

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

W.P.A 17757 of 2022

M/s. Down Town Temptation Private Limited and Another

vs.

Additional General Secretary, Finance Department,

Government of W.B. and Others.

For the petitioners : Mr. Soumya Mazumder, Adv.
Mr. Arindam Jana, Adv.
Mr. Saptarshi Banerjee, Adv.
Mr. Somosh Ghosh, Adv.

For the State : Mr. Anirban Ray, Ld. G.P.
Mr. Raja Saha, Adv.
Mr. Debashis Ghosh, Adv.
Mr. Amit Kr Ghosh, Adv.
Mr. Varun Kothari, Adv.

Last Heard on : 22.12.2022

Delivered on : 19.01.2023.

Moushumi Bhattacharya, J.

1. The petitioners are aggrieved by three orders dated 15th December, 2020, 3rd August, 2021 and 21st June, 2022 in the matter of rejection of the renewal of Excise Licenses of the petitioner no. 1. The first two orders are of the Excise Commissioner and the last order is of the Additional Chief Secretary, Finance Department, Government of West Bengal.

2. The renewal of Excise License pertains to three restaurants-cum-bars namely, Spice Garden, located at VIP Road and Chinar Park and Hotel Down Town at Teghoria. All three establishments enjoyed Excise License from 2001 onwards. The petitioner applied for renewal in March 2017. The petitioners approached the Excise Commissioner for renewal of Excise License for the three establishments. The proceeding resulted in the first impugned order of 15th December, 2020 citing an objection received from the Bidhannagar Police thereby calling for a fresh report from the Commissioner of Police, Bidhannagar. The petitioner approached the Court by way of an earlier writ petition being WPO 201 of 2021 which was disposed of by a direction on the Excise Commissioner to dispose of the appeal under the provisions of The Bengal Excise Act, 1909, within a certain time frame.

3. The second impugned order of 3rd August, 2021 was passed by the Excise Commissioner whereby the petitioner's application for renewal of Excise License was rejected.

4. The third impugned order dated 21st June, 2022 deals with the question of renewal of the Excise License of all three establishments of the petitioners, namely, the two Spice Garden restaurants and Hotel Down Town.

5. The consistent finding of the Excise Commissioner and the Additional Chief Secretary is commission of offences under the Indian Penal Code and The Immoral Traffic (Prevention) Act, 1956 in the concerned restaurants. The other finding is of one Jagjit Singh being involved with the affairs of the three establishments and pendency of cases against the said Jagjit Singh.

6. Learned counsel appearing for the petitioners submits that the pendency of judicial proceedings or Police Reports cannot form the basis of a rejection of an application for renewal of Excise License. Counsel relies on the provisions of The Bengal Excise Act, 1909 and The West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003 for this purpose. Counsel submits that the State cannot give preferential treatment to those on a similar footing to that of the petitioners.

7. The learned Government Pleader appearing for the State respondents relies on the Police Reports which were before the authorities at the time of rejection of renewal of the Excise Licenses. Counsel stresses on the immoral activities being carried on in the three restaurants of the petitioners and submits that this is a fit case for refusing renewal of license as there is a question of law and order. Counsel also places emphasis on the activities of Jagjit Singh in coercing girls into prostitution in the three premises. Counsel

urges the Court to lift the corporate veil of the three establishments to ascertain the involvement of Jagjit Singh in the day to day affairs of the restaurants. It is further submitted that the petitioners' liquor license expired in 2017 and hence the petitioners would have to rely on the Rules which were in existence at the relevant point of time.

8. The question before the Court is whether the impugned orders, particularly the order dated 21st June, 2022 rejecting the petitioner's application for renewal of Excise Licenses on and from the year 2017-2018, were in consonance with the Act of 1909 and the relevant Rules framed thereunder. The State authorities rejected the application for renewal primarily on the ground of immoral activities taking place in the restaurants and the part played by Jagjit Singh, a relative of two of the directors of the establishments, in commission of criminal activities. The State authorities relied on Police Reports including of 13th December, 2016 and 23rd December, 2016 to arrive at the impugned findings.

9. The Bengal Excise Act, 1909 is the governing statute for grant and renewal of Excise License. Section 20 of the Act read with Rule 6 of The West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003, governs, in particular, the terms and conditions of an Excise License. The expression "License" has been defined under Rule 3(vi) to mean a license granted under the Act for the retail sale of liquor or any other intoxicant to which the 2003 Rules apply. The Rules contain specific forms/formats detailing the terms and conditions for grant of

license. Section 31 of the Act gives discretion to the Collector to grant a license for the retail sale of spirit at the existing site for the next period of settlement on the expiry of the period of validity of the license in accordance with the prescribed conditions. The grant of license is subject to the direction of the State Government or the Excise Commissioner. Section 85 of the Act empowers the State Government to make Rules for carrying out the objects of the Act or any other relevant law relating to excise-revenue. Section 86 empowers the State Government to make Rules for regulating the manufacture, supply or storage of any intoxicant including prescribing restrictions under which a license may be granted and the particulars to be contained in licenses [section 86(9)and (10)].

10. Rule 14 of the 2003 Rules - “Grant of license at an existing site for the next period of settlement” - framed under the Consolidated Rules under section 85 of the Act - prohibits grant of licenses to the persons enumerated under the *proviso* to Rule 14(2). The *proviso* is set out below.

“ 14. Grant of license at an existing site for the next period of settlement. –

.....

(2) On receipt of the application referred to in sub-rule (1) along with the requisite fees and other sums payable and documents, and Collector shall grant license to the existing holder for the next period of settlement.

Provided that the Collector may refuse to grant a license to the existing holder for the next period of settlement if such holder –

- (a) has been convicted by a criminal court for commission of non-bailable offence, or
- (b) has committed serious violation of the terms and conditions of the license, or
- (c) is a defaulter in the payment of excise revenue to the Government.

Provided further that where the Collector refuses to grant license to an existing holder for the next period of settlement, he shall record the reasons for doing so and intimate the fact to the Excise Commissioner.”

11. While Rule 14(1) and (2) deal with grant of license by the Collector on an appropriate application accompanied with the requisite fees, the *proviso* to Rule 14 authorises the Collector to refuse licenses only to persons who have been convicted by a criminal Court and that too for commission of a non-bailable offence. This is a non-exhaustive condition. *Proviso (a)* under Rule 14(2) is relevant to the present case with reference to the allegations made against Jagjit Singh. The impugned orders do not mention the petitioners violating any of the terms and conditions of the license or the petitioners being a defaulter in the payment of the excise-revenue to the Government.

12. Jagjit Singh resigned as a director of the Company (owning the three establishments) in 2005. Jagjit Singh is a family member of two of the directors of the Company. The impugned orders allege that Jagjit Singh continues to be involved in criminal activities inside the three establishments despite his resignation from the company. The orders however do not contain any statement of Jagjit Singh being convicted under any offence which are allegedly being committed inside these restaurants. The *proviso* makes it clear that not only must there be a conviction of an existing license holder by a criminal court but also that the conviction must be in relation to commission of a non-bailable offence as defined under The Code of Criminal Procedure, 1973. Hence, for refusing a grant of license to an existing licensee, the Collector must be satisfied that clauses (a), (b), (c) of the *proviso* to Rule 14(2) have been satisfied.

13. In the absence of any conviction of Jagjit Singh or any of the other existing licensees connected with the three restaurants, it is arguable whether the Collector could have refused renewal of the licenses to the three restaurants by the impugned order dated 15th December, 2020 as confirmed in the impugned orders of the Excise Commissioner on 3rd August, 2021 and of the Additional Chief Secretary on 21st June, 2022.

14. Moreover, section 51 of the 1909 Act prohibits certain unlawful acts by the licensed vendor or his employees or any person acting on his behalf. The prohibition under section 51(1) and (2) extends to certain kinds of activities including drunkenness, intoxication, disorderly conduct or even permitting a person who has been convicted of a non-bailable offence or who are “reputed prostitutes” (reflective of the vintage of the statute) to remain in the premises. It is also relevant that sections 74, 75, 76, 77 and 78 of the Act also confer power on the Collector and Excise Officers to take on the duties of the Police and Law Enforcement agencies for the purpose of preventing the commission of offences in the licensed premises. These sections are contained in Chapter IX of the Act which deals with “Detention, Investigation and Trial of Offences and Procedure”.

15. Read together, the relevant sections of the Act and the 2003 Rules not only provide for policing within the precincts of a licensed premises to check immoral activities but also specific and non-exhaustive conditions for which a license may be refused to an existing license holder. The 2003 Rules make it

clear that a license can be refused only on the conditions under the *proviso* to Rule 14(2) and on no other ground.

16. The argument of the State with regard to Jagjit Singh is this; though Jagjit Singh exited the petitioner no. 1 Company in 2005, Jagjit Singh continues to control the Company through his wife and son who are presently the Directors of the petitioner no. 1 Company. Hence, the argument of the State for lifting of the corporate veil to find out who is in actual control of the petitioner no. 1 Company. The Court is however of the view that the issue with regard to Jagjit Singh relates to pendency of FIRs against him. The related argument is of Jagjit Singh being responsible for the immoral activities carried on in the three establishments namely Hotel Down Town and the two Spice Garden Restaurants of the petitioners. The impugned orders point to continued involvement of Jagjit Singh in the affairs of the three Restaurants and pendency of criminal charges against him. It is clear that the State is seeking to draw a connection between the immoral activities inside the restaurants and the non-renewal of the Excise License in respect of the three establishments.

17. The concept of lifting of the corporate veil, as stated in *Palmer's Company Law* and *Gower's Modern Company Law*, is where the corporate character of a company of having a separate and distinct legal entity from that of its shareholders, is being used for the purpose of committing a fraud or illegality. The Court in such cases would ignore the corporate character and pierce the veil to locate the perpetrator of the fraud and those who are lurking behind the opacity of the veil of the corporate entity. The objective is to reveal the identity

of the wrongdoer and dissect the layers of the indivisible entity by focusing on the substance and not the form. [Ref: *Delhi Development Authority vs. Skipper Construction Co. (P) Ltd.*; (1996) 4 SCC 622] The presumption is of fraudulent activity with a consequent need to lift the veil of anonymity. *R vs. Seager*; (2009) Lloyd's Report FC 492 advises certain checks and balances where the Court may only pierce the veil on certain events and not simply because it considers it just to do so. The need to pierce the corporate veil of the petitioner no. 1 Company may not be necessary in light of the specific findings of the impugned order of the Addl. Chief Secretary that Jagjit Singh made various applications on behalf of the petitioner no. 1 before the Excise Authorities. There is also no case made out with reference to commission of fraudulent activities by the petitioner no. 1 Company.

18. In this country a presumptive link is forged between sale of liquor, drunkenness and illegal acts. There is also a mental construct (including public perception) of liquor leading to commission of immoral acts such as prostitution. The connection may have its origins in the history of the country and in the stories recounted and circulated but more in the minds of people who view sale and consumption of liquor and intoxicants as the starting point of social malaise bordering on criminal acts. The Model Policy formulated by the Union Government prohibited sale of liquor to a retail vendor within a distance of 100 metres from any religious or educational institution or hospital and also within a distance of 220 metres from the middle of the State / National Highways. The logic is that consuming liquor would necessarily lead

to unruly behaviour and a risk to public safety. Seen in this context, the State's argument is no doubt compelling; that the three restaurants are being used as brothels and that grant of Excise License to the restaurants would lead to a law and order problem in the concerned area.

19. This Court is however of the view that non-renewal of Excise Licenses must be confined to and governed by The Bengal Excise Act, 1909 and the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003. The Act deals exhaustively with the conditions for refusing to continue the license of an existing holder. The Consolidated Rules made under section 85 of the Act deal with a vast range of situations warranting restrictions with reference to the provisions of The Code of Criminal Procedure, 1973. Section 74 of the Act reinforces the power of the Collector and Excise Officers to investigate any offence punishable under the Cr.P.C in the same manner and amplitude as may be exercised by a Police Officer. Thus, the non-renewal must only be for the conditions/circumstances provided under the Act and the Rules.

20. The concerned authorities have been conferred the power to take effective measures against illegal activities which may be carried on by a licensee or committed within the licensed premises. The defence of immoral activities, even if based on evidence, can only be used for non-renewal of a license if the defence forms part of the relevant sections of the 1909 Act and the 2003 Rules. Rule 14(2) read with the *proviso* of the 2003 Rules which has been set out above, does not contain any restriction on the ground either of commission of

immoral activities or pendency of charges against an existing license holder. Under the Rules, the license holder (a) must be convicted by a criminal court and (b) convicted for commission of a non-bailable offence. The State has not said that Jagjit Singh satisfies either of these two conditions.

21. Further, the order dated 20th February, 2019 of the Finance Department of the State for standardising the processes related to application for grant of NOC by Police Commissionerates in West Bengal in connection with grant of Excise Licenses under the Act of 1909, as amended, makes it clear in Clause 3 that clearance from Police Commissionerates will not be required for renewing an existing Excise License. Hence the repeated reliance on Police Reports in the impugned orders are contrary to the order of the Finance Department.

22. The impugned orders were passed after 20th February, 2019. The argument of the State that the petitioners cannot take advantage of the order of 20th February, 2019 since the petitioner's license had expired in 2017 is contrary to at least two decisions placed before the Court. In *Somdev Kapoor vs. State of West Bengal*; (2014) 14 SCC 486 the Supreme Court opined that the law previously laid down was that the Rules which are prevalent on the date when the application is considered are to be applied and not the date when the application is made. A similar view was taken by a learned Judge of this Court in *Gopal Garai vs. State of West Bengal*; 2016 (1) CHN (Cal) 174. In any event the petitioner's application for renewal of the Excise License was pending since 2017 and the authorities would hence be under an obligation to consider the order which came in 2019 for renewal of existing excise licenses. The

authorities can by no means say that the order of 2019 would not be applicable in the facts of the present case.

23. The alleged discrimination of the petitioners is also relevant to the expectation of equal treatment under the right guaranteed in Article 14 of the Constitution of India. The writ petition contains a document where other licensees/establishments have been granted licenses despite similar allegations being made against such entities. The petitioners have averred that entities in the list of the document dated 12.6.2017 have been granted licenses despite pending cases against the entities under The Immoral Traffic (Prevention) Act. This Court is of the view that although the petitioners cannot claim a fundamental right under Article 19(1)(g) to trade in liquor [Ref: *State of Tamil Nadu vs. K. Balu*; (2017) 2 SCC 281] the petitioners can certainly urge that the petitioners have been discriminated against by reason of differential treatment meted out to the petitioners. The Supreme Court in *Gwalior Distilleries Private Limited vs. State of Madhya Pradesh*; (2020) 12 SCC 690 relied on *State of M.P vs. Nandlal Jaiswal*; (1986) 4 SCC 566 to hold that although no one can claim to carry on trading in liquor, the State cannot escape the rigour of Article 14 and cannot act arbitrarily. The facts in the cases cited on behalf of the State are also distinguishable to the present facts. *Sayed Ratanbhai Sayeed (Dead) Through Legal Representatives vs. Shirdi Nagar Panchayat*; (2016) 4 SCC 631 and *K. Balu* were concerned with grant of license to shops near highways and encroachment on highways.

24. There is little doubt that the grant of a liquor license is a privilege as opposed to a right; the authority conferred with the power of grant or refuse a liquor license must however act within the equality mandate of the Constitution of India. If one entity has been deprived of a license on the ground of violation of the Act or the Rules, other entities must be visited with the same consequences subject to existence of similar facts in both the cases. The public interest argument and the supremacy of public consideration over private rights (in the writings of Cicero: "*the good of the people is the chief law*") is of course the guiding light but cannot be used to defeat the express provisions in the governing Act and the Rules. The State can only rely on an express and existing provision in an Act to deprive a person or citizen of his/her valuable legal rights. For instance, Rule 8 of the Central Civil Services (Pension) Rules, 2021 expressly gives the right to the President to withhold pension or gratuity or both either in full or in part whether permanently or for a specified period. The 1909 Act and the 2003 Rules do not contain any provision which is similar to Rule 8 of the CCS Rules.

25. In conclusion, the State, in its sovereign powers and functions, has the duty to prevent commission of offences under The Indian Penal Code, 1860 and The Immoral Traffic (Prevention) Act, 1956 among other acts and to uphold public order. The State has the means and the wherewithal to deploy law enforcement agencies including the Police to prevent breach of public peace. The State must however act within the legislative intendment of a statute in the matter of grant of licenses to persons and entities under the provisions of The

Bengal Excise Act, 1909 and the 2003 Rules. This is particularly non-negotiable where the prohibitions and exceptions have specifically been carved out in the Act. The State cannot add to the legislative object or curtail the right of an entity where the Act and the Rules do not provide the basis for such curtailment. The State is also under an obligation to preserve the equality and fairness mandate in the Constitution and is hence precluded from applying different standards to different entities on the pretext of ensuring a crime-free environment in the establishments where liquor is sold and consumed. The Police are there to prevent commission of offences. The Reports of the Police however cannot be a ground to refuse the renewal of license to an existing license holder when the Act/Rules and the 20th February, 2019 Order of the Finance Department of the State specifically debars the State from doing so.

26. The above reasons persuade this Court to grant the reliefs prayed for. WPA 17757 of 2022 is accordingly disposed of by quashing the impugned orders dated 15th December, 2020, 3rd August, 2021 and 21st June, 2022. The concerned respondents are directed to revisit the applications for renewal of licenses of the petitioners for the three establishments and pass reasoned orders in accordance with the 1909 Act, the 2003 Rules, the order of 20th February, 2019 and any other relevant Rules framed under the Act which may be applicable to the facts of the case. The authorised representative/s of the petitioners shall be heard before passing of the reasoned orders. The reasoned orders shall be passed within 4 weeks from the date of this judgment and shall be communicated to the petitioners within a week from the date on which the

reasoned orders are passed. The authorities are expected to act within the bounds of fairness and non-discrimination.

27. The writ petition is disposed of accordingly.

Urgent Photostat certified copies, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)