

24<sup>th</sup> April,  
2024  
(AK)  
13-14

**W.P.A 4844 of 2024**

Pranab Kumar Talukder  
Vs.  
The State of West Bengal and others

With

**W.P.A 11061 of 2023**

Anil Kumar Dutta  
Vs.  
The State of West Bengal and others

Mr. Krishnendu Sarkar  
Ms. Megha Das

...for the petitioner  
in WPA 4844 of 2024.

Mr. Anirban Ray, Ld. G.P.  
Mr. Tanoy Chakraborty  
Mr. Debraj Saha

...for the State in  
WPA 4844 of 2024.

Mr. Tanoy Chakraborty

...for the State in  
WPA 11061 of 2023.

Mr. Biswaroop Bhattacharya  
Mr. Golam Mohinuddin  
Mr. Anindya Bose  
Ms. Puja Mondal

...for the respondent no.6 in  
WPA 4844 of 2024 &  
for the petitioner in  
WPA 11061 of 2023.

1. The petitioners, one of the partners of a firm which has been running a liquor shop in the name of 'Diner Shese', has come up before this court challenging an order dated February 1, 2024

passed by the Additional District Magistrate (G) and Collector of Excise, Dakshin Dinajpur.

2. By the impugned order, the Collector withdrew the license of the said M/s. Diner Shese FL Off Shop as per Section 43 (1) of the Bengal Excise Act, 1909, as amended, and the operation of the license was terminated with effect from the issuance of the order. The Collector also recommended the State Government for the grant of fresh license under category 4(p) 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 the same local area as per Rule 5(C)(ii) of the West Bengal Excise (Transfer of License) Rules, 2023.
3. It is contended that Clause 5(C)(ii), in its proviso, contemplates that if there is no endorsement within six months as contemplated in sub-Clause(ii), the Collector shall proceed in the manner as done in the impugned order.
4. However, sub-Clause (ii) contemplates that the endorsement by all the legal heirs of the deceased shall be required only in the case the name of a legal heir of the deceased partner is to be inducted in the license.
5. In the present case, since the petitioner is the only surviving legal heir of his brother, who was the

deceased other partner, there arises no question of such endorsement and consequentially, the proviso does not apply at all.

6. Learned counsel appearing for the State contends that Rule 4 of the 2023 Rules provides the situations in which there will be a partial transfer.
7. Included therein is induction into the business of the legal heir of a deceased licensee/partner/member which shall be deemed to be a partial transfer according to Clause 4(A)(i).
8. It is argued that the said Clause has to be read in conjunction with Clause 5. The proviso thereto indicates that if no endorsement is received within six months and the license cannot be settled in the manner prescribed therein above, the Collector may withdraw the license and proceed in accordance with Category 4(p) of the 2023 Rules.
9. It is argued that in the present case, in view of the enmity and animosity between the petitioner and the private respondent, who are the surviving partners, no settlement of license is possible and as such the Collector was justified in passing the impugned order.
10. Learned counsel appearing for the private respondent contends that the private respondent has also challenged in WPA 11061 of 2023 a previous order of the Excise Commissioner whereby

three months' extension of the temporary license was granted.

11. It is argued that there are several pending litigations and criminal action between the petitioner and the private respondent and as such there was no scope of extending the temporary license of the liquor shop even for a day.
12. Upon considering the arguments of the parties, the present challenge in WPA 4844 of 2024 is seen to be confined to the impugned order dated February 1, 2024 which proceeded on the premise that there was no endorsement given within six months as contemplated in the proviso to Rule 5(C)(ii).
13. The said premise is bad in law, since in the circumstances of the case, there is no third party/legal heir of the deceased partner, in view of the present petitioner being the only surviving legal heir of the said partner and as such, there was no occasion for endorsement by other legal heirs to be furnished within six months.
14. The other question which remains is whether in view of the animosity between the petitioner and the private respondent, in any event the license could not have been settled, as also contemplated in Clause 5(C)(ii), read with its proviso.
15. However, as rightly contended by learned counsel for the petitioner, even as on the date of the

impugned order, as reflected in the impugned order itself, the private respondent Sri Anil Kumar Dutta pledged for some more time to take a decision regarding reconstitution of the partnership firm.

16. Hence, it was premature on the part of the Collector on the date of the impugned order to come to a conclusion that settlement on transfer was not possible.
17. One of the possible recourses which could be open to the Collector would be to proceed under Section 42 of the Bengal Excise Act in terms of Clause 5(A).
18. However, the said issue is beside the point.
19. Insofar as the present adjudication is concerned, neither of the two grounds stipulated in law, respectively the production of an endorsement within six months and/or impossibility of settlement, was available for deciding the issue as decided in the impugned order.
20. The Controller of Excise, thus, proceeded on an entirely erroneous footing in invoking the proviso to Clause 5(C)(ii) insofar as non-receipt of endorsement is concerned as well as on the issue of no settlement being arrived at, which could not be conclusively held due to the pledge of the private respondent for some more time to take a decision on the issue.

21. Accordingly, the impugned order dated February 1, 2024 passed by the Additional District Magistrate (G) and Collector of Excise, Dakshin Dinajpur is set aside.
22. It is made clear that nothing in this order shall preclude the respondent authorities from proceeding in accordance with law in the event the authorities are so empowered in law, if ultimately no settlement is arrived at between the surviving partners.
23. In the same breath, it is also made clear that nothing in this order shall also preclude the surviving partners from entering into a mutual settlement to ensure that the excise license is continued, either temporarily or on a permanent basis.
24. WPA 4844 of 2024 is accordingly disposed of.
25. WPA 11061 of 2023 is now taken up for hearing.
26. The challenge preferred in the present writ petition is against a temporary extension for three months of the excise license granted to the liquor shop 'Diner Shese'.
27. Since the said period of three months has already expired long back, the said writ petition has been rendered infructuous and disposed of accordingly.
28. It is, however, made clear that the merits of the observations and contentions of the parties which

were reflected in the impugned order are not entered into by this court at all.

29. There will be no order as to costs.
30. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Sabyasachi Bhattacharyya, J.)**