

(1993) 04 CAL CK 0005

Calcutta High Court

Case No: F M A T No. 888 of 1993

Bijoy Basanta Singha

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: April 2, 1993

Acts Referred:

- Bengal Excise Act, 1909 - Section 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, Asansol 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 ex parte. 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