
(1991) 05 CAL CK 0021
In the Calcutta High Court
Case No : C.O. No. 5297 (W) of 1989

Smt. Diljit Kaur	Vs	APPELLANT
The Collector and The District Magistrate and Others		RESPONDENT

Date of Decision : 08-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 CALLT 42

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : S. Pal and Mita Mukherjee, for the Appellant; D. Pal, R.N. Dutt for the Respondent No. 5, S.A.M. Habibullah and Gayetri Chowdhury, S.N. Datta, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—The present writ petition has been filed challenging the Notification vide Memo No. 917(2)/E(W) dated 18.3.89 holding the hearing and enquiry by the respondent No. 2 the Additional District Magistrate, Asansol and to restrain the respondent No. 1 the Collector and the District Magistrate, Burdwan from acting in furtherance of the hearing held on 20. 3. 1989 and/or acting in any manner in continuation of the proceeding and/ or issuing the licence thereof and other consequential reliefs as stated in the writ petition itself. It is stated in detail that the petitioner is the owner of the premises No. 3, G. T. Road (previously known as old 48, G. T. Road) at Asansol, District-Burdwan and all the floors were let out to Joginder Singh Attwal since deceased. The portion within the first floor and the second floor were vacated in terms of a decree of Civil Court. The said Joginder Singh Attwal since deceased allegedly carried on business on the ground floor of the said premises in the trading name "Attwal Brothers" as retail sellers of foreign liquors (wines) on the strength of an "off" licence issued in the name of Joginder Singh Attwal. The petitioner allegedly filed two separate suits for eviction and obtaining possession with regard to the first

floor and second floor. She filed a separate suit for eviction regarding the ground floor before the Subordinate Judge at Asansol being Title Suit No. 46 of 1977 and the same is still pending for decision. It is further alleged that Joginder Singh Attwal since deceased had been running "off" and "on" licences for foreign liquor in the first and second floors and thereafter was allowed and granted licences by the Excise Authority to shift the "on" licence in the ground floor and carry on both "off" and "on" licences in the said floor of the premises in spite of objection raised by the petitioner and the bank authorities who came to occupy as tenants in the said premises. Being aggrieved by the said purported action of the authorities concerned the petitioner filed a writ application before this Court and by Order dated 31st January, 1983 Chittatosh Mookherjee J. (As His Lordship then was) was pleased to dispose of the matter giving liberty to the petitioner to file objection before the renewal of the licences afresh and the Licensing Authority was directed to consider and dispose of the objection filed by the petitioner in accordance with law. Accordingly, the petitioner filed objection dated March 18, 1983 before the respondent nos. 2 and 3 and prayed for a personal hearing in accordance with law. The petitioner, was, however, given an opportunity of hearing on 13th April, 1983 and before that the respondent No. 1 renewed the said licence for 20 (twenty) days without considering the objection of the petitioner. However, the petitioner being aggrieved by the grant of provisional licence which is alleged to be illegal, unjust and mala fide moved this Court by filing another writ application and B. C. Roy J. (As His Lordship then was) issued a Rule Nisi and granted an interim order restraining the private respondents to carry on the business of foreign liquor "On and Off" until the licence is renewed and granted in accordance with law. It is placed on record that on 22nd of December, 1988 the said Rule being C. R. No. 4876 (W) of 1983 came up for final hearing before Bhagabati Prasad Banerjee J. and the Rule was disposed by directing the respondent No. 1 to consider and hear any objection that may be filed by the persons who are competent. There was a specific direction that the matter should be considered and/or heard by the Collector himself. It is further placed on record that pursuant to the order of Bhagabati Prasad Banerjee J., an objection was filed on 10th of January, 1989 stating inter alia that in any case Sanjiv Atwal son of Joginder Singh Atwal should not obtain any licence to carry on "Off and On" business within the premises No. 3, G. T. Road (Old 48, G. T. Road, Asansol) and the petitioner was allegedly surprised that despite such objection the Notification No. 293 (10)(EW) dated 28.2.89 was issued permitting the licence-holder to carry on "Off and On" feign liquor business at the ground floor of the aforesaid premises. Thus being aggrieved the petitioner has again come to this Court on the ground that the respondents have acted illegally in issuing the notification being Memo No. 917(2)/E(W) dated 18.3.1989 to the effect that the applicant had not produced any document to prove his right to run the aforesaid business. It is strongly alleged that the Additional District Magistrate took an erroneous view in holding that it was not his business to look out where there is existing land of the building and the owner had objected to the same or not before preliminary objection of site. It is

highlighted that it is incumbent upon the respondents to satisfy themselves as regards the site nowhere there was any "No Objection Certificate" from the owner to the holder of the premises. The attention of the Court has been drawn to the fact that the action of the respondents are wholly illegal and violative of Rule 4 Sub-Rule (2) of Section 86 of the Bengal Excise Act.

2. An application for amendment has been filed and the same was allowed by this Court in terms of the order dated 7.7.89. The petitioner by way of amendment has further prayed for a Writ of Mandamus be issued directing the respondent authorities to rescind, recall and/or cancel the existing licence and further not to renew the excise licence as to "Of and On" shops in premises No. 3, G. T. Road, Asansol, Burdwan.

3. The writ petition is seriously contested by the private respondent No. 5, Sanjiv Atwal. The allegations in the writ petition have been controverted and it is placed on record that the Excise Authorities before allowing to shift the business to the ground floor considered all the formalities and there is nothing wrong for the respondent No. 5 to carry "Off and On" Licences at the site as per provisions of the Bengal Excise Act and the objections raised by the petitioner are wholly erroneous.

4. An application for addition of parties was allowed viz. "Variety Stores" represented by Tapas Roychowdhury of 48, G. T. Road, Asansol, Burdwan and Satish Chandra, Editor of "Jan Jagriti" of 5, Hatton Road, Asansol were added parties. They have also challenged the notification dated 28.2.89 and the grievance of the added parties is that the site is located at a market-cum-residential area where ladies garment shop, a book shop and office of the State Bank of India, Asansol Branch and various ladies and gentlemen of the localities visit shops and banks regularly and there is no proper for selling wine from "off" and "on" shops. The added parties in fact have supported the case of the petitioner. The State respondents have produced the entire records of the case for proper appreciation of this Court as to the issuing of the impugned notification and as to how the objections of the petitioner have considered in the proper perspective.

5. From the facts and circumstances of the case and from the records produced before this Court, it appears that the following are the two kinds of existing shops at Asansol in view of the enquiry made pursuant to the direction in Civil Rule No. 4876(W) of 1983. It is found clearly that previously there was one F.L. "Of" Shop with Atwal Brothers, Asansol and there was one P.L. "On" shop with Atwal Cafe Hotel at G. T. Road, Asansol. The continuance of these two shops was allowed to continue and 48, G. T. Road, now known as "3, G. T. Road". Admittedly, there was a residential hotel on the first floor and the second floor of the premises and a shop at the ground floor. It is not disputed that the tenancy of the first floor and ground floor has been terminated and the tenant has vacated the possession. The place is occupied by the bank authorities and others. It further appears from the office records that two excise shops are not

located within a distance from 3.2 K.M. from the border of the neighbouring district and public notice inviting objection and opinion continues to approved sites were sought to be issued and in pursuance of the orders passed by this Court and the matter was fixed for hearing on 17.3.89. The matter was considered in the order dated 28.3.89. It was found by the Additional District Magistrate and Collector, Asansol that opinions and objections from public, Local M.L.A., Chairman of the Municipalities and others were invited and No Objection except Smt. Diljit Kaur was received and on the contrary one Sri Prabhudha Laha, M.L.A. informed under his letter dated 10.3.89 that he has no objection in the matter. The excise shop in question has been running at the present sites and foreign liquor is generally consumed by the people of High Societies and these shops cater their needs and in the said circumstances the Additional District Magistrate found that there is nothing except to submissions of the learned Advocates who appeared on behalf of the Objectors and hence the objection is rejected.

6. This Court has gone through the entire records produced by the State respondents in the matter of being considered objection as to the continuance of the licence for "Off and On" shops at the ground floor of the aforesaid premises.

7. Having considered the submissions of the learned Counsel appearing for the respective parties and upon perusal of the aforesaid materials on record, this Court is of the view that previously there were two separate licences for consuming liquor at the first floor and the second floor and to sell liquor from the shop at the ground floor, and since the tenancy in the first floor and second floor was terminated and the tenant had to vacate the portion thereof both the licences for "Off and On" shops were permitted from the ground floor shop room. The circumstances to consider objections to run both "Off and On" shops at the ground floor was considered in both the previous writ petitions and the authorities were directed to consider the objections of the writ petitioner in the proper perspective. In particular, the order made by Bhagabati Prosad Banerjee J. in disposing Civil Rule 4876 (W) of 1983 as per the Judgement dated 22nd December, 1988, it is mandatory on the part of the Licensing Authority to observe the provisions of Sections 32 to 36 of the Bengal Excise Act before granting and renewing licence case and it was found that in the incase case, as it is a course of renewal "Off and On" shops in view of the satisfaction of this Court, the respondent should observe the provisions of Sections 30 to 36 of. the Bengal Excise Act in respect of the renewal of the licences in question for that purpose, the elaborate procedure laid down therein should be followed by the respondents. The respondent No. 1 the Collector of Burdwan was directed to consider and hear any objection that may be filed by the persons who are competent to file objection under the law and shall decide the question in accordance with law. Since the currency of licences expired on 30th September, 1988 and if the licence had been renewed temporarily or otherwise in that event, the respondent should take steps to grant for renewal of licence directly in accordance with law and in accordance with observation made in the effect that

on and from 1st of April 1989 and within the period, the respondent shall comply with all formalities that were required to be observed in this matter and the respondents would be at liberty to renew the licence till 31st of March, 1989 and if any licence had already been granted beyond that period, the same should cease to have been effected after 31st of March, 1988 and on and from 1st April, 1989 the licence in respect of "Off and On" Shops should be granted in terms of this order. Under this background, the objections were heard and/or considered by the Additional District Magistrate and Collector, Asansol, the petitioner and the added parties have challenged the same.

8. This Court has considered the matter in depth and it finds that the Authority concerned has not properly considered the objections raised by the petitioner Diljit Kaur and simply swayed away by the letter of the M-L.A. dated 10.3.89 that he has "no objection" as to running "Off and On" shops at the site in question. This Court does not appreciate the reason of Additional District Magistrate that the foreign liquor is generally consumed by the people of high society and these shops cater their needs, No Objection can be considered. This view of the Additional District Magistrate cannot be supported under any stretch of imagination. The procedure as envisaged under Sections 30 to 36 of Bengal Excise Act has got to be considered since directed by Bhagabati Prosad Banerjee J. in his judgement dated 22.12. 1988. There cannot be any escape therefrom. The additional District Magistrate has also not considered that previously the liquor might have been consumed by the boarders of the hotel above ground floor and since the vacation of the first floor and second floor, the circumstances has undergone a material change. It has to be considered that the site in question is a market place and in view of the bank above the ground floor, the place is visited by general people irrespective of any person of high society or any ordinary man of the locality. Besides, there are shops around the site. As per the situation at the site the objections are required to be considered and upon perusal of all the materials on record and the objections raised by the petitioner and the added parties and the manner in which the entire matter has been dealt with, this Court finds sufficient force in the contentions made by the petitioner. The State respondents ought not to have overruled the objections in the manner as done in the present case. The reason appears to be irregular and illegal and the same appears to be perverse also. The private respondent No. 5 cannot be permitted to carry on business with "Off" and "On" shops at the ground floor of the premises. At best, the private respondent No. 5 can be permitted to hold the licence for only selling the liquor and by consuming elsewhere from this ground floor and not to permit to sell the liquor for consumption at the shop itself. This Court also finds in the merits of the objection raised by the petitioner and the added parties against the purported Notification No. 917(2)/E(W) dated 18.3.89 and the impugned order to renew the excise licence for both "Off" and "On" shop in premises No. 3, G. T. Road, Asansol in favour of the respondent No. 5.

9. For the aforesaid reasons, the writ petition is allowed by quashing the impugned notification and the steps taken by the authorities to grant excise

licence both for "Off" and "On" shop at No. 3, G. T. Road, Asansol to the respondent No. 5. This order will not, however, prevent the respondent authorities to grant licence to the respondent No. 5 to sell the liquor only for not consumption at the site. There will be no order as to costs. Prayer for stay is refused.