IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-
The Hon'ble Justice PARTHA SARATHI SEN

WPA 18064 of 2010

Ranjan Kumar Banerjee
-Vs-
The State of West Bengal and Ors.

For the Petitioner: Mr. Anant Kumar Shaw, Adv.,
Mr. Ravi Kumar Dubey,Adv.

For the respondents/State: Mr. Anirban Ray, Adv.,
Mr. Tanay Chakraborty, Adv.,
Mr. Saptak Sanyal, Adv.

Hearing concluded on: 19.03.2025.

Judgment on: 19.03.2025.

PARTHA SARATHI SEN, J. : –

1. The challenge in this writ petition is the three orders dated 11.08.2008 as passed by the Collector of Excise, Kolkata (North), the order dated 09.04.2010 as passed by the Excise Commissioner, West Bengal in an appeal under Section 8(2) of the Bengal Excise Act, 1909 (hereinafter referred to as the 'said Act of 1909' in short) and the order dated 14.07.2010 as passed by the Secretary, Excise Department, Government of West Bengal in a proceeding under Section 8 (3) of the said Act.

2. By passing three impugned orders each dated 11.08.2008, the Collector of Excise, Kolkata (North) cancelled three separate licenses of

the writ petitioner in respect of one F/L Bonded Warehouse, one F/L Wholesale Trade and one F/L Off Shop all of which are /were situated at 173 A, Lenin Sarani, Kolkata 700013.

3. In order to arrive at a logical conclusion of the instant writ petition the facts leading to initiation of the instant writ petition are required to be discussed in a nutshell and those are stated hereinbelow in seriatim:-

i. The writ petitioner at all material time used to carry on business in the name of M/s Celebrate and at that material time he was granted three licenses in respect of one F/L Bonded Warehouse, one F/L Wholesale Trade and one F/L Off Shop at the aforementioned premises.

ii. The writ petitioner made default in payment of excise duty for the period from 28.06.2004 to 26.07.2006 and as per the respondents/authorities the amount of outstanding excise duty came to the tune of Rs.1,90,47,164/-.

iii. Before the West Bengal Taxation Tribunal (hereinafter referred to as the 'said Tribunal' in short) proceeding nos. RN-175/07 and RN-374/07 were heard analogously and the said tribunal by an order dated 15.02.2008 directed the writ petitioner to pay the aforementioned dues in the following manner:-

a. Rs.50,47,167/- to be deposited by 15.03.2008.

b. Rs. 20 lacs each are to be deposited in two installments by 15.04.2008 and 15.05.2008 respectively.

c. The rest amount was directed to be deposited in 10 equal monthly installments of Rs.10 lacs each to be paid by 15th of every month commencing from June, 2008.

d. The writ petitioner was directed to pay interest at the rate of 9 % on every reducing balance to be paid in one installment along with final installment which has to be paid on 15.03.2008.

e. In default of any of the installments, the balance amount with interest would be recoverable at a time.

iv. The respondent no.3 found that the order of the tribunal as passed on 15.02.2008 was not complied with by the writ petitioner and thus by a memo dated 15.07.2008 the writ petitioner was asked to comply with the said order of the tribunal.

v. Aggrieved by the said order dated 15.02.2008 the respondents/authorities however approached a Division Bench of this Court by filing a writ petition being COTT 2 of 2008.

vi. In COTT 2 of 2008 the said Hon'ble Division Bench by an order dated 12.02.2008 permitted the writ petitioner to deposit Rs.50 lacs by 13.08.2008 and by a subsequent interlocutory order dated 14.08.2008 the Hon'ble Court extended the time to pay off the dues in terms of the order passed by the tribunal.

vii. During the pendency of the COTT 2 of 2008 the respondent no.3 passed the said three orders each dated 11.08.2008 cancelling the said three licenses of the writ petitioner.

viii. On 14.08.2008 the writ petitioner made a representation with the respondent no.3 requesting him to withdraw and/or revoke and/or recall the said three orders dated 11.08.2008 but of no effect.

ix. Being aggrieved with the aforementioned three orders dated 11.08.2008 the writ petitioner filed WP no. 22558(W) of 2008 which was disposed of by a Co-ordinate bench on 17.09.2008 holding that the said writ petition cannot be entertained and the same was thus dismissed. However, an observation has been made in the said order dated 17.09.2008 that the dismissal of the said writ petition would not preclude the writ petitioner to approach the appropriate forum for relief.

x. The writ petitioner thereafter challenged the said three orders each dated 11.08.2008 before the said tribunal by filing an application under Section 8 of the said Act. By an order dated

23.09.2008 the said tribunal did not consider such application favourably holding that since remedy under Section 8(3) of the said Act is available the said application cannot be entertained.

xi. Challenging the said order dated 23.09.2008 the writ petitioner filed a writ petition before this Court being COTT 6 of 2008 which was again dismissed by a Division Bench of this Court by its order dated 28.10.2009.

xii. The writ petitioner thereafter filed an appeal before the respondent no.2/authority which was also dismissed by an order dated 09.04.2010.

xiii. The said order dated 09.04.2010 was impugned in revision under Section 8(3) of the said Act before the respondent no.1/authority which was also dismissed and hence the writ petition.

4. It is pertinent to mention herein that on 15.01.2025 it has been recorded by this Court as per submission made at Bar that because of change of legislation, no license in respect of F/L Bonded Warehouse and F/L Wholesale Trade can now be issued in the name of the present writ petitioner since licenses under those category have been withdrawn and/or removed by way of subsequent amendment in the West Bengal Excise (Foreign Liquor) Rules, 1998.

5. In course of his submission Mr. Shaw, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this

Court to page no.46 of the writ petition being a copy of the memo dated 15.07.2008. It is submitted that by the said memo dated 15.07.2008 the respondent no.3 rightly found that the writ petitioner had failed to pay the dues of the government for Rs.1,90,47,164/- in installments as directed by the said tribunal in respect of his business of FL Bonded Warehouse. It is further submitted that in the said memo dated 15.07.2008 there is no whisper regarding any alleged dues in respect of the other two business of the writ petitioner namely; F/L Wholesale Trade and F/L Off Shop. Drawing attention to three impugned orders each dated 11.08.2008 it is submitted by Mr. Shaw that from page no.51 of the instant writ petition being a copy of memo dated 11.08.2008 it would reveal that the respondent no.3 had cancelled the lincense of the writ petitioner in respect of his business of F/L Bonded Warehouse for the alleged non-payment of dues under Section 42(1) (b) of the said Act and from page nos.52 and 53 of the instant writ petition it would reveal further that by the said two memos each dated 11.08.2008 the respondent no.3 also cancelled the licenses of the writ petitioner in respect of his other two business namely; F/L Wholesale Trade and F/L off Shop by invoking the provisions of Section 42(2) of the said Act.

6. It is submitted by Mr. Shaw that prior to cancellation of the licenses of the writ petitioner in respect of F/L Wholesale Trade and F/L Off Shop no previous notice was given to the writ petitioner and thus the writ petitioner is still in dark as to what prompted the respondent no.3 to

cancel the said two linceses in respect of F/L Wholesale Trade and F/L Off Shop.

7. It is further submitted by Mr. Shaw that since no opportunity of hearing and/or no opportunity for submitting any reply and/or submitting of any representation(s) was/were given, the respondent no.3 had not followed the settled principle of natural justice and thus on the said ground alone the said impugned orders dated 11.08.2008 as passed by respondent no.3 may be set aside.

8. It is further submitted by Mr. Shaw that on conjoint perusal of the orders dated 12.08.2008 and 14.08.2008 as passed by a Division Bench of this Court in COTT 2 of 2008 it would reveal that the Hon'ble Court has extended time to pay off the dues in terms of the order dated 15.02.2008 as passed by the said tribunal and therefore the respondent no.3 was not correct in cancelling the license of the writ petitioner in respect of his business of F/L Bonded Warehouse during the pendency of the said writ petition since pursuant to the said order dated 12.08.2008 and 14.08.2008 the writ petitioner had deposited Rs.50 lacs on 13.08.2008.

9. It is thus submitted by Mr. Shaw that the orders dated 11.08.2008 as passed by the respondent no.3, the copies of which are available at page nos. 51 to 53 were passed in hot haste and the same may be set aside.

10. Drawing attention to the order dated 09.04.2010 as passed by the respondent no.2 and the order dated 14.07.2010 as passed by respondent no.1 it is submitted by Mr.Shaw that the said two respondents

mechanically disposed of the appeal and the revision as preferred by the writ petitioner and no finding was returned by the said two authorities in respect of glaring illegalities and/or irregularities while passing the three orders for cancellation of lincese each dated 11.08.2008. It is further submitted that both the respondent nos. 1 and 2 had failed to visualize that while cancelling the three lincenses of the writ petitioner the respondent no.3 had failed to follow the established procedure of Law as embodied in Section 42 of the said Act.

11. In his next limb of submission Mr. Shaw further submits that the writ petitioner has cleared all the dues of the respondents/authorities in respect of his F/L Bonded Warehouse. It is thus submitted that the instant writ petition may be disposed of by directing the respondents/authorities to revive the license of the writ petitioner in respect of his F/L Off Shop without insisting for payment of renewal of lincense fees from 11.08.2008 till the date of revival of the license of the writ petitioner in respect of his F/L Off Shop.

12. In course of his argument Mr. Shaw places his reliance upon Rules 3(ix) (a), (ix) (b) and Rule 14. It is further submitted by Mr. Shaw since on account of passing of the impugned order dated 11.08.2008 for cancellation of the license of the F/L Off Shop of the writ petitioner the relationship of the respondent no.3 and the writ petitioner as licensing authority and licensee comes to an end and therefore the respondent no.3 is at best entitled to the license fee for grant of license of F/L Off Shop for

the next period of settlement in the event the instant writ petition is allowed.

13. In course of his argument Mr. Shaw places his reliance upon a judgement of a Co-ordinate Bench in the case of ***Ashutosh Ghosh vs. State of West Bengal*** *reported in* ***2014 (2) CHN Cal 502***.

14. It is lastly submitted by Mr. Shaw that since on account of change of legislation no license can be granted in favour of the writ petitioner for F/L Wholesale Trade the respondent/authorities may be directed to consider the writ petitioner's proposed representation for grant of distribution of licenses in respect of his erstwhile lincense for F/L Wholesale Trade.

15. Per contra, Mr. Chakraborty, learned advocate duly assisted by Mr. Sanyal learned advocate for the respondents/authorities submits before this Court that the reported decision of ***Ashutosh Ghosh(supra)*** is distinguishable from the facts and circumstances of the instant case inasmuch as from the said reported decision it would reveal that the subject matter of challenge in the case of ***Ashutosh Ghosh (supra)*** was not cancellation of license of F/L Off Shop and on the contrary the impugned order in the said case was a direction of the Collector Excise ordering for closure of an Off Shop in terms of Section 26(1) of the said Act.

16. In course of his submission Mr. Chakraborty also draws attention of this Court to the three orders dated 11.08.2008 as passed by the respondent no.3 whereby and whereunder three aforementioned licenses

of the writ petitioner were cancelled. Mr. Chakraboruty draws attention of this Court to the Section 42 of the said Act. It is submitted by Mr. Chakraborty that from the said three orders each dated 11.08.2008 it would reveal that while cancelling the license of the writ petitioner in respect of F/L Bonded Warehouse the respondent no.3 noticed that the writ petitioner is in default in payment of government revenues. The respondent no.3 thus rightly exercised its power under Section 42(1)(b) of the said Act. It is contended further that in respect of the other two licenses of the writ petitioner the respondent no.3 exercised its power under section 42(2) of the said Act. It is further submitted by Mr. Chakraborty that considering the huge unpaid dues of the writ petitioner in respect of his F/L Bonded Warehouse the respondent no.3 rightly exercised its discretion to invoke its power under Section 42(2) of the said Act and thus by no stretch of imagination it can be held that the action of the respondent no.3 is in any way arbitrary in nature.

17. It is further submitted by Mr. Chakraboroty that for the aforesaid reason the Hon'ble Division Bench of this Court which was in seisin of COTT 2 of 2008 made no observation regarding the said three orders dated 11.08.2008 though the said three orders were passed during pendency of COTT 2 of 2008.

18. In course of his submission, Mr. Chakrabarty also draws attention of this Court to Page No. 62 of the instant writ petition being a copy of the order dated 17.09.2008 as passed by a co-ordinate Bench of this Court in WP No. 22558 (W) of 2008. Mr. Chakrabarty requests me to peruse

internal Page No. 5 of the said judgment dated 17.09.2008 vis-à-vis Page No. 46 of the writ petition being a copy of the memo dated 15.07.2008 as issued by the respondent no. 3.

19. It is submitted on behalf of the respondent/State that on conjoint perusal of the said two pages, it would reveal that the memo dated 15.07.2008 was issued by the respondent no. 3 pursuant to non-payment of the government revenues by the writ petitioner which is why a show-cause notice was issued. It is submitted that from Page No. 50 of the writ petition, it would reveal further that on 11.08.2008, the writ petitioner's representative approached before the respondent no. 3 for grant of ten more days' time for submission of written reply which was not considered by the respondent no. 3 and, ultimately, the said three licences have been cancelled.

20. At this juncture, Mr. Chakrabarty took me to Page No. 44 of the instant writ petition being a copy of the order dated 15.02.2008 as passed by the said Tribunal in connection with Case No. R.N. 175 of 2007 with R.N. No. 374 of 2007 whereby and whereunder the said Tribunal extended time to deposit the arrear dues by the writ petitioner in installments but at the same time, the said Tribunal made it clear that such permission for making the payment in installments cannot be taken as a ground for extension of the validity of the licence granted to the writ petitioner. It is thus submitted by Mr. Chakrabarty that by the said order dated 15.02.2008, the said Tribunal made it clear that the writ petitioner cannot

seek equity on the basis of such extension of time to deposit the arrear revenues.

21. At this juncture, Mr. Chakrabarty again draws attention of this Court to Section 42 of the said Act. It is submitted by Mr. Chakrabarty that in the event, the order of the respondent no. 3 while cancelling the licence of the writ petitioner in respect of FL Bonded Warehouse is looked in the perspective of Section 42(1), it would reveal that there is no arbitrariness on the part of the respondent no. 3 since at the time of passing the said order of cancelling the licence of FL Bonded Warehouse, the writ petitioner had failed to pay the arrears revenues with the respondent/State. It is thus submitted by Mr. Chakrabarty that since the said Tribunal by the said order dated 15.02.2008 though extended time for deposit of the arrear revenues, the writ petitioner cannot claim any equity since the same has been made clear by the said Tribunal in the said order dated 15.02.2008. It is thus submitted on behalf of the respondent/State that there was no arbitrariness on the part of the respondent no. 3 while cancelling the licence of the writ petitioner in respect of FL Bonded Warehouse.

22. Drawing attention to Section 42(2) of the said Act, it is further submitted by Mr. Chakrabarty that the action of the respondent no. 3 while cancelling the other two licences of the writ petitioner, namely, in respect of FL Wholesale Trade and in respect of FL Off Shop those actions are consequential to the cancellation of the licence of the writ petitioner in respect of his FL Bonded Warehouse. It is further submitted by Mr.

Chakrabarty that the intention of the legislature as embodied in Section 42(2) of the said Act is very much clear which is why the legislatures have incorporated the necessary words in Section 42(2) of the said Act that in the event, a licence of a person is cancelled under Clause (a), Clause (b), Clause (c), Clause (d) or Clause (e) of Section 42(1), the authority may cancel any other licence of the self-same person. It is thus submitted by Mr. Chakrabarty that since the respondent no. 3 acted in accordance with the provision of Section 42(2) of the said Act, the legality, validity and correctness of the action of the respondent no. 3 ought not to be questioned.

23. While placing his reliance upon the reported decision of ***State of Kerala & Ors. Vs. Kandath Distilleries*** reported in ***(2013) 6 SCC 573***, it is submitted by Mr. Chakrabarty that right to carry on business on liquor cannot be considered to be a citizen's fundamental right since the same depends upon the liquor policy of the State and grant of licence in liquor is at the discretion of the State and its functionaries. It is thus submitted by Mr. Chakrabarty that keeping in mind the said propositions of law, the Hon'ble Supreme Court reminded that in respect of grant of licence for carrying on business in the liquor, the Constitutional Courts must be very slow in issuing a writ of mandamus.

24. Mr. Chakrabarty further draws attention of this Court to the order dated 09.04.2010 as passed by the Excise Commissioner, in appeal. It is submitted by him that from the said order dated 09.04.2010, it would reveal that the said Excise Commissioner had applied his independent

mind and came to a logical conclusion that the cancellation of licence of FL Bonded Warehouse of the writ petitioner is the outcome of violation of Section 42(1) of the said Act and the cancellation of the other two licences of the writ petitioner is the consequential effect as per provision of Section 42(2) of the said Act. Mr. Chakrabarty thus submits that in absence of any perversity in the said finding, this Court may not interfere with such finding.

25. In course of his submission, Mr. Chakrabarty also draws attention of this Court to the various provisions of The West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003 (hereinafter referred to as 'the said Rules' in short). Attention of this Court is drawn to Rule 4, Rule 13 and Rule 14 of the said Rules. It is submitted by Mr. Chakrabarty that for the sake of argument though not admitted if it is accepted that the cancellation of licences of the writ petitioner i.e., of FL Wholesale Trade and FL Off Shop of the respondent no. 3 was not proper at the instance of the respondent no. 3 even then, the writ petitioner is not entitled to any relief since the writ petitioner has made no application for renewal of the licence in the meantime. It is further submitted by Mr. Chakrabarty that the said Rules, more specifically Rules 13 and 14 thereof clearly specify as to how a person is selected for grant of licence and as to how such licence is renewed at an existing site for the next period of settlement. Mr. Chakrabarty thus submits that it is a fit case for dismissal of the instant writ petition.

26. This Court has meticulously gone through the entire materials as placed before this Court and this Court has given its due consideration over the submissions of the learned advocates for the contending parties.

27. For effective adjudication of the instant *lis,* this Court at the very outset proposes to look to the provision of Section 42 of the said Act in view of the fact that the aforementioned three licences of the writ petitioner was cancelled by invoking the provision of the said Section.

> *"**42.** (1) Subject to such restrictions as the State Government may prescribe by rule made under section 85, sub-section (2), clause (i), the authority who granted any license, permit or pass under this Act may cancel or suspend it –*
>
> *(a) if it is transferred or sublet by the holder thereof without the permission of the said authority; or*
>
> *(b) if any duty, tax or fee payable by the holder thereof be not duly paid; or*
>
> *(c) in the event of any breach by the holder thereof, or by any of his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions thereof; or*
>
> *(d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or if any cognizable and non-bailable offence, or of any offence punishable under the Dangerous Drugs Act. 1930, or under the Trade and Merchandise Marks Act, 1958 or under any of sections 479 to 489 of the Indian Penal Code, or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955; or*
>
> *(e) if the holder thereof is subjected to any penalty under Chapter XIV of the Customs Act, 1962; or*

(f) where a license, permit or pass has been granted on the application of the holder of an exclusive privilege granted under section 22, on the requisition in writing of such holder; or

(g) if the conditions of the license, permit or pass provide for such cancellation or suspension at will.

(2) When a license, permit or pass held by any person is cancelled under clause (a), clause (b), clause (c), clause (d) or clause (e) of sub-section (1) the authority aforesaid may cancel any other license, permit or pass granted to such person by, or by the authority of, the State Government under this Act, or under any other law for the time being in force relating to excise, or under the Opium Act, 1878.

(3) The holder of a license, permit or pass shall not be entitled to any compensation for its cancellation or suspension under this Section, or to the refund of any fee paid or deposit made in respect thereof."

28. This Court also considers that some provisions of the said Rules are also required to be looked into:-

> *"**3(ix) "**period of settlement" means unless otherwise defined in case of any particular intoxicant or intoxicants, the period from the 1^{st} day of April of an year to the 31^{st} March of the following year or such shorter period within the said limits as the Collector may fix;*
>
> *(ix)(a) "licensing year" means the year beginning from 1^{st} April to 31^{st} March following.*
>
> *(ix)(b) "next period of settlement" means a period commencing from 1^{st} April of the licensing year following the licensing year up to which the license has been granted and consists of one licensing year."*

*"**4. Categories of license-** unless otherwise directed by the State Government, a license may, subject to the provisions contained elsewhere in these rules, be granted for the retail sale of –*

(a)………..

(b)………..

(c)………..

(d) ……….

(e) foreign liquor for consumption "off" the site;"

"14. Grant of license at an existing site for the next period of settlement –

(1) ……………

(2) On receipt of the application referred to in sub-rule (1) along with the requisite fees and other sums payable and documents, and Collector shall grant license to the existing holder for the next period of settlement.

Provided that the Collector may refuse to grant a license to the existing holder for the next period of settlement if such holder-

(a)has been convicted by a criminal court for commission of non-bailable offence,

(b)has committed serious violation of the terms and conditions of the license, or

(c)is a defaulter in the payment of excise revenue to the Government.

Provided further what where the Collector refuses to grant license to an existing holder for the next period of settlement, he shall record the reasons for doing so and intimate the fact to the Excise Commissioner.

(3) ………………

(4) Where the Collector refuses to grant a license for the next period of settlement to an existing holder and the fact of

refusal is intimated by him, the holder shall have no right to carry on business after the expiry of the current period of settlement or with effect from the date on which the fact of refusal is intimated to him, whichever is later, and the Collector, unless otherwise directed by the Excise Commissioner, may select, in the same manner as prescribed for the purpose of the grant of license at a new site, any other person for the grant of license at the existing site or in the vicinity thereof.

(5) …………

(6) …………

(7) …………

(8) ………..

(9) …………"

29. Keeping in mind the aforementioned legislative provisions, if I look to the factual aspects of this case, it appears to this Court that undoubtedly the writ petitioner was in default in payment of excise duty for a considerable length of time, more specifically, from 28.06.2004 to 26.07.2006. As discussed in the foregoing paragraphs by an order dated 15.02.2008, the said Tribunal permitted the writ petitioner to deposit the said arrears in installment within the extended period but while making such order, it has been made clear by the said Tribunal that on account of such extension of time, the writ petitioner is not entitled to any equity. Materials have been placed before this Court that the respondent/State felt aggrieved against the said order dated 15.02.2008 and thus carried the matter in a writ petition before a Division Bench of this Court by filing

COTT 2 of 2008. As rightly pointed out by Mr. Chakrabarty that in COTT 2 of 2008, no stay order was passed by the Hon'ble Division Bench of this Court while seisin over the said writ petition. Materials have been placed before this Court that during the pendency of the said writ petition being COTT 2 of 2008, the respondent no. 3 under cover of its memo dated 15.07.2008 served a notice upon the writ petitioner finding that the writ petitioner again defaulted in payment of the installments as directed by the said Tribunal in the aforementioned two cases.

30. It is undisputed that the respondent no. 3, thereafter, fixed a date for hearing and on the said day of hearing, though writ petitioner was represented by his learned advocates but the said learned advocates could not show any authority to represent the writ petitioner and thus, the respondent no. 3 on 11.08.2008 passed the order of cancellation of the licence of the writ petitioner in respect of FL Bonded Warehouse in terms of the provision of Section 42(1) (b) of the said Act. The factum of such cancellation was brought to the notice of the Hon'ble Division Bench which were in seisin of COTT 2 of 2008 but no favourable order was passed in favour of the writ petitioner touching the merit and/or correctness of the cancellation of the licence in respect of FL Bonded Warehouse.

31. It is pertinent to mention herein that while cancelling the licence of the writ petitioner in respect of FL Bonded Warehouse, the respondent no. 3 had also cancelled the licence of FL Wholesale Trade and FL Off Shop of

the writ petitioner by invoking the provision of Section 42(2) of the said Act.

32. Admittedly, challenging the said three orders of cancellation, the writ petitioner approached a co-ordinate Bench of this Court by filing WP No. 22558 (W) of 2008 where they failed. The writ petitioner thereafter, approached the said Tribunal, however, by an order dated 23.09.2008, the said Tribunal also refused to entertain the petition of the writ petitioner holding that alternative remedy under Section 8(3) of the said Act is available.

33. Challenging the said order, the writ petitioner approached this High Court in Division Bench in filing COTT 6 of 2008 where also they failed, however, the Hon'ble Division Bench permitted the writ petitioner to approach before the appropriate forum. The writ petitioner, thereafter, filed an appeal before the Excise Commissioner, the said appeal was dismissed by an order dated 09.04.2010 and thereafter, the matter was carried in revision before the respondent no. 1 which was also dismissed. Thus, the said three orders dated 11.08.2008 as passed by the respondent no. 3 and the order dated 09.04.2010 as passed by the Excise Commissioner i.e., the respondent no. 2 and the order dated 14.07.2010 as passed by the Secretary, i.e., the respondent no. 1 are the subject matter of the instant writ petition in a judicial review.

34. On careful consideration of the order dated 11.08.2008 as passed by the respondent no. 3 regarding cancellation of the writ petitioner's licence for FL Bonded Warehouse, it appears to this Court that the said

respondent no. 3 duly exercised the provision of Section 42(1)(b) of the said Act inasmuch as on the day of passing of the said order, the writ petitioner was admittedly in default in payment of revenues.

35. In course of his argument, Mr. Shaw contended that in view of the extension of time as granted by the said Tribunal as well as by a Division Bench of this Court vide its order dated 12.08.2008 in COTT 2 of 2008, the respondent no. 3 was not supposed to cancel the licence and he has thus exercised his jurisdiction in a capricious manner. This Court considers that such argument has got no force at all in view of the fact that while granting extension of time for payment arrear revenue in installments, the said Tribunal had made it clear that the writ petitioner would not claim any equity on account of such extension of time and even a Division Bench of this Court did not interfere with the said order of cancellation of licence of FL Bonded Warehouse even though it was brought to the notice of the said Division Bench on 14.08.2008.

36. This Court thus finds that while passing the first order of cancellation of licence in respect of FL Bonded Warehouse of the writ petitioner, the respondent no. 3 had followed the principles of natural justice and exercised his power in accordance with the provisions of the law and by no stretch of imagination, it can thus be said that the said order of cancellation of licence of FL Bonded Warehouse is perverse.

37. As discussed in the foregoing paragraphs that on the self-same day, i.e., on 11.08.2008 the respondent no.3 by passing two separate orders cancelled the two licences of the writ petitioner, namely, licence in respect

of FL Wholesale Trade and licence in respect of FL Off Shop under Section 42(2) of the said Act. In course of his argument, Mr. Chakrabarty contended that if the action of the respondent no.3 is viewed in terms of the provision of Section 42(2) of the said Act, it would reveal that the respondent no.3 also acted in accordance with law and thus, this Court in exercise of its judicial review should not interfere with the said two orders cancelling licence of FL Wholesale Trade and FL Off Shop. It was argued on behalf of the respondent/State that the cancellation of the subsequent two licences are consequential action of the cancellation of the first licence.

38. On careful consideration of the provisions of Section 42(1) and (2) of the said Act, it appears to this Court that admittedly the authority is within its domain to cancel any other licence of a person in the event such person's licence is cancelled under Clause (a), Clause (b), Clause (c), Clause (d) and Clause (e) of Section 42(1) of the said Act. As rightly pointed out by Mr. Chakrabarty that respondent no.3 cancelled the remaining two licences of the writ petitioner since it cancelled the licence of FL Bonded Warehouse under Section 42(1)(b) of the said Act.

39. On careful perusal and consideration of Section 42 of the said Act, it appears to this Court that in sub-section (1) or sub-section (2) of Section 42 the legislatures have consciously used the word 'may'. It thus appears to this Court that it is the legislative intent that while exercising its power to cancel or suspend any licence the authority shall exercise its discretion. It is settled principle of law that an authority when exercises

its quasi judicial power, even administrative power such discretion has to be exercised judicially and not arbitrarily.

40. The decision of the said authority must be speaking and reasoned one. It is the bounden duty of the said authority to give a fair opportunity of hearing to the party/parties concerned.

41. As already noticed by this Court that while cancelling the licence of the writ petitioner in respect of FL Bonded Warehouse is concerned, the respondent no.3 being the authority under Section 42 of the said Act has exercised its discretion in a judicious manner, i.e., it issued a notice followed by a show cause, thereafter afforded a chance of hearing and ultimately, it passed the said order for cancellation of licence. However, while cancelling the other two licences of the writ petitioner, it appears to this Court that the respondent no.3 straightaway cancelled the other two licences of the writ petitioner without issuing any notice to show cause and without giving any opportunity of hearing. It thus appears to this Court that while cancelling the licences of the writ petitioner in respect of FL Wholesale Trade and FL Off Shop, the respondent no.3 had acted in a haste manner and thus, has forgotten to follow the principle of natural justice.

42. It further appears to this Court that the respondent no.3 has miserably failed to follow the established procedure of law while cancelling the second and third licenses of the writ petitioner though he has followed the same procedure while cancelling the first lincese of the writ petitioner.

43. In course of his argument, Mr. Chakrabarty showed me various provisions of the said Rules which have been discussed in the foregoing paragraphs. It appears to this Court that those Rules specifically deals with grant of licence as well as renewal of licence.

44. In considered view of this Court the reported decision of ***Kandath Distilleries (supra)*** as cited from the respondent authorities is distinguishable from the facts and circumstances as involved in the instant writ petition inasmuch as in the said reported decision, the Hon'ble Supreme Court found that the respondent's application for licence to establish a compounding, blending and bottling unit was not considered by the State favourably.

45. In the factual backdrop of the said case, the Hon'ble Apex Court expressly held that a citizen has no fundamental right to trade or business in liquor as a beverage and the same is subject to the liquor policy of the State and also subject to the discretionary power of the authority over which he has exclusive priviledge. In considered view of this Court the subject matter of the instant *lis* is not for non-consideration of prayer for grant of licence and on the contrary, the subject matter of the instant *lis* is whether the respondent no.3 is at all justified in cancelling the three licences of the writ petitioner. This Court thus holds that the reported decision of ***Kandath Distilleries (supra)*** as cited from the side of the respondent/State has got no manner of application in the instant writ petition and is thus distinguishable.

46. As discussed in the foregoing paragraphs, this Court has already come to a finding that the respondent no.3 has failed to provide adequate opportunity of hearing to the writ petitioner while cancelling two other licences of the writ petitioner i.e., F.L. wholesale trade and F.L. Off-shop. The respondent no.3 had not followed the principle of natural justice while exercising its power under the provision of Section 42(2) of the said Act. This Court, thus, holds that the order dated 11.08.2008 as passed by the respondent no.3 in cancelling the licence of F.L. wholesale trade and F.L. Off-shop cannot be sustained. This Court further holds that the Appellate Authority as well as the Revisional Authority by passing two orders dated 09.04.2010 and 14.06.2010 respectively had also failed to visualize that the respondent no.3 had not acted in an equitable manner while cancelling the said licence.

47. The next question which arises for consideration is as to whether the writ petitioner shall have to deposit the renewal fees, in the event this Court directs for revival of his license of F.L Off Shop.

48. In the report, supported by affidavit as filed by the respondent no.2 on 18.03.2025, it has been strongly contended that no exemption of payment of any renewal fees may be granted to the writ petitioner in terms of the provisions of Sections 42, 43 and 44 of the said Act.

49. It is undisputed that in the meantime, the writ petitioner has deposited his entire arrear dues with the respondent authorities. In view of such, the question arises as to whether while granting relief to the writ

petitioner, this Court will grant any further equitable relief to the writ petitioner or not.

50. Admittedly, in India in strict sense, writ Court does not operate as a traditional Court of equity. The writ Court exercises the equitable jurisdiction while granting relief to ensure fairness and justice. As rightly pointed out by Mr. Shaw that since the licence of the writ petitioner in respect of his F.L. Off-shop has been cancelled, there cannot be any question to pay the renewal fees since the writ petitioner has not approached this Court for grant of writ commanding the respondent authorities to renew its licence.

51. This Court finds sufficient force in the submission of Mr. Shaw, learned advocate appearing for the writ petitioner. The subject matter of the challenge of the instant writ petition is the orders dated 11.08.2008 and the subsequent orders as passed by the respondent Nos. 1 and 2 in their Appellate and Revisional jurisdiction.

52. This Court has already come to a finding that the cancellation of licence of the writ petitioner in respect of his F.L. Off-shop cannot be sustained and, thus, while disposing of the instant writ petition, this Court directs the respondent no.3 to revive the licence of the writ petitioner in respect of his F.L. Off-shop within a period of 30 days from the date of communication of this order on compliance of the regular formalities by the writ petitioner as prescribed under the said Act and under the said Rules and on payment of the regular fees of renewal of licence for the next period of settlement i.e., for the financial year of 2025-

2026 without insisting for payment of any other charges/revenues from 11.08.2008 till the date of revival of the said licence.

53. The time limit as fixed by the Court is mandatory and peremptory.

54. Respondent no.3 is directed to act on the server copy of this order.

55. Learned advocate-on-record for the respondents is hereby requested to communicate the server copy of this order to the respondent no.3 forthwith.

56. Similar liberty is also given to the learned advocate-on-record of the writ petitioner to communicate the server copy of this order to the respondent no.3.

57. With the aforementioned observations, the instant writ petition being **WPA 18064 of 2010** is disposed of.

58. All pending interlocutory applications, if there be any, are also disposed of.

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

60. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)