

In Re: Santibala Chatterjee

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Court : Kolkata

Decided On : Jul-17-1987

Reported in : (1987)0CALLT647(HC),92CWN337

Judge : S.K. Mookerjee, J.

Acts : [Bengal Excise Act, 1909](#) - Sections 30 to 35, 85 and 86; ;Bengal Excise Rules - Rules 61, 61(1)(2), 61(1), 61(2) and 62; ;[Constitution of India](#) - Article 227

Appellant : In Re: Santibala Chatterjee

Advocate for Def. : B.S. Bagchi and ;M. Nag (Ghose), Advs.

Advocate for Pet/Ap. : B.M. Mitra, Adv.;Mukul Prokash Banerjee and ;Safia Begum, Advs.

Disposition : Application dismissed

Judgement :

S.K. Mookherjee, J.

1. The present Revisional Application is at the instance of two erstwhile licencees of a liquor shop which was being used both as an off-shop and on-shop, situate at 567, Diamond Harbour Road, Calcutta-700034. The subject matter of dispute of the instant application is an Appellate Order of the Commissioner of Excise, West Bengal dated 6.12.86, substantially, affirming the order passed by the Collector of

Excise South 24-Parganas dated 3.5.86. The Appellate Authority, inter alia, directed that 'the country spirit shop shall not continue in the present location and its location shall be changed by shift within the current year, that is, by the 31st of March, 1987 in accordance with the Rules and provisions of law on the licencees offering a suitable alternative site whereupon the Collector may renew the licence at such site'.

2. The relevant facts are more or less admitted. The shop in question had been existing at the disputed site for decades ; during the widening of Diamond Harbour Road in 1975, a Sitala Temple had to be shifted to 'very' close proximity of the shop; close to the shop there are also two Nursing Homes, an x-ray installation and a School as also a Mother Dairy Stall; challenging the fitness of the site a writ application had been moved (C.O. 17355 (W) of 1985) by respondent No. 6 to the present application as President, Sitala Temple Managing Committee and the same had been disposed of by an Order dated 2nd April, 1986 by S.C. Sen, J. inter alia, directing the petitioner in the said Civil Order to file Objection to the grant of licence in respect of the country-liquor shop within fortnight from the date of the order and such objection was directed also to be disposed of by the Excise Authorities in accordance with the law and by a Speaking Order within 4 (four) weeks, from the date of receipt of the said Objection with liberty to the Excise Authorities to issue a provisional licence in favour of the present petitioners till the disposal of the said Objection; the disposal of the impugned proceedings are by way of compliance with the said order.

3. The point which has fallen for my determination is whether the Excise Authorities are empowered and/or are statutorily entitled to make the renewal of the excise licence in favour of the petitioners conditional on shifting of the site of the shop. Sections 30 to 35 of the Bengal Excise Act and Rules 61 and 62 of the Bengal Excise Rules framed under Section 85 of the Act require consideration for disposal of the aforesaid point. The said Sections and Rules embody provisions for preparation of list of places for which it is proposed to grant licences for the retail sale of spirit for consumption on the vendor's premises for the next period of settlement, publication of such List, entertainment of objections relating to such proposed sites, consideration by the Collector of such objections and decision and

the selection of sites and grant of licence by the Collector, consideration by the Commissioner of the Division of the List of Sites, objections and opinions sent to him by the Collector and forwarding the same with his own opinion and recommendation to the Excise Commissioner for final consideration by the Excise Commissioner and modification or annulment of any order of or licence granted by the Collector. As far as Rule 61 is concerned the same enumerates the prohibited sites for liquor shops which are or may be used as on-shops and Rule 62 enumerates the principles to be observed, as far as practicable, by the Collector in granting licences for new shops or established liquor shops. In other words Rules 61 and 62 really lay down the procedures in details for carrying out the purposes of Sections 30 to 35 of the Act. It would be convenient to quote, at this stage, Rule 61 of the Bengal Excise Rules framed under Section 8.5 of the Bengal Excise Act :

'61. Prohibited sites for liquor shops.--

(1) No new shop shall be licensed for the consumption of liquor on the vendor's premises.--

(a) in a market-place, or

(b) at the entrance of a market-place, or

(c) in close proximity to a bathing ghat, School, hospital, place of worship, factory or every place of public resort, or

(d) in the congested portion of a village.

(2) So far as practicable, an established liquor shop licensed for the consumption of liquor on the premises should not be allowed to remain on a site which would not under Clause (1) of this Rule, be permissible for the location of a new shop.'

4. Similarly the other relevant Rule, namely, Rule 62 should also be quoted and the same is as follows :

'62. Principles to be observed in granting licences for liquor shop. In granting licences for new shops, and as far as practicable, in granting licences for established liquor shops, the Collector shall have regard to the following principles

:

(a) the liquor shop should not be inaccessible to consumers, it should not be in such a situation as to obtrude itself on the attention of the public or to render persons passing by subject to annoyance from persons drinking;

(b) in town the position of a liquor shop should be so far public that persons entering it should not escape observation, and it should be such as to render supervision easy, but it should not be so prominent as to compel attention, e.g., by occupying a whole site of a public square ;

(c) liquor shop should never occupy a position to which the near neighbours object on grounds which, upon enquiry, appear to be sufficient and free from malice or ulterior motives.'

5. Considering the language of the aforesaid provisions the impugned direction of the Commissioner of Excise for shifting of the site does not appear to be unwarranted or ultra vires, Mr. Mitra's contentions that the Rules do not empower the Excise Authorities to direct a shifting of the site, particularly, after the grant of licence which only can be granted upon approval of a site offered for location of an on-shop, and such direction not being in connection with the cancellation, suspension or withdrawal of a licence, suffers from jurisdictional infirmity, cannot be accepted. The language of Section 30 makes it clear that a site of even an existing shop requires approval following the statutory procedures before issuance of a licence for the next period of settlement. Therefore, even after a site is approved and a licence is granted with regard to that site, a further approval cannot be dispensed with. The grant of a provisional licence in favour of the petitioners is compliance with the directions of the Collector cannot also be a ground for presuming the approval of the existing site in the face of the provisions of Section 37 of the [Bengal Excise Act, 1909](#). Every licence remains in operation for the period for which it is permitted to be operative and renewal is not a matter of right. The other submission of Mr. Mitra, in this connection, based upon the language of sub-rule 2 of Rule 61 of the Bengal Excise Rules is that the use of the word 'should' in the said sub-rule coupled with the phrase 'so far is practicable', clearly indicates that the Rule does not carry with it any mandate as far as an

existing liquor on-shop is concerned, but only provides for its application according to expediency. No doubt the Rule has some flexibility and is not mandatory in that sense as will appear from the reasons mentioned hereinafter but such flexibility is not intended to render the Rule illusory. The whole object and purpose of the Bengal Excise Act and the Rules are to safeguard public health and morality though simultaneously recognising the need for establishment of a liquor shop or grant of a liquor licence. Such a purpose would be frustrated if the authorities are divested of the power to direct a shifting of a shop which on its face contravenes the criteria laid down in sub-rule 1 of the said Rule 61.

6. Rule 61(1) enumerates the prohibited site for a new shop and is mandatory in that behalf. Rule 61(2) prohibits renewal of licence of an established or existing liquor shop on such a prohibited site so far as practicable. Renewal of licence of an established or existing liquor-shop on a prohibited site is, therefore, exception, the general rule being non-renewal on a (prohibited site and the exception comes in only when it is impracticable not to renew the licence on the existing prohibited site. Indeed, Rule 61(2) clearly contemplates shifting of the site of an established or existing liquor shop when its lease licence is going to be renewed if the site falls within the prohibition of Sub-rule (1). The language of the Rule (Rule 61(2)) is explicit on the point and leave no room for doubt or ambiguity and law clearly vests the authorities concerned with such power except in cases where it is impracticable not to renew the licence at the existing site or in other words, that the existing site is indispensable for such renewal. In the Instant case, on the existing facts, I am not convinced that the authorities have exercised their discretion or power in an arbitrary or illegal manner so as to call for an interference under Article 227 of the [Constitution of India](#). That being the position, I am not inclined to interfere with the order passed by the Commissioner of Excise, West Bengal. I am not unmindful also that the petitioners' licence had neither been cancelled nor suspended nor withdrawn but the period of the licence having expired the said contingencies are not relevant and any argument based on a reference to such contingencies is only academic.

7. Although the entire Rule can be disposed of on the basis of my decision as above, since some other points have been raised, on behalf of the petitioners by

Mr. Mitra, I propose to deal with the said points shortly. The first of such points is the submission of Mr. Mitra that the purported distinction between 'Site' and 'Spot' as sought to be made out by the Commissioner of Excise is misconceived if not imaginary. The correctness of the said distinction need not be gone into for the view I have already expressed. Secondly, as contended by Mr. Mitra, recommendation for renewal on condition that the site of the shop should be changed is not permissible in terms of the language of Section 44A of the Bengal Excise Act. Upon a paper reading of the Order and for the reasons, which I have indicated above, there is no such basic illegality which can render the Order unenforceable. As already indicated by me, preceding the issuance of a licence even by way of renewal after the expiry of its term, the site where the concerned shop had been existing has to be reconsidered for approval and since there was no default committed by the licence which might operate as a bar to such renewal of the licence in question, except existence of the illegality of the site where the shop of the licensee had been existing, the authorities did nothing wrong in clarifying that such renewal would be granted provided the site was altered in conformity with the rules.

8. The last point urged on behalf of the petitioners is that the direction for alteration of the site on the ground of public inconvenience is open for consideration, prior to issuance of the licence and not thereafter. I have already indicated the object and purpose behind the concerned provision. Apart from the Sub-rule 2 of Rule 61, it is pertinent to note that the whole anxiety of the authorities to maintain public discipline, convenience and health will further be confirmed when one takes into consideration the relevant provision relating to permission from, the Police Authorities under the Excise Act and Rules. Reference may be made to Sections 36 and 37 of the Calcutta Police Act and Sections 19 and 20 of the Calcutta Suburban Police Act which read as follows :--

'Excise licences not to be granted without certificate of Commissioner.--No licence shall be granted under the provisions of the [Bengal Excise Act, 1909](#) unless the person applying for such licence shall produce a certificate from the Commissioner of Police stating that a. licence may be granted to him for the sale of spirituous liquors or intoxicating drugs, as the case may be, without risk or detriment to the

preservation of peace and good order, and containing full statement of such conditions as may have been imposed and shall have remained in force under the provisions hereinafter Contained, at the date when such licence shall be granted.

No licence so granted shall be renewable without a fresh certificate as aforesaid previously obtained from the Commissioner of Police.

The Commissioner of Police shall in granting or refusing certificate under this section shall be subject to the discretion and control of the State Government.

Duration and condition of licence.--It shall be competent to the Commissioner of Police, subject to the discretion and control of the State Government, to limit in such certificate as aforesaid the period for which the licence may be granted, and also to fix such conditions as he may deem necessary for securing the good behaviour of the keepers of the houses and places of entertainment as aforesaid and for the prevention of drunkenness and disorder among the persons frequenting or using the same and from time to time to vary such conditions, subject to such direction and control as aforesaid ; and no licence granted under the [Bengal Excise Act, 1909](#) shall be valid unless it shall contain such conditions as shall have been imposed and shall remain in force for the time being under this section'.

9. The language of Rule 61(2) of the Bengal Excise Rules clearly vests the authority with jurisdiction as discussed by me to direct removal of site of an existing shop and the grounds on which such removal is to be made amply establish the predominance of consideration of public inconvenience and convenience. It is not, therefore, correct to say that at the present stage such consideration on the ground of public inconvenience is wholly extraneous. It may be noted in this connection that the allegation of mala fide against one Mrs. Sukti Sanyal had not been pressed and she, has not been impleaded as a party to the present proceeding also. The allegation based on the letter of the Secretary of the Excise Department that the Revisional Authority had made up its mind is also not tenable as in case of a reference by way of revision to the State Government such power is exercised by the Minister and not by the Secretary of the Department concerned.

10. Having stated the law and some of the facts as above, I turn now briefly to certain additional facts of the instant case. The records before me show that the petitioner had the opportunity of providing a new site but did not avail of the same. The records also show that there were bona fide valid objections to the continuance of the liquor-shop in the existing prohibited site. In the above state of things I am not inclined to interfere with the decision of the authorities concerned not to renew the petitioner's licence on the existing site. I, accordingly, dismiss the application.

11. There will be no order as to costs.

12. The respondent Excise Authorities, would now be free to consider the application for renewal of licences including that filed on behalf of the petitioners in accordance with law and in the light of the decision given by me. All interim orders are vacated. If an urgent certified copies are applied for on behalf of the parties to the proceeding the department is directed to supply the same within two weeks from the date of deposit of requisite stamps and folios.

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