

## **In Re: Santibala Chatterjee and Government of West Bengal and Others**

**Court:** Calcutta High Court

**Date of Decision:** July 7, 1987

**Acts Referred:** Bengal Excise Act, 1909 " Section 30, 35, 37, 44A, 85

Calcutta Police Act, 1866 " Section 19, 20, 36, 37

Constitution of India, 1950 " Article 227

**Citation:** 92 CWN 337

**Hon'ble Judges:** S.K. Mookerjee, J

**Bench:** Single Bench

**Advocate:** B.M. Mitra, for the Appellant; B.S. Bagchi and M. Nag (Ghose), Mukul Prokash Banerjee and Safia Begum for the State., for the Respondent

**Final Decision:** Dismissed

### **Judgement**

S.K. Mookerjee, J.

The present Revisional Application is at the instance of two erstwhile licensees of a liquor shop, which was being used

not as an off-shop and on-shop, situate at 567, Diamond Harbour Road, Calcutta - 700034. The subject matter of"" dispute of the instant

application is an Appellate Order of the Commissioner of Excise, West Bengal dated 6.12.86 substantially, affirming the order passed by the

Collector of Excise, South 24-Parganas dated. 3.5.86. The Appellate Authority, inter alia, directed that ""the country spirit shop shall not continue

in the present location and its location shall be changed by shift within the current year, that is by the 31st of March, 1987 in accordance with the

Rules and provisions of law on the licensees offering a suitable alternative site whereupon the Collector may renew the licence at such site. The

relevant facts are more or less admitted. The shop in question had been existing at the disputed site for decades; during the widening of Diamond

Harbour Road in 1975, a Sitala Temple had to be shifted to very close proximity of the shop; close to the shop there are also two Nursing Homes,

an X-ray Institution and a School as also a Mother Dairy Stall; challenging the fitness of the site a writ application had been moved [C.O. 17355

(W). of 1985] by respondent no.6 to the present application as President, Sitala Temple Managing Committee and the same had been disposed of

by an order dated 2nd April, 1986 by S.C. Sen, j. inter alia, directing the petitioner in the said. Civil Order to file objection to the grant of licence

in respect of the country-liquor shop within fortnight from the date of the order and such objection was directed also to be "" to be disposed of by

the Excise Authorities in accordance with the law and by a speaking order within 4 (four) weeks from the date of receipt of the said objection with

liberty to the Excise Authorities to issue a provisional licence in favour of the present petitioners till the disposal of the said objection; the disposal

impugned proceedings are by way of compliance with the said order.

2. The point which has fallen for my determination is whether the Excise Authorities are empowered and/or are statutorily entitled to make the

renewal of the excise licence in favour of the petitioners conditional on shifting of the site of the shop. Sections 30 to 35 of the Bengal Excise Act

and Rules 61 and 62 of the Bengal Excise Rules framed u/s 85 of the Act require consideration for disposal of the aforesaid point. The section said

and Rules embody provisions for preparation of list of places for which it is proposed to grant licences for the retail sale of spirit for consumption

on the vendor's premises for the next period of settlement, publication of such list, entertainment of objections relating to such proposed sites,

consideration by the Collector of such objections and decision the selection of sites and grant of licence by the Collector, consideration by the

Commissioner of the Division of the list of sites, objections and opinions sent to him by the Collector and forwarding the same with his own opinion

and recommendation to the Excise Commissioner for final consideration by the Excise Commissioner and modification annulment of any order of

or licence granted by the Collector. As far as Rule 61 is concerned the same enumerates the prohibited sites for liquor shops which are/or may be

used as on-shops and Rule 62 enumerates the principles to be observed, as far as practicable the Collector in granting licences for new shops or

established liquor-shops. In other words Rules 61 and 62 really lay down the procedures in details for carrying out the purposes of sections 30 to

35 of Act. It would be convenient to quote, at this stage, Rule 61 of the Bengal Excise Rules framed u/s 85 of the Bengal Excise Act":-

61. Prohibited sites for liquor shops. -

(i) No new shop shall be licensed for the consumption of liquor on the vendor's premises, -

(a) in a market-place, or

(b) at the entrance of a market-place, or

(c) in close proximity to a bathing ghat, School, Hospital, place of worship, factory or every place of public resort, or

(d) in the congested portion of a Village,

(2) So far as practicable, an established liquor shop licensed for the consumption of liquor on the premises should not be allowed to remain on a

site which would not under clause (1) of this Rule, be permissible for the location of a new shop.

Similarly the other relevant Rule, namely, Rule 62 should also be quoted and the same is as follows: -

62. Principles to be observed in granting licences for liquor shop - In granting licences for new shops, and as far as practicable, in granting licences

for established liquor shops, the Collector shall have regard to the following principles:-

(a) the liquor shop should not be inaccessible to consumers, it should not be in such a situation as to obtrude itself on the attention of the public or

to render persons passing by subject to annoyance from persons drinking;

(b) in town the position of a liquor shop should be so far public that persons entering it should not escape observation, and it should be such as to

render supervision easy, but it should not be so prominent as to compel attention, e.g., by occupying a whole site of a public square;

(c) A liquor shop should never occupy a position to which the near neighbours object on grounds which, upon enquiry, appear to be sufficient and

free from malice or ulterior motives.

3. Considering the language of the aforesaid provisions the impugned direction of the Commissioner of Excise for shifting of the site does not

appear to be unwarranted or ultra vires. Mr. Mitra's contentions that the Rules do not empower the Excise authorities to direct a shifting of the

site, particularly, after the grant of licence which only can be granted upon approval of a site offered for location of an on-shop, and such direction

not being in connection with the cancellation, suspension or withdrawal of a licence, suffers from jurisdictional infirmity, cannot be accepted. The

language of Section 30 makes it clear that a site of even an existing shop requires approval following the statutory proceedings before issuance of a

licence for the next period of settlement. Therefore, even after a site is approved and a licence is granted with regard to that site, a further approval

cannot be dispensed with. The grant of a provisional licence in favour of the petitioners in compliance with the directions of the Collector cannot

also be a ground for presuming the approval of the existing site in the face of the provisions of Section 37 of the Bengal Excise Act, 1909. Every

licence remains in operation for the period for which it is permitted to be operative and renewal is not a matter of right. The other submission of

Mr. Mitra, in this connection, based upon the language of sub-rule 2 of Rule 61 of the Bengal Excise Rules is that the use of the word "should" in

the said sub-rule, coupled with the phrase. "so far as practicable", clearly indicates that the Rule does not carry with it any mandate as far as an

existing liquor on-shop is concerned, but only provides for its application according to expediency. No doubt, the Rule has some flexibility and is

not mandatory in that sense as will appear from the reasons mentioned hereinafter but such flexibility is not intended to render the Rule illusory. The

whole object and purpose of the Bengal Excise Act and the Rules are to safeguard public health and morality though simultaneously recognising the

need for establishment of a liquor shop or grant of a liquor licence. Such a purpose would be frustrated if the authorities are divested of the power

to direct a shifting of a shop which on its face contravenes the criteria laid down in sub-rule 1 of the said Rule 61.

4. Rule 61(1) enumerates the prohibited site for a new shop and is mandatory in that behalf. Rule 61(2) prohibits renewal of licence of an

established or existing liquor shop on) such a prohibited site so far as practicable. Renewal of licence of an established or existing liquor-shop on a

prohibited site is, therefore an exception, the general rule being non-renewal on a prohibited site and the exception comes in only when it is

impracticable not to renew the licence on the existing prohibited site. Indeed, Rule 61(2) clearly contemplates shifting of the site of an established

or existing liquor shop when its licence is going to be renewed if the site falls within the prohibition of sub-rule (1). The language of the Rule 61(2)

is explicit on the point and leaves no room for doubt or ambiguity and law clearly vests the authorities concerned with such power except in cases

where it is impracticable not to renew the licence at the existing site, or, in other words, that the existing site is indispensable for such renewal. In the

instant cases, on the existing facts, I am not convinced that the authorities have exercised their discretion or power in an arbitrary or illegal manner

so as to call for an interference under article 227 of the Constitution of India. That being the position, I am not inclined to interfere with the order

passed by the Commissioner of Excise, West Bengal. I am not unmindful also that the petitioners' licences had neither been cancelled nor

suspended nor withdrawn but the period of the licence having expired the said contingencies are not relevant and any argument based on a

reference to such contingencies, is only academic.

5. Although the entire Rule can be disposed of on the basis of my decision as above, since some other points have been raised on behalf of the

petitioners by Mr. Mitra, I propose to deal with the said points shortly. The first of such points is the submission of Mr. Mitra that the purported

distinction between "Site" and "Spot" as sought to be made out by the Commissioner of Excise is the said distinction need not be gone into for the

view I have already expressed. Secondly, as contended by Mr. Mitra, recommendation for renewal on condition that the site of the shop should be

changed is not permissible in terms of the language, of Section 44A of the Bengal Excise Act. Upon a proper reading of the Order and for the

reason which I have indicated above, there is no such basic illegality which can render the Order unenforceable. As already indicated by me,

preceding the issuance of a licence even by way of renewal after the expiry of its term, the site where the concerned shop had been existing has to

be reconsidered for approval and since there was no default committed by the licensee which might operate as a bar to such renewal of the licence

in question, except existence of the illegality of the site where the shop of the licensee had been existing, the authorities did nothing wrong in

clarifying that such renewal would be granted provided the site was altered in conformity with the Rules.

6. The last point urged on behalf of the petitioners is that the direction for alteration of the site on the ground of public inconvenience is open for

consideration prior to issuance of the licence and not thereafter. I have already indicated the object and purpose behind the concerned provisions.

Apart from sub-Rule 2 of Rule 61, it is pertinent to note that the whole anxiety of the authorities to maintain public, discipline, convenience and

health will further be confirmed when one takes into consideration the relevant provision relating to permission from the Police Authorities under

the Excise Act and Rules. Reference may be made to Sections 36 and 37 of the Calcutta Police Act and Sections 19 and 20 of the Calcutta

Suburban Police Act which reads as follows:-

Excise license not to be granted without certificate of Commissioner. No licence shall be granted under the provisions of the Bengal Excise Act,

1909 unless the person applying for such licence shall produce a certificate from the Commissioner of Police stating that a licence may be granted

to him for the sale of spirituous liquors or intoxicating drugs, as the case may be, without risk or detriment to the preservation of peace and good

order, and containing full statement of such conditions as may have been imposed and shall have remained in force under the provisions hereinafter

contained, at the date when such licence shall be granted.

No license so granted shall be renewable without a fresh certificate as aforesaid previously obtained from the Commissioner of Police.

The Commissioner of Police shall, in granting or refusing certificate under this Section, shall be subject to the discretion and control of the State

Government.

Duration and condition of licence. It shall be competent to the Commissioner of Police, subject to the discretion and control of the State

Government, to limit in such certificate as aforesaid the period for which the licence may be granted, and also to fix such conditions as he may

deem necessary for securing the good behaviour of the keepers of the houses and "places of entertainment as aforesaid and for the prevention of

drunkenness and disorder among the persons frequenting or using the same and from time to time to vary such conditions, subject to such direction

and control as aforesaid; and no licence granted under the Bengal Excise Act, 1909 shall be valid unless it shall contain such conditions as shall

have been imposed and shall remain in force for the time being under this section.

7. The language of Rule 61(2) of the Bengal Excise Rules clearly vests the authority with jurisdiction as discussed by me to direct removal of site of

an existing shop and the grounds on which such removal is to be made amply establish the predominance of consideration of public inconvenience

and convenience. It is not, therefore, correct to say that at the present stage such consideration on the ground of public inconvenience is wholly

extraneous. It may be noted in this connection that the allegation of malafide against one Mrs. Sukti Sanyal had not been pressed and she has not

been impleaded as a party to the present proceeding also. The allegation based on the letter of the Secretary of the Excise Department that the Re-

visional Authority had made up its mind is also not tenable as in case of reference by way of revision to the State Government such power is

exercised by the Minister and not by the Secretary of the Department concerned.

8. Having stated the law and some of the facts as above, I turn now briefly to certain conditional facts of the instance case. The records before me

show that the petitioner had the opportunity of providing a new site but did not avail of the same. The records also show that there were bonafide

valid objections to the continuance of the liquor-shop in the existing prohibited site. In the above state of things I am not inclined to interfere with

the decision of the authorities concerned not to renew the petitioner's licence on the existing site. I, accordingly, dismiss the application. There will

be no order as to costs.

The respondent Excise Authorities, would not be free to consider the applications for renewal of licensees including that filed on behalf of the

petitioners in accordance with law and in the light of the decision given by me. All interim orders are vacated. If urgent certified copies are applied

for on behalf of the parties to the proceeding, the department is directed to supply the same within two weeks from the date of deposit of requisite

stamps and folios.