IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 13597 of 2009

Smt. Sikha Saha

Versus

The State of West Bengal & Ors.

Mr. Sandip Kumar Bhattacharyya
Mrs. Mamata Khatun
Mr. Soumyadeep Mukherjee
Ms. Sayani Ahmed
Mr. Satyam Mukherjee

.....For the Petitioner

Ms. Chaitali Bhattacharyya
Mr. Debasish Ghosh

.....For the State

Mr. Anant Shaw
Mr. Ravi Kumar Dubey

......For the Respondent No. 5

Heard on : 11.03.2022

Judgment on : 17.05.2022

Krishna Rao, J.: The petitioner has challenged the order passed by the Principal Secretary, Excise Department, Government of West Bengal dt.

20.05.2009 wherein the appeal preferred by the private respondent no. 5 against the order passed by the Collector of Excise, Murshidabad dt. 09.09.2008 was set aside and confirmed the order passed by the District Magistrate dt. 13.07.2007.

In the year 1931, the business of Retail Selling of Country Sprit, Coloured and Flavoured Country Sprit and beer in the town of Ragunathgunj was granted to Sri Rajendra Nath Saha, since deceased, who was the Father-in-Law of the petitioner.

In the year 1972, the respondent no. 6, Nimai Chandra Saha, the husband of the petitioner herein who is elder son of the original licensee i.e. Rajendra Nath Saha was inducted in the said business. The respondent no. 5 namely Amar Nath Saha was also inducted in the said business in the year 1991. Since 20.06.1991 till 1994 the licenses were jointly held by Rajendra Nath Saha, Nimai Chandra Saha and Amar Nath Saha.

On 21.07.1994, the original licensee namely Rajendra Nath Saha expired and after the death of Rajendra Nath Saha, the licenses were jointly granted in favour of the respondent no. 5 and the respondent no. 6 with the approval of the concern authorities.

The respondent no. 6 being an Assistant Teacher in the High School at Raghunathgunj Boy's High School and was also the Secretary/member of Jangipur Urban Co-operative Credit Society Limited and due to his personal reasons, the respondent no. 6 had made an application on 27.03.2002 to the District Magistrate and Collector, Murshidabad seeking approval/

permission for voluntary retirement from the licenses and also requested for transfer of the licenses of the above mentioned business in the name of respondent no. 5.

On receipt of the request made by the respondent no. 6, the District Magistrate and Collector, Murshidabad after giving an opportunity of hearing and considering all the relevant documents as submitted by the respondent no. 6 granted approval for voluntary retirement of the respondent no. 6 from the licenses and transferred the licenses in the name of the respondent no. 5 which was duly approved by the competent authority.

After the approval granted by the State Government and Excise Commissioner, West Bengal, the licenses were granted in the name of the respondent no. 5 as a sole licensee and the respondent no. 5 had started running the business since 24.02.2003.

On 18.10.2006, the petitioner had made an application to the Collector, Murshidabad requesting for incorporation of her name as joint licensee in the license issued in the name of the respondent no. 5. In the representation submitted by the petitioner, the petitioner has submitted that the husband of the petitioner retired from the license with a condition that petitioner would be inducted as a joint licensee in place of her husband as per partnership deed executed on 27.03.2002 between the respondent no. 5 and the petitioner in presence of witnesses and also submitted that petitioner is also running the business jointly with the respondent no. 5 after retirement of her husband.

After receipt of the representation made by the petitioner an enquiry was conducted by the District Magistrate and Collector, Murshidabad and after enquiry, the District Magistrate and Collector, Murshidabad had rejected the claim made by the petitioner on 30.10.2007.

Being aggrieved and dissatisfied with the order passed by the District Magistrate and Collector dt. 30.10.2007, the petitioner has preferred an appeal before the Excise Commissioner, West Bengal and on 09.09.2008, the Excise Commissioner, West Bengal had disposed of the appeal preferred by the petitioner by setting aside the order passed by the District Magistrate and Collector, Murshidabad dt. 30.10.2007 and directed to settle the license jointly in the name of respondent no. 5 as well as in the name of the petitioner.

Being aggrieved and dissatisfied with the order of the Excise Commissioner, the respondent no. 5 had preferred an appeal before the Principal Secretary, Excise Department. The appeal filed by the respondent no. 5 was disposed of by the Principal Secretary on 20.05.2009 by setting aside the order passed by the Excise Commissioner and confirmed the order passed by the District Magistrate and Collector, Murshidabad.

Mr. Sandip Kumar Bhattacharyya, Ld. Counsel representing the petitioner submits that the husband of the petitioner, the respondent no. 6 realized that it would not proper for him to continue as a partner in the said business and accordingly he expressed his desire to induct his wife, the petitioner herein, as partner in the said business in his place and got himself retired from the said business. The said issue was discussed with the respondent no. 5 and it was agreed between the respondent no. 5 and 6 that the petitioner would be one of the partner after the retirement of the respondent no. 6 from the said business.

The Counsel for the petitioner further submits that on 27.03.2002, a deed of partnership was executed between the respondent no. 5 and the petitioner and in the said deed of partnership it was agreed to take the petitioner as a partner of the said business to share the profit and loss in the said business equally.

The Counsel for the petitioner further submits that on the same date, the respondent no. 6 had submitted an application to the District Magistrate and Collector, Murshidabad praying for retirement from the said business and also issued No-Objection for transfer of the entire business in the name of the respondent no. 5.

The Counsel for the petitioner submits that on 04.02.2003, the Excise Commissioner has accorded approval of the proposal of the respondent no. 6 after the lapse of one year and in the mean time there was no license was in existence in the name of respondent no. 5 as the license was expired on 31.03.2002.

The Counsel for the petitioner further submits that the respondent no. 5 had took away the original deed of partnership executed between the petitioner and the respondent no. 5 and also the deed of retirement entered between the respondent no. 6 and the respondent no. 5 on 27.03.2002 on the pretext that the respondent no. 5 will produced the same before the

Excise Authority for incorporating the name of the petitioner in the licenses along with the respondent no. 5.

The Counsel for the petitioner submits that the respondent no. 5 had also obtained signature of the petitioner and her two daughters on blank papers for incorporation of the name of the petitioner in the license issued by the Excise Department. The Counsel for the petitioner further submits that the signature obtained by the respondent no. 5 in the blank paper was later on converted into No Objection Certificate of the petitioner and their daughter.

The Counsel for the petitioner further submits that at the time of induction in the partnership business, the petitioner has contributed an amount of Rs. 4,75,000/- towards the share of her capital by way of two account pay cheque in the name of the respondent no. 5.

The Counsel for the petitioner further submits that in terms of the partnership deed dt. 27.03.2002, the respondent no. 5 used to withdraw Rs. 10,000/- per month till July, 2006 being his portion of profit from the said business.

The Counsel for the petitioner further submits that in the month of August, 2006, the respondent no. 5 failed to pay the monthly share to the petitioner and thereafter the petitioner came to know that the respondent no. 5 had played fraud upon the petitioner and her daughters by transferring the license of the business in the name of the respondent no. 5 alone and, accordingly the petitioner has made a complaint to the District

Magistrate in 18.10.2006. On 30.10.2007, the District Magistrate and Collector has rejected the prayer made by the petitioner on the ground that the allegation made against the respondent no. 5 in her complaint was a deception and has no jurisdiction to adjudicate such allegation.

Being aggrieved by the Order dt. 30.10.2007 passed by the District Magistrate and Collector, Murshidabad, the petitioner has preferred an appeal before the Excise Commissioner and accordingly after detailed enquiry conducted by the Excise Commissioner; the Excise Commissioner has passed an order by setting aside the order passed by the District Magistrate and directed to include the name of the petitioner in the license.

The Counsel for the petitioner further submits that the respondent no. 5 had preferred an appeal before the Principal Secretary, Excise Department and on 09.09.2008 the Principal Secretary has set aside the order of the Excise Commissioner and upheld the order passed by the District Magistrate.

The Counsel for the petitioner submits that the Principal Secretary while passing the order has held that the partnership deed dt. 27.03.2002 as “Void” though the respondent no. 5 has challenged the said deed before the Civil Judge, Junior Division, Jangipur, Murshidabad and the said suit is pending before the Hon’ble Court.

The Counsel for the petitioner further submits that the Principal Secretary failed to consider the first clause of the partnership deed dt. 27.03.2002 wherein it is mentioned that Nimai Chandra Saha retired from the business and it was agreed between the partners that Sikha Saha, wife of retiring partner of Nimai Chandra Saha will be taken as partner in the said business in place of Nimai Chandra Saha under the self same terms and conditions incorporated in the deed of partnership and a fresh deed of partnership shall be executed by the parties.

The Ld. Counsel for the petitioner further submits that when the statutory provisions ordinance the removal of jurisdiction from the domain of the Excise Department in respect of the matters connected with a license for consideration by the Judicial fora under Section 83 (b) of the West Bengal Act, 1909 then the Excise Department cannot avoid taking action thereon.

The Counsel for the petitioner further submits that as per Section 83 (b) the officers of the Excise Department can file a complaint before the appropriate Court and not by an ordinary citizen.

The Counsel for the petitioner further submits that the petitioners have raised the issue before the Principal Secretary for initiating appropriate action against the respondent no. 5 before the court of law but the authorities failed to take appropriate steps against the respondent no. 5.

The Counsel for the petitioner further submits that the Principal Secretary failed to appreciate that the respondent no. 5 has committed fraud upon the petitioner and got the license in his favour by playing fraud before the authorities' inspite of knowing the fact the authorities failed to take any action against the respondent no. 5 but has decided that the license granted in favour of the respondent no. 5 is legal.

The Counsel for the petitioner prays for setting aside the order passed by the Principal Secretary, Excise Department and to allow the petitioner to be inducted in the said license.

The Counsel for the petitioner further submits that an order is required to be passed directing the respondent authorities to take an appropriate step against the respondent no. 5 for committing fraud by the respondent no. 5.

Per contra, Learned Counsel for the respondent no. 5 submits that the respondent no. 6 was working as Assistant Teacher in the High School of Ragunathgunj and due to his personal reason, the respondent no. 6 made an application on 27.03.2002 to the District Magistrate and Collector, Murshidabad seeking approval for voluntary retirement from the license requested for transfer the licenses of the said business in the name of the respondent no. 5. As per the request made by the respondent no. 6, the District Magistrate after giving an opportunity of hearing and considering all the relevant documents as submitted by the respondent no. 6 granted approval of voluntary retirement of the respondent no. 6 from the licenses and transfer the licenses in the name of the respondent no. 5 which was duly approved by the competent authority.

The Ld. Counsel for the respondent no. 5 further submits that the Excise Commissioner, West Bengal had granted approval and accordingly licenses were granted in the name of the respondent no. 5 as sole licensee and since then the respondent no. 5 is running the business. It is further submitted that as the respondent no. 6 has retired from the business and accordingly, the respondent no. 5 had paid Rs. 4,74,612.52/- to the respondent no. 6 being the investment/share of the respondent no. 6 by way of two cheques and the respondent no. 6 had duly accepted the same.

The Ld. Counsel for the respondent no. 6 further submits that the petitioner had the knowledge that with the consent of the respondent no. 6 had voluntarily submitted his resignation from the licenses and accordingly, the authorities have issued the licenses in the name of the respondent no. 5 but only to mislead the authorities and to harass the respondent no. 5, the petitioner had made a false complaint after the lapse of 4 ½ years for incorporation of her name in the licenses along with the respondent no. 5.

The Ld. Counsel for the respondent no. 6 further submits that the petitioner is claiming her share in the said business/licenses in terms of the Partnership Deed dt. 27.03.2002 but the said Partnership Deed is a forged document and accordingly the respondent no. 6 has filed a suit challenging the said Partnership Deed which is pending before the Civil Court for adjudication.

The Ld. Counsel for the respondent no. 5 further submits that the petitioner in connivance and collusion with the respondent no. 6 who is the husband of the petitioner with an ulterior motive to harass the respondent no. 5 has filed the complaint before the District Magistrate.

The Ld. Counsel for the respondent no. 5 further submits that as per Rule 4 of consolidate Rules made under Section 85, the Principal Secretary, Excise Department, Government of West Bengal is having power to decide the appeal. The Ld. Counsel for the respondent no. 5 further submits that Section 54A of the Bengal Excise Act, 1909 provides penalty for contravention of Section 85 and 86 and condition of license but in the instant case the petitioner failed to prove that the respondent no. 5 has violated any condition under the licenses to attract Section 54A of the Bengal Excise Act.

The Ld. Counsel for the respondent no. 5 further submits that the Excise Commissioner after detail enquiry, investigation, applications, records and recommendation of the Excise Collector had transferred the license in the name of the respondent no. 5 and as such the allegation made by the petitioner is totally false and baseless and accordingly, the respondent no. 2 has rightly set aside the order of Excise Commissioner and upheld the order passed by the District Magistrate.

Ld. Counsel for the respondent no. 5 relied upon the judgment reported in 2005 (3) CHN (Goutam Hazra & Anr. –Vs- Pinaki Hazra & Ors.).

Heard the Ld. Counsel for the parties considered the documents available on record.

Admittedly the license was jointly recorded in the name of respondent no. 5 and respondent no. 6, the respondent no. 6 realized that it was not conducive for him to continue as partner in the said business and accordingly has resigned from the said business and license was granted in the name of the respondent no. 5 on 24.02.2003. After the retirement of the respondent no. 6 from the said license, the respondent no. 5 had paid an amount of Rs. 4,74,612.52 by way of two cheques to the respondent no. 6 on 18.03.2004 and on 26.03.2004. Since May, 2003 till October, 2006 there was no grievance against the respondent no. 5 and all of a sudden on 18.10.2006 the petitioner being the wife of the respondent no. 6 had made complaint that due to pre occupation of her husband i.e. the respondent no. 6, intend to resign from the said business and to induct the petitioner as partner in the said business in the share of the respondent no. 6 along with the respondent no. 5 and accordingly, a Partnership Deed was executed between the petitioner and the respondent no. 5 on 27.03.2002. It is the case of the petitioner that the respondent no. 5 had cleverly got the license in his name without inducting the petitioner in the said business by taking the benefit of a signature of the petitioner and her daughters in the blank paper by using the same as No-Objection.

The complaint made by the petitioner was duly considered by the District Magistrate and after proper enquiry and after giving an opportunity of hearing of all the parties had passed an order by disposing of their complaint filed by the petitioner by passing the following order:-

"Having considered all the points I find that,

i) *Ex-joint license, Sri. Nemai Chandra Saha applied for retirement from his business without any condition.*

ii) *Sri. Nemai Chandra Saha never mentioned the existence of the so called "Deed of agreement" and his conditional retirement.*

iii) *The allegation against the existing license is nothing but a case of deception and this forum has no jurisdiction to adjudicate such allegation.*

iv) *The existing licensee, Sri. Amar Nath Saha allowed his sole licenseeship as per formal process satisfying the existing provisions of the relevant Act & Rules.*

v) *No person can run his business without valid license and as such voluntary retirement of Sri. Nemai Chandra Saha can not be constructed otherwise.*

Hence I hereby reject the prayer of Smt. Sikha Saha and all concerned be informed accordingly."

The petitioner being aggrieved with the order of the District Magistrate had preferred an appeal before the Excise Commissioner, West Bengal and the Excise Commissioner had disposed of the said appeal on 09.09.2008 by passing the following order:-

"I, therefore, find that the prayer of the present appellant has a strong ground. I am also satisfied that the present appellant has been deprived by her brother-in-law as he is denying her right into the business I am, therefore, of the view that the right of the present appellant should be restored without any delay. Accordingly, I set aside the order passed by the District Magistrate & Collector, Murshidabad on 30.10.2007 in this connection. It is, also ordered that the license shall be settled jointly with the present holder of the license viz., Sri Amar Natha Saha alongwith the present Appellant Smt. Sikha Saha, immediately.

The present appeal is accordingly disposed of."

The respondent no. 6 being aggrieved with the order of the Excise Commissioner had preferred an appeal before the Principal Secretary and the Principal Secretary has disposed of the appeal by passing the following order:-

"20. After considering various submissions made on behalf of the appellant and the respondents and also after going through the order of the District Magistrate and Collector of Excise, Murshidabad, my

observations on various findings and submissions, as considered relevant, are as below:

i) *The Collector of Excise, Murshidabad has categorically stated that, as per the provision of Rule 207 of the Bengal Excise Rules, no transfer of license shall be made except with the previous permission of the Collector and the approval of the Excise Commissioner.*
The views of the District Magistrate and Collector of Excise, Murshidabad are confirmed by me, particularly in the context of Rule 207 read with Rule 208 of the Bengal Excise Rules, keeping in view the decision of the Hon'ble Calcutta High Court in the matter of Goutam Hazra & Anr. vs. Pinaki Hazra & Ors. (F.A. No. 207 of 2002) reported in 2005 (3) CHN 364, where the specific provisions except Bengal Excise Rules regarding deemed transfer were highlights, The said partnership Deed of March 27, 2002, in my opinion is void.

ii) *The Collector had opined Shri Amar Nath Saha fit and qualified to hold such a license and has also recorded that Shri Nemai Chandra Saha had appeared before the District Magistrate and Collector in a personal hearing. He had also recorded that the prayer of Shri Nemai Chandra Saha mentions no conditions of the presence of any Deed of Agreement.*
In view of the factual findings of the District Magistrate and Collector of Excise, Murshidabad and no denial of Shri Nemai Chandra Saha, the views of the District Magistrate and Collector of Excise, Murshidabad are confirmed.

iii) *The Commissioner has stated that, "It is a common knowledge that a person of ordinary prudence who is benefiting by running a business will not retire from the same without protecting his interest in the said business. The argument that appellant's husband retired from the business on his own is therefore not acceptable."*
The observations/conclusions of the Ld. Commissioner are not based on any facts, but based on presumption as to what a person of ordinary prudence would do. In the absence of findings based on any facts and without countering the findings of the District Magistrate and Collector of Excise, Murshidabad, I do not agree with the views of the Ld. Commissioner.

iv) *The Ld. Commissioner has also recorded his observations on the alleged deed that, "Besides, the anomalies in the deed and its authenticity as stated by the private respondent have already been challenged at the proper forum and actions according to law shall take effect only after its disposal."*

The observations of the Ld. Commissioner regarding pendency of the matter before proper forum and actions according to law do not have any relevance in so far as the decision of the Ld. Commissioner is concerned.

v) The Commissioner, in his order, has finally recorded that, "Accordingly, I set aside the order passed by the District Magistrate and Collector, Murshidabad on 30.10.2007 in this connection. It is also ordered that the license shall be settled jointly with the present holder of the license viz., Shri Amar Nath Saha along with the present appellant Smt. Sikha Saha, immediately."

The decision of the Ld. Commissioner, in my opinion, firstly accepts the present holder of the license, Shri Amar Nath Aaha, as sole-licensee, and then adds Smt. Sikha Saha as joint licensee. In my opinion, this cannot hold since with acceptance of retirement of Shri Nemaio Chandra Saha leaves Shri Amar Nath Saha as the sole-licensee, the retirement of Shri Nemai Chandra Saha stands validated. There cannot be any concept of conditional retirement, particularly based on presumption. It cannot merit any consideration in the absence of concerned facts.

vi) In so far as monetary transactions are concerned, these are civil disputes in nature, which cannot be adjudicated in this forum.

vii) In so far as veracity of any of the partnership deeds, i.e. that of the appellant and the respondents is concerned, it is not necessary to adjudicate on the same at this stage. In my opinion, it is also not possible without detailed investigation.

21. I, therefore, confirm the order dated October 30, 2007 of the District Magistrate and Collector of Excise, murshidabad and set aside the order dated September 9, 2008 of the Ld. Commissioner of Excise. Hence the appeal of Shri Amar Nath Saha succeeds."

Neither the petitioner nor the respondent no. 6 have denied with regard to the application filed by the respondent no. 6 for transfer of the license in the name of the respondent no. 5. Only the contention raised by the petitioner is that the respondent no. 5 had misused the signature of the petitioner and her daughters by using the same as No-Objection for transfer of the license in the name of the respondent no. 5. The license was recorded in the joint name of respondent no. 5 and respondent no. 6, the respondent no. 6 had made an application for transfer of licenses in the name of the respondent no. 5. On receipt of the applications submitted by the respondent no. 6, an enquiry was conducted. Transfer of license is provided under Rule 207 of the Bengal Excise Rule consolidated rules made under Section 85 which reads as follows:-

> *"207. No transfer or sub-lease (whether entire or partial) of a license shall be made except with the previous permission of the collector and the approval of the Commissioner. The Collector shall not allow such transfer, or sub-lease, unless good and sufficient reason be shown to his satisfaction, and unless the transferee or sub-lease is, in his opinion, fit and qualified to hold such license."*

After submission of the application by the respondent no. 6, respondent no. 6 had appeared before the District Magistrate in a personal hearing and accordingly, the competent authority had passed an order for transfer of license in the name of the respondent no. 5. Now after about 4 years, the petitioner has filed the complaint stating that there was a Partnership Deed in which the share of the respondent no. 6 has been given to the petitioner but the name of the petitioner has not been included. The Partnership Deed was not proved before the authorities and the Partnership Deed on the basis of which the petitioner is claiming her share over the license is under challenge before the Civil Court and as such this Court is of the view that the Principal Secretary as well as the District Magistrate have rightly rejected the complaint made by the petitioner.

The Counsel for the petitioner relied upon Section 82, 83(b), Section 54(a) and 42(1)(d) of the Bengal Excise Act, 1909 and submitted that the authorities failed to report the matter to the Magistrate for taking cognizance for the offence committed by the respondent no. 6 for committing fraud upon the authorities by producing false document to get his name entered into the license by depriving the right of the petitioner.

Section 82 reads as follows:-

> *"[**82. Magistrates having jurisdiction to try offences.**- No Magistrate other than-*
>
> *(a) the Chief Metropolitan Magistrate, or*
>
> *(b) the Chief Judicial Magistrate, or*
>
> *(c) an Additional Chief Metropolitan Magistrate, or*
>
> *(d) an Additional Chief Judicial Magistrate, or*
>
> *(e) a Metropolitan Magistrate, or*
>
> *(f) a Judicial Magistrate, or*
>
> *(g) a Judicial Magistrate of the second class,*
>
> *shall try any offence punishable under this Act.]"*

Section 83 reads as follows:-

> "***83. Initiation of certain prosecutions.****- No Magistrate shall take cognizance of an offence referred to-*
>
> *(a) in section 46, [section 46A] section 48, section 52 or section 53, except on his own knowledge or suspicion, or on the complaint or report of an Excise Officer or an officer empowered in this behalf by the [State Government]; or*
>
> *(b) in section 54 [section 54A) section 58, clause (d) or clause (e), or section 59, except on the complaint or report of the Collector or an Excise Officer authorized by the Collector in this behalf."*

Section 54(a) reads as follows:-

*"[**54A. Penalty for contravention of sections 85 and 86 and conditions of license, etc.**- if any holder of a license, permit or pass granted under this Act, or any person in his employ acting on his behalf,-*

(a) In any case not proved for in sections 46 and 46A wilfully contravenes any rule made under section 85 or section 86, or
(b) Wilfully does any act, in breach of any of the conditions of the license, permit or pass, for which a penalty is not prescribed elsewhere in this Act,

shall be liable to fine which may extend to [five thousand rupees].]"

Section 42(1)(d) reads as follows:-

***"42. Power to cancel or suspend license, permit or pass.**- (1) Subject to such restrictions as the [State Government] may prescribe, [by rule made under Section 85, sub-section (2), clause (i)] the authority who granted any license, permit or pass under this Act may cancel or suspend it-*

(a) if it is transferred or sublet by the holder thereof without the permission of the said authority; or
(b) if any duty [tax] or fee payable by the holder thereof be not duly paid; or
(c) in the event of any breach by the holder thereof, or by any of his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions thereof; or
(d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence punishable [under the Dangerous Drugs Act, 1930 (2 of 1930)] [or under the Trade and Merchandise Marks Act, 1958 (43 of 1958) or under any of sections 479 to 489 of the Indian Penal Code (XLV of 1860), or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955)]; or
(e) if the holder thereof is subjected to any penalty under Chapter XIV of the Customs Act, 1962 (52 of 1962), or;]
(f) where a license, permit or pass has been granted on the application of the holder of an exclusive privilege granted under section 22, on the requisition in writing of such holder; or
(g) if the conditions of the license, permit or pass provide such cancellation or suspension at will,"

Section 83 relates to initiation of certain prosecution. Section 83(B) relates to the complaint or report authorized by the Collector. The allegation of the petitioner in the instant case that the respondent no. 5 has committed fraud and has obtained a license in his name, the allegation made by the petitioner with regard to the fraud committed by the respondent no. 5 is not proved. The petitioner failed to prove what documents have been used by the respondent no. 5 for committing fraud upon the authorities. Two contentions have been raised by the petitioner in the complaint i.e. there was a partnership deed and the respondent no. 5 has suppressed the said partnership deed and secondly, the respondent no. 5 has used the signature of the petitioner and her daughters as No-Objection. As regard the Deed of Partnership i.e. not proved before the authorities and on the other hand, the said Partnership Deed is under challenge before the court of law as regard the signature of the petitioner and her daughter used by the respondent no. 5 as No-Objection does not arise, as at the relevant point of time, the license was not in the name of the petitioner or in the name of her daughter. The license was in the joint name of the respondent no. 5 and the respondent no. 6. On the request of the respondent no. 6, the license was transferred in the name of the respondent no. 5 and as such the respondent authorities have no occasion to initiation of any criminal prosecution against the petitioner and as such either Section 83 or Section 82 or Section 54(a) 42(1)(d) is applicable.

The Counsel for the petitioner relied upon the judgment reported in (2016) 11 SCC 31 (Lalaram & Ors. –Vs- Joipur Development Authorities).

The judgment relied by the petitioner is not applicable in the instant case as the allegation made by the petitioner against the respondent no. 5 is not proved. Unless or until the allegation with regard to the fraud committed by the respondent no. 5 is proved, the authority cannot make any complaint against the respondent no. 5. In the instant case, though the allegation of fraud has been made against the respondent no. 5 but the same has not been proved. There is no allegation that respondent no. 5 has violated any terms and conditions of the license and as such the respondent authorities have no occasion to make any complaint for taking cognizance against the respondent no. 5. The respondent no. 5 had relied upon the judgment reported in (2005) 3 CHN 364 and submitted that there is no provision in the Act with regard to deemed clauses. The Counsel for the petitioner relied upon paragraph 25 of the said judgment and submitted that the petitioner has not filed any document with regard to the partnership deed entered between the petitioner and the respondent no. 5 and only on the oral submission it cannot be said that there has been a deemed partnership. Clause 25 of the judgment reads as follows:-

> ***"25.*** *We, therefore, find that all the decisions cited by Mr. Banerjee dealt with provisions of different statutes where there was no similar provision of a "deemed clause" and as such, the Courts were of the view that mere introduction of a partner did not amount to transfer of license. We have already held that the said principle cannot be applicable to a case under a statute where the legislature has introduced a "deemed clause" of transfer though there is not actual transfer of license."*

The Judgment relied by the respondent no. 5 is squarely applicable in the instant case.

In view of the above, this Court does not find any infirmity in the order passed by the Principal Secretary, Excise Department dt. 20.05.2009 hence the impugned order does not require any interference.

WPA No. 13597 of 2009 is thus **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)