(1954) 02 CAL CK 0035

In the Calcutta High Court

Case No : Civil Revision Case No. 1293 of 1953

Surendra Nath Bose APPELLANT

Vs

State of West Bengal RESPONDENT

Date of Decision : 22-02-1954

Acts Referred:

Bengal Excise Act, 1909 — Section 20, 30, 31, 33, 34
West Bengal Excise Compilation Rules — Rule 29

Citation : (1956) 1 ILR (Cal) 223

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Amarendra Mohan Mitra and Arunendra Nath Bose, for the Appellant;Sankar Banerjee, Standing Counsel, Pramatha Kumar Chakravarty for Respondents Nos. 1 to 3 and Amiya Kumar Mukherjee, for Respondents No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The facts in this case are shortly as follows:

One Sajani Mohan Batabyal was the holder of a license in respect of a country spirit shop at No. 4, Grand Trunk Road, Howrah. He died on September 22, 1951. Thereupon, his widow Shrimati Bhanumati Batabyal applied for a settlement, and later nominated her son, Tarapada Batabyal, who applied for a settlement. Upon the death of a licensee, the Collector is empowered to renew the license with a representative of the deceased (Rule 29, West Bengal Excise Compilation, pt. II). There appears to exist certain departmental instructions called the "Martin Circular", which provides that upon the death of a licensee, it should first be seen whether he was managing the shop to the satisfaction of the Excise authorities till the time of his decease. If his management was satisfactory, it was next to be seen whether any of his near relatives were (1) competent and were (2) actually helping him in the management of the shop. Tarapada Batabyal stated that he had been a registered salesman in the shop for three years up to the time of his father''s death and was actually helping his father in the management of the shop. It appears that he is a matriculate.

2. The Petitioner also applied for a settlement of the shop. It appears that he had a country spirit shop in the town of Bogra for a number of years. He says that he was deprived of this license upon the allegation that he was a fifth columnist. The usual advertisements were issued and the Collector proceeded to consider the applications. By an order, dated August 20, 1952, the Collector held that Tarapada was not entitled to the license because he was not satisfied that Tarapada had been actually helping his father in the management of the shop. He ordered that the shop be settled with the Petitioner.

3. There was an appeal by Shrimati Bhanumati and Tarapada Batabyal to the Commissioner of Excise against this order. The Commissioner also held that the Appellants had not satisfied the terms of the "Martin Circular" and he, by his order, dated October 28, 1952, refused to interfere. The Appellants then applied to the Government of West Bengal for a revision of the order. The matter came up for hearing before the Minister-in-charge of Excise. It appears that he heard lawyers appearing on behalf of the parties. Two affidavits were filed on behalf of the Batabyals in spite of the protest of the Petitioner''s lawyers. No opportunity was given to the Petitioner to controvert the contents thereof. I shall revert to this aspect of the case presently. By his order, dated April 2, 1953, the Minister-in--charge of Excise allowed the revision petition and set aside the orders of the Collector and the Commissioner. This order is challenged in this Rule. This Rule was issued on May 11, 1953, calling upon the Respondents to show cause why a writ in the nature of mandamus should not be issued, directing the Respondents to forbear from enforcing the impugned order.

The learned advocate for the Petitioner takes two points which are as follows:

(1) That the State Government (that is to say, the Minister-in-charge of Excise) had no power of revision in this case and the order of the Excise Commissioner is final.

(2) That if the State Government had such power of re-vision, the rules of natural justice were violated by allowing the two affidavits to be filed without granting any opportunity to the Petitioner to meet them.

With regard to the first point, it is formulated thus. It is said that the order of the Excise Commissioner is made u/s 35 of the Bengal Excise Act (V of 1909) and that the order is final.

The relevant part of Section 35 is as follows:

The Excise Commissioner shall consider the list, objections and opinions so sent to him, and may modify or annul any order passed or license granted by the Collector, and, notwithstanding anything contained in Section 8, his orders shall be final...

4. Section 8 deals with control, appeal and revision. There is an appeal to the Excise Commissioner from the orders of the Collector and the iState Government has power of revision over the orders of the Collector and the Excise Commissioner.

5. In my opinion, Section 35 does not apply to the facts of this case. Section 35 appears in Chapter VI which is headed "Licenses, "permits and passes" and the scheme seems to be as follows:

Under Section 30, before the expiration of every period for which existing licenses are in force, the Collector is to prepare a list showing what licenses it was proposed to be granted for the next period of settlement. u/s 31, the list is to be published. Section 33 enables objections to be preferred. Section 34 requires that after considering the objections the Collector.

shall, if necessary, revise the said list, and shall decide for what places licenses for the retail sale of spirit shall be granted, and may, in his discretion, grant licenses accordinly.

6. The Collector then forwards his list to the Excise Commissioner. The relevant part of Section 35 has been set out above.

7. It is clear that the list that is prepared is the annual list and is a list of sites. The original lists have been produced and show that the list is area-wise. The list is headed "Detailed "list of licenses proposed to be settled in the district of...for "the year...". It is this list which is made up annually and forwarded to the Excise Commissioner. Section 34 makes it clear that the list is of sites and not individuals, since it says, "Shall decide for what places, licenses.....shall be granted". It is true that u/s 34, the Collector can grant licenses as well. But this is obviously to be done in exceptional cases, as the grant of individual licenses is not the object of the provisions contained in Sections 30 to 34; but the determination of the sites.

8. By notification No. 2335 F.T., dated October 28, 1950, published in the Calcutta Gazette, dated October 30, 1950, the powers and duties of the Collector in Sections 30 to 34 have been vested in Licensing Boards, except the discretionary powers of the Collector to select persons to whom licenses shall be granted and to grant licenses.

Mr. Mitra argues that the exception shows that Sections 30 to 34 grant power to the Collector to select persons to whom a license would be granted. He says that in the present case also the Collector has granted a license u/s 34 and, therefore, Section 35 applies and Section 8 is excluded.

9. I have already stated that Section 34 does give power to the Collector to grant licenses and such grants must necessarily involve individual selection. But it is not the only section which gives power to the Collector to grant licenses. The general power is derived u/s 20 which lays down that no intoxicant can be sold except under the authority and subject to the terms and conditions of license

granted in that behalf by the Collector.

10. Section 34 contemplates the exercise of this power in certain cases, but only at a particular stage, namely, when the annual list is being determined. From the lists I find that normally the sites are all existing sites. Where new sites are selected, the Collector will normally have the sites approved by the Excise Commissioner before granting the license, because it would be futile to grant a license if the site itself is turned down. But in exceptional cases he may also grant the license before sending the list to the Excise Commissioner who can modify or annul the list as well as a license so granted. The granting of a license at other times, and because the existing incumbent has died and the shop has to be re-settled, has nothing to do with the choice of site and can be done at any time and not necessarily at the time of settling the list. Thus it has no necessary connection with Section 34.

11. It will be seen that the grant of license here had nothing to do with the preparation of any list, nor was it granted at the time that the list was being prepared. The Excise Commissioner did not deal with the matter because the list or the license was forwarded to him u/s 34. He never purported to act u/s 35. There was an appeal to him because he was the appellate authority u/s 8, consequently his order and that of the Collector were both subject to revision by the State Government.

12. As to the second point, it was certainly very unwise to allow the affidavits to be filed before the Minister-in-charge of Excise. If I was satisfied that the Minister considered them and based his decision thereon, his findings would have to be set aside as being contrary to natural justice. In the counter-affidavit filed by the Deputy Secretary to the Government of West Bengal, Department of Excise, it is said as follows:

I state further that the Petitioner''s lawyers perused the affidavit and objected to the filing of the same without previous notice. I say that the Hon''ble Minister for Excise observed that he could not prevent the Respondent No. 4 from filing the said affidavit and he added further he would only keep it with the records of the case and that no notice of its contents would be taken by Government and thus there was no occasion for any prayer on behalf of the Petitioner to give an opportunity to file an affidavit of opposition.

13. This statement is however verified as partly derived from records and partly derived from informations received and believed to be true. It is not stated as to what records bear out this statement and what are the sources of such information. I would, therefore, have attached little importance to it but for the fact that the entire record has been produced in Court including the two affidavits and the order of the Minister. I have carefully looked into the order which is a fairly long and well-reasoned document, and I am quite satisfied that Mr. Barman has not relied on the affidavits at all, for the purpose of deciding the matter. One of the affidavits is merely an application for adjournment and the

other gives a list of the cases, etc., which, it is alleged, were instituted against the Petitioner in Pakistan and fines said to have been imposed upon him. In his order, Mr. Barman has not relied on any cases having been instituted against the Petitioner in Pakistan or any fines impose upon him. Six facts have been enumerated which induced Mr. Barman to hold in favour of the fourth Respondent and they are as follows:

(1) The Petitioner is a young man of 25, whereas the Respondent is 52;

(2) The Petitioner is a matriculate and the Respondent read up to the matrix class;

(3) Tho excise shop is located within a portion of the residential house of the Petitioner whereas the Respondent has not been able to secure a house. There are cases where many licensees could not open shops for want of houses;

(4) The Petitioner is a permanent native of district of Howrah and as such he can claim some preference;

(5) The entire family consisting of ten members depends for their livelihood on the income from this shop; and

(6) The Petitioner is managing the shop satisfactorily since September 26, 1951. The most important advantage which the Petitioner has is that he has an approved site where he is now running his shop.

14. There is thus no reference to the facts stated in the impugned affidavit. Mr. Mitra refers to the following observation in the order of the Minister:

On merits also the findings of the Commissioner of Excise and the Collector were against the Petitioner. But I differ from them on this point also. The Respondent is an experienced man no doubt; but there is nothing to show that his records have been all along satisfactory. He had a license at Bogra, but he did not produce any evidence to show that his records were clean.

15. He argues that this observation is based upon the affidavit filed. But I do not think that is so. In his order, the Excise Commissioner, speaking of the Petitioner, said, "He had a very" good record of service but in spite of it, he lost the license...."

16. But on the record there is nothing to show this except his bare statement. It is, therefore, legitimate comment to say that there was nothing to show that his records have all along been satisfactory. The affidavit filed gives a long list of proceedings against the Petitioner. If the Minister relied on this he would have said that the record was unsatisfactory and not that there was nothing to show that it was satisfactory. This does not amount to relying on the affidavit but ignoring it. There has, therefore, been no violation of the rules of natural justice. Both the points taken have, therefore, failed and the application must be dismissed. The Rule is discharged and all interim orders vacated. There will be no order as to cost.

