

## **Bijoy Basanta Singha Vs The State of West Bengal and Others**

**Court:** Calcutta High Court

**Date of Decision:** April 2, 1993

**Acts Referred:** Bengal Excise Act, 1909 " Section 30, 30, 30(2), 31, 31  
 Constitution of India, 1950 " Article 226

**Citation:** 97 CWN 740

**Hon'ble Judges:** Nure Alam Chowdhury, J; Ajit Kumar Sengupta, J

**Bench:** Division Bench

**Advocate:** Balai Chandra Ray, A.K. Sengupta and Mita Mukherji, for the Appellant; Arunava Ghosh, Anant Kumar Shaw, B.S. Bagchi and Prasanta Kumar Banerjee, for the Respondent

### **Judgement**

A.K. Sengupta, J.

This appeal is directed against the order passed on 18th March, 1993, by a learned Single Judge of this Court vacating

the interim order granted on 26th February, 1993 on a writ application filed by the appellant. The subject matter of dispute relates to settlement of

an "Off licence foreign liquor shop. The case of the appellant writ petitioner is that he is a resident of Ushagram, Assansol where one of the Off

licence shops was proposed to be set up. According to the appellant the Addl. District Magistrate, Assansol invited public objections and

opinions on 9th December, 1986 regarding granting of 2 Excise "off" licenses for sale of foreign liquor as Ushagram and New Road By-pass Road

Crossing, Assansol. The proposal for granting license at Ushagram, Assansol was, however, dropped on the ground that it comes adjacent to

children park etc. The said proposal related to the year 1987-88. Again a proposal for granting the foreign liquor "Off license at Ushagram,

Assansol for the year 1990 - 1991 was made and the Addl. District Magistrate vide his memo dated 29th December, 1989 invited public

objections and opinions thereto. The appellant claims that he was a signatory to the objection raised by the local people reiterating the grounds on

which the proposal for grant of hotel-cum-bar license for the periods 1987-88 and 1988-89 was dropped in the locality. It was stated that the said

grounds would also apply to the rejection of the proposal of "off license.

2. On 16th March, 1992 the Addl. District Magistrate invited application for grant of 2 "off licenses for the year 1992-93. If the case of the

appellant that provisions of Bengal Excise Act, 1909 (hereinafter referred to as the said Act) as well as the Rules framed thereunder have not been

followed in inviting application for settlement of "off license shop.

3. The said writ application was moved exparte. It appears that no prayer was made for dispensation with compliance of the Rule 27 of the

Appellate Side Rules relating to the applications under Article 226 of the Constitution of India.

4. By the interim order dated 26th February, 1993 the Excise Authorities were restrained from giving any effect or further effect to the Memo

dated 11th February, 1993 of the Superintendent of Excise Burdwan, West Area, Assansol whereby interview was called on 3rd March, 1993 to

the intending licensees for settlement of foreign liquor "off shop at Ushagram, Assansol and further restrained them from granting the license at the

proposed site at Ushagram and New Road Bypass Road crossing, Assansol without following the provisions as laid down under Sections 32 to

36 of the said Act and the Rules.

5. Thereafter, an application for vacating the interim order was made by the Respondent No. 6. Suranjit Kundu, who was called for interview for

the settlement of foreign liquor "off shop at Ushagram. But when he went for Interview he was told by the Excise Authorities that interview had

been stayed by an order passed by a learned Single Judge of this Court. The learned Judge was prima facie satisfied that the appellant-writ

petitioner does not have any locus standi to question the grant of license. The learned Judge was also of the view that while the appellant

acquiesced to the grant of license for the hotel bar which serves liquor, it does not in his mouth to object to the issuance of "Off" license shop. The

learned Judge after considering all the facts and circumstances vacated the said interim order dated 26th February, 1993 and fixed hearing of the

main writ application on 26th April, 1993. The learned Judge also observed that the question of extension of time for grant of license for the period

1992-93 beyond 31st March, 1993 would be determined at the final hearing. The learned Judge did not grant any stay of operation of the said

order. Hence this appeal.

6. Mr. B.C. Roy, 1d. Senior Advocate appearing for the appellant has submitted that the learned Judge was not justified in holding that the

appellant had no locus standi to move the writ application challenging the grant of license. He has submitted that it is incumbent upon the excise

authorities to follow the rules for grant of "Off" license, specially, regarding selection of site. He has submitted that no objections and opinions have

been invited from the public which were earlier invited when proposals had been made for settlement of 2 "Off license shops.

7. Mr. Aranava Ghosh, learned Advocate appearing for the respondent No. 6 has contended that the Rules under the Bengal Excise Act, relied on

by Mr. Roy relate to the "On" license. He submits that there is no requirement for inviting objection for settlement of "Off licence shop.

8. We have considered the rival contentions. Section 85 of the said Act empowers the State Government to make rules, inter alia, specifying the

procedure to be followed and prescribing the matters to be ascertained before any license for wholesale or retail vend of any intoxicant is granted

for any liquor. Sections 30 to 36 of the said Act provide how the license should be granted for the retail sale of spirit for consumption on the

vendors premises. The license for retail sale of spirit for the purposes of consumption at the vendors premises must necessarily mean "on" license.

In "Off license shop, the question of consumption of spirit on the vendors" premises should not arise. By the West Bengal Taxation Laws

(Amendment) Ordinance, 1993 which came into force on January 29, 1993 far-reaching changes have been made in the provisions of Section 30

and 31 of the Act and a new Section 36 has been inserted. Under the new provisions Section 30, 31 and 36 have been substituted by new

Sections and Sections 32, 33, 34, 35 and 35A have been omitted. Section 30 provides that the State Government may, subject to such conditions

and restrictions as may be prescribed, determine from time to time the number of licenses which may be granted at new sites or in the vicinity

thereof in any local area for the retail sale of the spirit having due regard to public demand. Section 37 empowers the Collector to grant license to

any person for retail sale of any intoxicant during any period not exceeding 6-months. Section 30(2) provides that upon determination of the

number of licenses to be granted at a new sites or in the vicinity thereof in any local area for the retail sale of spirit, the Collector may grant such

license for retail sale of spirit in such local area for the purpose of settlement. It appears that provisions for grant of license have been liberalised to

a great extent.

9. The contention of Mr. Ghosh, therefore, is that all formalities provided for inviting objections and opinions to the selection of site are no longer

required and the Commissioner can grant license without inviting any objection or opinion.

10. On consideration of relevant rules we are of the view that although the provisions have been liberalised, such provisions can not completely do

away with the procedure for inviting objections and opinion that consumption of liquor is a necessary evil having regard to Excise Duty realised.

The concept of morality may not be germane in such situation, but even then there are certain checks and balances to be provided so that the

licenses are not indiscriminately issued which may ultimately be the cause of various social evils. There cannot be any objection to the issuance of

the license for foreign liquor shops having regard to the present trend of which judicial notice can be taken. But even then selection of sites has to

be made on objective consideration taking into account the various factors which are relevant for the purpose of selection of sites. We are,

therefore, of the view that notwithstanding the amendment made and the liberalisation of the provisions of the Act it is incumbent upon the

respondent to invite opinions and objections relating to selection of sites, even for "off" license shops. The right given to the Excise authorities is not

absolute. The proposed site must be at a considerable distance from schools, colleges, temples, mosques, offices and establishments, children's

park and similar places.

11. Under Rule 7(2)(b), the Licensing Board are appointed from time to time in different districts and areas to exercise the powers (except the

discretionary power to select the person to whom license shall be granted and grant license) and to perform the Act, to the exclusion of the

Collectors. In exercise of the power conferred u/s 85 of the Bengal Excise Act, 1909, rules for regulation of the transactions of the business by

Excise Licensing Board appointed under Clause (b) of sub-section (2) of section 7 of the said Act were framed which are called as the West

Bengal Excise (Licensing Boards) Rules, 1950. Rule 21 of the said Rules provides that the board shall send a list showing the sites of new licenses

and of the existing ones as tentatively approved.

a) to the Chairman of the District Board in the case of shops situated in the rural areas of the district.

b) to the Commanding Officer of the Cantonment in the case of shops situated within the limits of a Cantonment within a distance of 3.0 Kilometres

from the Cantonment, and

c) to the authority of any educational institution, temple, mosque, church, railway workshop, mill, factory or tea-garden in the case of shops

situated within 400 metres of such institution, temple, mosque, church, railway workshop, mill factory or tea-garden when required by such

authority.

12. Rule 21 provides that every such list under Rule 21 shall be accompanied by a notice inviting opinions and objections regarding the sites and

the nature of the licenses specified in the list. These rules clearly indicate that whether "Off" or "On" license the opinions and objections regarding

the sites and the nature of the licenses have to be obtained from the concerned authorities before the settlement of license whether "Off" or "On".

13. The other contention which has been raised is whether any one can raise objection to the setting up of "off" license shop. In our view statute has

recognised the right of certain persons to raise objection and give opinion on the selection of site. It cannot be misused to create a pressure or to

assist the parties interested in obtaining the license but failed in their endeavour. Accordingly, there cannot be any absolute right to raise objection

by any one of the locality where the shop is likely to be set up. After all, a person has a right to carry on business subject to such reasonable

restrictions as may be imposed having regard to nature of the business and the interests of the public. One has to strike a balance between the

individual interest and interest of the society.

14. In our view, the authorities and the persons specified in Rule 21 of the West Bengal Excise (Licensing Boards) Rules, 1950 would generally be

entitled to raise objections regarding the sites and the nature of the license.

15. The licensing period for the year 1992-93 has already expired. In view of the pendency of the proceedings in the court, license could not be

issued for the said year. We therefore, dispose of this appeal by the following order :-

a) The Licensing Authorities will be at liberty to consider all applications already submitted for the year 1992-93 for "Off license shop at the sites

proposed being the subject matter of the writ application after inviting opinions and objections from those who are entitled to raise such objections

and give opinions regarding the sites and the nature of the license.

b) The Excise authorities shall issue a notice inviting opinions and objections regarding the sites and the nature of the license within two weeks from

the date of communication of this order specifying the date within which such objections and opinions should be submitted.

c) The Excise authorities shall proceed for settlement of license shop at the proposed sites only after consideration of the opinions and objections

that may be received pursuant to the notice to be issued in terms of this order. They will be at liberty to make such settlement of "Off shop if they

consider such objections and opinions have no relevant bearing on the proposal for settlement "Off license shops at the proposed sites.

d) The Excise authorities shall pass a reasoned order dealing with the opinions and objections, if any, and thereupon proceed to issue license after

complying with other formalities to the eligible candidate (s) in accordance with the Rules. Such license shall be for the year 1993-94.

e) Any interim order that might have been passed by any other Court is in respect of the proposed license shops for 1992-93 and shall not apply

to the grant of license for the year 1993-94 at the proposed sites in terms of

f) The Excise Authorities shall dispose of the entire matter within six weeks from the date of communication of this order.

This order disposes of the writ application also.

Let xerox copy of this judgment and order be given to the Id. Advocates appearing for the parties upon usual terms.

Nure Alam Chowdhury, J