

(1967) 07 CAL CK 0026

In the Calcutta High Court

Case No : Civil Revns. No's. 1873 (W) and 989 (W) of 1966

Jogesh Chandra Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-07-1967

Acts Referred:

Bengal Excise Act, 1909 — Section 20, 8(3)
Bengal Excise Rules, 1993 — Rule 58
Civil Procedure Code, 1908 (CPC) — Section 107, 115
Constitution of India, 1950 — Article 226

Citation : AIR 1968 Cal 528

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : T.P. Das and Shib Lal Bose, for the Appellant; Tapash Chandra Ray and N.C. Chakraborty, Govt. Pleader, for the Respondent

Judgement

D. Basu, J.—These two rules arise out of the same matter and involve the common facts even though the petitioners in the two cases are different persons. The controversy arises out of the settlement of a liquor shop at Andul for which applications were invited by the Additional District Magistrate in the year 1964. The petitioners in both these cases were applicants for the same.

2. In Civil Rule No. 1873 (W) of 1966 the applicant had a favourable order from the District Magistrate dated the 20th November 1964 (Annexure A) by which the District Magistrate selected the petitioner Jogesh Chandra Roy for the licence and required him to take certain steps by way of deposit etc upon the completion of which the licence in question would be granted to him. Respondent No. 6 Madan Mohan Nayek, who was disgruntled by the same order approached the Commissioner of Excise and the latter disposed of the appeal by his order dated that 9th February, 1965 which is at annexure "B" Though the Commissioner of Excise rejected the case of Madan Mohan Navek before him on the ground that he was outside the panel of "three" drawn up by the Collector and had no previous experience as a licensee of a liquor shop the Commissioner of Excise

remanded the matter to the Collector for re-assessing the merits of the three candidates in the panel prepared by the Collector, in view of the fact that that assets of the petitioner Jogesh Chandra Roy stood in the name of his wife. On the 27th February, 1965, the Collector made his revised order after the re-assessment referred to but it was again in favour of the petitioner and that order is at annexure "C" to the petition, by which the petitioner was again asked to deposit certain sums etc in order to obtain licence.

3. In the meantime, respondent No. 6 and some others preferred a further appeal to the Board of Revenue against the order of the Commissioner inasmuch as the Commissioner's order could not give them any relief as they were outside the panel of "three" initially made by the Collector. The Board of Revenue however, upheld the order of the Commissioner of Excise, which meant that that appellants got no relief. Opposite party No. 6 Madan Mohan Nayak as well as Bijon Kumar Saha the petitioner in the other case before me, went in revision to the State of West Bengal against the order of the Board of Revenue. The revision petition was heard by the Minister in-charge of Excise and he disposed of the matter by his order at annexure "E" dated the 30th April, 1966. By this order, the Minister set aside the orders passed by all the inferior authorities and instead of remanding the matter for further consideration, the Minister himself passed a direct order enjoining the Additional District Magistrate, Howrah, to grant the licence in question to Madan Mohan Navek, opposite party No. 6. This advice of the Minister was implemented by a formal order of the Governor issued on the 7th June, 1966 (Annexure E) to the petition. The petitioner has now brought this petition challenging the order of the Minister dated the 30th April, 1966 and has also asked for a Writ in the nature of Mandamus to direct the respondent No. 5 the Additional District Magistrate to issue a licence in his own favour.

4. Two preliminary objections have been taken on behalf of the opposite parties.

(A) It has been urged that the petitioner cannot obtain any relief inasmuch as he has sought to quash only the order of the Minister which is of not (sic) advisory nature but has not prayed for quashing the order of the State Government dated the 7th June, 1966. There is no doubt that the revisional function u/s 8(3) is vested in the State Government and it is by virtue of the rules of business that that function has been delegated to the Minister and the final statutory order is issued in the name of the Governor: but the complaint of the petitioner is that the quasi judicial function of revision has not been properly exercised and the order of the Governor is only a formal expression of the decision of the Minister who disposed of the revisional application. The State of West Bengal is already impleaded as opposite party No. 1. It would have been a different matter if the State of West Bengal was not formally present before me. The affidavit-in-opposition filed on behalf of the opposite parties is also one jointly on behalf of the State of West Bengal, the Minister-in-charge and the other Government Officers concerned. In this state of affairs, I do not think that the Rule can be discharged on the technical plea raised on behalf of the opposite party.

5. The second objection is that the period for which the licence was sought to be granted and with respect to which the petitioner was an applicant has long been over so that the Rule should be discharged on the ground that it has become infructuous. There is no doubt that under Rule 58 of the Rules made under the Bengal Excise Act, a licence can be granted only for a period of one year with an option to the Government to renew at the end of the period. Looking through the papers on record, however, it is patent that the authorities concerned did not place much importance to this statutory provision in the announcement by which applications for licence were invited: nor in any of the orders of the Collector, the Commissioner of Excise, the Board of Revenue or the Minister was it mentioned that the matter was only in respect of one year. It is only during the Pendency of the Rule when the opposite party No 6 sought to obtain a renewal with leave of the court that the authorities have granted his licence mentioning a specific renewal. The ground on which the petitioner seeks to set aside the order of the State Government or the Minister is that the decision is perverse and does not constitute a proper determination of the application for revision. Amongst other observations, the petitioner's candidature which had been upheld by the authorities below was rejected by the Minister on the ground that the petitioner had made a misstatement in his application stating that he had given up his pre-independence business in liquor at the instance of Deshbandhu, of revered memory. According to the petitioner, this is a consideration entirely irrelevant to the matter in revision. If the decision of the Minister stands, there is every likelihood that the petitioner would never be considered eligible for any future year inasmuch as the observations of the Minister in the impugned decision casts a stigma on the petitioner's character and makes him unreliable for any public business. The matter in question cannot therefore, be necessarily connected with any particular year. The petitioner not only seeks a Writ in the nature of Mandamus which of course may be refused on the ground that the year in question has elapsed but also a Writ in the nature of Certiorari to quash the order of the Minister the effects of which as I have already stated are not confined to a particular year. I shall, therefore, have to consider this matter in drawing up the proper order but the petition cannot be dismissed in limine on the ground that the year in question has expired.

6. Coming now to the merits, it appears that the petitioner, in his application for licence which contains a column for special claims stated as follows:

"Had many excise shops before partition gave up vending excise shops on the order of Deshbandhu C. R. Das".

7. In the said application the petitioner gave his age as 52 years in 1964. The Minister by his calculation came to the conclusion that if the petitioner's statements were to be true then his age at the time of the application must be 62 years or he must have been counselled by Deshbandhu when he was at the age of 13 years only. Apparently, of course, this seems to be monstrous enough but the entire tragedy might end in a comedy at 52 years as stated in the

application were read as 62. It might have been due to a typist's devil or an accidental error or the petitioner might have been penalised otherwise for such statement, if wilfully false but could his licence be nullified by revisional authority on this ground alone? That is the question before me. There is no doubt that in the matter of granting a liquor licence the person's experience in the line is the foremost consideration and other relevant matters would be his financial stability, the features of the site selected by him, and perhaps his influence in the locality. Whether he had any acquaintance with Deshbandhu C. R. Das or any other personality in the past would apparently come in nowhere under the statute and this was an objection which was never raised before the entire hierarchy of the statutory authorities beginning from the Collector up to the Board of Revenue. It was before the Minister, it appears, that this objection was raised for the first time, by the applicants in revision and the petitioner's candidature was struck down on this sole ground. Not only that, the only order which was subsisting at the time when the matter went up before the revision was the order of remand of the Commissioner by which the Collector was directed to reassess the suitability of the three members in the panel prepared by the Collector in connection with which the financial stability or the nature of the assets of the petitioner could be better scrutinised. Apparently, there was little to find fault with this order but the Minister in revision not only set aside that order but granted the licence outright to Madan Mohan Nayek who had no previous experience as the holder of a liquor shop licence. It is not clear whether the third person who was in the panel, namely one Durga Pada Saha had been given any notice of the application for revision before the Minister made his impugned order. No doubt, the powers of an appellate or revisional authority, unless stated otherwise in the governing statute, are co-extensive with those of the original authorities but when an appellate or revisional authority proposes to exercise initial powers he takes upon himself quite a responsible task. The Minister, of course, considered the case of the petitioner Jogesh Chandra Roy from the standpoint of his misstatement but does not appear to have given any reason why the other two candidates of the Collector's panel were rejected outright. As regards the candidature of Madan Mohan Nayek he, no doubt stated that the petitioner had a salesman's experience but did not point out any other flaw in the orders of the Collector or of the Commissioner by which they rejected the candidature of Madan Mohan Nayek on the ground that there were three persons amongst applicants who had the experience of a licensee. We have in a previous Division Bench of this Court reported in (1966) 70 Cal WN 807 *Kamal Kumar Biswas v. Chandra Sekhar* made an elaborate analysis of the nature of the revisional powers vested in the State Government and the quasi judicial obligation of the Minister-in-charge to exercise that power by delegation under the Rules of business. Applying those principles to the facts of this case, it cannot but be said that the Minister's order at annexure "E" is not a proper exercise of that power, but, to be more precise is a perverse decision being based on irrelevant considerations. It has been urged that this Court under Article 226 of the Constitution has no power to interfere with the Minister's order even though

it be erroneous. There is no doubt that if it were only a case of a wrong decision it could not be set aside under Article 226 but it is now established since the case of *Edward v. Bairstow*, (1955) 2 All ER 48, 57-59 (H L) followed in another House of Lords decision in *Griffiths v. Harrison*, (1962) 1 All ER 909 (911) H. L., that when a decision is perverse or, in other words, is not supported by the materials on the record, it constitutes an error of law apparent on the face of the record. It is not merely an error of fact because a person who has to decide must decide according to established principles but not according to his caprice. A decision which is perverse is no decision at all and amounts to a nullity and if that is apparent from the decision itself, unfortunately for as that impugned order is a speaking order a court exercising jurisdiction in *Certiorari* has to set aside that order unless, of course other considerations relevant in this behalf stand in the way. In my opinion a perverse decision is also a decision without jurisdiction because even though it is well established that a court which has initial jurisdiction has the jurisdiction to decide rightly as well as wrongly it has no jurisdiction to produce something which does not constitute a decision at all. I have therefore, not the least hesitation in striking down the impugned decision of the Minister-in-charge.

8. The question of the proper order to be passed has yet to be considered. As I have stated at the outset, not only is the year in question for which the licence could be granted at the relevant time namely, the financial year 1965-66 has been long over but also another fact has supervened. The opposite party No. 6 who obtained the licence for the year 1966-67 by virtue of the Minister's order dated the 30th April, 1966 has obtained a renewal for the next year or the strength of an interlocutory order of this Court dated the 5th October, 1966 by which the interim order of injunction which was granted initially restraining the opposite parties from giving any effect to the Minister's order was vacated upon the opposite party No. 6 depositing a sum of Rs. 2000 which was offered by him by way of damages to the petitioner, in case he succeed in the Rule. I must say at the outset that though the Minister has taken cognizance of the fact that if the date of the applications or the announcement were construed in the light of the statutory provisions the licence could be granted only for the year 1965-66 which year had expired by the time when the Minister made his order, he could not make a direct order granting the licence in favour of the opposite party No. 6 for the next year on the assumption that he was dealing with applications for the licence *ab initio* inasmuch as certain formalities are prescribed by the statute to be gone through before applications for a new licence have to be disposed of. The fact remains, however, that opposite party No. 6 not only had the advantage of a licence for the year 1966-67 but now happens to be the holder of the licence for the next year 1967-68 granted by the opposite parties after the vacation of the order of interim injunction. No order granting a licence in favour of the petitioner by issuing a *Mandamus* upon the Collector can at this stage be issued by this Court. Nevertheless if the Magistrate's order is quashed and the Rule made absolute it is quite patent in view of the nature of the order dated 5th

October, 1966 upon which the renewal in favour of opposite party No. 6 has been granted, that such renewal must fail as invalid as a result of the Rule being made absolute. The consequences of this will be that for the year 1967-68 the formalities for a new settlement under the statute shall have to be undergone and that must be done with the utmost expedition of which the opposite parties are capable. At such selection, the applications already pending together with new applications if any, will have to be considered afresh in the light of the observations made herein and in accordance with the provisions of law in that behalf, ignoring the adverse remarks made by the Minister-in-charge against the petitioner, Jogesh Chandra Roy. I should also observe in this connection that anticipating the decision in the other case which will be just pronounced, the Collector should not resort to a system of making a panel inasmuch as the function as well as duty of making the selection for the grant of the licence rests upon him subject of course, to the control made by the Commissioner: but for the matter of that he is not merely a recommending or advisory body.

9. The Rule is made absolute in the modified form. But I would not make any order as to costs.

10. Regarding the security of Rs. 2000 by way of damages referred to in my judgment, the Registrar. Appellate Side is directed to keep the money in deposit for a period of three months from this date and to refund it to opposite party No. 6 if by the expiry of that period the petitioner is unable to obtain the orders of a court of competent jurisdiction regarding withholding of payment to opposite party No 6 in a suit claiming damages with respect to the dispute involved in this Rule.