

29.07.2025

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Ct.No.7
sdas

WPA No. 8114 of 2021

Sri Sanjib Kr. Sarkar
Vs.
State of West Bengal & Ors.

Mr. Satyendra Agarwal
Mr. Bijoy Bag
Mr. Goutam Malik
....for the petitioner

Mr. Tanoy Chakraborty
.... for the State

The present writ petition has been preferred challenging the legality of the order dated 20th March, 2020, passed by the Additional District Magistrate (G) and Collector of Excise, North 24 Parganas.

Briefly stated, the facts leading to the institution of the present writ petition are that the petitioner's father was a holder of an excise licence. The petitioner's father expired on 13th January, 2017, and was survived by three sons and three daughters. The petitioner, a practicing Advocate, applied for the grant of a licence in his name along with the other legal heirs. However, the petitioner's prayer for grant of licence in his name, jointly with the other legal heirs, was rejected on the ground that he is a practicing Advocate, and the Advocates Act and the Rules framed thereunder do not permit a practicing Advocate to engage in any business.

Subsequently, the licence was granted in the names of three legal heirs of the original licence holder, since one of the remaining legal heirs is a physically challenged person and another was not inclined to accept the licence.

Mr. Agarwal, learned Advocate representing the petitioner, submits that the petitioner has an inheritable right to obtain the licence in his name along with the other legal heirs. He further submits that an appropriate direction be issued to the competent authority to grant a fresh licence in the name of the petitioner and the other three legal heirs of the original licence holder.

Mr. Chakraborty, learned Advocate representing the State, at the outset, raises the issue of maintainability of the writ petition. Inviting my attention to the provisions of Rule 3 of the Consolidated Rules made under Section 85 of the Bengal Excise Act, 1909, he submits that, in accordance with the said Rule, an appeal lies against the order passed by the Collector of Excise. He further submits that the petitioner may avail the alternative remedy available under the statute, and that in view of the existence of such an efficacious alternative remedy, it would not be appropriate to entertain this writ petition.

In response, Mr. Agarwal, learned counsel, submits that the mere existence of an alternative

remedy does not constitute an absolute bar to the maintainability of a writ petition.

Heard the learned Advocates representing the respective parties and perused the materials on record.

Undoubtedly, the order passed by the Collector is an appealable order, and in accordance with the provisions of Rule 3 of the Consolidated Rules, an appeal lies before the Excise Commissioner against the order made by the Collector.

Needless to state, there is no absolute bar on the Writ Court to entertain a writ petition despite the existence of an alternative remedy. However, where the statute provides for such a remedy, the Court ought to exercise self-imposed restrictions. Therefore, since the petitioner has an efficacious alternative remedy before the appellate authority, I am not inclined to interfere in the present writ petition.

Thus, the writ petition is dismissed, however, without any order as to the costs.

If the appeal is preferred within a period of fifteen days from date, the same shall be decided on merits after affording an opportunity of hearing to the petitioner and other interested parties, without raising any objection as to its belated presentation. A sincere effort shall be made to dispose of the appeal, preferably within a period of two months from the date of presentation of the appeal.

It is clarified that I have not gone into the merits of the petitioner's contentions raised in this writ petition. All points are kept open to be decided by the appellate authority in accordance with law.

However, there shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)