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**(2009) 09 CAL CK 0008**

**Calcutta High Court**

**Case No:** Writ Petition No 13502 (W) of 2009

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| Kanthal Bagan Bazar O Byabsayee Samity and Others | | APPELLANT |
| | Vs | |
| State of West Bengal and Others | | RESPONDENT |

**Date of Decision:** Sept. 2, 2009

**Hon'ble Judges:** Sanjib Banerjee, J

**Bench:** Single Bench

**Advocate:** Indranil Roy, Arnab Mukherjee, for the Appellant; D. Saha for the State, Saptanshu Basu, Rini Bhattacharyya, Anjan Ray, Ananya Das for the Respondent No. 8, for the Respondent

**Judgement**

Sanjib Banerjee, J.
The grievance of the petitioners is that the private respondent has been allowed to open a foreign liquor "off" shop despite the private respondent not complying with the stringent conditions set by the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003. The petitioners" specific grievance is that the shop operated, or proposed to be operated, by the private respondent does not comply with the conditions set under Rule 8 of the 2003 Rules.

2. Both the State and the private respondent are represented. The private respondent says that a licence already stood issued in favour of the private respondent but for some reason the shop had not been permitted to be operated. According to the private respondent, she was constrained to institute W.P. No.2610 (W) of 2009 which was disposed of by an order of March 3, 2009. The order of March 3, 2009 proceeded on the premise that a valid licence was issued in favour of the private respondent herein for the purpose of operating the shop.

3. The State says that it is" in pursuance of the direction contained in the order dated March 3, 2009 that the Collector has permitted the private respondent to open the "off" shop.

4. The private respondent submits that at the time that the licence was issued all relevant facts were taken into consideration by the issuing authority. The private respondent seeks to demonstrate on the basis of a map or plan proposed to be handed over to Court that in the shop being located where it is, there is no violation of the mandatory conditions of Rule 8 of the 2003 Rules.

5. The private respondent, however, contests the petitioners" right to maintain these proceedings or to maintain any complaint before the Collector or elsewhere in respect of the licence duly granted in favour of the private respondent. The private respondent refers to the West Bengal Excise (Selection of New Sites and Grant of Licence for Retail Sale of Spirits and Certain Other Intoxicants) Rules, 1993 and, particularly to Rule 9 thereof. The private respondent asserts that under sub-rules (3) and (4) of Rule 9 of the 1993 Rules, the Collector was required to display a notice on a board informing the public at large that he proposed to grant a licence at a particular site. The old rules also required the Collector to send copies of the notice to the Member of the Legislative Assembly in whose jurisdiction the new site was to come up; to the Sabhadhipati of the Zilla Parishad; to the Chairman of the relevant municipality; and, to the Municipal Commissioner and Chief Executive Officer of the Municipal Corporation, if any.

6. The private respondent argues that in the 2003 Rules not carrying any provision similar to what was contained under Rule 9(3) and Rule 9(4) of the previous Rules, it would be evident that the State Government had taken a conscious decision that there was no need for any notice to be issued to the public or to any representative of the people or other official prior to issuing a licence under the Bengal Excise Act. The private respondent relies on a judgement reported at 2008(1) CRN 979. Paragraph 16 of the report is apposite:

"16. We do not find any substance in the contention of Mr. Bandopadhyay, the Learned Counsel appearing on behalf of the writ petitioner that the Rules of 2003 providing selection of new retail shops without consulting the people"s representatives as provided in the Rules of 1993 were in any way violative of any provision of law. The Bengal Excise Act does not impose a duty to consult with the peoples" representative in the matter of grant of new licence and thus, for giving a go-by to the earlier provision of consultation with the representatives of people, the Rules of 2003 cannot be branded as unreasonable or ultra vires any of the provision of law."

7. It is possible to view the situation as the private respondent suggests. It is equally possible to view it from another perspective. The 1993 Rules specified that notices were to be published to the public at large and to specified authorities referred to therein. That may have implied with upon the notice period expiring, and no objection being received

by the Collector, it would be deemed that there was no objection in fact to the grant of the proposed licence. The other way of looking at it would be that the small window opened for objections at the stage prior to the issuance of the licence has been done away with; objections may now be made at any stage and upon a just cause.

8. In the 2003 Rules not containing the same provisions, it would not imply that members of the public cannot object to the issuance of a licence or the continuance thereof. It might only imply that the complaint that had to be made prior to the grant of the licence may now be made at any stage. It would be unreasonable to construe the omission of the provision in the subject Rules to mean that no matter what the violation, no person can complain of such violation at all.

9. Paragraph 16 of the Division Bench judgment that the private respondent has relied on, does not further the private respondent''s argument. The Division Bench considered as to whether in the 2003 Rules doing away with the provision of giving notice to people''s representatives would amount to the 2003 Rules being ultra vires any provision of law. The Division Bench opined that since the Bengal Excise Act did not impose any duty to consult with the people''s representative in the matter of grant of a licence thereunder, the fact that the 2003 Rules did not incorporate the provisions recognised under Rules 9(3) and (4) of the 1993 Rules would not render the new Rules vulnerable on such ground.

10. The matter in issue in this case did not fall far consideration before the Division Bench.

11. It cannot be said that there would be a set of rules and the authorities would have the sole prerogative to decide as to whether the rules had been complied with in a particular case without any person having any right to make a representation to the appropriate authority. The removal of subï¿½-rules (3) and (4) of Rule 9 of the 1993 Rules in its avatar of 2003 would not support the argument made on behalf of the private respondents that the new Rules bar the right of any person to complain of a licence issued in derogation of the conditions stipulated in Rule 8 thereof.

12. Accordingly, W.P. No. 13502 (W) of 2009 is disposed of by requiring the Collector to consider the representation said to have been made by the writ petitioners herein and take a decision in the matter, in accordance with law, after affording the private respondent an opportunity of hearing.

13. It is made clear that the facts that this petition has been entertained and this order has been made should not imply that the bona tides of the petitioners or the veracity of their allegations have been endorsed.

14. There will be no order as to costs.

15. Urgent certified photostat copies of this order, if applied for, shall be given to the parties subject to compliance with all requisite formalities.