SUPERINTENDENT OF EXCISE
DHEMAJI ASSAM PIN- 787057.

5:ADDITIONAL DEPUTY COMMISSIONER
EXCISE DEPT. OF DHEMAJI DISTRICT
ASSAM

6:THE TENDER/ BID COMMITTEE
(IN RESPECT OF BID NO. DEX. 19/2023-2024)
REPRESENTED BY ITS CHAIRMAN
THE DISTRICT COLLECTOR
DHEMAJI DISTRICT
EXCISE BRANCH
DHEMAJI DISTRICT
ASSAM PIN- 787057.

7:KOKO KULI
S/O- LATE DINANATH KULI
R/O- VILL.- MUKTIYAR KULI GAON
P.O. CHIMEN MUKH
P.S. SILAPATHAR PIN- 787059
DIST. DHEMAJI ASSAM

8:NIRANJAN PEGU
S/O- LATE TIRTHESWAR PEGU
VILL.- KEBARANG GAON
P.O. MECHAKI TONGANI
P.S. SILAPATHAR PIN- 787110
DIST. DHEMAJI ASSAM

9:DILIP PEGU
S/O- LATE BILAPSON PEGU
R/O- VILL- 2 NO. MECHAKI TONGANI
P.O. MECHAKI TONGANI
PS. SILAPATHAR
DIST. DHEMAJI PRESIDENT OF NO. 2 MECHAKI TONGANI SARBOJONIN
SHIV MANDIR COMMITTEE.

10:PRADIP DOLEY
S/O- LATE KATIR DOLEY
R/O- VILL- 2 NO. MECHAKI TONGANI
P.O. MECHAKI TONGANI
PS. SILAPATHAR DIST. DHEMAJI
ASSAM SECRETARY OF NO. 2 MECHAKI TONGANI SARBOJONIN SHIV
MANDIR COMMITTEE

Advocate for the Petitioner : MR P R SARMA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 07.03.2024

Heard Mr. P. R. Sarmah, learned counsel for the petitioner, who submits that the petitioner submitted his bid, pursuant to the notice inviting E-Bid (NIB) dated 12.12.2023 for grant of India Made Foreign Liquor (IMFL) Retail 'Off'

Licence in the district of Dhemaji, pertaining to shop No. DMJ1, No. 2 Mechaki Tongani, Ujjni Sissitongani G.P. in Dhemaji. Out of four bidders that participated, three bidders including the petitioner's bid qualified the technical bid evaluation stage. However, at the time of opening the financial bid of the three remaining bidders, it was found that the respondent No. 7 had quoted the highest bid at Rs. 27,00,500/-, while the petitioner had quoted the lowest bid, which was slightly above Rs. 1 Lakh. Accordingly, the respondent No. 7 was granted the IMFL retail of licence for the said shop.

2. The petitioner is aggrieved with the allotment of the IMFL Retail 'Off' Licence to the respondent No. 7, on the ground that the shop to be established by the respondent No. 7 is only 60 meters away from a place of Worship, while in terms of Rule 289 of the Assam Excise Rules, 2016 (in short, 2016 Rules), the wine shop in a rural area should be at a distance of at least 150 meters from any place of public Worship or any educational institutions or hospitals. He submits that though the respondent No. 7 in his tender document has stated that the shop was to be set up would be 200 meters away from the place of Worship, the said statement made by the respondent No. 7 in his tender document was a false statement.

3. The petitioner's counsel further submits that similarly, the bid of the second highest bidder (respondent No. 8) should also be disqualified, as the shop to be established by him was also in violation of Rule 289 of 2016 Rules. He further submits that the President and Secretary of the No. 2 Mechaki Tongani Sarbojonin Shiv Mandir Committee (in short, "Committee") had submitted a representation dated 12.02.2024 to the Addl. Deputy Commissioner, Excise Department, Dhemaji, requesting that no licence should be given near the temple in which they had been worshipping and, as such, the licence should

not be given for No. 2 Mechaki Tongani, Ujjini Sissitongani G.P. (Shop No. DMJ1). The petitioner's counsel submits that the said letter dated 12.02.2024 issued by the said Committee has not been considered by the respondents till date.

4. Mr. K. P. Pathak, learned counsel for the Excise Department submits that the petitioner had made a complaint against the respondent Nos. 7 & 8, with regard to the location of the IMFL shop, if licence was allotted to them. Besides the above, the No. 2 Mechaki Tongani Sarbojonin Shiv Mandir Committee also submitted a complaint to the respondent authority and due to which a site enquiry was conducted and a report made. He submits that as per the report dated 13.02.2024 issued by the Superintendent of Excise, Dhemaji, the Shiv Mandir is not a public temple and the same is located in the personal residence and compound of Sri Dilip Pegu, who is the President of the No. 2 Mechaki Tongani Sarbojonin Shiv Mandir Committee.

5. Rule 289 of the 2016 Rules states that no IMFL retail licenced shop shall be established within a distance of 150 meters from any place of public Worship in the rural area. It also defines "public place of Worship" as a pucca structure with a covered area of more than 200 square feet, which is managed or owned by a registered public trust or a well-established and recognized management committee.

6. The site enquiry report dated 13.02.2024 made by the Superintendent of Excise, Dhemaji is to the effect that the Shiv Mandir, which the said committee has stated that the people are worshipping, is not a public temple. The said temple is made in the personal residence and compound of Sri Dilip Pegu, who is the President of the said Committee. The photograph of the said temple is also produced before the Court and the same clearly goes to show that it does not come within the definition of 'Public Place of Worship', as provided in Rule

289 of the 2016 Rules.

7. In view of the reasons stated above, this Court is of the view that there has been no violation of Rule 289 of 2016 Rules, in terms of the site enquiry report dated 13.02.2024 issued by the Superintendent of Excise, Dhemaji and the photographs annexed to the said report.

8. The site enquiry report dated 13.02.2024 issued by the Superintendent of Excise, Dhemaji and the photograph are made a part of the record and marked as Annexure 'X' collectively.

9. If the petitioner is of the view that the site enquiry report dated 13.02.2024 and the photograph annexed therein does not give a true/correct picture of the temple, the same being a disputed question of fact, the petitioner is at liberty to approach the Civil Court with his grievance.

10. The above being said, it would be profitable to refer to the Supreme Court case of ***Raunaq International Limited -vs- IVR Construction Limited***, reported in ***(1999) 1 SCC***, wherein it has been held that any judicial relief at the instance of a party who does not fulfill the requisite criteria seems to be misplaced.

11. Accordingly, this writ petition is dismissed.

JUDGE

Comparing Assistant