22.12.2022
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WPA 24857 of 2022

Mita Saha & Anr.
-Vs-
The State of West Bengal & Ors.

Mr. Mohit Gupta,
Mr. Manarshi Kumar Roy
... for the petitioners

Mr. Raja Saha,
Mr. D. Ghosh,
Mr. Debraj Sahu
... for the State

Mr. Supriyo Roy Chowdhury,
Ms. Madhumita Roy Chowdhury
... for the respondent nos. 6 & 7

As noted in the order passed by this Court yesterday (22.12.2022), the petitioners have given up the prayer of challenging the Memo dated 1st November, 2022 for closure of the Country Spirit On-Shop and the Flavoured IMFL Off-Shop. The only prayer now is for further extension of a temporary extension granted by the Authorities on 27th September, 2022.

The case of the petitioners, in short, is that the petitioners' shop was closed pursuant to the death of one of the three joint licensees on 2nd April, 2022. The petitioners were, however, granted a temporary licence to run the shop on 8th April, 2022. The temporary licence was up to 30th September, 2022. An extension was given on 27th September, 2022 to run the shop on a temporary basis till 31st October, 2022. The petitioners now pray for further extension for running the shop on the submission that the petitioners will take requisite steps under The Bengal Excise Act, 1909 for induction of the surviving heirs of the deceased joint licensee.

Learned counsel for the State places Section 37 and the Sub-Sections thereunder of the 1909 Act and submits that the extension cannot be given beyond the period of six months.

Upon considering Section 37 of The Bengal Excise Act, 1909 which deals with exemption of certain licence from the other provisions of the Act and the power of a Collector to grant licences on certain conditions and restrictions, it is found that the sub-sections are disjunctive in nature and do not provide for an outer limit for extensions in the case of a temporary licence.

Section 37(a) merely provides that the Collector may subject to conditions and restrictions, grant a licence to any person for the retail sale of any intoxicant during any period not exceeding six months. Sub-Section 37(c) applies in the present facts which provides for cancellation, withdrawal or surrender of the licence before expiration of the period for which it was granted on the death of the person to whom it was granted.

Since Sub-Sections (a) and (c) are disjunctive in nature, Section 37 does not specifically provide for an outer limit of six months for grant of temporary licence.

In any event, the facts of the present case reveal otherwise. The first extension on and from 4th April, 2022, as indicated in the letter of 8th April, 2022, was granted till 30th September, 2022, namely for six months. This was later extended on 22nd Septemeber, 2022 for an additional one month. Hence, the Collector himself extended the temporary licence beyond the period of six months.

WPA 24857 of 2022 is accordingly disposed of with a direction on the Collector of Excise, Kolkata (South)/respondent no. 4 to extend the temporary licence of the petitioners till 31st January, 2023 subject to the petitioners taking requisite steps under the Act and the Rules to induct the surviving heirs of the joint licensee who expired on 2nd April, 2022 by 6th January, 2023. The application shall be made under the prescribed provisions of the Act and Rules.

(Moushumi Bhattacharya, J.)