

16.06.2025
Sl. No.13
tkm

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

W. P. A. 1157 of 2025

[Sudhanshu Kumar Mishra -Vs- State of West Bengal & Ors.]

Mr. Abhimanyu Banerjee
Md. Shoaib Akhtar
... .. for the petitioner

Mr. Nabankur Paul
Mr. Sourav Sarkar
... for the State

1. The petitioner has preferred the present writ petition challenging the impugned order dated 30.04.2025 passed by the respondent no.2, whereby the respondent no. 2 had declined to interfere with the earlier order dated 18.02.2022 passed by the District Magistrate and Collector, Alipurduar. By the said order, the operation of the license of Sinchua Restaurant cum Bar was suspended on account of initiation of proceeding against the petitioner, who is the licensee of the said establishment, by the Matharihat P.S under the provisions of Immoral Traffic (Prevention) Act 1956.
2. It is the case of the petitioner that he is the duly registered licensee of Sinchua Restaurant cum Bar situated within the territorial jurisdiction of Matharihat PS. Pursuant to a raid conducted at the said establishment, an FIR being no. 110 of 2022 dated 05.07.2022 was registered against the

petitioner and others under section 3/4/5/6/7 of the Immoral Traffic (Prevention) Act 1956. Subsequently, a Charge sheet dated 03.08.2022 was filed against the petitioner under the same provisions of law. Pursuant to the said incident, Superintendent of Police Alipurduar, reported the matter to the District Magistrate and Collector, Alipurduar. In exercise of powers under Section 42(1)(d) of the Bengal Excise Act 1909 (as amended) read with notification no. 13061-EX dated 28.06.1937, the District Magistrate and Collector, Alipurduar vide order dated 18.08.2022, suspended his license of the said Sinchua Restaurant cum Bar with immediate effect.

3. Aggrieved by the said order of suspension, the petitioner preferred a statutory appeal before the competent appellate authority. However, the said appeal remained undecided for an inordinate period of time. Consequently, the petitioner was constrained to file WPA 2047 of 2024 before this Court challenging the suspension order dated 18.08.2022. Vide order dated 24.09.2024, the said writ petition was dismissed by the Hon'ble Single Judge, granting liberty to the petitioner to pursue his remedies before the appellate authority. Thereafter, the petitioner assailed the said order of dismissal before the Division Bench in MAT 98 of

2024. Vide order dated 04.04.2025, the Division Bench was pleased to dispose of the said appeal with a direction to the appellate authority to decide the petitioner's statutorily appeal within a period of four week from the date of the order. In compliance of the said direction, the appellate authority passed the impugned order dated 30.04.2025.

4. It is the contention of the petitioner that initiation of the FIR against him is the outcome of a personal vendetta harboured by a police officer who allegedly attempted to implicate the petitioner in a false and fabricated case.

5. The petitioner further submits that since criminal trial is presently ongoing, no adverse finding or conviction has been recorded against him so far. He also submits that he has continued to deposit the requisite fees in respect of the license with the authority concerned.

6. It is further submitted by the petitioner that there exists no legal prohibition under the Bengal Excise Act or any other applicable law that bars the renewal of excise license solely on the ground of pendency of a criminal trial. The restaurant cum bar operated under the said excise license was the sole means of livelihood of the petitioner. The cancellation of subsequent non-renewal of the license by the respondent authority, violates his

fundamental right to livelihood under Article 21 of the Constitution of India.

7. Learned counsel for the petitioner further contends that the license was purportedly cancelled under section 42(1)(d) of the Bengal Excise Act. However, on the bare reading of the said provision reveals that it can only be invoked at the instance where the licensee has been convicted for certain offences as specified therein. Since no conviction has been recorded against the petitioner, the invocation of section 42(1)(d) of the Bengal Excise Act in the present case manifestly erroneous and unsustainable in law. On the strength of the above statement, learned counsel for the petition prays for setting aside of the impugned order and seeks appropriate directions for consideration of his application for renewal of his license in accordance with law.

8. This court has heard arguments advanced by the parties. It appears that by an order dated 18.08.2022, the District Magistrate and Collector, Alipurduar had suspended the license of the petitioner with immediate effect. It is, however, noted that the tenure of the said license has since expired.

9. In view of the same, this Court is not inclined to go into the merits or legality of the suspension order

dated 18.08.2022 at this stage. Nevertheless, it is observed that the said order of suspension was passed in the purported exercise of powers under section 42(1)(d) of the Bengal Excise Act. For reference, the proviso is extracted hereinbelow :

“42. Power to cancel or suspend license permit or pass –(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 –*

(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 of any cognizable and non-bailable offence, or of any offence punishable under Dangerous Drugs Act 1930.”

10. In the present case, it is undisputed that the petitioner has not been convicted of any offence till date.

11. Learned counsel for the respondent also confirms that till date no conviction has been recorded against the petitioner. The criminal proceedings initiated against the petitioner are still pending adjudication before the Trial Court. In such circumstances, the continued suspension of the petitioner’s license, particularly in the absence of any conviction, has adversely affected petitioner’s right to livelihood. The respondent authority cannot

keep the license in a state of indefinite suspension merely on the ground of pendency of a criminal proceeding. It is incumbent upon the respondent to periodically review the matter to ascertain whether change of any circumstances warrant reconsideration and to evaluate whether the petitioner's license can be renewed or re-issued subject to imposition of more stringent and appropriate conditions, if necessary.

12. In light of the above, liberty is granted to the petitioner to submit an application before the licensing authority seeking renewal of the said license.

13. In the event, such application is made, licensing authority shall consider and dispose of the same on its own merit and in accordance with law, without being influenced solely by the pendency of the criminal proceeding, as the petitioner has yet not been convicted of any offence.

14. With the above observation, the present writ petition is disposed of.

(Gaurang Kanth, J.)