

Sl. No.01.
13.02.2025
Suman
Ct. 02

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

WPA 2514 of 2024

Sinclairs Hotels Limited and Anr.
Vs.
The State of West Bengal and Ors.

Mr. Sakya Sen, Sr. Adv.
Ms. Somali Bhattacharya
Ms. Labanyashree Sinha
Mr. Arijit Ghosh
..for the petitioners

Mr. Pritam Das
Ms. Rima Sarkar
..for the State

A show cause notice and an explanation were sought by the Superintendent of Excise, Jalpaiguri, through a letter dated December 3, 2021, from petitioner no. 1 regarding an alleged unauthorised change in the management of the company.

In response, the petitioner submitted a reply to the said show cause notice by a letter dated December 6, 2021, asserting that no change had occurred in the management of the company. Subsequently, a hearing notice was issued by the Superintendent of Excise, Jalpaiguri. Pursuant to this notice, a hearing was conducted before the Commissioner on September 4, 2024. The Commissioner passed an order on the same date.

The relevant portion of the said order is as follows:

“Having gone through the documents on records and hearing the parties at length in terms of Rule 8 of West Bengal Excise (Transfer of License) Rules, 2023, the licensee i.e., M/s. Sinclairs Hotel-cum-Restaurant-cum-Bar, Chalsa hill top under Jalpaiguri Excise District is instructed to submit the certified copies of the list of Directors, the shareholding patterns and other relevant documents from the Registrar of Companies, Government of India, and any other document from the competent authority before the Superintendent of Excise, (Revenue III) Section, Excise Directorate to start the process of regularization of their change in the Board of Directors after payment of the applicable fees for recording such change in the license in terms of West Bengal Excise (Transfer of License) Rules, 2023 within 15 days from the date of receipt of this order.

The Superintendent of Excise (Revenue III) Section, Excise Directorate is instructed to collect the certified copies of the list of directors, shareholding patterns and other relevant documents from the Registrar of Companies, Government of India and examine all the documents to regularize the change of Directors of the said license afresh in accordance with the provisions of the West Bengal Excise (Transfer of License) Rules, 2023 within 30 (thirty) days from the date of receipt of this order”

Mr. Sakya Sen, learned senior advocate appearing on behalf of the petitioners, challenges the validity of Regulation 5(D) of the West Bengal Excise (Transfer of License) Rules, 2023. Mr. Sen specifically contends that three independent directors have been inducted into the management of the company in the usual and routine course of business. As such, this induction does not fall within the scope of Rule 4(B) of the Rules, 2023, in light of Explanation (II) to Rule 4(B).

On behalf of the State, it has been submitted that the authorities are merely in the process of examining the documents relating to the alleged change in the company's management and have not yet determined the applicable levy, if any, on such a change. It has been clarified that any necessary fees will be charged only after the nature of the change in management is conclusively determined.

In view of the foregoing, this Court is not inclined to keep the present writ petition pending.

It has been submitted before this Court that the petitioners have already furnished the necessary documents before the Excise Commissioner, Jalpaiguri, in compliance with the order passed by this Court in this writ petition on January 8, 2025.

Accordingly, the Excise Commissioner, Jalpaiguri, is directed to complete the proceedings and issue a reasoned order within a period of three months from the date of this order.

If the petitioners are aggrieved by the order of the Excise Commissioner, Jalpaiguri, they shall have the liberty to challenge the said order, as well as to challenge the vires of Rule 5(D) of the West Bengal Excise (Transfer of License) Rules, 2023, in accordance with law.

It is further clarified that the petitioners' application for the renewal of the company's license shall be

considered in accordance with law, independent of any order passed in the present writ petition.

Accordingly, **WPA 2514 of 2024** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)