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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 5519 of 2023

Shaktipada Roy
Vs.
The State of West Bengal & Ors.

Mr. Malay Bhattacharyya,
Mr. Madan Mohan Roy,
Mr. Subhrajyoti Ghosh
...for the petitioner

Mr. Wasim Ahmed,
Mr. Md. Shehabuddin
...for the State

Mr. Samrat Chowdhury,
Mr. Nimai Chandra Konar,
Mr. Swadhin Pan
...for the private respondent

1. The present challenge has been preferred against the issuance of drug licence to the private respondent for running a medicine shop.
2. Learned counsel for the petitioner contends that under the Drugs and Cosmetics Rules, 1945, Rule 62B(2)(ii) provides that in granting a licence under Rule 62A the authority empowered to grant the same shall have regard to the occupation, trade or business carried on by the applicant.
3. Learned counsel also places reliance on a procedure for issue of retail and wholesale drug licence and documents required, which has

been issued allegedly by the respondent-authorities, to harp on the point that by way of possession document of the premises, current house tax receipt/consolidated rate bills/registered deed of conveyance/consent letter from the owner/NOC in the form of affidavit before first-class Magistrate, etc. are required to be produced. The private respondent aving not produced the same and having obtained no consent from the petitioner, it is argued that the respondent-authorities could not have issued a drug licence afresh in favour of the private respondent.

4. Learned counsel appearing for the State points out that the petitioner himself has made certain allegations of signatures being obtained from the petitioner on blank paper. It is contended that the respondent-authorities duly issued a drug licence to the private respondent upon the private respondent having satisfied all required criteria. It is pointed out that nothing in the provisions of law or procedure mandates the production of any no-objection or consent from anybody for issuing a drug licence. What is required is only the proof of possession to be produced.

5. Learned counsel for the private respondent contends that the present writ petition is a fallout of the dismissal for default of a suit filed by the petitioner for partition.

6. It is argued that the private respondent, on the strength of a lease agreement issued to the private respondent by the petitioner, duly applied and obtained a drug licence and has been continuing with the said medicine business thereafter.

7. It transpires from the allegation made in the writ petition that learned counsel for the State is justified in arguing that the allegations made by the petitioner pertain to civil and criminal disputes. In paragraph 7 of the writ petition, the petitioner has alleged that the private respondent obtained few signatures of the petitioner on blank papers, taking advantage of the alleged faith that the petitioner had in the private respondent.

8. Since the allegations revolve around allegations of fraud perpetrated on the petitioner by the private respondent, which are, of course, denied to the hilt by the private respondent, the matter attains the character of a civil dispute insofar as the relief of the petitioner lies in filing a proper suit before a

competent civil court for cancellation of the documents-in-question. Criminal proceedings are also pending between the parties, as submitted by counsel.

9. However, as it appears from the writ petition itself that certain documents were admittedly signed by the petitioner, albeit being misled to do so, which documents were subsequently produced before the respondent-authorities by the private respondent to obtain a licence. Thus, documents were duly produced before the authorities for grant of drug licence to the petitioner.

10. The presumption of correctness of official acts within the ambit of Section 114 of the Indian Evidence Act has not been rebutted or dispelled within the confines of the present writ petition, which could be sufficient to set aside the issuance of drug licence to the private respondent.

11. The petitioner has not established any palpable infraction of any law as such in issuance of the licence. Rule 62B of the 1945 Rules merely speaks about the occupation, trade or business carried on by such applicant having to be satisfied by the applicant before the authorities. Since no objection in that

regard has been raised by the authorities, there is no reason for interfering with the issuance of drug licence at the behest of the petitioner, who is a third party with regard to such drug licence.

12. Inasmuch as the procedure for issuance of retail and wholesale drug licence and documents required are concerned, the same operates merely as a guideline and not a mandatory provision of law. In any event, the stress in the said document is on documents of possession of the premises being provided, which include, among other documents, consent letter from the owner, etc. The documents mentioned therein are in the nature of examples and not exclusive. Moreover, the documents have been mentioned in the alternative.

13. The presumption as per Section 114 of the Indian Evidence Act that the provisions of law and procedure have been duly complied with by the private respondent in getting the drug licence remains intact unless rebutted before a competent court of law by the petitioner. Having not done so, the petitioner is not entitled to an order in the present writ petition.

14. Accordingly, W.P.A. No. 5519 of 2023 is disposed of without interfering with the issuance of drug licence to the private respondent but granting liberty to the petitioner to approach the competent civil court for cancellation of the documents, if the petitioner so feels necessary or aggrieved.

15. All parties will be at liberty to approach the competent criminal court and/or to ventilate their grievances in the pending criminal proceeding/investigation, if any, regarding the allegations and counter-allegations made in the present writ petition.

16. Since no affidavits have been called for, it is deemed that none of the allegations made in the writ petition are admitted by the respondents.

17. There will be no order as to costs.

18. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)