

19.03.2021
Ct. 7
D/L 4
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WPA 3525 of 2020
(Via Video Conference)

Amit Dinda
-Vs-
The State of West Bengal & Ors.

Mr. Sourav Sen,
Mr. Dibashis Basu,
Mr. Arun Bandhyopadhyay,
... for the petitioner

Mr. Debabrata Saha Roy,
Mr. Neil Basu,
... for the respondent No. 7

Mr. Swapan Banerjee,
Mr. Amit Kr. Ghosh,
... for the State

Leave is granted to the petitioner to file a supplementary affidavit. Let the same be kept with the record. Mr. Sen, learned advocate for the petitioner undertakes to serve copies of the said supplementary affidavit upon the learned advocates appearing for the respondents by Monday (22.03.2021).

The writ petitioner has challenged an order dated December 10, 2019 passed by the Additional District Magistrate (D) & Collector of Excise, Hooghly whereby an order for temporary closure of the shop under Section 26(1) of the Bengal Excise Act, 1909 was passed.

The writ petitioner claims to have been granted a temporary licence for running a 'Restaurant-cum-Bar' on September 19, 2019 which was valid till March 18, 2020. During the subsistence of such licence, an order dated December 10, 2019 was passed by the concerned authority for temporary closure of the shop.

Mr. Sen, learned advocate for the petitioner submits that the order for temporary closure of such shop was passed without being satisfied with the conditions for temporary closure of shops as laid down under Section 26 of the Bengal Excise Act, 1909. In support of his contention, Mr. Sen places reliance upon an unreported judgement of a coordinate Bench of this Court in W.P. No. 491(W) of 2020 (Sri Mohit Lal Ghosh Vs. The State of West Bengal & Others).

Mr. Banerjee, learned advocate appears for the State respondents and submits that on the basis of mass petition received against the running of restaurant-cum-bar by the petitioner herein, such order for temporary closure of the shop was passed. He further submits that in the meantime, the temporary licence issued in favour of the writ petitioner has already expired and as such, the writ petitioner is not entitled to renewal of such temporary licence at this stage. Mr. Banerjee relies upon an unreported

judgement of the Division Bench of this Court in the case of *Panchayat Pradha, Singur No. 2 Gram Panchayat, Ratnapur Road, Singur, Hooghly Vs. Sri Mohit Lal Ghosh & Ors.* passed in MAT 545 of 2020, in support of his contention that the authorities under the Bengal Excise Act while considering an application for grant of regular licence is empowered to take into consideration the objections raised by persons at the locality.

Mr. Saha Roy, learned advocate appears for the respondent No. 7. He adopts the argument of Mr. Banerjee. He also submits that the excise authority was perfectly justified in issuing the order of temporary closure in view of the objections raised by a group of persons against the running of business by the petitioner herein.

I have heard the learned advocates for the parties and have perused the materials on record. The Additional District Magistrate (D) & Collector of Excise, Hooghly passed an order for temporary closure without indicating in the said order the reasons for passing the order for temporary closure. The said order also does not speak of any occurrence of breach of public peace for preservation of which such order was necessary. The said order is also silent as to whether any riot or unlawful assembly is apprehended or occurred in the

vicinity of the shop which necessitated the authority in passing such order for temporary closure. The said order only indicates that a mass petition was received against the running of business by the petitioner herein and in order to avoid untoward incident in the locality, such order of temporary closure was passed.

Public objection in the form of a mass petition endorsed and forwarded by an Hon'ble MLA cannot be the basis for passing an order for temporary closure. The order for temporary closure also does not fix any time period which is also contrary to the spirit of Section 26 of the Bengal Excise Act, 1909. A coordinate Bench of this Court in W. P. No. 491(W) of 2020 on an identical issue observed as follows:

“ 26. However, a pre-condition for the exercise of the power under Section 26 of the Act was that there had to be a threat to the public peace or a riot or unlawful assembly, either apprehended or occurred, prior to the closure of the shop.

28. First, such a mass petition of eleven people could not, following the thought-process of a man of normal prudence, be perceived as a “public objection”.

29. Second, a “public objection” could not be a ground under Section 26 of the Bengal Excise Act to close a shop.

30. Third, no time-limit was fixed for such closure in the impugned order, contrary to the spirit of Section 26 itself.”

The judgement of the coordinate Bench is binding upon this Court.

It does not appear from the order dated December 10, 2019 that the concerned authority applied its mind while passing such order. The said order was passed mechanically only on the ground that the mass petition was endorsed and forwarded by an Hon'ble MLA.

This Court is of the considered opinion that the conditions laid down for passing an order for temporary closure under Section 26 of the said Act has not been satisfied in the instant case for passing such order dated December 10, 2019.

The issue before the Hon'ble Division Bench in MAT 545 of 2020 was whether the competent authority can look into the public grievances or objections at the stage of considering an application for grant of regular licence. In the instant case, the period of temporary licence has already expired and the writ petitioner is yet to apply for a regular licence for running the restaurant-cum-bar.

Furthermore, the issue involved in the instant case is the legality of the order of temporary closure which was not in issue before the Hon'ble Division

Bench. As such, the decision rendered in MAT 545 of 2020 is not applicable to the facts of the instant case.

However, Mr. Banerjee, in his usual fairness, submitted that the writ petitioner herein is entitled to apply for grant of regular licence in terms of the provisions laid down in the West Bengal Excise (Selection of New Sites and Grant of Licence for Retail Sale of Liquor and Certain other Intoxicants) Rules, 2003.

For the reasons as aforesaid, the order dated December 10, 2019 passed by the Additional District Magistrate (D) & Collector of Excise, Hooghly, is hereby set aside and quashed. Since the licence issued in favour of the petitioner has already expired in the meantime, the petitioner will be at liberty to apply for grant of regular licence in terms of the West Bengal Excise (Selection of New Sites and Grant of Licence for Retail Sale of Liquor and Certain other Intoxicants) Rules, 2003. If such application is made, it will be open to the authorities to consider such application strictly in accordance with law including the consideration of public grievances or objections, if any, against the grant of such licence and to take a decision thereon within a period of six weeks from the date of making such application.

With the observations as aforesaid, WPA 3525 of 2020 is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(**Hiranmay Bhattacharyya, J.**)