

GAHC010057872024



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

Case No.: WP(C)/1586/2024

DEEPAK SUBBA
S/O- LATE GYAN BAHADUR SUBBA
R/O- VILLAGE NO. 2 DOLABARI
KOLIABHOMURA
P.S. TEZPUR
DIST. SONITPUR
PIN0 784027.

VERSUS

THE STATE OF ASSAM AND 7 ORS
THROUGH THE SECRETARY TO THE GOVERNMENT OF ASSAM
EXCISE DEPARTMENT
DISPUR GHY-6.

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

3:THE DISTRICT COLLECTOR OF (EXCISE BRANCH)
SONITPUR
TEZPUR
DIST. SONITPUR
ASSAM

4:THE SUPERINTENDENT OF EXCISE
SONITPUR
TEZPUR
DIST. SONITPUR
ASSAM PIN-784001.

5:TENDER/BID COMMITTEE
SONITPUR
REPRESENTED BY THE ADDITIONAL DISTRICT COMMISSIONER (EXCISE)
SONITPUR
TEZPUR

PIN- 784001.
6:THE CIRCLE OFFICER
NADAUAR REVENUE CIRCLE
NADUAR
SOOTEA
DIST. SONITPUR
ASSAM
PIN- 784175.
7:THE INSPECTOR OF EXCISE
TEZPUR SADAR
P.O. TEZPUR
DIST. SONITPUR
PIN- 784001.
8:HRISHIKESH BORA
S/O- SRI APARAJIT BORA
R/O- VILL.- MADHAB GAON
P.O. JAMUGURIGHAT
DIST. SONITPUR
ASSAM
PIN- 784180.

Advocate for the Petitioner : Mr. B. D. Das, Sr. Advocate

Mr. S. C. Biswas, Advocate

Advocate for the Respondents : Mr. R. R. Gogoi, Advocate
Mr. N. Borah, Advocate
Mr. M. Chetia, Govt. Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 18.07.2024

Date of Judgment : 18.07.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. B. D. Das, the learned senior counsel assisted by Mr. S. C. Biswas, the learned counsel for the petitioner. Also heard Mr. R. R. Gogoi, the learned counsel appearing on behalf of the Excise Department; Mr. N. Borah, the learned counsel appearing on behalf of the private respondent as well as Mr. M. Chetia, the learned counsel appearing on behalf of the

Circle Officer, Naduar, Sootea.

2. The petitioner herein has assailed the rejection of its technical bid for Shop No. SNP 2 at Rangachakua Morisuti Mangalbaria under Pashim Murhadol Gaon Panchayat by the respondent Excise Department.

3. The brief facts of the instant case are that the Office of the District Collector, Sonitpur District had issued a tender for grant of Indian Made Foreign Liquor (IMFL) Retail Off Licence on 12.01.2024. Pursuant to the said tender notice, the petitioner along with the private respondent had submitted their bids.

4. Taking into account the scope of the instant writ petition, this Court finds it relevant to take note of some of the Clauses of the tender notice. Clause 6 of the tender notice stipulates as to what documents should comprise the bid. Clause 6.2.9 stipulates that the description of the site on which the proposed shop is to be setup has to be provided along with the bid and the site plan has to be enclosed. In terms with Clause 6.2.12, a copy of the document showing the bidders rights, title and interest on the proposed site or the land has to be enclosed. Clause 6.2.13 is very relevant for the purpose of the instant adjudication in as much as it stipulates that the copy of the plan of the building which the bidder intends to use or construct for his shop has to be enclosed. This Clause is relevant taking into account that a bidder need not have already constructed premises for submitting the bid. Merely, the copy of the plan of the building which the bidder intends to use or construct for his shop would be sufficient.

5. This Court finds it relevant to take note of that the petitioner herein

had entered into a deed of lease with one Shri Lal Bahadul Newar whereby the plot of land measuring 1 katha covered by Dag No.875 of Periodic Patta No.150, Class of land Lohitoli situated at village Christianbasit, Mouza-Murhadol, Circle-Naduar in the district of Sonitpur was taken for the construction and running of the business of wine shop. The petitioner also submitted a site plan for construction in terms with Clause 6.2.9 as well as Clause 6.2.13 showing where the proposed wine shop would be constructed. This Court also takes note of the record of rights which shows that the lessor's name was duly inserted in respect to Patta No.150 wherein various Dags have been mentioned including Dag No.875. On the basis of the submission of the documents, the petitioner was expecting that the petitioner would be considered for the grant of the IMFL (Off) Licence. However, vide the impugned minutes of the selection enclosed as Annexure-7 to the writ petition, the petitioner's bid was rejected primarily on two grounds. First, that it was found that in the site plan submitted by the applicant, it was marked as wine shop whereas the proposal was for IMFL Off Shop. Secondly, there were a complaints receipt from the Office of Pashim Murhadol Gaon Panchayat and the Office of Uttar Murhadol Gaon Panchayat forwarded by the BDO of Jamuguri vide letter dated 01.03.2024 against the petitioner. Be that as it may, it is relevant to take note of that in the same minutes, the private respondent's bid was held to be technically valid.

6. At this stage, it is very pertinent to take notice of the record of rights so enclosed to the writ petition. It is seen that the private respondent has offered its proposed site at Dag No.878 which is adjacent to the proposed site offered by the petitioner and is included in the same Patta of that of

the petitioner. This Court also finds it relevant to take note of that the Excise Officials have also based its impugned order on the basis of a report submitted by the Circle Officer wherein it has been mentioned that the petitioner has taken on lease from one Shri Lal Bahadur Newar though NOC of the co-pattadar has not been submitted and no construction of the building is seen. The petitioner being aggrieved by the impugned minutes of the selection enclosed as Annexure-7 to the writ petition had approached this Court by filing the instant writ petition on 16.03.2024 and this Court vide an order dated 20.03.2024, issued notice. Subsequent thereto, vide an order dated 20.06.2024, this Court directed maintenance of status quo as on date. This Court further takes note of that the official respondents as well as the private respondent have filed their affidavits thereby supporting the rejection of the technical bid of the petitioner. To the said affidavit filed by the State respondents, the petitioner has also filed the reply reiterating his stand taken in the writ petition.

7. Heard Mr. B. D. Das, the learned senior counsel for the petitioners and Mr. R. R. Gogoi, the counsel appearing on behalf of the Excise Department as well as Mr. N. Borah, the learned counsel appearing on behalf of the private respondent.

8. Mr. B. D. Das, the learned senior counsel for the petitioner submitted that the reason for which the petitioner's technical bid was rejected suffers from malice in law in as much as the respondent authorities have taken into consideration certain aspects which are totally not tenable in law. Referring to Clause 6.2.9 as well as Clause 6.2.13 and the enclosures to the writ petition, the learned senior counsel submitted that the petitioner has a right over the land in question to construct and in that regard to

submit a proposed plan wherein the petitioner would like to construct. There is no requirement of already constructed premises as would be seen from Clause 6.2.13. Referring to the complaint, the learned senior counsel for the petitioner submitted that though the Excise Authorities have a discretion to consider such an objection when given by an authority, but the tenor of the communications which are enclosed to the instant writ petition as well as also in the affidavit by the respondents would categorically show that the authorities concerned has done so in order to favour the private respondent. The learned senior counsel submitted that it is shocking as to how an authority would act in such a manner.

9. Mr. N. Borah, the learned counsel appearing on behalf of the private respondent submitted that in terms with Rule 295 of the Assam Excise Rules, 2016 (for short, 'the Rules of 2016') the Excise Authorities can very well take into account such objection so filed by an authority and if such objections are taken into account and made the basis, the same cannot be said that the respondent authorities have acted arbitrarily or illegally thereby calling for interference under Article 226 of the Constitution. The learned counsel appearing on behalf of the private respondent further submitted that the power of judicial review is only to see the decision making process and not to sit over as an appellate authority. The decision making process would only be put to challenge if it is shown to be arbitrary and illegal or in a circumstance when the authority takes such a decision which no prudent person would take.

10. Mr. R. R. Gogoi, the Standing Counsel for the Excise Department supported the impugned selection on the basis of the stand taken therein.

11. Upon hearing the learned counsels for the parties and taking into account the Clause 6.2.9 and Clause 6.2.13, it is apparent that what is required to be submitted is that the bidder has either propose a constructed premises or has a right to construct the premises. The reason as stated in the impugned minutes enclosed as Annexure-7 stipulates the first reason is that the site plan submitted by the applicant it is marked as wine shop whereas the proposal was for IMFL Off shop which on the face of it shows that the respondent authorities have taken into consideration certain aspects which were not at all tenable or was foreign to the tender conditions. In the opinion of this Court, the same is not only arbitrary and unreasonable, rejection of the technical bid on that ground, but it is completely irrational.

12. As regards the second ground on which it was rejected was complaint submitted by Pashim Murhadol Gaon Panchayat and Uttar Murhadol Gaon Panchayat. This Court has duly perused the complaint which has been enclosed to the affidavit-in-opposition filed by the respondent No.4. This Court in the previous segments of the instant judgment has duly taken note of that the land which the petitioner is proposing to setup his wine shop and the land where the private respondent is going to setup its wine shop are adjacent to each other and falls in the same Patta, i.e. Patta No.150. No doubt an objection given by an authority is require to be considered by the Excise Department in terms with Rule 295 of the Assam Excise Rules, 2016, but the said objection has to be taken into account if the authority or any person has any grievance on setting up of the IMFL Off or On Licences within that area. However, if an authority submitted an objection stating that it has objection against

the petitioner setting up of IMFL Licence Off Shop and has no objection if the private respondent sets up an IMFL Off Licence in the said area such an objection in the opinion of this Court cannot be the basis for the respondent authorities to reject the technical bid of the petitioner.

13. Under such circumstances, in view of the two reasons which have been assigned and this Court is of the opinion that the same are illegal, arbitrary, irrational and unreasonable, this Court duly sets aside the impugned minutes enclosed as Annexure-7 to the writ petition by which the petitioner's bid was technically rejected.

14. This Court therefore directs the respondent authorities to reconsider the bid of the petitioner along with the private respondents in accordance with law and in terms with the tender conditions. It is made clear that the impugned minutes have been set aside solely on the ground assigned. The Respondent Authorities would be at liberty to consider the technical bids of both the petitioner and the private respondents afresh on any other grounds not dealt with in the present Judgment.

15. Before parting with the records, the learned counsel appearing on behalf of the private respondent submitted that an amount of Rs.2,05,000/- has already been deposited by the private respondent. The private respondent would be at liberty to file an application before the Excise Authority for refund of the said amount, if so desired and if such application is filed, the Respondent Authorities shall duly consider the same.

JUDGE