Form No. J.(2)
Item No.2

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUIONAL WRIT JURISDICTION
APPELLATE SIDE

HEARD ON: 24.02.2025

DELIVERED ON: 24.02.2025

CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

M.A.T. 1073 of 2024
With
I.A. No. CAN 1 of 2024
+
CAN 2 of 2024
The State of West Bengal & Ors.
Vs.
Sabita Debnath (Bibi)

Appearance:-
Mr. Nirmalya Biswas
.....For the Respondent/Writ Petitioner

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

In Re.: I.A. No. CAN 1 of 2024

1. This appeal has been filed by the State challenging the order dated 12th March, 2024 in W.P.A. 28727 of 2023. There is a delay of 80 days in filing the appeal. As we are satisfied with the explanation offered, the delay is condoned.

2. Accordingly, application being, I.A. No. CAN 1 of 2024 stands disposed of.

In Re. M.A.T. 1073 of 2024

3. The petitioner had filed the writ petition challenging the order passed by the Additional Chief Secretary, Finance Department, Government of West Bengal dated 2nd November, 2022 in and by which the Additional Chief Secretary directed the district authorities to consider the application filed by the writ petitioner for grant of foreign liquor on-shop licence in the light of the relevant

rules that apply for grant of licence for the category, as has been prayed for by the applicant/writ petitioner.

4. The learned Single Bench noted that earlier, the appellant had approached this Court and filed a writ petition in W.P.A. 30089 (W) of 2015. In the said writ petition, the respondent/writ petitioner had challenged the order of rejection of the application filed by the respondent for grant of foreign liquor on-shop licence.

5. The learned Writ Court after having perused the writ petition and the points, which were canvassed before the Court by either side, allowed the writ petition by setting aside the order dated November 9, 2015 passed by the Principal Secretary, Department of Excise, Government of West Bengal and directed the revision petition to be heard afresh by granting the writ petitioner an opportunity of being heard and thereafter, pass a reasoned order in the light of the observations made in the said order. A time frame was also fixed for compliance with the direction.

6. However, the revisional authority upon remand without adhering to the directions issued by the learned Writ Court, further remanded the matter to the district authorities to consider the application in the light of the relevant rules that apply for grant of licence for the category, as prayed for, by the applicant/writ petitioner. The correctness of this order was the subject-matter of challenge in W.P.A. 28727 of 2023.

7. The learned Writ Court while setting aside the order dated November 2, 2022 passed by the Additional Chief Secretary, Finance Department, Government of West Bengal observed that to avoid unnecessary further harassment, the matter was directed to be re-adjudicated by the Additional Chief Secretary, who was the respondent no.2 in the writ petition in the light of the documents

already lying before him including the Deputy Excise Collector's report and the enquiry report, which has been subsequently forwarded to him in accordance with law upon giving an opportunity of hearing to all concerned including the writ petitioner. The State is on appeal against the said order.

8. To be noted that the earlier order passed in W.P.A. 30089 (W) of 2015 dated 30th August, 2018 had attained finality. Therefore, the authority was bound by the directions issued therein, wherein there was a specific direction to re-hear the revision petition in the light of the observations made in the said order. For better appreciation, the relevant observation contained in the order dated 30th August, 2018 is quoted hereinbelow:-

> *"Having perused the points raised by the petitioner in the revision petition before the Principal Secretary concerned and the documents, which have been placed before this Court during hearing of this writ application, I find that the Principal Secretary concerned has failed to exercise his jurisdiction as vested by law and has mechanically affirmed the order of the Excise Commissioner concerned based on the reports, which are not comprehensive. On the contrary, there is already an existing report of the Deputy Excise Collector concerned in favour of the writ petitioner, which was not at all looked into by the Principal Secretary concerned. Moreover, the petitioner's specific contention is that the Treasurer of the Birbhum Zilla Bus Samity is running a Foreign Liquor 'ON' Shop in the said area and he as also the authorities, were hands in glove in not allowing the petitioner to run a competitive business of the same nature in the area. This point was also not considered by the Principal Secretary concerned. The Principal Secretary concerned has also failed to take into consideration that the site offered by the petitioner, does not suffer from any of the restrictions, as imposed by Rule 8 of the West Bengal Excise (Selection of New Sites For Grant of Licence For Retail Sale of Sprit and Certain Other Intoxicant Rules), 2003 and the reason for rejecting the case of the petitioner, does not have any legal basis."*

9. The above directions/observations having attained its finality, the authority was required to re-hear the revision petition afresh by granting an opportunity

of personal hearing to the writ petitioner and pass a reasoned order in the light of the observations made in the order, which we have quoted above.

10. Therefore, the learned Single Bench was fully justified in remanding the matter back to the Additional Chief Secretary to re-adjudicate the issue in the light of the documents already lying before him including the Deputy Excise Collector's report and the enquriy report, which has been subsequently forwarded to him.

11. The learned Single Bench is also right in observing that such direction is required to be given to avoid unnecessary further harassment to the writ petitioner. To be noted that the litigation commenced in the year 2015 and this is the third round of litigation. Therefore, the direction issued by the learned Single Bench is perfectly justified and does not call for any interference.

12. The time granted by the learned Single Bench to comply with the direction as contained in paragraph 10 of the impugned order stands extended by a period of eight weeks from the date of receipt of server copy of this order.

13. With the above observations, appeal and the connected application (CAN 2 of 2024) stand dismissed.

14. No costs.

15. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS) J.)

Pallab/KS AR(Ct.)