

D/L. 28.
August 8, 2023.
MNS.

WPA No. 17791 of 2023

Sri Tapan Sarkar
Vs.
The State of West Bengal and others

Mr. Prantick Ghosh,
Mr. Prasad Bhattacharyya

... for the petitioner.

Mr. Anirban Ray,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal

...for the State.

Mr. Krishnendu Sarkar,
Ms. Meghla Das

...for the private respondent no. 6.

Affidavit-of-service filed in Court today be
kept on record.

Learned counsel for the petitioner
contends that although the petitioner's signature
was obtained, the same was misused by the
private respondent no. 6 by making an
application, purportedly by the petitioner, for co-
opting the said licence as a co-licensee in respect
of Excise Licence for running of a foreign liquor
"Off Shop".

It is argued that in terms of the proviso to
Rule 4 of the West Bengal Excise (Change in

Management) Rules, 2009, no such change in management as contemplated therein shall be considered by the Collector unless the licence has operated for at least five years at a stretch.

In the present case, the said condition was not fulfilled, for which the change of management granted by the impugned order of the respondent authorities is vitiated by illegality.

Learned counsel further argues that the petitioner has lodged complaints before several authorities, including the police, on the allegation of the misrepresentation/fraud being perpetrated by the private respondent.

Learned counsel further contends that even if for some reasons beyond the control of the licensee, the bar of five years is relaxed, there has to be an enquiry by the Collector, which has not taken place in the instant case.

Learned counsel appearing for the respondent authorities places reliance on the application of the petitioner, which was made in the year 2020. It is argued that the first complaint before the police was lodged only in the year 2022, as such, rendering the credibility of the said complaint dubious.

It is also argued that, in the present case, the licence was operating since 2009, and, as such, the five-year bar does not apply in the present case.

Learned counsel appearing for the private respondent no. 6 also submits in same tune as the respondent authorities.

Learned counsel for the private respondent contends that the application for change of management was made under Rule 234 of the West Bengal Excise (Foreign Liquor) Rules, 1998. It is argued that, in the present case, the petitioner himself having applied for the change in management, he cannot resile from the same at this juncture.

Heard learned counsel for the parties.

This writ petition has certain essential features.

First, the application for change of management was made with the admitted signature of the petitioner, which is annexed at page 74 of the writ petition. The date of filing of the same is October 17, 2020

Conspicuously, the first complaint lodged with the police by the petitioner, alleging misrepresentation / fraud being practised with the

signature of the petitioner by the private respondent, was lodged on August 17, 2022, that is, almost two years after the application being made.

More importantly, the impugned order, whereby the change of management was granted, was passed on June 17, 2022. *Ex facie*, the complaint was lodged two months thereafter, that is, on August 17, 2022, thereby hinting at afterthought on the part of the petitioner.

In any event, the previous complaint lodged before the Excise Authorities by the petitioner primarily pertained to allegations regarding veracity of paragraph no. 15 of the agreement between the petitioner and the private respondent and were not on the allegation of forgery or misrepresentation.

Since an application was made with the admitted signature of the petitioner and the authorities merely acted upon the same, it cannot be said that the authorities acted without jurisdiction in doing so.

As rightly contended by learned counsel appearing for the respondent authorities, the writ petition itself carries, as annexures, certain reports filed by the respondent authorities, which

clearly reveal that upon query, the respondent authorities came to the conclusion that the licence had been operating for more than five years since June 4, 2009, as revealed at page 135 of the writ petition.

Hence, the bar stipulated in the proviso to Rule 4 of the 2009 Rules is not applicable in the present case as well.

Thus, in the circumstances aforesaid, this court does not find any illegality or irregularity in the decision-making process of the respondent authorities sufficient to invoke the jurisdiction to court under Article 226 of the Constitution of India.

Accordingly, WPA No. 17791 of 2023 is dismissed on contest without any order as to costs.

However, it is made clear that this court has not entered into the merits of the allegations made by the petitioner before the police, the investigation and/or trial regarding which shall not be influenced in any manner by any of the observations made herein.

Urgent photostat certified copies of this order, if applied for, be made available to the

parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)