
(2021) 06 CAL CK 0086
In the Calcutta High Court
Case No : Writ Petition No. 201, 202 Of 2021

Sanjay Biswas And Anr.

APPELLANT

Vs

Commissioner Of Excise And Anr.

RESPONDENT

Date of Decision : 30-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 14
Bengal Excise(Selection Of New Sites And Grant Of License For Retail Sale Of Liquor
And Certain other intoxicants)Rules,2003 — Rule 14
Bengal Excise Act, 1909 — Section 42

Citation : (2021) 06 CAL CK 0086

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Jatinder Singh Dhatt, Anirban Ray, Debasish Ghosh

Final Decision : Disposed Of

Judgement

The writ petitioner is aggrieved by an order dated 15th December, 2020 passed by the Excise Commissioner while hearing an appeal from an order of

the Collector dated 15th June, 2017 refusing to renew licence for the settlement year 2017-18 for three bar-cum- restaurant licences. The Collector

had rejected prayer for the refusal of licence as the Bidhan Nagar Police Commissionerate refused to issue NOC in view of different criminal cases

registered against licences.

The Commissioner has, however, fairly recorded that the objections of the Bidhan Nagar police were more than three years old and a fresh report is

needed from the police authorities.

Counsel for the petitioner would argue before this Court by reference to Section 42 of the Bengal Excise Act 1909 and Rule 14 of the Bengal Excise

(Selection of New Sites And Grant of Licence For Retail Sale of Liquor And Other Intoxicants) Rules that the licence can be refused only upon any

of the owners having been convicted of any offences mentioned therein. Admittedly, certain criminal proceedings may have been pending against the

father of one of the directors of the petitioner and there is no conviction as yet. Counsel for the petitioner also refers to a notification of the Finance

Department, Government of West Bengal dated 20th February, 2019. Clause 3 stipulates that no clearance from the Police Commissionerate should

be given for refusing regular excise licences for every licensing year.

Counsel for the petitioner has relied upon two several decisions of a Co-ordinate Bench of this Court. First of which is Asutosh Ghosh vs. State of

West Bengal reported in 2014 (2) CHN (CAL) 502. The other decision is Guruprasad Mitra vs. Principal Secretary to the Govt. of W.B. and Ors.

reported in 106 CWN 265. In both the decisions the propriety of rejection of a licence or renewal of licence were tested and the objections taken by

the respondents therein have been held to be unconstitutional. It is indeed true that a writ petitioner has no fundamental right to conduct trade and

business in the field of liquor. However, an order refusing to grant licence or renew the same, contrary to rules, will invariably attract the provisions of

Article 14 of the Constitution of India.

This Court, ex facie finds that the requirement of police clearance is no longer mandatory in view of the Finance Department's order dated 20th

February, 2019 being FS-14/2019.

Counsel for the respondent State submits that the police report that has been sought is not for the purpose of ascertaining any conviction or otherwise

of the directors or the owners of the writ petitioners but only to ascertain an likely law and order problem that may arise at the said place.

In those circumstances, the Excise Commissioner shall forthwith and not later than a period of 21 days, dispose of the appeal filed by the petitioner

pending before him. The petitioner shall be heard either in person or through legal representative.

The Commissioner shall take a pragmatic view of the application of the petitioner for renewal of licence, preferably in terms of the applicable rules as

on date since a period of more than three years has elapsed after the petitioner's licence had expired.

It shall be borne in mind of the Commissioner that the State loses revenue for refusing to grant licence unless there is a substantial and serious violation of any of the provisions of the Bengal Excise Act and the Rules framed thereunder.

Let this matter stand adjourned and be listed four weeks hence.