

(2011) 12 CAL CK 0025

In the Calcutta High Court

Case No : W.P.No. 8616 (W) of 2010 with C.A.N. No. 10440 of 2011

Sumit Majumder and Another

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Bengal Excise Act, 1909 — Section 8, 8(2), 8(3)
Constitution of India, 1950 — Article 226

Citation : (2012) 2 CALLT 367 : (2012) 5 CHN 579

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Arunava Ghosh, Mr. Anant Kumar Shaw, Mr. Ravi Kumar Dubey and Mr. Mainak Ganguly, for the Appellant; Debabrata Saha Roy and Mr. Susovan Sengupta, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioners in this Article 226 petition dated April 26, 2010 are questioning an order of the Secretary, Excise Department. Government of West Bengal dated March 10, 2010 (at p.85) under sub-section (3) of section 8 of the Bengal Excise Act, 1909. The petitioners applied for a licence under the Bengal Excise Act, 1909 for sale of liquor on February 12, 2007. By an order dated August 7, 2009 (at p.59) the Additional District Magistrate & Collector, Asansol directed the application to be treated as cancelled.

2. Feeling aggrieved, the petitioners lodged an appeal u/s 8(2) of the Act to the Excise Commissioner, West Bengal. By an order dated November 17, 2009 (at p.62) the Commissioner affirmed the order of the Collector. Then the petitioners applied for revision to the State Government under sub-section (3) of section 8 of the Act. By the impugned order the State Government has disposed of the revision petition affirming the order of the Excise Commissioner.

3. The Collector, the Commissioner and the State Government all have refused the petitioners licence on the grounds that within 1000 (one thousand) ft of the proposed site there is a Government sponsored sub-divisional library..

4. While the Collector has held that if licence is granted to open an F.L. On Shop at the proposed site, then it "may cause serious disturbances in maintaining the ambience of the library," the Excise Commissioner has held that "though a library is not an educational institution," in his opinion, the Collector rightly took the decision, because people use libraries "for acquiring further knowledge," and "libraries are also used by students for education purposes."

5. The Secretary passing the impugned order held, inter alia, as follows:

"Having heard the petitioner and on going through the submissions made by him, I find no reason to interfere with the orders of the Excise Commissioner dated 17.11.09. It is a fact that libraries are used as knowledge house and provide an opportunity for students and other citizens to gain knowledge. It is therefore natural that a library is likely to be frequented by people of different age group and of all walks of life with the intention to gain access to books to further their knowledge. Thus grant of excise license in the vicinity of a library creates risk of disturbing the ambience suitable for educational purposes. Rule 8 of Notification dated 29.07.03 restricts grant of a new license at a site in the vicinity of an education institutional affiliated to any University established by law, traditional places of worship and hospitals for public use. There can be no doubt that libraries are meant and used for purposes related to education. It is a well settled principle of interpretation of statutes that the spirit of law must prevail where any ambiguity might arise from the letter of the law. Moreover, the petitioner has been provided with an opportunity to offer an objection free site, which has not been considered by the petitioner."

6. The request for licence was to be considered by the Collector under the West Bengal Excise (Selection of New Sites and Grant of Licence for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003.

7. The provisions of sub-rule (1) of rule 8 of the rules provide that no licence for retail sale of liquor or any other intoxicants at a new site shall be granted where the new site is situated in the vicinity of an educational institution recognised by the State Government or the Central Government or any college or institution affiliated to any university established by law. traditional places of public worship and hospital for public use.

8. In the explanation to sub-rule (1) of rule 8 it has been provided that for the purpose of the rule the word "vicinity" means a distance of 1000 ft measuring from the points mentioned in the explanation. In this case the request for licence has been rejected on the grounds that within 1000 ft from the proposed site there is a Government sponsored sub-divisional library.

9. The question is whether citing existence of a Government sponsored sub-divisional library within 1000 ft from the proposed site the request for licence could be rejected.

10. Mr Ghosh appearing for the petitioners has argued that the Collector, the

Commissioner and the Secretary all agreeing that a library cannot be treated as an educational institution for the purpose of rule 8 of the rules, could not reject the request on the grounds that, in their opinion, licence for setting up of a liquor shop within 1000 ft from the library would affect the people using the library.

11. Relying on the provisions of rules 8 and 18 of the rules, the provisions of the West Bengal Public Libraries Act, 1979 and the decision in Indian Medical Association Vs. Union of India (UOI) and Others, Mr. Saha Roy appearing for the respondents has justified the orders.

12. His argument is this. Rule 8 has to be given the widest interpretation. Since the expression "educational institution" has not been defined, it is reasonable to include in it a library that is used by the visitors for educational purpose. In any case, it should be presumed that the State Government refusing licence citing existence of the library has interpreted the rules in exercise of power conferred by rule 18 thereof, so as to include a library within the meaning of the expression "educational institution."

13. Education is systematic instruction, schooling or training given to the young in preparation for the walks of life. What education connotes is the process of training and developing knowledge, skill, mind and character of students by formal schooling (The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, . The word "education" means a process of teaching, training and learning especially in schools or colleges, to improve knowledge and develop skills; and the word "institution" means a large important organization that has a particular purpose. Hence the expression "educational institution" would mean a large important organization connected with or providing education.

14. In T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, it has been said that the expression "education" in the articles of the Constitution means and includes education at all levels from the primary school level upto the postgraduate level; and that the expression "educational institutions" means institutions that impart education where "education" is understood in the meaning given therein.

15. In S. Azeez Basha and Another Vs. Union of India (UOI), it has been said that educational institutions teach students and have teachers for the purpose; that in the normal run of things all educational institutions impart education, though only some of them, for example the universities, grant degrees of their own.

16. The word "library" has not been defined in any of the Acts and rules mentioned hereinbefore. Its ordinary dictionary meaning is a building in which collections of books, newspapers, etc. are kept for people to read, study or borrow.

17. Educational institutions and libraries can definitely be of many kinds and the

chief of them are public educational institutions and public libraries, and private educational institutions and private libraries. The provisions of rule 8 of the rules do not prohibit grant of licence for a site having in its vicinity many private educational institutions or private libraries. They do not either prohibit grant of licence even if the site is situated in the vicinity of a public library or a Government sponsored public library.

18. The restriction is very specific, and it is that the licence shall not be granted for a site situated in the vicinity of an educational institution recognised by the State Government or the Central Government, or any college or institution affiliated to any university established by law. Though college and institution affiliated to any university established by law have been separately mentioned, they actually do not indicate any separate category, for they also fall within the very wide purport of the expression "educational institutions".

19. It is worth repeating that in *S. Azeez Basha* their Lordships of the Supreme Court clearly said that the expression "educational institution" is an expression of widest purport. Hence every institution imparting education to the students at it through the teachers appointed by it is an educational institution. Education may be from the primary level upto the postgraduate level including the professional, technical and other categories of education.

20. The restriction imposed by rule 8 applies to all categories of educational institutions recognised by the State Government or the Central Government or affiliated to any university established by law. And this is absolutely clear and there is no ambiguity whatsoever.

21. A library has no feature of an educational institution. It is a place where books, newspapers, etc. are stored so that the persons visiting it may read and borrow them. If they want to educate themselves, they have to do that on their own. None engaged by or on behalf of the library, even if it is treated as an institution, takes the responsibility of imparting education to its visitors who may be of any age, class "or sex in the absence of a specific restriction according to law.

22. By no stretch of imagination a library can be treated as an educational institution. When in law a library was admittedly not and could not be treated as an educational institution there was no reason for the Collector, the Commissioner and the Secretary to import the concept of good conscience and public good emanated principally from the abstract concept of morality for enlarging, quite unauthorisedly, the purport and scope of the restrictions imposed by the provisions of rule 8 of the rules.

23. The rule has mentioned three specific categories of things within whose vicinity a site for a shop for retail sale of liquor cannot be licensed. The provisions do not allow such an interpretation as was given by the authorities passing the orders. They clearly transgressed their jurisdiction and, thus, rejected the request on an absolutely extraneous consideration.

24. The argument that the order of the Secretary affirming the order of the Commissioner should be considered an interpretation of the provisions of rule 8 of the rules by the State Government in exercise of power conferred by rule 18 of the rules is utterly misconceived.

25. If the State Government wanted to interpret the rules, it was free to do that, and that it could do only in the same manner in which the rules were made; not by passing an order u/s 8(3) of the Act dealing with a revision petition filed by a person applying for licence. It is absolutely wrong to say that the State Government has interpreted the provisions of rule 8 to include a Government sponsored public library within the meaning of the expression "educational institution" mentioned in the rule. For these reasons, I set aside the orders passed by the Secretary, the Commissioner and the Collector, allow the petition to this extent and order as follows. The Collector shall take up the application for licence and pass the final order therein within a fortnight from the date of communication of this order. If the petitioners are otherwise entitled to licence, then licence shall be granted immediately. CAN No. 10440 of 2011 shall be deemed to be disposed of. No costs. Certified xerox.