

WP(C) No.235/2015

**BEFORE
THE HON'BLE MR. JUSTICE DINESH MAHESHWARI
CHIEF JUSTICE**

31.03.2016

This petition was filed in the month of September, 2015 by the petitioner, a license holder of the respondents, stating grievance against the order dated 11.09.2015 passed by the Deputy Commissioner (Excise) West Garo Hills District, Tura, whereby, he was directed to temporarily close down the shop-in-question.

This petition was taken up for consideration on 16.09.2015, and this Court passed an interim order in favour of the petitioner as under:-

"16.09.2015

Ms. T. Tangi B., learned counsel, appears for the petitioner.

Mr. ND Chullai, learned senior GA, assisted by Mr. S Sen Gupta, learned GA, represents the State respondents.

We have heard learned for parties and perused the pleadings of the writ petition.

Learned counsel for the petitioner, took us to paragraph 5 of the writ petition wherein, it is submitted that the petitioner shifted his wine shop to Hawakhana, Tura, West Garo Hills District, after obtaining necessary permissions from all the concerned official and non-official organizations and functionaries including local MLA and some Non-Government Organizations. It appears that when the petitioner started running the shop peacefully, the MLA of South Tura from outside the constituency, where the shop is situated, and some NGOs made complaints about the shop. It was also brought to the notice of the Deputy Commissioner (Excise), that the Hawakhana Baptist Church is to organize a CK Sobha next year. In the aforesaid background, the Officer though being the District Magistrate in exercise of powers as Deputy Commissioner (Excise) has passed the order under Section 52(1) of the Assam Excise Act, 1910 and directed temporarily closure of the shop. Being aggrieved by the impugned order, the petitioner has appeared before us. When there was no specific complaint; or a notice regarding the date of holding of CK Sobha by the Hawakhana Baptist Church, and also no ground to show a breach of peace, the Deputy Commissioner, by passing

the impugned order has acted in violation of the fundamental rights under Article 19 (1)(g) of the Constitution of India. Thus, the petitioner prays for quashment of the impugned order being Annexure – XV passed on 11.09.2015 by the Deputy Commissioner (Excise). On the other hand, learned senior GA, tried to justify the impugned letter issued by the Deputy Commissioner (Excise), but he is not able to point out as to what is the nature of complaint which can be said to amount to apprehension of likelihood of breach of peace causing an emergent situation for passing the impugned order. In that view of the matter, we stay the operation of the order dated 11.09.2015 passed by the Deputy Commissioner: for, it prima facie appears to suffer from non-application of mind and ignorance of the provisions of law. It also appears that the power under Section 52 of the Assam Excise Act, 1910 is vested only in the District Magistrate and Sub-Divisional Magistrate, whereas the order has been passed in exercise of powers of Deputy Commissioner (Excise). However, on request of learned senior GA, we grant him 4 (four) weeks' time to file reply. List the matter on 14.10.2015."

On the matter being taken up today, learned counsel for the parties are *ad idem* that the order aforesaid has remained in operation for all this time and now, the term of the present license shall be expiring today i.e. 31.03.2016. Obviously, the proposal for renewal of license, if made, shall be considered by the authorities concerned in accordance with law.

So far this petition is concerned, no further orders on the issue raised being requisite, it does not appear necessary to continue with the same for adjudication. This Court is of the view that interest of justice shall be served if the order aforesaid is made absolute, while otherwise leaving it open for the parties to take up the further processes in accordance with law. Ordered accordingly.

The petition stands disposed of.

CHIEF JUSTICE

LAM