

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Shampa Sarkar

And

The Hon'ble Justice Smita Das De

F.M.A. 704 of 2025

Sri Bijay Saha

Vs.

The State of West Bengal & Ors.

For the Appellant : Mr. Raghunath Chakraborty,
: Ms.Sabnam sultana

For the State : Ms. Susmita Saha Dutta, AGP,
: Ms.Tanusree Ghosh

For the Respondent No.2 : Mr. Krishnendu Sarkar,
: Mrs. Manisha Bose,
: Ms. Meghla Das

Reserved on : **30/06/2026**

Judgment pronounced on : **10/07/2026**

Judgment uploaded on : **10/07/2026**

Smita Das De, J.:-

1. This intra court Appeal under Clause 15 of the letters patent is directed against the Judgment and Order dated 10.05.2023 passed by the Learned Single Judge in WPA 19824 of 2021, whereby, the Writ Petition challenging the Order dated 26.10.2021 of the Principal Secretary, Finance Department was dismissed.

- 2.** Apropos the facts of the case is that, the excise licence for Sheoraphully Country Spirit Shop (hereinafter referred to as C. S. Shop for the sake of brevity and convenience) was originally held by one Prankrishna Saha, who died in the year 1971. After successive temporary settlements, the Collector of Hooghly by an Order dated 23.07.2014, finally settled the licence in favour of the appellant, being the grandson of the original deceased licensee.
- 3.** Respondent No. 4 being the brother of the appellant and one of the grandsons of the original deceased licensee challenged inter alia, the settlement of licence of the C. S. Shop in favour of the appellant. The Collector, by an Order dated 22.11.2018, upheld the settlement in favour of the appellant, which was subsequently affirmed by the Excise commissioner vide order dated 04.09.2019.
- 4.** On further revision, the Principal Secretary, Finance Department being the respondent No. 2 herein, by an Order dated 26.10.2021, was pleased to set aside the concurrent decisions and directed the licence to be settled jointly in favour of the appellant and the respondent No. 4.
- 5.** Challenging the order dated 26.10.2021, the appellant filed a writ petition being WPA 19824 of 2021. The learned single judge by a judgment and order dated 10.05.2023, was pleased to dismiss the writ petition by affirming the reasoned order passed by the respondent no.2.
- 6.** Being aggrieved by and dissatisfied with the said judgment and order dated 10.05.2023, the appellant has filed the instant appeal.
- 7.** The core issues involved herein are as follows:

- i) Whether the Principal Secretary being the respondent No. 2 was justified in directing joint settlement of the Excise Licence under Rule 14(6) of the West Bengal Excise (Selection of new sites and grant of licence for retail sale of liquor and certain other intoxicant) Rules, 2003 (hereinafter referred to as the 2003 Rules) when the Collector and the Excise Commissioner had concurrently held that the appellant was “alone” entitled to the licence.
- ii) Whether the Learned Single Judge erred in upholding the order dated 26.10.21, in which, prior experience was disregarded by the respondent No. 2 and a relevant factor to determine eligibility to run the shop, had been incorrectly construed.

8. Learned Counsel appearing for the appellant submits that the learned single judge failed to appreciate that “willingness” under Rule 14(6) of the said Rules of 2003, must be construed as ready, prompt and eager. The appellant was the only legal heir who approached the authorities in 2013, immediately, with a “No Objection Certificate” from the appellant’s father, Rabindra Nath Saha, upon the licence being surrendered by the sales man Bimal Saha.

9. It was further contended that the respondent No. 4, being the brother of the appellant and the grandson of the original deceased licence holder, never expressed his willingness at the relevant time and had made the claim only after 2016, upon the death of his father. The desire was an

afterthought and was filed only to disturb the appellant and deny him of his legitimate right.

- 10.** It was also contended that, the respondent No. 2 ought not to have reversed the finding of fact which were recorded by the Collector and the Excise Commissioner, without holding such findings to be either perverse or inconclusive. The respondent No. 2 was not an appellate authority and re-appreciation of evidence could not be made.
- 11.** It was urged that the learned single judge erred in holding that “prior experience” was not a yardstick under Rule 14(6) of the 2003 Rules. The word “experience” was an integral part of “eligibility” under Rule 14(6) of the said Act.
- 12.** In the present case, the appellant continued to run the shop for over nine years without any complaint. Therefore, ignoring his experience, defeated the intent and the purport of the said Rule. It was further submitted by the appellant that joint settlement between two hostile brothers was impracticable and would jeopardise the business, leading to problems in generation of revenue. The learned single judge ignored the fact that, as per the enquiry report of the enquiry officer, the respondent no. 4 was not dependent on the earnings from the business of the liquor shop and he was not willing to participate in the business. The respondent no. 4 was already employed as a medical representative, whereas, the appellant did not have any other source of income, apart from the income generated from the C.S. Liquor Shop.

- 13.** It was further submitted that the licence granted in favour of the appellant was based on the findings of the enquiry officer. The report revealed that, the appellant was sufficiently experienced in managing such retail liquor shop, as he had already worked as a sales man of the shop and also as a licence holder.
- 14.** The learned single judge erred in not appreciating the fact that the respondent No.4 was never managing the business and he lacked previous experience.
- 15.** The Learned Counsel appearing for the respondent No. 4, herein vehemently opposed the submissions of the appellant and urged that, Rule 14(6) of the 2003 Rules contemplates settlement in respect of “one or more heirs or representatives,” and as such, there was no statutory bar on joint settlement. As both the parties were the legal heirs of the original deceased licence holder, they had equal status.
- 16.** It was further contended that the expression “willingness” could not be decided on the basis of priority of the claim. The Rule did not prescribe a cut off date. In the present case, the father of the appellant lodged a police complaint, alleging that the appellant obtained the ‘No Objection’ by fraud, deceit and misrepresentation. An FIR was registered vide Serampur Police Station case No. 16 of 2016 under Sections 468/406/506 of the Indian Penal Code against the appellant. Trial is pending.
- 17.** It was asserted by the respondent no.4 that, at the time of granting the licence in favour of the appellant, the respondent No. 4 and his younger

brother was a minor. As a result of which, Rabindra Nath Saha father) could not make an application for transfer of the licence in favour of respondent No. 4. Subsequent thereto, the respondent No. 4 expressed his willingness and preferred an appeal against the order of settlement of the licence in favour of the appellant.

18. The Learned Counsel for the respondent No. 4 places reliance on the decision of **Narayan Prasad Gupta and Another Vs. The State of West Bengal delivered in WPA 241 of 2019** to urge that, prior experience was not a criteria under Rule 14(6). The Collector misdirected himself by importing such requirement under the said Rule.

19. The Learned Counsel appearing for the State authorities submits that, the issue involved in the present case is an inter se dispute between private parties. The State was only concerned with uninterrupted generation of revenue and smooth running of the shop, to cater to the need of the local people.

20. After hearing the rival contentions of the parties and upon perusing the materials available on record, this court finds that the use of the phrase “one or more” makes it clear that joint settlement is permissible under the Rules. The Principal Secretary did not act without jurisdiction in directing joint settlement. The submissions of the appellant that, joint settlement was per se illegal, is not sustainable in the eye of law.

21. Respondent No. 2 was entitled to take a view based on the circumstances relevant at the time of deciding the rival claims, and review the same, by applying the law.

22. Judicial Review is permissible only in respect of the decision making process and not of the decision itself.

23. The question whether the Principal Secretary, being the respondent No. 2 herein, was justified in reversing concurrent finding of facts is answered in the affirmative. The Collector and the Excise Commissioner after considering the documents and the report of local enquiry, held that the appellant 'alone' was willing to obtain the licence. The Principal Secretary re-appreciated the same set of documents to hold that both the parties were willing. The criminal case, the father's FIR with allegations of fraud against the appellant, were relevant considerations.

24. We respectfully agree with the Learned Single Judge that, "experience" cannot be a requirement under the Rule 14(6) and the word 'eligibility' cannot be read in isolation.

25. Rule 14(6) of the 2003 Rules, is reproduced below:

"14. 6. Notwithstanding anything contained elsewhere in these rules or in any other rules for the time being in force, when a license granted by the Collector at an existing site lapses on the death of the holder, a licence of the same category in lieu of the one lapsed, shall be granted in favour of one or more heirs or representatives of the deceased licensee along with the surviving partner/surviving joint licensees, if any, at the existing site, if such representatives are willing and eligible to hold the license and the arrears, if any, due from the deceased licensee.

Provided that where it is not possible to grant the license under this sub-rule to any representative of the deceased licensee with or without the surviving partners/surviving joint licensees, as the case may be, the said license may be granted in favour of all the surviving partners/surviving joint licensees.

Provided further in the case of cessation of partnership due to death, no license shall be granted to the person or persons who have been partners, unless the partnership is validly reconstituted and the Excise Commissioner accords his approval to the grant of a license to the reconstituted partnership firm;

Provided also that if a fresh license cannot be granted in any manner under the first or second proviso, the Collector may select, in the same manner as prescribed for the grant of a license at a new site, a

person for the grant of license at the existing site or on the vicinity thereof.”

- 26.** We have carefully considered the rival submissions and perused the material available on records. The lis revolves around the interpretation of the Rule 14(6) of the said Rules 2003.
- 27.** Since Rule 14(6) in clear terms permits the grant of licence in favour of one or more heirs or representative of the deceased licensee provided they are willing and eligible, the Principal Secretary had acted within his jurisdiction by directing joint settlement of the licence between the appellant and the respondent No. 4. The expression ‘willing’ cannot be confined to mean whoever approaches ‘first’. In **Alpana Saha Vs. The State of West Bengal and Other being WP No. 1158(2) of 2008** the Calcutta High Court held that **“Rule 14(6) did not prescribe any time limit for expressing willingness. Willingness was to be assessed by the authority at the time of consideration of settlement.** The Principal Secretary held that both the appellant and the respondent No. 4 were willing to run the shop. Such finding was based on materials on records. The same cannot be interfered with. We do not find any perversity in the order passed by the respondent No. 2. In **U.P. Vs. Johuri Mal** reported at **2004(4) SCC 714**, the Hon’ble Supreme Court observed that **“when a statute provides for hierarchy of authorities, the last fact finding authority has primacy. Writ court will not interfere merely because another view is possible.”**

- 28.** The Learned Single Judge rightly held that Rule 14(6) does not stipulate prior experience as a criterion. The Rule requires that, persons seeking settlement of licence should demonstrate, willingness and eligibility. The Collector erred in importing “experience” as the decisive factor. **Narayan Prasad Gupta (Supra)** has correctly laid down the law on this issue, by observing that Rule 14(6) mentioned “one or more heirs or representatives”. The word “or” was disjunctive and the phrase “one or more” expressly permitted joint settlement. There is no bar on settling the licence jointly if multiple heirs are willing and eligible.
- 29.** Power of judicial review is not to be exercised, to re-appreciate evidence. The Principal Secretary considered the relevant criteria under Rule 14(6), i.e. willingness, eligibility and heirship. He applied his mind to the facts. The decision making process does not suffer from any illegality, irrationality or procedural impropriety. In the case of **Tata Cellular Vs. Union of India** reported at **(1994) 6 SCC 651** the Hon’ble Supreme Court held that, **“judicial review is concerned with decision making process, not the merits of the decision. Court cannot sit as an appellate authority over finding of facts unless perverse or malafide”**.
- 30.** The statute permits joint licence and the possibility of future disputes between the parties, cannot be a reason for denying the right of the respondent No. 4 as the heir of the original licence holder. If disputes arise, the licensing authority is empowered to take appropriate action in accordance with law.

31. It is a well settled proposition of law that, when multiple heirs satisfy the conditions of Rule 14(6), the Collector cannot prefer one over the other, merely on the ground seniority. Joint settlement is a valid mode. In the present case the respondent no. 2 has rightly conferred equal treatment to the heirs. The decision has been rightly affirmed by the learned single judge.

32. For the above reasons, we find no infirmity in the order dated 26.10.2021 passed by the Principal Secretary, Finance department, directing joint settlement of the licence of Sheoraphully C. S. Shop in favour of the appellant and respondent No. 4. Learned Single Judge rightly declined to interfere with the said decision. The impugned judgement dated 10.05.2023 passed in **WPA 19824 of 2021** does not suffer from any error of law or fact warranting interference in appeal.

33. The appeal is devoid of merit and is liable to be dismissed in limine.

34. With the above observation and directions FMA 704 of 2025 is dismissed.

There shall be no order as to cost.

35. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

I Agree.

(Shampa Sarkar, J.)

(Smita Das De, J.)