

(2010) 06 CAL CK 0021
In the Calcutta High Court
Case No : Writ Petition 7745 (W) of 2009

Kidderpore Wine Stores and Another	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 10-06-2010

Acts Referred:

Bengal Excise Act, 1909 — Section 37, 42(1), 86
Bengal Excise Rules, 1993 — Rule 14(1)

Citation : (2010) 06 CAL CK 0021

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : L.K. Gupta and S.K. Sarkar, for the Appellant; S. Roy Chowdhury, for Official Respondents, for the Respondent

Judgement

Dipankar Datta, J.—The first petitioner is a "Foreign Liquor Off Shop". Initially, the fourth respondent was the sole licensee in respect thereof. However, subsequently, the second petitioner was inducted as joint licensee and necessary licence in their joint names was duly issued by the excise authorities.

2. After issuance of the licence, the second petitioner and the fourth respondent carried on business jointly. With passage of time the licence became due for renewal. The second petitioner applied for renewal of the licence. It is claimed in the petition that since the fourth respondent did not sign the application for renewal of licence, the Collector of Excise (South) had allowed the second petitioner to run the shop temporarily. However, the Excise Commissioner by an order dated 6.5.2007 had observed that running of the shop on temporary basis is unacceptable and, accordingly, directed the Collector to settle the licence jointly in favour of the second petitioner and the fourth respondent after obtaining their signature. The order for granting of temporary licence in favour of the second petitioner was set aside. It was further observed that if licence cannot be granted on regular basis in favour of the joint licensees, he may be informed for further instruction in the matter.

3. In pursuance of the order of the Commissioner, the Collector issued a notice dated 25th June, 2007 to the second petitioner and the fourth respondent directing them to submit application jointly for renewal of licence for the period 2007-08. Since the fourth respondent did not agree to submit joint application for renewal, the licence could not be renewed for the period 2007-08 resulting in the Collector referring the matter to the Commissioner for his observations/remarks.

4. The Commissioner heard both the second petitioner and the fourth respondent. By an order dated 24.10.2008, he observed, inter alia, as follows:

In the instant case, since one of the existing joint licensees has been constantly refusing to put his signature on the application for settlement of the license for the next financial year, the Collector does not have any other option but to suspend the shop as provided under the law.

It appears that instead of taking this drastic steps the Collector has allowed the said shop to be run on a temporary basis by Smt. Indrani Saha one of the joint licensees.

It is however felt that the shop cannot be allowed to be run on a temporary basis u/s 37 of the B.E. Act for long.

Accordingly, it is hereby directed that the present license shall remain suspended till 31.3.2009. Liberty is however, given to the joint licensees to make reconciliation and file a joint prayer before the Collector of Excise, Kolkata (South) for renewal of the license in their favour in the mean time. The Collector is directed to issue the license in favour of both the joint licensees, if they come forward to him jointly. It is further directed that if the Collector of Excise, Kolkata (South) fails to settle the license on a regular basis within 31.03.2009, the F.L. Shop shall be settled as a new site as per law. The present appeal is accordingly disposed of.

5. In pursuance of the aforesaid order, the Collector passed an order dated 14.11.2008 which reads thus:

In pursuance of the order passed by the learned Excise Commissioner, West Bengal on 24.10.2008 in connection with an Appeal before him in connection with 5097(W) of 2006 of the Hon'ble High Court at Calcutta in the matter of Sri Bani Kumar Saha v. State of West Bengal and Ors. as communicated under Excise Directorate's Memorandum No. 6A-18/6-7/2086/1(3)E dated 10/11/2008, I, the Collector of Excise, Kolkata (South) do hereby order that the retail licence for F.L. Off Shop under name & style- "Khiddirpore Wine Stores" at 100F, Karl Marx Sarani, Kolkata-700023 shall remain suspended up to 31st March, 2009 with effect from 15th November, 2008.

6. Questioning the order dated 14.11.2008, the petitioners had the occasion to approach this Court by filing W.P. 29297 (W) of 2008. The writ petition was disposed of by a learned Judge of this Court by an order dated 25.3.2009, which

reads thus:

The writ petitioners challenge an order dated November 14, 2008 passed by the Collector of Excise, Kolkata (South) to suspend the foreign liquor off shop licence in favour of Kidderpore Wine Stores till March 31, 2009. Such decision was taken by the Excise authorities in the wake of disputes between the second writ petitioner and the private respondent who were former partners running the shop together.

It appears that the order of suspension is till March 31, 2009 and thereafter there would be no further licence and the licence will expire upon the passing of March 31, 2009.

The writ petitioners submit that the dispute between the second petitioner and the private respondent are in the process of being resolved and seek a direction on the Excise authorities not to cancel the licence immediately upon the expiry of March 31, 2009 and afford the petitioners a further fortnight's time.

W.P. No. 29297 (W) of 2008 is disposed of by permitting the second petitioner and the private respondent to make a joint application before the Collector of Excise, Kolkata (South) by April 16, 2009 evidencing the resolution of all disputes between such partners. In the event such application is made by April 16, 2009 and the Collector is of the opinion that the licence may be renewed for a further period in accordance with law, it will be open to the Collector to renew the licence. This order will not permit the writ petitioners or the private respondent to seek any concession in the matter of compliance with the provisions of law.

7. It is not in dispute that within 16.4.2009, the second petitioner and the fourth respondent were unable to make any joint application resulting in expiry of the licence. The Collector in terms of liberty granted by the aforesaid order of Court proceeded to cancel the licence by his order dated 22.4.2009 which has been brought on record by filing an application for recording subsequent events dated 17.2.2010. In such application it has also been pleaded that the fourth respondent has since expired in February, 2010 as a bachelor without surviving heirs.

8. In the order dated 22.4.2009, the Collector recorded as follows:

As both the joint licensees did not comply with the direction of the Hon'ble Justice Sanjib Banerjee dt. 25.03.2009 to submit proposal for renewal of license jointly by 16.04.2009, I, the Collector of Excise, Kolkata (South) do hereby cancel the F.L. Off license of Kidderpore Wine Stores, F.L.Off Shop at 100-F, Karl Marx Sarani, Kolkata-700023 with immediate effect, as per provision of Sub-section (1)(c) of Section 42 of the B.E. Act, 1909, for violation of Rule 14(1) of Excise Deptt. Notfn. No. 800-Ex dated 29.07.2003.

It is further ordered that the old stock of I.M.F.L. & Beer which are lying at the licensed premises after expiration of the license shall be sold out to the nearest licensee, Sangeeta Jalan F.L. Off shop at D.B. 226, Circular Garden Reach Road,

Kolkata-700043, as per provision of Rule 155 of Consolidated Rules made u/s 86 of the B.E. Act, 1909, published through Notifn. No. 601 S.R. dated 30.03.1915, in presence of the Superintendent of Excise, F.L. Kolkata (South).

9. In the present petition dated 21.4.2009, the petitioners have prayed for orders for cancellation, withdrawal and/or rescission of the Commissioner's order dated 24.10.2008 and the Collector's order dated 14.11.2008 referred to above. They have also prayed for issuance of excise license pertaining to the shop in the sole name of the second petitioner.

10. I have heard Mr. Gupta, learned senior advocate representing the petitioners and Mr. Ray Chowdhury, learned advocate for the State.

11. Challenge to the orders dated 24.10.2008 and 14.11.2008 is barred by res judicata and/or analogous principles.

12. In the earlier round of litigation before this Court which stood terminated by the order dated 25.3.2009, the petitioners did not challenge the order dated 24.10.2008. The principle of constructive res judicata, therefore, comes into play and bars challenge to such order at this stage.

13. So far as the order dated 14.11.2008 is concerned, the petitioners stalled adjudication of the issue pertaining to propriety thereof by having the writ petition disposed of based on their submission that the dispute between the second petitioner and the fourth respondent is in the process of being resolved and, thereby inviting the Court to restrain the excise authorities from treating the licence as cancelled upon expiry of 31.3.2009 and to treat the license to be alive till 16.4.2009. Now that the second petitioner failed to have the dispute with the fourth respondent resolved, it is not open to the petitioners to turn around and question the orders dated 24.11.2008 and 14.11.2008 by presenting this petition. Surely, the official respondents cannot be vexed twice over the same issue once again.

14. I do not find any merit in the petitioners' challenge to the said orders. The writ petition is liable to be dismissed and is, accordingly, dismissed.

15. In view of the aforesaid order, the application being CAN No. 1388 of 2010 also stands disposed of.

16. However, in course of hearing it has been represented before me that the vacancy caused due to cancellation of the license issued in respect of the first petitioner is yet to be filled up by inviting interested parties to offer their candidature.

17. Since the fourth respondent has expired and the second petitioner has acquired some experience in running the business of selling foreign liquor being a joint licensee, it shall be open to the excise authorities to consider whether the second petitioner may now be granted license in her sole name in order to enable her to earn a living. However, this is not to be construed as a positive

direction and it would be entirely within the discretion of the excise authorities to decide upon the next course of action.

18. There shall be no order as to costs.

19. Urgent photostat certified copy of this judgment and order, if applied for, shall be given to the applicant as early as possible.