

Court No. 9
(265711)

WPA 22224 of 2024

10.09.2024

(AD 4)

(S. Banerjee)

Smt. Chandana Saha

Vs.

The State of West Bengal & Ors.

Mr. Tanmoy Mukherjee
Mr. Kajal Baran Roy
Mr. Suman Nandi
Mr. Soumik Das
Mr. K. R. Ahmed
Mr. Rudranil Das
Mr. Tapas Chatterjee

...for the petitioner

Mr. B. Basu Mallick
Mr. Sayan Ganguly

...for the State

Mr. Sudip Sarkar

...for the respondent no. 8

The question in this writ petition is whether the provisions of Rule 14(6) of the West Bengal Excise (Selection of New Sites and Grant of License of Retail Sale of Liquor and Certain other Intoxicants) Rules, 2003, should have been followed by the Superintendent of Excise, Arambagh Excise District while considering in whose favour the permission to run the foreign liquor on shop, should be granted, upon death of the licensee Amit Saha.

The petitioner claims to be the mother of the deceased and a first-class heir under the Hindu Succession Act. The petitioner apprehended that the licensing authority was proceeding with the

application filed by the widow of the deceased. Hence the writ petition was filed.

It is submitted by the learned advocate for Smt. Piyali Saha, the respondent no. 8 herein, that temporary permission has been granted on a provisional basis for a period of six months.

Mr. Basu Mallick, learned advocate for the Department of Excise, submits that according to the transfer rules, only the name of one legal heir could be incorporated in the license.

Such submission of Mr. Basu Mallick is confusing, in view of Rule 14(6) of the Rules which is quoted below –

“(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: ”

Usually, when there are more than one legal heirs, a no-objection in the form of an affidavit is obtained from the other heirs, before issuing a license in the name of one of the heirs of the deceased. The rules relied upon, do not indicate that licence can be issued only in respect of one person.

Secondly, a question arises as to the basis on which the Excise Department thought Piyali Saha would be the appropriate candidate and not the petitioner, when both of them are first-class legal heirs of the deceased. These issues are required to be addressed, as it is submitted that the business is still closed.

The respondent no. 8 shall be restrained from taking steps pursuant to the provisional license, till the matter is once again heard by the appropriate authority.

Let this matter be decided by the District Magistrate and Collector, Hooghly, the respondent no. 3 herein, who will treat the writ petition as a representation and dispose of the same in accordance with law, upon hearing all parties and by passing a reasoned order.

A copy of the writ petition shall be served upon the District Magistrate and Collector, Hooghly within a period of one week from date and the authority will

decide the matter within two months, upon hearing all the parties. All the parties are entitled to be represented by their respective learned advocates.

The fate of the temporary license granted to Piyali Saha, shall abide by the result of the decision of the authority concerned.

Let the affidavit of service be kept with the record.

(Shampa Sarkar, J.)