

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Appellate Side)

MAT 545 of 2020

**Panchayat Pradhan, Singur No.2, Gram Panchayat,
Ratnapur Road, Singur, Hooghly**

Vs.

Sri Mohit Lal Ghosh & Ors.

**Before: The Hon'ble The Chief Justice Thottathil B. Radhakrishnan
&
The Hon'ble Justice Arijit Banerjee**

For the Appellant	: Mr. Subir Sanyal, Adv. Mr. Neil Basu, Adv.
For the Respondent No.1	: Mr. Jaydip Kar, Sr. Adv. Mr. Abhishek Halder, Adv. Mr. Arkaprava Sen, Adv. Ms. Sanghita Mukherjee, Adv.
For the Respondent No.5	: Mr. Debabrata Saha Roy, Adv. Mr. Subhankar Das, Adv.
For the State	: Mr. Abhratosh Majumdar, Ld. A.A.G. Mr. Swapan Banerjee, Adv. Mr. Suman Sengupta, Adv. Mr. Sanatan Panja, Adv.
Heard On	: 19.01.2021, 21.01.2021 & 25.02.2021
CAV On	: 25.02.2021
Judgment On	: 03.03.2021

Arijit Banerjee, J.:

1. This is an appeal against a judgment and order dated March 16, 2020, whereby WP 3462 (W) of 2020 was disposed of by a Learned Single Judge. By the impugned order the Learned Judge allowed the writ petition by setting aside the impugned communication dated February 14, 2020 issued by the Pradhan of the Singur – II, Gram Panchayat, rejecting the application of the writ petitioner for grant of trade license for running a 'Bar'. Being aggrieved, the said Panchayat Pradhan, who was the respondent no.3 in the writ petition, has preferred this appeal.

2. Appearing for the appellant, Learned Counsel submitted that the grounds for rejecting the writ petitioner's application for trade registration have been clearly mentioned in the impugned communication. They are:

- i) The proposed place for setting up the 'Bar – cum – Restaurant' is in close proximity to a school and locality where about a thousand families live.
- ii) A mass petition has been submitted to the Gram Panchayat requesting not to grant any permission for running the trade of 'Bar' which may degrade the social ambience.
- iii) A playground is located near the place where the 'Bar' is proposed to be set up. A large number of youths gather at the playground everyday for sports activity. Granting trade certificate for a 'Bar' in

the vicinity of the playground will not be judicious since the teenagers may be tempted to visit the 'Bar' and get addicted.

3. Learned Counsel referred to Sections 19 and 20 of the West Bengal Panchayat Act, 1973, which enumerate the obligatory duties of a Gram Panchayat and the transferred duties of a Gram Panchayat, respectively. He also referred to Section 21A (e) of the said Act which provides that in pursuance of the objectives laid down in Section 19(1), a Gram Panchayat shall have powers to take measures for improvement of quality of life, including undertaking schemes and adopting measures relating to organizing campaigns against social evils like *drinking*, consumption of narcotics, dowry, child marriage, gender discrimination and abuse of women and children.

4. Learned Counsel submitted that the Gram Panchayat is an elected representative of the local people and the views of the local people ventilated through the Gram Panchayat should be considered by the Competent Authority prior to issuance of Excise license in favour of the writ petitioner for running a 'Bar'. It was further submitted that just because the Excise Authorities may have issued a license in favour of the writ petitioner, that does not mean that the Pradhan has to necessarily issue certificate of enlistment/trade license. If that was the case, the Pradhan would be reduced to a mere rubber stamp. In this connection Learned Counsel relied on a Division Bench judgment of this Court in the case of ***Sahidul Mondal v. Jakir Hossuin Mondal & Ors.***, delivered on October 3, 2018 in FMA 570 of 2017.

5. Learned Counsel finally submitted that the grounds for rejection of the writ petitioner's application for trade license mentioned in the impugned communication are not arbitrary or unreasonable or contrary to any statutory provision. It was an administrative decision which the Learned Judge should not have interfered with. In this connection reliance was placed on the Supreme Court decision in the case of **V. Ramana v. A.P. SRTC: (2005) 6 SCC 338**.

6. Learned Counsel for the State, supporting the appellant, submitted that the writ petitioner has no vested right to carry on trade in liquor. The application of the writ petitioner for grant of regular Excise license is pending before the Competent Authority and such Authority is entitled to consider whether or not there is any public grievance or resistance to the grant of such license to the applicant. The State has an implied power of prohibiting trade in liquor. Just because once temporary license was issued following the procedure in Rule 9 of the West Bengal Excise (New Sites & Grant of License) Rules, 2003, that does not mean that at the time of processing or considering an application for regular license, the Competent Authority cannot consider the issue of public opposition or other relevant factors. In this connection reliance was placed on the decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Devens Modern Breweries Ltd.: (2004) 11 SCC 26**.

7. Appearing for the writ petitioner/respondent, Mr. Jaydip Kar, Learned Senior Advocate submitted that the applicant for trade license has a right to get such license under the relevant provisions of the West Bengal Panchayat

Act and the Rules framed thereunder unless the concerned trade is prohibited by law. In this connection, Learned Counsel referred to Section 21(1)(c) of the Act of 1973 which provides that subject to such conditions as may be prescribed, a Gram Panchayat shall within its jurisdiction make registration of running trade unless such trade or registration of such trade is prohibited under any other law for the time being in force. Reference was also made to Section 47(1)(vii) of the Act which says that subject to such maximum rates as the State Government may prescribe, a Gram Panchayat may levy fees on registration for running trade of any nature, and in any form whatsoever, having statutory clearance from the Competent Authority, wherever applicable, as specified by the State Government, within the jurisdiction of the Gram Panchayat unless registration of such trade is prohibited under any law for the time being in force. Mr. Kar then submitted that the purported mass petition on the basis of which the concerned Panchayat had refused to issue trade license, has been held to be not a mass petition by this Court in WP 491 (W) of 2020. That was a writ petition in which the present writ petitioner challenged the order dated December 10, 2019 passed by the Additional District Magistrate (D) and Collector of Excise, Hooghly, directing temporary closure of the writ petitioner's 'Restaurant – cum – Bar' under Section 26(1) of the Bengal Excise Act, 1909. Such closure order was passed on the basis of a mass petition objecting to the running of the concerned 'Bar – cum – Restaurant'. This was challenged in that writ petition. The closure order was set aside. In the process, the Learned Single Judge held that "a mass petition of eleven people could not, following the 'thought process' of men of normal prudence, be perceived as a

public objection.” Mr. Kar submitted that the judgment and order dated January 28, 2020 by which the earlier writ petition was allowed, has attained finality since such judgment was not assailed in any higher forum. The Panchayat, on the basis of the same purported mass petition, cannot withhold grant of trade license.

8. Mr. Kar further submitted that the private respondent in the writ petition is a local MLA who has differences in political ideology with the writ petitioner. It was at the instance and instigation of the private respondent that the so-called mass petition was submitted to the Panchayat. This is motivated and such purported objection must be ignored.

9. Learned Counsel then referred to Rule 9 of the West Bengal Excise (New Sites & Grant of License) Rules, 2003 which lays down the procedure for selection of new sites for grant of licenses. The said Rules contemplate that the Collector after obtaining an application along with the requisite information and documents shall cause an enquiry by a responsible officer, to ascertain the demand in the local area; whether the area is free from objections as contemplated in Rule 8 of the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003; and whether the applicant is eligible to hold the license according to Rules 11 and 12 of the aforesaid Rules. Thereafter, the Collector shall consider, public grievances, if any, that may be submitted to him in that regard. In case of receipt of any public grievance, he shall cause enquiry into the same. If on such enquiry, the representations are found to be genuine, he shall not consider the prayer for grant of Excise license at the

proposed site. To form an opinion, he may conduct any other enquiries as he feels necessary. After being satisfied that the proposed site is free from any restriction/objection and the proposed licensee is eligible to hold an Excise license, the Collector shall grant a license temporarily for a period not exceeding six months. Grant of a regular license may be considered after the holder of the temporary license has run the business for a period not exceeding six months; after the Collector is satisfied that the revealed demand justifies the location for the grant of a regular license and the Collector is satisfied that the application for regular license merits recommendation. The Collector may, in such cases, recommend to the Excise Commissioner the proposal for grant of a regular license, who may send it to the Government with his opinion, if any. If the Government approves the grant of the regular license, the same shall be conveyed by the Excise Commissioner to the Collector. After receiving the approval of the Government, the Collector shall grant the regular license after realisation of fees applicable to new license of the same category in the same local area.

10. Mr. Kar submitted that the enquiry as regards public grievance/objection is contemplated at a stage prior to issuance of temporary license. Once a temporary license is issued, for the grant of a regular license after the validity of the temporary license expires, no enquiry into any public grievance/objection is envisaged under the Rules. The writ petitioner's application for grant of regular license is pending. Public objection is not a relevant consideration at this stage.

11. Mr. Kar finally submitted that the Learned Single Judge rightly allowed the writ petition by quashing the impugned communication and was justified in directing the Gram Panchayat, through the Pradhan, to issue trade license/certificate of enlistment to enable the writ petitioner to run the 'Bar – cum – Restaurant' at the proposed place. He submitted that the judgment under appeal does not warrant interference.

Court's View:

12. We have given our anxious consideration to the arguments advanced on behalf of the respective parties.

13. Two questions arise. Firstly, whether there is any error of such nature in the judgment under appeal which calls for interference by this Court? Secondly, whether or not the Competent Authority should consider public objection ventilated directly or through the local Panchayat, prior to deciding an application for grant of regular Excise license?

14. We have gone through the judgment assailed before us in details. For the reasons recorded, the Learned Judge came to the conclusion that the grounds mentioned in the impugned communication for rejection of the writ petitioner's application for grant of trade license, are not sustainable in law. We find the reasons supporting the judgment to be logical. We do not find any illegality, irregularity or procedural impropriety in the impugned judgment. As such, *per se* we are not inclined to interfere with the impugned judgment.

15. However, the writ petitioner will not be able to carry on with his business of operating the 'Bar – cum – Restaurant' even if he is granted trade license by the Gram Panchayat, unless a regular Excise license is issued in his favour. Admittedly, the temporary Excise license that the writ petitioner was holding, has lapsed by efflux of time. His application for grant of regular license is pending before the Competent Authority. The only question is whether the local Gram Panchayat should be granted an audience by the Competent Authority prior to taking a decision on the writ petitioner's application for grant of regular license?

16. Learned Counsel for the appellant Gram Panchayat submitted that such an opportunity should be given by the Competent Authority to the Gram Panchayat. Learned Counsel for the writ petitioner submitted that the law does not contemplate granting of any such hearing by the Competent Authority to the Gram Panchayat.

17. The Seventy-Third Amendment of the Constitution has given Panchayati Raj institutions a constitutional status as a result of which it has become permanent in the Indian political system as a local self-government. The Seventy-Third Amendment is undoubtedly a very powerful tool of social engineering. The main purpose behind such amendment appears to be to ensure democratic decentralization following the principle of participatory democracy. The Amendment was introduced for strengthening the preambular vision of democratic republicanism which is inherent in India's constitutional framework. The Panchayati Raj

institutions structured under the Amendment are meant to initiate changes so that rural feudal oligarchies lose their ascendancy in village affairs.

18. Pachayats are local self-government institutions. A Gram Panchayat is an elected body. Part IX of the Constitution which contains Articles 243 and 243A to 243ZG, was introduced in the Constitution by the Constitution (73rd Amendment) Act, 1992, with effect from April 24, 1993. Following the mandates in Part IX of the Constitution, the Members of the Panchayat are elected by the citizens of this Country residing within the territorial limits of the concerned Panchayat. To that extent, a Panchayat is the face and mouth-piece of the local people. If the local people have any grievance or objection regarding any proposed executive or administrative action of the Government, they are entitled to present such objection to the local Panchayat which in turn, has the standing and indeed the duty, to take up the matter with the Competent Authority in the Government. Viewed in such light, we are of the opinion that the Excise Commissioner or other Competent Officer of the Government before whom the writ petitioner's application for grant of regular Excise license is pending, ought to grant an opportunity of hearing to the local Gram Panchayat before taking a decision on the application. The writ petitioner apprehends that there is an *unholy entente* between the private respondent and the members of the local Panchayat and they, in tandem are acting against interest of the writ petitioner. However, it is not the case of the writ petitioner that the Excise Commissioner or any other Competent Authority before whom the application for grant of regular license may be pending, is biased against

him or is likely to act in a manner prejudicial to his interest with any oblique motive. Hence, nobody will be prejudiced, if such Authority grants an opportunity of hearing to the local Gram Panchayat before finally deciding whether or not to grant a regular Excise license to the writ petitioner. Rightly or wrongly, the local Gram Panchayat is seeking to ventilate the alleged grievance of some of the local residents who object to the grant of regular liquor license to the writ petitioner. Such objection should at least be considered by the Competent Authority. Obviously, it will be open to the Competent Authority to reject such objection if the same is found to be frivolous, meritless or motivated. This course of action, in our considered view, also be in consonance with the larger spectrum of the principles of natural justice.

19. We are not in agreement with the submission of Learned Counsel for the writ petitioner that the Competent Authority cannot look into public grievances or objections at the stage of considering an application for grant of regular Excise license. This in our reading is not the intent of the scheme of the relevant statute and the rules framed thereunder. Situations may arise even after grant of a temporary Excise license to an applicant, which may justify public objections to the grant of a regular license. Such objections surely require consideration.

20. Accordingly, we direct that the Competent Authority who is in seisin of the writ petitioner's application for grant of regular Excise license, shall grant an opportunity of hearing to the Gram Panchayat which is the appellant herein, prior to taking a final call on the writ petitioner's

application for grant of regular license. Reasonable notice of such hearing should be given by the Competent Authority to the Pradhan of the concerned Gram Panchayat. We request the Competent Authority to dispose of the writ petitioner's application for grant of regular license as expeditiously as possible. The Competent Authority shall decide the writ petitioner's application in accordance with law including the relevant Rules/Notifications, un-influenced by anything stated in this judgment.

21. Insofar as the impugned judgment is concerned, we have already expressed our view that the findings therein are well supported by the reasons recorded. The judgment does not call for interference in principle. However, since it will be futile for the writ petitioner to obtain a trade license from the Gram Panchayat for running the 'Bar – cum – Restaurant' unless a regular Excise license is issued in his favour, in our view, it would be appropriate if the direction of the Learned Single Judge is given effect to only if a regular Excise license is issued in favour of the writ petitioner. In case such Excise license is granted to the writ petitioner, within seven (7) days of intimation of the same to the appellant Gram Panchayat, the trade license would be issued by the Gram Panchayat in favour of the writ petitioner in terms of the directions contained in the judgment and order under appeal.

22. With the aforesaid directions the appeal and the connected applications are disposed of. There will be no order as to costs.

Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I agree.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)

Later:

After the Judgment is delivered, prayer is made on behalf of the writ petitioner/respondent for stay of operation of the Judgment.

The prayer is considered and refused.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)