

AD-26
Ct No.09
03.10.2023
TN

WPA No. 18151 of 2023

Sandip Kumar Neogi
Vs.
The State of West Bengal and others

Mr. Sobham Majumder,
Ms. Atulya Sinha

.... for the petitioner

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

.... for the State

- 1.** Learned counsel for the petitioner contends that the Superintendent of Excise, Nadia has palpably acted without jurisdiction in not enquiring whether the provisions of law for setting up liquor shops were adhered to by the concerned authority in issuing liquor licence to the private respondent. It is submitted that despite the specific complaint of the petitioner that there were several educational institutions within the close vicinity of the shop-in-question, the Superintendent did not look into such aspect of the matter at all and rejected the complaint on technical aspects.
- 2.** Learned counsel places reliance on Rule 8 of the West Bengal Excise (Selection of New Sites and

Grant of License for Retail Sale of Liquor and Certain other intoxicants) Rules, 2003 in support of his contention.

3. Learned counsel for the respondent-authorities places reliance on Rule 2 of the Consolidated Rules made under Section 85 of the Bengal Excise Act, 1909 and submits that an appeal is provided before the Collector against any order passed by any subordinate authority under the said Act. In any event, learned counsel submits that the petitioner having not challenged the original grant of licence, is precluded from doing so at this juncture, since there is no provision for recall or reopening of the issue in the Act.
4. Learned counsel, in support of his proposition, places reliance on a coordinate Bench judgment of this court in *Asutosh Ghosh vs. State of West Bengal and others*, reported at (2014) 2 CHN (Cal) 502.
5. Upon hearing learned counsel for the parties, it transpires that the Superintendent of Excise, Nadia undoubtedly proceeded on a technical premise in observing that the petitioner's objection was not a mass petition, since 15 out of 17 of the complainants did not reside in the area-in-question. The Superintendent also took into

consideration that the private respondent, the owner of the shop, was merely an accused in certain criminal cases and not being convicted, no action could be taken against the said shop.

6. A perusal of the ratio laid down in the judgment cited by the respondent indicates that the learned Single Judge observed that there was no material to conclude that the grant of licence in favour of the petitioner therein was illegal and, therefore, void *ab initio*. It was further observed, *inter alia*, that there is a presumption of law that official acts are regularly performed and the burden is on the person who claims to the contrary and seeks a different conclusion to be reached to dislodge such presumption by proper rebuttal.
7. It was further observed that one does not know for certain whether over the last 6 (six) years in the said case, when the licence was granted in favour of the petitioner, any new facts had cropped up.
8. The logic of the said judgment is applicable to the present case as well, since the presumption in law is that the acts done officially in granting the licence to the private respondent is covered by the presumption under Section 114 of the Indian Evidence Act insofar as the correctness of such

official act is concerned. There is no specific provision for recall of the said grant of licence.

- 9.** That apart, the respondents are justified in arguing that in view of the specific provision of appeal being provided in the Consolidated Rules, in particular, Rule 2 thereof, against any such order such as the present impugned order, there is no scope of interference at this juncture.
- 10.** The Superintendent of Excise was also justified in recording that there was no complaint lodged by the schools or educational institutions concerned and/or the parents or guardians of any student of the same in respect of the operation of the off-shop run by the private respondent in the area.
- 11.** In such view of the matter, I do not find any reason to justify interference with the order impugned herein.
- 12.** Accordingly, WPA No. 18151 of 2023 is dismissed, without any order as to costs.
- 13.** 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.)