

03.05.2023
Sl. No.9(DL)
srm

W.P.A. No. 7953 of 2023

Sri Tarun Sau

Vs.

The State of West Bengal & Ors.

Mr. S. Agarwal,
Mr. T.N. Sarkar

....for the Petitioner.

Mr. Anirban Ray, Id. GP,
Mr. Raja Saha,
Mr. Debraj Sahu

...for the State-respondents.

Mr. Kumarjyoti Tewari,
Ms. Rajlakshmi Ghatak

...for the Respondent Nos.5, 16 & 17.

Mr. Manas Kumar Das

...for the Respondent No.18.

The petitioners alleges that at the instigation of the Pradhan of Palaspai Gram Panchayat, Paschim Medinipur, the Sub-Divisional Officer, Ghatal, retracted from the earlier position and opined that an excise licence to operate a bar could not be given to Rimjhim Restaurant. The petitioner contends that the Pradhan had influenced such decision only to protect the business of the respondent No.18.

According to the petitioner, on two earlier occasions, upon making proper enquiries and upon

considering the police report as also public grievance, the Sub-Divisional Officer had found that the area was conducive for grant of liquor licence to operate the Restaurant-cum-bar.

Subsequently, the Sub-Divisional Officer wrote to the Collector not to proceed on the basis of the no objection or the enquiry report granted in favour of the petitioner, but to keep the matter on hold. A third enquiry was made by the said authority. The third enquiry was necessitated on receipt of other complaints from the villagers, and a report of the Pradhan, inter alia, stating that law and order problems would crop up if another excise licence for operating a bar was allowed in the same area. The petitioner contends that the action of the sub-divisional officer was arbitrary, irrational and influenced by extraneous consideration.

Mr. Tewari, learned Advocate appearing on behalf of the Pradhan submits that another excise licence for operating a bar could give rise to law and order problems. As a regular feature, the people become unruly and get into fights after consumption of alcohol. There were several incidents in the past over bar fights in the two other bar-cum-restaurants and criminal cases are pending. The Pradhan would be unable to control the law and order

situation. It is further submitted that in a small area under Palaspai Gram Panchayat there are already two existing bars and a third bar would only add to nuisance and disorderly behaviour of the local people. However, Mr. Tewari submits that if the police authorities and the local administration are equipped to control such law and order problems, the Pradhan would not have any particular grievance in respect of the petitioner's application for an excise licence to operate the bar.

Mr. Das, learned Advocate for the respondent No.18 denies the allegation that personal favours had been shown to the respondent No.18, by the Pradhan. According to Mr. Das, the respondent No.18 has been running the bar from 2018, with proper licence from the authorities.

The Sub-Divisional Officer has filed a detailed report justifying the reasons behind the third enquiry and the objection that was raised by him before the Additional District Magistrate (General), Paschim Medinipur, with regard to the grant of excise licence to the petitioner, for operating the bar.

The West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Order Intoxicants) Rules, 2003 deals with the procedure for

selection of new sites for grant of licence. Sub-rule C of Rule 9 categorically provides that before any licence is granted, certain steps are to be followed by the Collector. The Collector is required to consider public grievance and also take into account other factors before forming an opinion as to whether the licence can be granted to a new site or not. Only after being satisfied that the proposed site is free from any objection or restriction and the proposed licensee is eligible to hold the excise licence, the proposal is to be sent to the Excise Commissioner for opinion. Thereafter, the Excise Commissioner shall forward the same to the State Government for a final decision. Once the State Government grants the approval, the Excise Commissioner shall intimate the Collector and the excise licence for operating bar, shall be granted by the Collector.

Mr. Saha, learned Advocate for the State-respondents submits that the above position clarifies why the Sub-Divisional Officer had made repeated enquiries. The enquiry by the Collector is always through his agents and subordinates. Hence, the Sub-Divisional Officer did not act illegally while making the repeated enquiries.

According to the Court, when the law requires that public grievance, the ground reality and demand should be taken into account before any decision is arrived at for

grant of excise licence to operate a bar, the contention of the petitioner that the authorities had arbitrarily decided not to issue him a licence, is no longer sustainable. The Sub-Divisional Officer, on the basis of local enquiry, inputs from the panchayat authorities and police authorities, has formed the opinion. There is a chance of law and order problem if a liquor licence is given to the restaurant as per the said perception and enquiry. It is not about any personal animosity or enmity. It is only about the safety, security and maintenance of law and order in an area which is very small and where there are two existing bars. The specific grievance of the panchayat authorities is that these bars have created lot of disruption in the law and order situation in the area and criminal cases are pending.

Under such circumstances, the writ petition is disposed of with a direction upon the Additional District Magistrate (General), Paschim Medinipur to treat the writ petition as the representation of the petitioner and dispose of the same in accordance with law upon hearing the petitioner, the police authorities, the Pradhan of the concerned gram panchayat as also the Sub-Divisional Officer, Ghatal. The authority shall decide the entire issue independently, upon taking note of all the factors which have to be taken into account under the law, before any

decision is taken. Upon completion of the entire hearing to be given to the parties, the final decision will be taken by the Collector in accordance with law. If the decision is in favour of grant of such licence, necessary steps shall be taken to expedite the matter.

The reasoned order shall be passed and communicated to all.

The entire exercise shall be completed within a period of two months from the date of communication of this order.

The Court has not gone into the merits of the claims and counter-claims of the parties.

A copy of the writ petition, along with a server copy of this order be served upon the Additional district Magistrate (General), Paschim Medinipur.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)