AD-24
Ct No.09
16.01.2024
TN

WPA No. 29228 of 2023

Ranjit Saha
Vs.
State of West Bengal and others

Mr. Sudip Deb,
Mr. Dip Jyoti Chakraborty,
Ms. Ipsita Ghosh,
Mr. Ranjit Malakar
.... for the petitioner

Mr. Biswabrata Basu Mallick, Ld. AGP,
Mr. Sukalpa Seal
.... for the State

1. Affidavit-of-service filed today be kept on record.

2. Learned counsel for the petitioner contends that the petitioner had applied for shifting of his liquor shop from its existing location to a different one. When the petitioner applied for the same, initially there was a rejection which was challenged before this court. The matter was remanded to the first authority with a direction to reconsider the petitioner's application. In the meantime, police protection was afforded to the petitioner to ensure that the petitioner smoothly carries on the business in the existing location. After similar orders being obtained by the petitioner twice, ultimately by the impugned order, the Excise Commissioner refused the application of the petitioner for shifting the site which was affirmed by the Principal Secretary, which is the Appellate Authority under the Bengal Excise Act, 1909 (for short "the 1909 Act").

3. Learned counsel contends that subsequently the petitioner has obtained information under the Right to Information Act, 2005 that a similarly placed person's application for shifting was allowed despite the transferee location already having four existing liquor shops. Hence, the respondents are guilty of unreasonable discrimination, which is violative of Article 14 of the Constitution of India.

4. Learned counsel further submits that although Section 30 of the 1909 Act has been cited by the respondent-authorities, the discretion conferred therein is subject to the provisions of the West Bengal Excise (Shifting of existing site or change of premises of Excise License) Rules, 2009 (for short "the 2009 Rules"), which governs applications for shifting as in the present case.

5. Clause 4.3 of the same, pertaining to procedure of shifting, clearly provides that before deciding on an application for shifting, the opinion in writing of the Collector is to be forwarded to the

Excise Commissioner having regard to the reasons for shifting, keeping in view the realization of revenue potential in the area. The Collector shall also specifically record his satisfaction or otherwise as to whether the proposed new site is free from restriction and the proposed site is suitable in all respects, as may be applicable, for grant of licence for all other categories of licence not covered by 4.3.1.

6. In the present case, there is no reflection of any such written report from the Collector being considered.

7. It is contended by the petitioner that the refusal of the petitioner's request for shifting of location, despite there admittedly being no restriction otherwise, is tainted and is required to be set aside.

8. Learned counsel places reliance on the judgment of *National Insurance Co. Ltd. vs. Keshav Bahadur and others,* reported at *(2004) 2 SCC 370*, where it was held by the Supreme Court that a statutory discretion is not necessarily or usually absolute but must be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether to act and how to act.

9. Learned counsel appearing for the respondent-authorities places reliance on the impugned orders and submits that the said orders clearly reflect that all documents and relevant materials were considered. It is, thus, clear that the written opinion of the Collector must have been considered while passing the said orders. It is further submitted that the impugned orders clearly record that there are as many as seven retail excise licences existing in the vicinity of the proposed new location. Three excise licences are within 1.5 kilometer radius of the proposed site and there are other seven within 5 kilometer of the same. Thus, in view of the sales data of the existing ten shops indicating that the combined sales figure remains fairly constant over the last few years and there being no exponential growth in that regard, the decision to refuse the petitioner's application was justified.

10. A consideration of the judgment cited by learned counsel for the petitioner clearly shows that the proposition is well-settled that a statutory discretion is attended by compliance of the express and implied legal duties of the authorities. Discretion cannot be unfettered but is also circumscribed by the requirements of law.

11. Let us consider in the said backdrop the facts of the present case. It is clear from the impugned orders that the authorities clearly observed that the newly proposed site is free from all restrictions imposed by Rule 8 of the 2003 Rules. However, both the authorities below considered the fact that in the existing site the licence was granted having regard to the public demand but in the newly proposed site, there are already ten other existing liquor outlets. It is clearly recorded in the orders that the concentration of the licences around the proposed site, taking into consideration three retail excise licences within 1.5 kilometers of the same and seven within 5 kilometers of the same, read in conjunction with the available sales data for the existing ten shops which shows that the demand has been constant in the area over the last few years, clearly indicates that there was sufficient basis for the authorities to come to the impugned conclusion.

12. It was observed by the Excise Commissioner and affirmed by the Appellate Authority that another licence in the area will lead to concentration of licences within a small radius of space.

13. In the same breath, the petitioner was given the liberty to apply afresh for shifting to any other suitable site, thereby lending credence to the petitioner's contention that the existing location of the petitioner's shop is not suitable to carry on the business further.

14. Insofar as the other comparable unit sought to be projected by the petitioner, the consideration for the same is numerically different from the present. Whereas there are existing four shops in the area where the proposed site was allowed for the other comparable person, in the present case, there are as many as ten liquor shops in the close vicinity, three being within 1.5 kilometers radius and seven within 5 kilometers.

15. Moreover, there can be a subjectivity in the discretion exercised by the authorities, keeping in view not only the objective consideration of the public demand and sales in recent years of the existing shops but also the suitability and demand peculiar to a particular area, which has to be unique for each area, for attributing propensity to the area for further consumption of liquor.

16. I find from the impugned orders that both the authorities below took into consideration all the relevant factors including the propensity of the proposed new site to absorb further business in liquor. The sales figures of the existing ten shops over the last few years have been taken into consideration. In the order of the Excise Commissioner, which has been affirmed by the Appellate Authority, it is also recorded that all the written submissions and the materials on record were taken into consideration.

17. Since a presumption of correctness is attached to all official and judicial acts, in the absence of any concrete rebuttal, there is no reason to assume that the written opinion of the Collector was not taken by the Excise Commissioner while passing the impugned order. In any event, there is no legal requirement for the said Commissioner's opinion to be quoted verbatim in the order refusing or allowing an application for shifting.

18. Insofar as the applicability of Clause 4.3.1 of the 2009 Rules is concerned, the same also takes into consideration the realization of revenue potential in the area, which is reflected in the impugned orders.

19. Section 30 of the 1909 Act, although pertaining to selection of new sites for grant of licences, stipulates the tests which are equally applicable to grant of permission to shift to a new site, since the material considerations for setting up a new site and shifting of an existing shop to a new area are comparable and similar.

20. In such view of the matter, this court does not find any fault or flaw and/or arbitrariness or discrimination in the decision-making process of the authorities while passing the impugned orders.

21. Hence, there is no scope of interference in the present writ petition.

22. Accordingly, WPA No. 29228 of 2023 is dismissed, without any order as to costs.

23. However, in consonance with the leave granted by the Excise Commissioner to the petitioner, it is made clear that the petitioner will be at liberty to apply afresh for shifting of his liquor shop to any other suitable site than the one which has been turned down by the authorities.

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.)