D/L. 21.
July 12, 2024. (Assigned)
MNS

WPA No. 4635 of 2022
+
CAN 1 of 2022

Bapi Dutta
Vs.
The State of West Bengal and others

Mr. Satrajit Sinha Roy,
Mr. Tapan Roy,
Ms. Sulagna Sen

…for the petitioner.

Mr. Kishore Dutta,
Mr. Anirban Ray,
Mr. Tanoy Chakraborty,
Mr. Debraj Saha

…for the State.

1. Notice of service filed in Court today be kept on record.

2. Learned counsel for the petitioner contends that the order refusing the petitioner's application for permission to run a bar-cum-restaurant is vitiated in law, being perverse and contrary to the governing Rules.

3. The first ground of challenge is that whereas in the proviso to Rule 8(1) of the West Bengal Excise (Selection of New Sites and Grant of Licence for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003 (in short "the 2003 Rules"), it is stipulated that if a road has to be crossed along the path which an ordinary prudent person normally takes to

reach such new site and the said road is marked by a zebra crossing for pedestrians to cross, the said distance shall be measured taking into account the act of an ordinary prudent person, while walking, would have crossed the said road at the point marked by zebra crossing for pedestrian to cross. In the present case, although there was no such zebra crossing in the immediate vicinity, measurements have been taken by the authorities.

4. It is submitted that such action on the part of the authorities without taking into account the fact that there is no zebra crossing itself vitiates the order.

5. Secondly, learned counsel for the petitioner places reliance on an 'Enquiry Report' annexed to the writ petition. In one of the items thereof, annexed at page 74 of the writ petition, it has been indicated that there are five existing FL 'On' shops and/or FL 'Off' shops and/or FL Bar-cum-Restaurant and/or retail shops selling country spirit within a radius of approximately one kilometer of the locality.

6. Hence, it is submitted that there has been discrimination against the petitioner, since, although other five shops have been given

licence within the vicinity, the petitioner has been deprived of such opportunity.

7. It is further argued by the petitioner that different distances have been measured by the authorities, as reflected from the impugned order, which itself vitiates the impugned order.

8. Such contentions are controverted on behalf of the respondents.

9. Insofar as the first contention of the petitioner is concerned, the proviso to Rule 8(1) of the 2003 Rules is not attracted in the present case at all.

10. Since it is an admitted position and also reflected from the order and the enquiry report that there was no zebra crossing in the vicinity, the said proviso cannot have any application. The proviso merely provides that if a road has to be crossed along the path which an ordinary prudent person normally takes to reach such new sites and the said road is marked by zebra crossing for pedestrians to cross, the said distance shall be measured taking into account the fact that an ordinary prudent person, while walking, would have crossed the said road at the point marked by zebra crossing for pedestrians to cross.

11. It is rather obvious that if there is no zebra crossing, there is no question of a prudent person crossing a zebra crossing. As such, it is absurd that the said proviso should be looked into while passing the impugned order.
12. Insofar as the second ground is concerned, the existing liquor shops cannot have any manner of relevance in the present context, since admittedly those shops are situated within a radius of one kilometer which is more than the restricted area of 1000 feet.
13. No case has been made out before this court or before the authority by the petitioner that any of those shops are also situated within 1000 feet as opposed to one kilometer.
14. Even if such contention was raised, two wrongs do not make a right and the petitioner could not have invoked negative equality inasmuch as if irregularities were committed in respect of grant of licence to other shops, the same illegality could not be a premise of seeking a similar right for the petitioners. In any event, no such illegality finds place in the records.
15. Thirdly, the argument that several distances were measured is misconceived. The impugned order reflects that an enquiry was conducted and as per the enquiry report, the

distance between the proposed site and two different gates being Gate Nos. 3 and 4 of the educational institution-in-question, that is, the Indian Statistical Institute, are 757 feet and 582 feet respectively. Thus, the measurements taken were not different distances between the same points, but from the chosen site of the petitioner two different gates of the Educational Institution, both of which fell within the prohibited limits.

16. In fact, even if one of the gates was within the prohibited limit, the requirement of the Rules would be subserved since even then the Educational Institution would be within the prohibited vicinity of the proposed site of the petitioner.

17. Hence, in view of the findings arrived at by the Principal Secretary, Finance Department, Government of West Bengal, while passing the impugned order, I fail to convince myself that there has been any irregularity or perversity and/or palpable illegality in any manner whatsoever.

18. Moreover, since the respondents gave an opportunity of hearing to the petitioners and proceeding on the premise of the enquiry report in accordance with law, there is no flaw

in the decision-making process as well, inviting the writ court to interfere.

19. Accordingly, the present writ petition is frivolous and ought to be dismissed.

20. Hence, WPA No. 4635 of 2022 is dismissed on contest. Consequentially, the connected application, being CAN 1 of 2022, is disposed of as well.

21. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)