

(1988) 09 CAL CK 0017
In the Calcutta High Court

Rahipada Saha

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 29-09-1988

Acts Referred:

Bengal Excise Rules, 1993 — Rule 209
Constitution of India, 1950 — Article 226

Citation : (1989) 1 CALLT 191

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : M.B. Sircar and Mitra Banerjee, for the Appellant; S.N. Datta, for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterji, J.—Having heard Mr. Sircar for the petitioner and Mr. Datta for the State respondents," it appears that the present writ petition has been filed by the petitioner for issuance of a writ of mandamus commanding the respondents to revoke, cancel, rescind the Order contained in Memo No. 2043, dated 2-9-88 issued by the Additional District Magistrate, Murshidabad, being Annexure "E" to the writ petition and to renew the licence in the sole name of the petitioner in respect of a pachai shop at Murshidabad and also to restrain the respondents from giving effect to the Order as communicated by Annexure "F" to the writ petition by inviting, the eligible intending candidates in prescribed form for settlement of excise licence for the excise shop for the period of 1988-89. It is stated in the petition that originally the excise licence stood in the name of the petitioner and one Sm. Snehalata Saha. Said Snehalata Saha died on January 29, 1988. After her demise, the petitioner has been running the said shop upon representation to grant necessary licence in his name. It appears from the materials on record that the petitioner was given an opportunity of hearing on 19-5-88 regarding settlement of the said Pachai Shop. It appears further that by another letter, dated 2-9-88, regarding the petitioner's application, dated 30-8-88 he was informed that no further extension will be allowed to him

beyond..30-9-88 .for running the said shop and the petitioner was directed to wound up the business by 30-9-88 and make over the charge of relevant registers papers, etc., to the Officer-in-Charge of excise of Kandi "B" Circle. A step has, however, been taken to issue the notice inviting applications as aforesaid. Both the steps have been challenged-by-the writ petitioner in the present writ petition.

2. Mr. Sarkar has strongly argued that there has been non-compliance of Rule 209 of the West Bengal Excise Compilation, Part 2 indicating inter alia that on the death of a licensee the Collector may renew the licence on the same terms in favour of a representative of the deceased, if he be satisfied that such representative is fit to hold it, and on the condition that any arrears due from the deceased licensee are recovered before the licence is so renewed. In such case, no fresh deposit need be called for. Mr. Sarkar has further drawn the attention of this Court to a circular issued by the Commissioner of Excise on 20-11-59 indicating inter alia that in disposing; of a revision petition in the year 1953, the Hon"ble Excise Minister was pleased to hold that an excise licence held in partnership with another person terminates on the death of a joint licensee and that the surviving licensee cannot as a matter of right have any claim to the licence. It goes on further indicating that in the interest of revenue the surviving partner may be allowed to continue to hold the licence provided he is a suitable candidate" and the Hon"ble Minister disposed of the revisional application with the direction that the Collector concerned would make a new settlement if he did not consider the surviving joint licensee a suitable person to hold the licence in question.

3. Mr. Datta has however, tried to support the case of the respondents by drawing the attention of the Court to Section 37 of the Bengal Excise Act, 1909;

4. Having anxiously considered the claim of the respective parties this court does not appreciate legal consequence of the opinion and/or observation of an Hon"ble Minister regarding disposal of a petition for grant of licence. It is neither an executive instruction nor it has got statutory force in any manner whatsoever. Looking to Rule 209 as placed before this Court, it is not appreciated that the petitioner being not a legal representative of the other deceased licensee can ask for grant of a licence. In the instant case regard being had to the background and the facts and circumstances of the case there is no application of either Rule 209 or the circular. Mr. Sarkar has however laid much emphasis that there should have been a speaking order refusing the petitioner to have an opportunity to enable him to go up in appeal and to ventilate his "grievance; This court has also considered this aspect of the matter and it finds that after the demise of a joint licensee, the licence ceases automatically by operation of law. The petitioner has prayed for grant of a fresh licence. This Court finds that after the demise of a joint licensee the petitioner was given an opportunity of hearing and subsequently he has been asked to surrender all the papers by the Order, dated 2-9-88 and for the fitness of things the licensing authority was taken steps; to

invite applications in the prescribed form. This is purely an administrative order and there is nothing prejudicial to the interest of the petitioners. Considering all this aspect of the matter, this court is not inclined to interfere with the impugned order.

5. Hence the writ petition is rejected without any Order as to costs.