

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side**

Present:

**The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Biswaroop Chowdhury**

**MAT 112 of 2025
with
IA No.: CAN 1 of 2025**

**The Additional District Magistrate (G)
and Collector of Excise, Darjeeling & Ors.
- Versus -
Ajoy Lucas Edwards**

For the State/Appellants : Mr. Kishore Dutta, Ld. A.G. (V/C)
Mr. Amal Sen, Ld. A.A.G. (V/C)
Mr. Subir Kr. Saha, Ld. A.G.P.
Mr. Sombuddha Dutta,
Ms. Bedashruti Bose.

For the respondent : Mr. Bikash Ranjan Bhattacharyya, Sr. Adv. (V/C)
Mr. Samim Ahmed, (V/C)
Ms. Ambiya Khatun,
Ms. Esha Acharya.

Hearing is concluded on : 24th December, 2025.

Judgment On : 24th December, 2025.

Tapabrata Chakraborty, J.

1. The present appeal has been preferred challenging an order dated 17th December, 2025 passed by the learned single Judge in the writ petition being

WPA 2505 of 2025 which was preferred challenging *inter alia* an order dated 4th December, 2025 passed by the Additional District Magistrate (G) and Collector of Excise, Darjeeling in Misc. Case No.04/2025-2026/07958/M.

2. Records would reveal that the writ petitioner, the proprietor of the Glenary's Restaurant-cum-Bar (hereinafter referred to as the said restaurant) was granted a licence for retail sale of foreign liquor for consumption on the premises of any restaurant and attached bar *vide* memo dated 10th April, 2025 stating *inter alia* that the said license shall remain valid for the period from 1st April, 2025 to 31st March, 2026. The writ petitioner also applied for sanction to hold professional entertainment or to permit playing of vocal instrumental music. Upon consideration of the said application permission was granted *vide* memo dated 10th April, 2023 under Rule 239 of the West Bengal Excise (F.L) Rules, 1998 (hereinafter referred to as 1998 Rules) up to 31st March, 2024. An application for renewal was, thereafter, filed by the writ petitioner but the same was not disposed of. In the midst thereof, the impugned order dated 4th December, 2025 was passed suspending the license of the said restaurant for a period of 90 days.

3. Mr. Dutta, learned Advocate General assisted by Mr. Sen, learned Additional Advocate General submits that the writ petition itself was not maintainable in view of the alternative remedies provided under the provisions of the Bengal Excise Act, 1909. The exceptions carved out for entertaining a writ petition in spite of availability of alternative remedy also do not apply in the present case since the order impugned was passed upon granting an

opportunity of hearing and there had, in fact, been no infringement of any enforceable right. Such argument, as urged, was glossed over by the learned single Judge and no finding was returned on the same. Such infirmity warrants interference in the present appeal.

4. Drawing our attention to the order impugned in the writ petition, Mr. Dutta submits that the defects as has been indicated are not curable in nature and that there had been an admission on the part of the writ petitioner as regards non-compliance of the statutory provisions. In view thereof, the learned single Judge ought not to have exercised discretion in favour of the writ petitioner.

5. Mr. Bhattacharyya, learned senior advocate appearing for the writ petitioner/respondent, however, denies and disputes the contention of Mr. Dutta and submits that primarily the present appeal itself is not maintainable since there had been no decision on merits of the matter.

6. He further contends that the writ petitioner is enjoying the licence for retail sale for foreign liquor, as would be explicit from the memo dated 10th April, 2025. The permission as initially sought for under Rule 239 of the 1998 Rules was also granted *vide* memo dated 10th April, 2023. Prior to expiry of the validity period, the writ petitioner applied for permission afresh but the same was admittedly not disposed of by the authorities and for such inaction on the part of the authorities the writ petitioner cannot be made to suffer. In support of such arguments, reliance has been placed upon the judgment delivered in the

case of *Murarilal Jhunjhunwala –vs- State of Bihar and Others*, reported in 1991 *Supp (2) SCC 647*.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record.

8. It was submitted before the learned single Judge that the restaurant-cum-bar is in operation for more than 150 years and that the authorities ought not to have taken such coercive steps during Christmas festival resulting in huge financial loss to the writ petitioner.

9. The learned single Judge observed that some of the defects pointed out by the authorities are curable in nature and accordingly directed such curable defects to be rectified and further observed that it would be open for the authorities to visit the restaurant-cum-bar premises for inspection and would also be open to the authorities to call for records for verifying the accounts which were found to be inaccurate and liberty was also granted to the writ petitioner to file fresh application seeking permission under Rule 239 and the matter was made returnable on 22nd December, 2025.

10. It is now well-settled that the appellate Court interferes not when the order under appeal is not right but only when it is clearly wrong. The learned single Judge in the order impugned disclosed the reasons in support of the observations that the licence ought not to have been suspended as the application grant of licence under Rule 239 for the previous year was not disposed of and remained pending. The appellate Court should not flimsily, whimsically or lightly interfere in the exercise of discretion by the learned single

Judge unless such exercise is palpably perverse. We do not find any perversity in the order impugned and that as such, no interference is called of in the present appeal.

11. Accordingly, the appeal and the connected application are dismissed.

12. There shall, however, be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Biswaroop Chowdhury, J.)

(Tapabrata Chakraborty, J.)