AD-11
Ct No.09
15.01.2024
TN

WPA No. 28582 of 2023

Samarendra Nath Saha
Vs.
The State of West Bengal and others

Mr. Subir Sanyal,
Mr. Sumit Ray,
Mr. Sourajit Mukherjee,
Mr. Sailen Naskar
.... for the petitioner

Mr. Rajrshi Basu,
Mr. Ananda Dulal Sarkar
.... for the State

Mr. Siddhartha Banerjee,
Mr. Anjan Bhandari
.... for the private respondents

1. Learned counsel for the petitioner contends that the impugned order withdrawing the excise licence of the petitioner is bad in law. It is contended as a backdrop of the present case that initially the petitioner and his brother Sailendra Nath Saha were joint holders of an excise licence. Although the petitioner submits that they held so in the capacity of joint proprietors, the private respondents contend that it was a partnership. Be that as it may, the fact remains that admittedly the petitioner and his brother Sailendra Nath Saha (since deceased) were joint holders of an excise licence. Upon the demise of

Sailendra Nath Saha, the legal heirs of Sailendra Nath Saha, each of whom held their independent excise licences and thus, according to the petitioner, were ineligible to be granted licence. As such, a stand was taken by the petitioner that upon the demise of Sailendra Nath Saha, the said heirs could not come in as joint holders of licence and the petitioner was entitled to settlement of the licence exclusively in his favour.

2. The issue was agitated before the Controller and went up to the appellate authority, that is, the Excise Commissioner. The Excise Commissioner, vide order annexed at pages-37 and 38 of the writ petition, remanded the matter to the Collector. While doing so, the Excise Commissioner *inter alia* observed upon considering the rival submissions made before him and the report of the Collector of Excise, Kolkata (North) that it is seen from the prayers of renewal of the Excise licence in respect of the country spirit shop-in-question for the years 2016-17 to 2018-19 that the private respondent had refrained from providing true and correct information in respect of items 9(a) and 9(b) of Form- I and such action on the part of the private respondent renders such application for renewal faulty. From the impugned order dated September 04, 2017 passed by the Collector, the Excise Commissioner did not find such issue having been sufficiently dealt with, for which the matter was remanded to the Collector for consideration of the same afresh after according an opportunity of hearing to all interested parties and to pass a reasoned order in the matter.

3. Needless to say, it was observed, the Collector would be at liberty to consider all submissions made before him and all documents which he may deem fit for the adjudication of the case.

4. Thus, according to the petitioner, the entire issue as to the entitlement of the legal heirs of Sailendra Nath Saha to come in as joint holders of excise licence with the petitioner was remanded. Yet, without deciding on such issue, when the petitioner sought for settlement of the licence exclusively in the name of the petitioner, there were initial hitches and after the petitioner deposited the due fees twice over, due to intervening change of the Rules, it was made out to the petitioner by the concerned authorities that in the absence of the heirs of the deceased Sailendra Nath Saha coming in as joint applicants, the licence could not be exclusively renewed in favour of the petitioner or settled in his favour.

5. Ultimately, the excise licence was withdrawn by the impugned order since the heirs of Sailendra Nath could not be brought by the petitioner.

6. It is contended that the entire premise of such withdrawal was the necessity of the heirs of Sailendra Nath Saha to come in or be represented, which premise itself goes if on the remand being adjudicated, the petitioner's stand of the ineligibility of Sailendra Nath Saha and his heirs was upheld.

7. Learned counsel further argues that the withdrawal was apparently under Section 43(1)(b) of the Bengal Excise Act, 1909. Such a withdrawal, however, as per Sub-Section (1) of Section 43, could only come to pass if the breach was on any cause other than those specified in Section 42 of the said Act.

8. Section 42(1) provides the grounds of cancellation or suspension. Clause (c) of Sub-Section (1) provides that the licence may be cancelled or suspended in the event of any breach by the holder thereof or by any of his servants or anyone acting on his behalf with his express or implied permission of any of the terms or conditions thereof.

9. If at all, the said provision was applicable for which the respondent-authorities could, after giving an opportunity to the petitioner of hearing, at best cancel or suspend the licence, but not withdraw the same summarily under Section 43(1)(b) of the Act.

10. Learned counsel places reliance, in this context, on the judgment reported at *AIR 1972 SC 1863 [Amar Chandra Chakraborty v. Collector of Excise, Govt. of Tripura],* where it was held by the Supreme Court inter alia that Section 43(1)(b) is only applicable on the high ground of the policy of State coming in. In the present case, without any such State policy or high ground having been made out, the invocation of Section 43(1)(b) was in any event improper.

11. That apart, it is pointed out that Section 43(2) contemplates compensation amounting to fifteen days' average fees being payable in respect of the licence in the event a forthwith withdrawal without notice is done. In the present case, however, the impugned order of withdrawal was not accompanied by any corresponding compensation, which also vitiates the same.

12. Learned counsel places reliance on the judgment reported at *(2001) 10 SCC 740 [State of Tripura v. Manoranjan Chakraborty] and* submits that if there is gross injustice, alternative remedy cannot be an absolute bar to the exercise of the writ jurisdiction by this court.

13. Learned counsel appearing for the private respondents controverts the submissions of the petitioner and argues that the remedy of the petitioner lay before the Taxation Tribunal. Learned counsel places reliance on the relevant provisions of the extant law on such count and submits that matters pertaining to excise licence are amenable to such jurisdiction of the Tribunal.

14. In fact, the jurisdiction vested in the Tribunal as per the relevant statute is collateral with the writ jurisdiction of this court and, as such, it is submitted that the writ court is not the appropriate forum to decide such issues.

15. That apart, under Section 8(2) of the Bengal Excise Act, 1909, an appeal is maintainable before the appropriate authority.

16. Learned counsel appearing for the State submits that although the Tribunal does not have jurisdiction since the matter does not pertain to taxation or revenue, the impugned order of the

Collector was amenable to an appeal before the Excise Commissioner.

17. Learned counsel also contends that the provisions of Article 47 of the Constitution is required to be looked into, since the same vests power on the State to regulate intoxicants.

18. Even on a cursory perusal of the materials annexed to the writ petition and relied upon by learned counsel for the parties, it is evident that the remand order passed by the Excise Commissioner, West Bengal, has not been given effect as yet. The specific question raised by the petitioner therein, *inter alia*, was whether the private respondents, as heirs of Sailendra Nath, were at all entitled to be inducted as joint excise licensees with the petitioner with regard to the licence-in-question.

19. Upon remand, in the event the said issue was decided in favour of the present writ petitioner, and it was held that the private respondents are ineligible to be so inducted, there would not remain any question of applicability of the relevant provisions of the concerned Rules, that is, the West Bengal Excise (Section of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003 as well as the Consolidated Rules made under Section 85, to operate as a fetter to the petitioner being settled the excise licence exclusively.

20. Thus, the present conundrum would be nipped at its roots in the event the issue was decided in favour of the petitioner.

21. On the other hand, if the issue was decided against the petitioner and in favour of the private respondents, the petitioner would have an opportunity to approach the private respondents to seek a consensus on a joint application for licensee being applied for/renewed and/or the petitioner would have an option to go for a fresh licence in his own name. Thus, the current issue is entirely dependent on the previous issue which, after remand, has not culminated in a fresh decision of the Collector.

22. Insofar as the point raised by the petitioner regarding applicability of Section 43 in the present case, the petitioner has a good point there as well.

23. The petitioner is justified, on the principle as laid down in *AIR 1972 SC 1863*, to argue that there could be no withdrawal of licence forthwith under Section 43(1)(b) unless there was a high ground such as State policy for doing so. An isolated individual alleged breach cannot be a justification for the respondent-authorities to invoke Section 43(1)(b).

24. In any event, the petitioner is also correct in arguing that in view of applicability of the provisions of Section 42(1)(c) due to the alleged breach of the conditions by the petitioner, the appropriate *modus operandi* before the respondent-authorities was to invoke Section 42 and not Section 43. Thus, the impugned order withdrawing the petitioner's licence is bad on all counts.

25. A question of maintainability of the writ petition has been taken. However, the State is justified in pointing out that the Taxation Tribunal has parallel jurisdiction with this court only in the event the matter pertains to excise duty and a matter of revenue. The present case, however, is a question of renewal of licence, which falls within the domain of the State regarding regulation of sale of intoxicants and, as rightly contended by the State, comes within the purview of Article 47 of the Constitution of India.

26. However, in view of the above discussions, the Collector acted palpably without jurisdiction in invoking the power of Section 43 and, as such, the said exercise was a nullity, being *de hors* the provisions of the concerned statute. Hence, the writ court is not powerless, despite the availability of an appeal against an order of the Collector, to step into such larger issue and intervene in the matter. Hence, the availability of an alternative remedy by way of an appeal is not an absolute bar, particularly since the gamut of the present writ petition is much wider than the mere application of law by the Collector. The scope of adjudication in the present matter and the questions involved are wider than the ambit of exercise of power by the Collector under the Act.

27. In view of the above observations, WPA No. 28582 of 2023 is allowed on contest, thereby setting aside the impugned order of withdrawal of the licence of the petitioner vide order dated December 12, 2023 passed by the Collector of Excise, Kolkata (North) by virtue of Memo No. 554(N)(5) R.E.

28. The Collector shall now, as expeditiously as possible and positively within a month from date, act in terms of the remand order of the Excise Commissioner, West Bengal annexed at pages 37-38 of the present writ petition and decide all issues between the petitioner and the private respondents on such count by affording adequate opportunity of hearing to both the said private parties as well as the respondent-authorities.

29. Upon such decision being taken, it will be open to the parties as well as the respondent-authorities to act in accordance thereof and in terms of the observations made above.

30. Since no affidavits have been invited in the matter, it is deemed that none of the allegations made in the writ petition are admitted by any of the respondents.

31. There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)