

03.10.2024
Court No.09
Item no.08
CP/GB

WPA No. 24685 of 2024

Somnath Pramanik & ors.
Vs.
The State of West Bengal & ors.

Mr. Jaydip Kar, Sr. Advocate
Mr. Nilay Sengupta
Mr. Mohit Gupta
Ms. Sneha Dutta

....for the petitioners.

Mr. Anirban Ray, Ld. GP
Sk. Md. Galib, Sr. Govt. Advocate
Mr. Saptak Sanyal

.....for the State.

Mr. Mani Sankar Chattopadhyay
Mr. Sandip Mondal

.....for the respondent nos. 5 to 9,
11, 13 & 14.

1. Despite service, none appears on behalf of the respondent Nos.10 and 12.
2. The petitioners and the respondent nos. 5 to 9 are the existing surviving joint licensees. The dispute cropped up when Lilabati Pramanick, one of the joint licensees, expired. The respondent nos. 12, 13 and 14 are the heirs of late Lilabati Pramanick and there is no dispute with regard to the heir of the Mahadeb Pramanick, i.e., the respondent nos. 10 and 11. The respondent nos. 10 and 11 mutually agreed that respondent no. 10 would be the

representative of the deceased joint licensee Mahadeb Pramanick.

3. Arup Pramanik applied before the authority for issuance of licence in his name and the authority found that without the consent of the respondent nos. 13 and 14 (other heirs of the deceased Lilabati Pramanick) his application for being represented as the heir of the deceased joint licensee could not be entertained. The authority directed that the dispute amongst Arup, Bidyut and Pradyut should be resolved and they should come to a consensus with regard to who would represent late Lilabati Pramanick in the licence.
4. The licence was granted in respect of a foreign liquor off shop. Admittedly, the licence was issued in 2021 the name of Nagendra Nath Pramanick. The shop is situated at 38, Munshigunj Road, Kolkata – 700023 and is named and styled as ‘NN Pramanick & Sons’. Upon demise of Nagendra Nath Pramanick, several branches were issued joint licence being recognized as joint licensees till the dispute cropped up between the heirs of late Lilabati Pramanick. During such pending dispute, the licence expired. The authority could not issue the said licence as the heirs of Lilabati Pramanick could not arrive at an agreement as to which of them would be included as a joint licensee in the licence in question.

5. This issue has now affected the business prospect of the petitioners and the respondent nos. 5 to 9 who are already the joint licensees and were entitled to run the business on the strength of the licence which had been granted to them earlier, by the authority.
6. A writ petition was filed by Arup when the licence had expired. An Hon'ble Coordinate Bench directed the authority to consider the representation of Arup Pramanik, one of the heirs of Lilabati. In the meantime, the court directed the authority to grant a temporary licence so that the business could continue. Accordingly, the concerned authority allowed temporary licence. While disposing of the application of Arup Pramanik on September 4, 2024, the authority observed that the other legal heirs of the deceased licensee (Lilabati) were not even informed about the pending applications. Under such circumstances, all the parties and joint licensees were directed to settle the matter within three months on and from September 4, 2024. The period of three months has not yet expired.
7. The authority wanted to extend the time for a further period of three months from September 4, 2024, so that the matter could be resolved. The order dated September 4, 2024 does not indicate that the authority was desirous of closing the shop

completely. Rather, the intension was that the business should continue.

8. By another order dated September 4, 2024, the authority amended the earlier order passed by the Collector of Excise Kolkata (South) dated January 24, 2024, which was in compliance of the order/interim arrangement made by a Hon'ble coordinate Bench and held that the temporary licence shall continue till the final settlement or six months whichever was earlier, with retrospective effect. The surviving licensees and the legal heirs of the deceased licensees were granted liberty to file an application for consideration of the prayer for temporary licence. This order indicates that the authority, in consonance with the provision of section 37(a) of the Bengal Excise Act 1909, limited the temporary licence to six months.
9. The court is of the view that the liberty granted by the authority only indicates that if temporary licence was to be further granted, the licence-holders and the heirs of the deceased licensee should apply for a fresh term of six months. The temporary licence could not continue for an unending period. The order does not indicate that the authority was of the view that fresh temporary licence for another six months to operate the shop, was either barred by law or that the authority was not inclined to grant a

fresh temporary licence for another period of six months.

10. In the meantime, an application was filed on the basis of the liberty granted by the authority, by all the surviving joint licensees and the legal heir of Manab (since deceased). The said application was rejected on the ground that the prayer for grant of temporary licence for 12 months, could not be allowed. The law permits the authority to grant temporary license for six months.
11. Mr. Galib, learned Advocate for the authority submits that the order impugned is an appealable order. That the authority could not go beyond the West Bengal Excise (Transfer of License) Rules 2023. Rule 5(C)(i) clearly provides that in case of a proprietorship business, the Collector must settle the licence in a fresh manner among surviving joint proprietors, if any, along with a legal heir of the deceased licence holder and in case of sole proprietorship, only with a legal heir of the deceased license holder. In both cases, the name of the legal heir to be inducted must be endorsed by all the other heirs of the deceased within six months from the date of death of the licensee.
12. In this case, it is a question of livelihood of the petitioners and the respondent no.5 to 9, whose business has been totally stopped on account of lack

of consensus amongst the heirs of Lilabati. The Hon'ble coordinate Bench had directed that the temporary licence should continue till the application of Arup was decided. The application of Arup was not decided. The authority was of the view that as Arup had not informed the other heirs about this application, the matter could not be kept pending forever. The authority further granted the surviving joint licensees and other heirs of the deceased, liberty to pray for a temporary licence. The authority thereafter rejected such prayer. Here, the authority was blowing hot and cold and also failed to take into consideration the issue of livelihood of the other joint surviving licensees whose business was closed only because one branch could not come to a consensus.

13. Secondly, the fact that the authority granted liberty to the parties to apply for a temporary licence, indicates that the authority did not want to shut down the business. Closing the shop as a whole, when three months' time had been given by the same authority to the parties to come to a consensus, is arbitrary. None of the orders record that the authority had come to an informed decision either with regard to the application or the dispute pending between the parties. The proviso to Rule 5(C) clearly indicates what the authority could do if

the provisions of 5(C)(i) and (ii) could not be fulfilled. The authority has not taken any such step. All that the authority did was close the business, just before the festive season. The period allowed by the authority to the parties to settle the matter, has not expired. Such action is arbitrary, unreasonable and contrary to rule of law. It is not the case of the authority that an adjudication as per Rule 5(C) was made and a final decision was arrived at.

14. The order impugned is set aside. The authority is directed to open the shop by granting a temporary licence for 6 months with retrospective effect from the date of cancellation and/or the closure of the shop, as the case may be. The authority will depute a person from their own office who will monitor and supervise the business and keep note of the accounts. The distribution of the profit shall also be decided accordingly. The proportionate share of Lilabati from the proceeds, shall be kept separately, by the said officer. The other dispute with regard to previous profit sharing etc., between the petitioners and the other respondents, are matters of the a court and the order of the civil court shall ultimately govern the same. This order is a temporary arrangement and the petitioners are at liberty to file a regular appeal challenging all the orders passed by the authority.

15. Other legal heirs are entitled to voice their opinion, file their applications and approach the appellate authority in accordance with law.
16. Accordingly, the writ petition is disposed of.
17. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)