

16.05.2023
Ct. 5
D/L 26
ab

WPA 28013 of 2022

Barun Malakar

-Vs-

The State of West Bengal & Ors.

Mr. Anindya Mitra,
Mr. Arindam Banerjee,
Mr. Ashis Kr. Mukherjee,
Ms. Arpita Saha,
Mr. S. Prasad

... for the petitioner

Mr. Raja Saha,
Mr. Debraj Sahu

... for the State

1. The confusion in the present writ petition arises out of a correction made at the instance of the petitioners to an order passed by a coordinate Bench on 9th September, 2021 in *WPA 1581 of 2020 (Sadhu Mirdha & Others Vs. The State of West Bengal & Ors.)*. The material part of the order directed the petitioners before the Court to apply for a fresh licence at their existing sites upon compliance with all required formalities. The concerned authority was directed to consider and dispose of the application in accordance with the applicable rules and law. The Court was hearing several writ petitions in the aftermath of withdrawal of Rule 4(Q) of The West

Bengal Excise (Selection of Sites and Grant of Licence for Retail Sale of Liquor and Other Intoxicants) Rules, 2003. The direction/relief adverted to the petitioners who had enjoyed a benefit at a certain point of time but had their licence cancelled after withdrawal of Rule 4(Q). The petitioners, however, mentioned for correction of the order and by an order dated 13th September, 2021, the “fresh licence” was substituted with “Off-shop license”.

2. The petitioner says that the petitioner followed up with the direction of the Court and made an appropriate application before the Excise Commissioner. The petitioner is now aggrieved by an order passed by the Excise Commissioner on 21st February, 2022 by which the petitioner’s application for Off-shop licence under the Bengal Excise Act, 1909 was rejected on the ground of the application not being compliant with the procedures prescribed under 2003 and 2004 Rules.
3. Learned counsel appearing for the petitioner submits that the petitioner made the application for the existing site whereas the Excise Commissioner rejected the application on the New Site Rules 2003 and 2004. According to counsel, neither 2003 nor 2004 Rules have any application to the petitioner’s case.

4. Learned counsel appearing for the State submits that the petitioner's application must follow the formalities and procedures laid down in 2003 and 2004 Rules relating to an Off-shop licence. Counsel submits that the Off-shop licence cannot be at the existing site since the State reserves the right to select a new site as well as the concerned licensee for the Off-shop licence.
5. None of the objections raised or explanations given on behalf of the State are reflected in the impugned order of Excise Commissioner dated 21st February, 2022. The impugned order simply states that the petitioner's application is not in accordance with the procedures prescribed under 2003 and 2004 Rules.
6. In any view of the matter, the impugned order needs to be more specific with regard to the alleged non-compliance.
7. WPA 28013 of 2022 is accordingly disposed of by directing the Excise Commissioner, West Bengal being the respondent no. 3 to reconsider the impugned order dated 21st February, 2022 and come to a fresh decision with reasons within a period of six weeks from today. The petitioner shall be heard by the concerned respondent before the reasoned order is passed. A copy of the reasoned order shall be made available to the petitioner within four days from the date of passing such order. Needless to say,

the impugned order dated 21st February, 2022 shall
cease to be of any effect till date.

(Moushumi Bhattacharya, J.)