

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 19824 OF 2021

Sri Bijay Saha

Vs.

The State of West Bengal & Ors

For the Petitioner	: Mr. Abhratosh Majumder, Sr. Adv., Mr. Supriya Roy Chowdhury, Ms. Madhumita Ray Chowdhury, Mr. Shankar Ghosh, Mr. Sagnik Chatterjee	advocates
For the Respondent no. 4	: Mr. Krishnendu Sarkar, Ms. Meghla Das	... advocates
For the State	: Mr. Debasish Ghosh, Ms. Munmun Ganguly	advocates
Reserved on	: 23.03.2023	
Judgment on	: 10.05.2023	

Hiranmay Bhattacharyya, J.:-

1. The writ petitioner has prayed for issuance of a writ of Mandamus to command the respondent authorities to rescind and revoke the order of the Principal Secretary, Finance Department, Government of West Bengal dated 26.10.2021.
2. By the said order, it was directed that the license of the country spirit shop be settled jointly in favour of the petitioner and the 4th respondent herein.

3. Two brothers are fighting against each other over settlement of excise license in respect of Seoraphully Country Sprit Shop.
4. Facts giving rise to this writ petition in a nutshell are as follows-

License of the said shop was initially granted to one Prankrishna Saha, who died in 1971. Thereafter the license was settled in favour of Jaladabala Saha, i.e. the wife of the deceased license on temporary basis. After the death of Jaladabala, license was settled temporarily in favour of the sons of the original deceased licensee namely Asok Jiban Saha and Rabindranath Saha. Subsequently disputes cropped up between the sons of the deceased original licensee and the license was settled in favour of the salesman of the shop namely Bimal Saha on temporary basis. Bimal ran the shop in such capacity from 1984 till 2013 and thereafter decided not to continue due to his ill health. License was thereafter settled in favour of Bijoy Saha, i.e., the writ petitioner who is one of the grandson of Prankrishna i.e. the original licensee. The 4th respondent challenged the order dated 23.07.2014 by which the license was settled in favour of the writ petitioner by preferring an appeal. The said appeal stood dismissed on technical ground and thereafter on a review petition being filed, a direction was passed upon the Excise Commissioner to decide the matter by passing a reasoned order. The Excise Commissioner, by an order dated 07.09.2018, directed the superintendent of Excise to enquire into the matter and submit a report before the Collector, who shall upon considering such report pass a reasoned order of settlement of the license. The Collector, by an order dated 22.11.2018 allowed the writ petitioner to run the shop as a licensee. On an appeal being preferred by the 4th respondent against the order of the Collector dated 22.11.18, the Excise Commissioner refused to interfere by passing an order dated 04.09.2019. The

4th respondent filed an appeal before the Principal Secretary against the aforesaid order dated 04.09.2019 and the Principal Secretary by the order dated 26.10.2021 directed the license of the shop to be settled jointly in favour of the writ petitioner and the 4th respondent.

5. Being aggrieved by the order of the Principal Secretary dated 26.10.2021, the writ petitioner approached this Court.
6. Mr. Majumdar, learned Senior Counsel appearing in support of the writ petition contended that the writ petitioner having worked with the registered salesman of the shop is sufficiently experienced to run the shop. The writ petitioner being the grandson of the original licensee is also eligible to hold the license upon the death of the original licensee. Mr. Majumdar further contended that the writ petitioner expressed his willingness to hold the license at the earliest point of time when no other representative of the original licensee came forward. According to him, the writ petitioner having satisfied the criteria for settlement of the license should be allowed to run the shop. The 4th respondent, according to Mr. Majumdar cannot claim any right to run the shop as a joint licensee as he was not willing to hold the license at the relevant point of time.
7. Mr. Sarkar, learned advocate representing the 4th respondent seriously disputed the submissions of Mr. Majumdar. By referring to various documents, Mr. Sarkar contended that the 4th respondent was also willing to hold the license. He further submitted that the 4th respondent being the representative of the original licensee is entitled to have the license settled jointly with the writ petitioner. Mr. Sarkar, however, referred to the following unreported decisions of this Court in support of his contention.

- 1) WP 18432 (W) of 2017 (Sujit Pramanick & ors. vs. The State of West Bengal & Ors.

2) WP 1158 (W) of 2008 (Alpana Saha vs. The State of West Bengal & Ors.)

3) WPA 241 of 2019 (Narayan Prasad Gupta and another vs. The State of West Bengal and others)

8. Mr. Ghosh, learned advocate for the State did not make any submission in so far as the inter se private dispute between the writ petitioner and the 4th respondent. He contended that since the excise shop is a source of government revenue, the State is only concerned with the smooth running of such shop in order to fulfill the need of the local area.
9. Heard the learned advocates for the parties and perused the materials placed.
10. It is not in dispute that the writ petitioner and the 4th respondent, both are eligible to hold the license as representatives of the original licensee. The only dispute between the parties is as to whether the writ petitioner alone or both of them can be said to be willing to hold the license.
11. The writ petitioner states that he expressed his willingness immediately after the registered salesman surrendered his responsibility to run the shop in the year 2013 on the strength of the no-objection issued by his father. It is his further contention that since no other representative was willing to hold the license at the relevant point of time, the authorities initially settled the license in his favour and such mode of settlement should be allowed to continue.
12. On the other hand it is the case of the 4th respondent that the father of the parties namely Rabindranath died on 08.02.2016 and before his death he lodged a written complaint before the police authorities alleging that the writ petitioner, taking advantage of his ill-health, obtained the no-objection certificate for the purpose

of renewal of license. According to him, the writ petitioner obtained the initial settlement by practicing fraud and misrepresentation and he approached the authorities immediately after such fraud was detected. The 4th respondent stated that he was all along willing to hold the license.

13. Mr. Majumdar would contend that for the purpose of deciding willingness of a party to hold the license, this Court is to see who amongst the legal representative of the deceased original licensee was ready and prompt in approaching the authorities for settlement of the license. In course of his argument he took this Court through the definition of the word “willing” from different dictionaries.
14. The word “willing” has been defined in Shorter Oxford English Dictionary to mean wishing, wishful, desirous. It shall also mean having a ready will and ready to do.
15. The word “Willing” has been defined in The New Collins Concise Dictionary of the English Language to mean favourably disposed or inclined; ready.
16. The Chambers Dictionary defines the word “willing” to mean ready, eager, co-operative; ready and prompt to act.
17. There is, however, no quarrel to the proposition of law laid down by the Hon’ble Supreme Court in the case of Commissioner of Wealth Tax, Andhra Pradesh vs. Officer-in-Charge (Court of Wards), Paigah reported at (1976) 3 SCC 864, cited by Mr. Majumdar, that the ordinary dictionary meaning can be relied upon in the absence of some overriding or special reason to justify a departure. It is well settled that discarding the ordinary dictionary meaning would amount to destroying the literal rule of construction.

18. The learned advocates of the respective parties drew the attention of the Court to various documents in support of their respective contentions. After going through the materials on record, this Court finds that the private parties are both claiming to be ready and prompt in approaching the authorities for settlement of the license. The issue as to whether any one or more of the representatives was/ were willing to hold the license is entirely a factual dispute.
19. This Court, however, finds that in the case on hand, the Principal Secretary being the last fact finding authority in the hierarchy of authorities as per the relevant statute, returned a factual finding that the writ petitioner and the 4th respondent are willing to run the shop. The Principal Secretary, after observing that both of them have a same degree of claim as heirs over the license that was held by the deceased licensee directed that the license of the shop in question be settled jointly in favour of the writ petitioner and the 4th respondent.
20. Mr. Majumdar would contend that the Collector, after taking into considerations all the relevant factors, decided that the writ petitioner be allowed to run the shop which finding was also affirmed by the Excise Commissioner and such concurrent finding could not have been reversed by the Principal Secretary by totally disregarding the reasons assigned by the Collector and the Excise Commissioner.
21. After going through the order of the Collector, this Court finds that the only factor which weighed in the mind of the Collector and tilted the balance in favour of the writ petitioner was that he has sufficient experience with regard to the business of liquor both as a salesman as well as the licensee of the shop. The Excise Commissioner, however, mechanically affirmed the order of the Collector. The Commissioner, therefore, failed to perform his duties that is expected from an appellate authority.

22. At this stage, it would be relevant to take note of the legal provisions regarding settlement of license upon the death of the licensee.

23. 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 (for short “2003 Rules”), deals with settlement of license upon the death of the original licensee. Rule 14(6) which is relevant for this case is extracted hereinbelow.

“14.(6) Notwithstanding anything contained elsewhere in these rules or in any other rules for the time being in force, when a license granted by the Collector at an existing site lapses on the death of the holder, a license of the same category in lieu of the one lapsed, shall be granted in favour of one or more heirs or representatives of the deceased licensee along with the surviving partner/surviving joint licensees, if any, at the existing site, if such representatives are willing and eligible to hold the license and the arrears, if any, due from the deceased licensee:

24. Upon reading Rule 14(6) of the 2003 Rules, this Court finds that authorities while considering the issue of settlement of license has to consider whether the representatives of the deceased licensee are willing and eligible to hold the license and the arrears, if any, due from the deceased licensee.

25. It is not the case of the authorities that any sum is due from the deceased licensee. Therefore, the only factors which could be considered by the authorities in the case on hand are whether the representatives are willing and eligible to hold the license. Therefore, the experience of a representative in regard to the running of the liquor business could not be the reason for settlement of the license in favour of a particular representative.

26. A co-ordinate bench of this Court in the case of Narayan Prasad Gupta (supra) also observed that prior experience is not the yardstick stipulated in Rule 14(6). The said decision also supports the view of this Court.
27. Rule 14(6) permits license to be granted in favour of one or more heirs or representatives of the deceased licensee in lieu of the license that lapsed on the death of the holder.
28. Therefore there is no bar in the 2003 Rules for settlement of the license jointly in favour of the two heirs/ representatives of the deceased original licensee. The Principal Secretary, after taking into consideration the willingness and eligibility as per Rule 14(6), rightly directed settlement of the license of the shop in question jointly in favour of the writ petitioner and the 4th respondent.
29. This Court holds that the order of the Collector suffers from infirmity as the same was based on consideration which do not fall within the parameters of Rule 14(6). The order of the Commissioner, for the reasons as mentioned hereinbefore, also suffers from infirmity. The Principal Secretary took into consideration relevant facts and applied the provision under Rule 14(6) rightly for arriving at the decision, which is impugned herein. It is well settled that Judicial review is not a review of the decision but the decision making process. This Court accordingly holds that the Principal Secretary was justified in reversing the order of the Excise Commissioner.
30. This Court shall now deal with the other unreported decisions cited by Mr. Sarkar.
31. The issue involved in Sujit Pramanick(supra) was with regard to deletion of the name of a legal heir of the deceased from the license. The said decision being distinguishable on facts has no manner of application to the case on hand.

32. The unreported decision in Alpana Saha (supra) is distinguishable on facts as willingness of the representative of a deceased licensee was not in issue therein. Therefore, the same do not lend any support to the 4th respondent.
33. For all the reasons as aforesaid, this Court is not inclined to interfere with the order of the Principal Secretary dated 26.10.2021. The writ petition accordingly fails and the same stands dismissed without, however, any order as to costs.
34. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)