

Form No. J(2)

**HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION**

Present:
The Hon'ble Justice Jay Sengupta

WPA 525 of 2025

Smt. Amrit Kaur
-vs-
State of West Bengal & ors.

For the Petitioner	Mr. Sandip Mandal Mr. Amit Saha
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For the State	Ms. Bedashruti Bose Ms. Rima Sarkar
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Heard on	: 11.03.2025
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Judgment on	: 11.03.2025
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Jay Sengupta, J.:

This is an application praying for direction upon the respondent authorities to act in accordance with law in regard to the assessment of requisite fees for shifting the license premises and for

taking appropriate steps for shifting the Bar Cum Restaurant License of the petitioner to the new business premises.

Learned counsel appearing on behalf of the petitioner submits as follows. The husband of the petitioner was initially granted license for retail sell of foreign liquor for consumption (on the premises of Restaurant and/or Hotel and attached Bar Restaurant Cum Bar/Hotel Cum Restaurant Cum Bar/ Hotel Cum Bar) under the name and style of M/s Sher-E- Punjab Hotel Cum Restaurant Cum Bar” at the Hill Cart Road, Siliguri. The husband of the petitioner and her father in law both purchased adjacent plots of land. The father in law died in 1992 leaving behind the petitioner’s husband and one brother in law and sister in law as heirs. After the petitioner’s husband died, his brother and sister had become absolute owners having 1/3 undivided share in the land. After an intimidate transfer of a portion of the property, the husband of the petitioner had become absolute owner of a portion of the property. Since then the business was being run by the husband. The petitioner’s husband passed away on 29.06.2013 leaving behind the petitioner and her two unmarried daughters as absolute owners of the said property. The two daughters jointly transferred their undivided share to the petitioner. So the petitioner became the owner of the property in question. The Bar license was transferred in the name of the petitioner in the year 2013 and she has been running the business. The present business place of the petitioner is situated

on a land under the Siliguri Municipal Corporation and the proposed place of shifting is situated on the land which was just beside the present existing property of the petitioner. For the purpose of shifting the place of business, the petitioner made a representation to the petitioner on 07.10.2021. But, the same was not being considered. Reminders had to be sent. After lapse of a considerable period, the petitioner was constrained to approach this Court. By an order dated 27.1.2025 passed in WPA 188 of 2025, this Court directed the respondent no.4 to decide a representation dated 23.11.2024 within a stipulated time. After hearing the petitioner, the respondent no.4 passed an order on 20.02.2025 in which it was ordered that the excise authority would process the application of the petitioner for shifting the proposed site forthwith only after deposit of non refundable application fee. Such fees are not required to be paid in the instant case. Reliance is placed on Rule 4.5 of the West Bengal Excise (Shifting of existing site or change of premises of Excise License) Rules, 2009 and it is submitted that as the situation was beyond the control of the licensee, the required fees need not be paid. The present owners did not want the petitioner to continue her business there so the petitioner was being constrained to shift out to another place.

Learned counsel appearing on behalf of the State denies the allegations and submits as follows. As per Rule 4.5, on approval of shifting of license premises to a new site, the licensee shall pay an

amount equivalent to the amount payable for the initial grant of new license applicable to the category of license and the area where the new site is located. Even the proviso spoke about two situations in which such application need not be paid. The petitioner does not fall within the ambit of those two situations. The fees that are being charged are as per Table 1 of the West Bengal (Payment of Fees for grant of license for retail service of certain intoxicant) Rules 2005. It is also germane to mention that non-refundable application fees would be chargeable as per Rule 4.1 of the West Bengal Excise (Shifting of existing site or change of premises of Excise License) Rules, 2009.

It appears that the petitioner's prayer for shifting of his business to a different premises is being acted upon. The only bone of contention is the requirement to pay the application fees and other fees/ charges.

From Rule 4.1 of the Rules of 2009, it applies that for an application for shifting the same has to be made along with requisite Court fees stamped along with original copy of the treasury challan showing deposit of non refundable application fee applicable to the initial grant of that category of license. This covers a sum of Rs. 1.5 lakhs that is being charged.

Rule 4.5 of the Rules of 2009 clearly states that on approval of shifting of the license premises to a new site, the licensee would have to pay an amount equivalent to the amount payable for the initial

grant of new license applicable. This refers to the sum of Rs. 12 lakhs as per Table 1 of the Rules of 2005.

Annual registration fee for grant of license to the tune of Rs. 5 lakhs in any way payable for renewal every year.

Now, it has to be seen whether the petitioner can come within the ambit of the proviso to Rule 4.5.

The proviso to Rule 4.5 states that no initial grant of fees as mentioned shall be payable in the case of change of site of shifting of existing license premises when the collector is satisfied that such change or shifting is necessary in the interest of the people residing in the area or that such change of existing rules or procedure, which are beyond the control of the licensee.

In the facts of the present case, it is quite abundantly clear that the shifting was necessitated by the petitioner and had not become necessary in the interest of the people residing in the area or because of the change in the existing rule or procedure. Even then, the satisfaction of the Collector would be necessary. The term “beyond control of the licensee” is only meant to further qualify the above two conditions.

It is absolutely clear that the petitioner does not fall within the ambit of proviso to Rule 4.5 so as to get exemption from the payment of fees.

Accordingly, I do not find any merit in this application.

With these observations, the writ petition is dismissed.

As affidavits were not called for, allegations are deemed not to have been admitted.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J.)