(2022) 04 CAL CK 0050

In the Calcutta High Court

Case No : MAT No. 1342, 1350 Of 2021, CAN 1, 2 Of 2021

Mandira Saha APPELLANT

Vs

Dhruba Mohan Saha & Ors. RESPONDENT

Date of Decision : 18-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
West Bengal Excise (New Sites & Grant of License) Rules, 2003 — Rule 14, 14(6)
Bengal Excise Act, 1909 — Section 8(3), 85(2)(c)

Citation : (2022) 04 CAL CK 0050

Hon'ble Judges : Prakash Shrivastava, CJ;Rajarshi Bharadwaj, J

Bench : Division Bench

Advocate : Surya Prasad Chattopadhyay, Arjun Samanta, Surya Prasad Chattopadhyay, Arjun Samanta, Kalyan Bandopadhyay, Joytosh Majumdar, Siddhartha Ghosh, Tapati Samanta, Anirban Ray, Raja Saha, Debasish Ghsoh

Final Decision : Dismissed

Judgement

Rajarshi Bharadwaj, J

1. By this appeal, correctness of the order of the Learned Single judge dated 24th November, 2021 passed in W.P.A. No. 13820 of 2021 (Dhruba Mohan Saha -versus- State of West Bengal & Ors.) has been questioned by the writ petitioner. This appeal is concerned with the order of the said Learned Single Judge relating to the validity of an impugned order dated 18th November, 2019 passed by the Learned Additional Chief Secretary, Finance department, West Bengal.

2. The petitioner/appellant herein had filed a writ petition W.P.A. No. 13820 of 2021 under article 226 of the Constitution of India, which was preceded by various other proceedings between members of the same Saha family, the private respondent herein.

3. The said dispute is between the legal heirs of two partners of an original

partnership firm which was enjoying excise license for selling liquor. The partnership firm was reconstituted with an heir after one of the partners died. The disputes and differences between the legal heirs arose pursuant to the death of one of the partners of the reconstituted partnership firm.

4. The order impugned in the writ petition W.P.A. No. 13820 of 2021 before the Learned Single Judge is concerned with the order of the Additional Chief Secretary, Finance Department, Government of West Bengal.

5. According to the said order under Section 8(3) of the Bengal Excise Act, 1909, the order of the Collector of Excise (North) and the order of the Excise commissioner dated 23rd November, 2016 was modified. As mentioned in section 8(3) of the said Act, the State Government may revise any order passed by the Collector, the Excise Commissioner or the Commissioner of a division or by any officer exercising the power of an appellant authority under any rule made under Section 85 sub-section (2) (c) of the Bengal Excise Act, 1909.

6. The second Proviso to the contended Sub-rule (6) of Rule 14 of the West Bengal Excise (New Sites & Grant of License) Rules, 2003 states that:

i. "14(6) Notwithstanding anything contained elsewhere in these rules or in any other rules for the time being in force, when a license granted by the collector at an existing site lapses on the death of the holder, a licensee of the same category in lieu of the one lapsed, shall be granted in favour of one or more heirs or representatives of the deceased licensee along with the surviving partners/ surviving joint licensees, if any, at the existing site, if such representatives are willing and eligible to hold the license and pay the arrears, if any, due from the deceased licensee;

ii. Provided that where it is not possible to grant the license under this sub-rule to any representative of the deceased licensee with or without the surviving partners/surviving joint licensees, as the case may be the said license may be granted in favour of all the surviving partners/surviving joint licensees;

iii. Provided further that in the case of cessation of partnership due to death, no license shall be granted to the person or persons who have been partners, unless the partnership is validly re-constituted and the Excise commissioner accords his approval to the grant of a license to the re-constituted partnership firm."

7. As per the above mentioned Proviso, the license upon termination of the partnership due to death can only be granted to a validly re-constituted partnership firm with the approval of the Excise commissioner. As stated by the Learned Single Judge, it remains ambiguous as to how the Excise Commissioner or the Additional Chief Secretary, Finance Department, Government of West Bengal could direct the parties to enter into a partnership deed and specify the modalities thereafter.

8. According to the learned counsel for the State Mr Raja Saha, the temporary license was being granted to one set of legal heirs and/or surviving partners of

the erstwhile licensee firm to ensure continued flow of revenue to the State. The Learned Single Judge was of the view that even temporary license could not have been granted given the longstanding bad-blood between the legal heirs in the subject firm which is pending since about four to five years.

9. The Learned Single Judge correctly held that the temporary licence of the excise department shall continue only for a period of 45 days from the given date. The Learned Single Judge was also justified in stating that in case the warring parties produce a lawful partnership deed, the same may be considered by the respondent according to Rule 14 of the said Rules of 2003. Thus, no case is made out to interfere in the order of the Learned Single Judge.

10. For the foregoing reasons, the appeal is found to be devoid of any merit which is accordingly dismissed.