IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-
The Hon'ble Justice Moushumi Bhattacharya

W.P.A 17290 of 2022

Sri Anupam Goswami
vs.
The Principal Secretary, Department of Finance,
Government of West Bengal & Ors.

For the petitioner	:	Mr. Amit Das Gupta, Adv. Mr. Sayan Mitra, Adv. Ms. Aishee Dey, Adv.
For the State	:	Mr. Raja Saha, Adv. Mr. Prantick Garai, Adv.
Last Heard on	:	10.04.2023.
Delivered on	:	19.04.2023.

Moushumi Bhattacharya, J.

1. The petitioner seeks a restraint on the State Respondent from giving any effect to an order passed by the Principal Secretary, Finance Department on

28.2.2022 by which the State authority declined to interfere with the order passed by the Excise Commissioner on 15.9.2021 and was also of the view that the Collector of Excise had correctly settled the Excise License permanently in favour of the widow of the deceased licensee. The Principal Secretary was also of the view that the Collector had acted in consonance with Rule 14(6) of the Notification dated 29.7.2003 namely The West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003.

2. The petitioner is the brother of the deceased erstwhile licensee Rupam Goswami. Rupam Goswami died on 18.12.2014. After Rupam Goswami's death, the license was temporarily settled for the period of 6 months from 14.5.2015 – 31.12.2015 in favour of Priti Goswami and Jogomaya Goswami being the mother and wife of Rupam Goswami respectively. Priti Goswami, the mother of the erstwhile licensee died on 5.9.2015 leaving behind 3 sons of which the petitioner is one. The petitioner claims to have made several representations in October, 2015 and in January and July, 2016 for having the Excise License issued in favour of the petitioner in the place of Priti Goswami, his mother. The petitioner further claims that in response to petitioner's application under The Right to Information Act, 2005, the State Public Information Officer clarified by a letter dated 12.11.2018 that the Excise License has been settled by the Collector in favour of Jogomaya Goswami, the wife of the erstwhile license holder.

3. Learned counsel appearing for the petitioner places the orders passed by the Collector of Excise, South 24 Parganas on 14.5.2015 and the Excise Commissioner on 15.9.2021 and submits that there is no bar under section 37 of the Bengal Excise Act, 1909 or the 2003 Rules to prevent the authorities from issuing the permanent excise license in favour of the petitioner as the heir of Priti Goswami (the petitioner's mother).

4. Learned counsel appearing for the State submits that the license issued in favour of the deceased license holder's mother and wife was purely on a temporary basis under section 37 of the Bengal Excise Act, 1909 and was only for a period of 6 months with effect from 14.5.2015. Counsel submits that this was only a stop-gap measure before settlement of the permanent license under the 2003 Rules. Counsel submits that the claim of the petitioner for induction as a joint licensee after his mother's death is not maintainable either under the Act or the relevant Rules.

5. The undisputed facts are that the petitioner's brother, Rupam Goswami was the Excise License holder in respect of an F.L. 'Off' Shop located at OAISHA Commercial Complex under P.S. Rabindra Nagar. Rupam Goswami died in 2014 and the license of the shop was thereafter settled on a temporary basis in favour of Priti Goswami and Jogomaya Goswami being the mother and the wife respectively of the deceased license holder. The District Authorities called upon the joint temporary licensees to apply for a permanent license in respect of the concerned shop. Priti Goswami being the mother of the erstwhile

license holder passed away in 2015 during the period of the temporary license. After Priti Goswami's death, the permanent license was settled in favour of Jogomaya Goswami, the widow of the deceased license holder, Rupam Goswami. The facts show that both Priti Goswami (mother) and Jogomaya Goswami (wife) were the first class legal heirs of the deceased licensee, Rupam Goswami under the Hindu Succession Act, 1956 and were hence eligible for regular settlement of the license in their favour under Rule 14 (6) of The West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003. Therefore, at the time of settlement of permanent license in respect of the concerned shop, Jogomaya Goswami was the only surviving legal heir of the erstwhile license holder.

6. Section 37 of the Bengal Excise Act, 1909 includes grant of a temporary license by the Collector. This would be evident from section 37(a) which contemplates grant of license to any person for the retail sale of any intoxicants for a period not exceeding 6 months. This would further be clarified from section 37(c) which provides for grant of license to a person in substitution for the license holder during the remainder of the license where the license has been cancelled, withdrawn or surrendered before the expiration of the period for which it was granted or where the license has lapsed on the death of the person to whom it was granted. In the present case, the license was granted on a temporary basis to Priti Goswami and Jogomaya Goswami being the mother and wife of the deceased license holder, Rupam Goswami. The facts further

indicate that Priti Goswami, the mother also passed away during the period of the temporary license.

7. A careful reading of Rule 14 of The West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003 shows that the said Rule is for grant of license for the next period of settlement before the expiry of the period of validity of the current license on a proper application being made for such. Rule 14 deals with settlement of a permanent license as opposed to grant of a temporary license under section 37 of the Act. Rule 14 (6) starts with a non-obstante clause to the extent of the Rules and contemplates a situation where a license granted by the Collector at an existing site lapsed on the death of the holder and grant of a license to one or more heirs or representatives of the deceased licensee along with the surviving partner or surviving joint licensees as the case may be. Rule 14(6) would apply to a situation where a permanent license granted in favour of a license holder lapses on the death of the holder and a substitute license in the same category is granted to the surviving heirs / surviving partner / surviving joint licensees if they are willing and eligible to hold the license.

8. The petitioner in the present case, claims grant of a permanent license as the son of Priti Goswami who was granted a temporary license under section 37(c) of the Act as the mother of the deceased license holder, Rupam Goswami. A conjoint reading of section 37 and Rule 14(6) makes it clear that the heirs of the deceased person who held a temporary license under section 37(c) cannot

claim an automatic grant of a permanent license under Rule 14(6). Admittedly, Priti Goswami, the petitioner's mother, passed away at the stage of the temporary license which was granted to her. The 2003 Rules do not contain any provision by which a legal heir of a temporary licensee can claim a permanent license under Rule 14(6) or any of the other Rules.

9. The impugned order dated 28.2.2022 passed by the Principal Secretary, Finance Department disposing of the petitioner's appeal from the order of the Excise Commissioner without interfering with the said order, cannot be faulted since the findings arrived at are within the framework of the statutory provisions including Rule 14(6) of the 2003 Rules. The finding that the petitioner cannot claim any right under the Rules since the petitioner's mother was only granted a temporary license at the relevant point of time is an admitted fact. The Principal Secretary has also given a correct interpretation of the Bengal Excise Act, 1909 and the 2003 Rules and this Court therefore sees no ground to interfere with the impugned order.

10. WPA 17290 of 2022 is accordingly dismissed without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)