02
05.05.2025
Ct. No. 11
Jayanta

MAT 579 of 2023
with
IA No. CAN 1 of 2023

Shibnath Naskar
Vs.
State of West Bengal & Ors.

Mr. Ashim Kr. Routh
Mr. S. Barik
Ms. Ananya Mondal
.... For the Appellant.
Mr. Arjun Roy Mukherjee
Ms. Rajyashree Mukhrjee
.... For the State.

This appeal arises out of an order passed on 9th February, 2023 by a Learned Single Judge of this Court, dismissing the writ petition.

The brief facts of the matter are enumerated hereinafter.

The appellant/writ petitioner challenged an order dated 2nd September, 2021 passed by the Excise Commissioner upholding the order passed on 7th August, 2019 by the Additional District Magistrate (G) and Collector of Excise, North 24 Parganas, rejecting the representation of the writ petitioner to get the liquor license for the Off Shop since, he had failed to provide a suitable site within 15 days of receipt of the letter.

The writ petition was dismissed on the ground of delay as well as on the ground of violation of Rule 9 (3) of the West Bengal Excise (Selection of Person for Grant of

License at the New Sites for Retail Sale of Intoxicants) Rules, 2004.

The writ petitioner has however not challenged the final order passed by the Additional Chief Secretary, on 7th September, 2022. This writ petition was dismissed primarily on the ground of delay and also on the ground of violation of Rule 9 (3) of The West Bengal Excise (Selection of Person for Grant of Licence at New Sites for Retail Sale of Intoxicants) Rules 2004. This rule provides the manner of selection of the applicants for allotment of site. Sub-rule 3 thereof, specifies the time lines within which the concerned applicant shall offer the details, which is 15 days from the receipt of the communication.

The writ petitioner/appellant herein has argued that the communication of 23rd March, 2005 had never been made. On the contrary, he contends that he had personally gone and taken this communication on 30th March, 2005. The application was thereafter submitted by him on 13th April, 2005.

The learned Counsel appearing for the State has categorically argued that there is no evidence of such communication being received by the writ petitioner/appellant on 30th March, 2005, as contended.

It has also been contended by the counsel appearing for the State that the petitioner has himself admitted in his letter of 16th February, 2009, that he had received the offer letter “on 23/03/2005”. The statements made by the petitioner have never been controverted.

It has also been pointed out by the learned counsel for the State that the petitioner has gone through three levels of adjudication starting with the order of 7th August, 2019 passed by the DM (G) and Collector of Excise, which was appealed and rejected by the Excise Commissioner on 2nd September, 2021, and the final order of 7th September, 2022 passed by the Additional Chief Secretary, Department of Finance, Government of West Bengal which has not been challenged.

It has also been contended by the State that the Writ Petition has been filed after a long delay and therefore the petitioner does not deserve any relief.

We have considered the arguments by Counsel for both parties and have also gone through the records and the documents. It is not in dispute that on being refused the licence, the writ petitioner/appellant had at the first instance been given a hearing before the concerned Additional District Magistrate (G) & Collector of Excise on 14th August, 2018.

The order was carried in appeal, which was disposed of on 19th December, 2018 giving liberty to the writ petitioner to approach the Collector once again with necessary documents, which would be considered by the Collector

The second attempt of resurgence emanated from the order of 19th December, 2018. Pursuant thereto, representations were made once again and a hearing was also held on the basis of such representation. The Additional District Magistrate (G) and Collector of Excise, by his order of 7th August, 2019, dismissed the representation. This order, though carried in appeal, was sustained, the appeal being dismissed by the Excise Commissioner on 2nd September, 2021.

Being dissatisfied with the said order, the writ petitioner/appellant had carried the same in appeal before the Additional Chief Secretary, Finance Department, Government of West Bengal. This appeal was disposed of on 7th September, 2022 holding, *inter alia,* that the communication had been made to the writ petitioner by the concerned department on 23rd March, 2005, but the petitioner failed to offer a suitable site within 15 days, as mandated under Rule 9 (3) of the said Rules. This order has not been challenged.

The petitioner/appellant's contention that he had himself collected the order on 30th March, 2005 does not find any reflection in any order passed by the authorities nor has the appellant disclosed any contemporaneous document/representations made by the petitioner/appellant before any such authority.

In this conspectus of facts, it can be clearly culled out that the 15 day period for submission of the "suitable site" had long expired, when the petitioner submitted the same on 13th April, 2005. It is absolutely clear and has been established beyond any reasonable doubt that the petitioner/appellant had submitted the site details to the concerned authority beyond the stipulated period of 15 days, having received the communication of 23rd March, 2005, on that same date as is clear and unassailable from the letter of 16th February, 2009.

In the aforestated circumstances, we do not find any merit in the appeal.

In view thereof, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Reetobroto Kumar Mitra, J.)   (Tapabrata Chakraborty, J.)