

(2016) 08 CAL CK 0018
In the Calcutta High Court
Case No : W.P. No. 19779 (W) of 2015

Chaitali Samanta

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Citation : (2016) 4 CalHCN 582 : (2017) 2 WBLR 186

Hon'ble Judges : Joymalya Bagchi, J.

Bench : Single Bench

Advocate : Jaydeep Kar, Krishnendu Sarkar, Abhijit Mondal, Advocates, for the Appellant; Abhratosh Majumdar, T. M. Siddiqui, Advocates, Ganesh Manna, Advocate, Kallol Kumar Basu, Prasanta Bishal, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Joymalya Bagchi, J.—Pursuant to the leave granted by this Court by order dated September 28, 2015, the applications being CAN 943 of 2016 and CAN 2971 of 2016 have been filed by the applicants seeking to intervene in this writ proceeding.

2. The applications are allowed and the applicants are added as party respondents in this writ petition.

3. Office is directed to carry out necessary amendment in the cause title of the writ petition.

4. Now, I take up the writ petition for final disposal.

5. The writ petitioners have approached this court challenging the action of the respondent authorities in insisting on their obtaining "Crooner's licence" for performing at various hotels, bars and restaurants registered under the Bengal Excise Act.

6. Mr. Jaydeep Kar, learned senior advocate appearing on behalf of the petitioners, submits that there is no provision in the aforesaid statute for the

petitioners, who are the performers in the said establishments, to obtain separate licence other than the licences issued to the establishment itself. It is not disputed that the concerned establishments where the petitioners are performing have the requisite licence under the said enactment for hosting live performances therein.

7. The learned Government Pleader submits that although the establishments have requisite licences but in order to ensure maintenance of law and order and prevention of crime, identity and other particulars of the performers in the said establishments are required to be furnished to the law enforcement agencies. Such exercise undertaken by the respondent authorities cannot be said to be contrary to law.

8. In view of the aforesaid circumstances, by order dated October 16, 2015, this Court by way of interim measure had directed that all the lady performers/crooners would inform the police authorities about the names of the bars/restaurants where they intend to perform and if such information is provided to the police authorities, the lady performers would not be prevented from continuing with live performances in accordance with law.

9. I have considered the submissions made on behalf of the respective parties. The right to carry on business in liquor is *res extra commercium* and no one can claim a fundamental right to carry on such business. Hence, such business may be subjected to restrictions as envisaged in law for maintenance of public order, health or morality of the society. However, there is nothing in the provisions of the Act or the rules framed thereunder or in the conditions of licence granted to the concerned establishments that necessitates in the event such an establishment is permitted to carry on live performance, a separate licence is required to be obtained by the performers/crooners themselves.

10. Hence, I am in agreement with the submission advanced by Mr. Kar that in the event the hotels/bars/restaurants have valid licences under the Bengal Excise Act and other relevant laws for the time being in force to carry on live performances in their establishments, the performers should be permitted to perform in such establishments without obtaining separate licence.

11. However, the concern as to law and order as expressed by the learned Government Pleader cannot also be brushed aside. Law enforcement agencies have ample power to insist on maintenance of records vis-a-vis the identity and other particulars of such performers and the identity of the establishments where they are performing for maintenance of law and order, collection of intelligence and prevention of commission of cognizable offences.

12. One may also take judicial notice of the fact that lady crooners perform in most vulnerable circumstances exposing themselves to various forms of exploitation and criminal activities. Under such circumstances, maintenance of records by the law enforcement agencies as to their identities and/or place of work may help in ensuring their own safety and security and prevention of any

crime against them. Such steps, therefore, cannot be construed as an unreasonable restriction on their right to carry on trade and business in any manner whatsoever but would ensure a better and safer atmosphere in the work place itself.

13. Hence, I hold that the petitioners including other performers participating in live performances in hotels/bars/restaurants having valid licences under the Bengal Excise Act for such purpose do not require separate licence under the said Act.

14. The performers in such live performances and/or the owners of such establishments, however, are required to furnish particulars as to their identity, that is, name, father's/husband's name, age and address to the jurisdictional police station as well as the name of the establishment where they intend to perform. In the event, the live performers and/or the owners of such establishments provide such details to the police authorities, the police authorities shall issue due acknowledgement to the performers as well as the concerned bar owners and permit them to participate in live performances in the specified establishment in accordance with law. Any change as to the aforesaid particulars of the performers shall also be forthwith intimated by the said performers and/or the establishment to the law enforcement agencies in similar manner.

15. Such requirement shall be read in to the conditions of licence already issued in favour of the hotelcum- bar-cum-restaurant under the provisions of the Bengal Excise Act and any breach thereof shall be construed to be a breach of conditions of licence of the establishment itself. Fresh licences issued to new establishments shall include such condition as a part of the licence.

16. The Excise Commissioner and the Director General of Police are directed to give wide publicity and communicate this order to all existing licence holders carrying on live performances in their hotel-cum-bar-cumrestaurant including the performers engaged therein to ensure due compliance of the aforesaid directions not later than six months from date of this order.

17. With the aforesaid directions, the writ petition is disposed of.

18. There will be no order as to costs.