IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

MAT 812 of 2024
With
CAN 1 of 2024
CAN 2 of 2026
Barun Malakar & Others
Vs
State of West Bengal & Others

With
MAT 418 of 2023
Goutam Mondal and Anr.
Vs.
State of West Bengal and Ors.

With

MAT 847 of 2022
Raju Ghosh
Vs.
State of West Bengal and Ors.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellants in MAT 812/2024 & MAT 847/2022	:	Mr. Aninda Kr. Mitra, Sr. Adv, Mr. Arindam Banerjee, Sr. Adv, Ms. Arpita Saha, Mr. Ashis Kr. Mukherjee, Mr. Saurabh Prasad .....Advocates
For the State	:	Mr. Surojit Nath Mitra, ld. AG Mr. Amit Chakraborty, Ld. AGP Mr. Shiv Shankar Banerjee, Ms. Falguni Bandopadhyay Soma Chakraborty .....Advocates
CAV on	:	06.10.2026
Judgment on	:	13.11.2026

Apurba Sinha Ray, J. :-

For the sake of convenience and brevity and also on consent of the parties, three appeals being MAT 812 of 2024, MAT 847 of 2022 and MAT 418 of 2023 are disposed of by this common judgment.

MAT 812 of 2024 & MAT 847 of 2022:-

1. The appeal being MAT 812 of 2024 is directed against the judgment and order dated 16.04.2024 passed in W.P. No. 16265 (W) of 2019, whereby the writ petition was dismissed by following the common judgment dated 27.09.2019 passed in a batch of matters concerning licences granted under Rule 4(q) of the West Bengal Excise Rules, 2003.

1.1. The appeal being MAT 847 of 2022 is directed against the judgment and order dated 16.09.2021 passed in W.P. No. 1090 of 2020, whereby the writ petition was dismissed by following the judgment dated 09.09.2021 and 13.09.2021 passed in WP No. 1585 of 2020 concerning licences granted under Rule 4(q) of the West Bengal Excise Rules, 2003. (in short "the 2003 Rules).

2. By notification dated 03.10.2018, a new category of excise licence was introduced under Rule 4(q) of the 2003 rules, permitting sale of all kinds of liquor, except tari and pachwai, from a liquor shop. Pursuant thereto, the appellants were granted temporary licences for a period of six months.

3. On 02.03.2019, Order No. C-40E was issued suspending the operation of all such liquor shops until further orders, citing the General Election of 2019 and the instructions of the Election Commission. The appellants contend that the suspension was not based on any breach or default on their part and was not limited to the period contemplated under the provisions relating to election-time closure of liquor shops.

4. The General Election concluded on 23.05.2019. The appellants' licences were due to expire on 14.08.2019. As the suspension continued, the appellants approached the High Court by filing W.P. No. 16265(W) of 2019.

5. On 22.08.2019, the Excise Commissioner issued Order No. 22EG rescinding the order dated 02.03.2019. However, the appellants were not permitted to resume business for the remaining period of their licences. The order stated that continuation of the temporary licences would be considered by the Excise Directorate having regard to demand and supply, law and order and other relevant factors, and that the applications for continuation would be re-examined subject to the applicable conditions.

6. The appellants contend that, after rescission of the suspension order, their licences ought to have been restored for the balance period of the original tenure. According to them, the authorities could not reopen the question of eligibility or impose fresh conditions after the licences had already been granted upon fulfilment of the prescribed requirements.

7. Several similarly situated persons filed writ petitions which were disposed of by the common judgment dated 27.09.2019. W.P. No. 16265(W) of 2019 was not part of the matters disposed of by that judgment and remained pending. Subsequently, the same was disposed of on 16.04.2024 following the aforesaid common judgment dated 27.09.2019.

8. The principal issues arising for consideration in these appeals are:

1. Whether the suspension order dated 02.03.2019 was authorised by Sections 26 and 42 of the Bengal Excise Act, 1909.

2. Whether the election-related closure provisions permitted suspension of the licences beyond the period contemplated under the West Bengal Excise (Closure of Retail Licensed Premises on Special Occasion, viz. Election) Rules, 1998.

3. Whether, after rescission of the suspension order on 22.08.2019, the appellants were entitled to restoration of their licences for the unexpired period.

4. Whether the Excise authorities could reconsider the eligibility of the appellants or impose fresh conditions for continuation of licences which had already been granted.

5. Whether there was any valid basis for treating the Rule 4(q) licence holders differently from other categories of liquor licence holders.

6. Whether the findings in the common judgment dated 27.09.2019, as adopted in the order dated 16.04.2024, are sustainable.

9. The appellants' case is that their licences were granted for a fixed period after fulfilment of the prescribed requirements and payment of the requisite fees. There was no allegation of breach of the conditions of licence or any other default against them. The suspension

was, according to them, solely on account of the General Election and continued even after the election was over. They contend that the suspension was not permissible under Sections 26 or 42 of the Bengal Excise Act, 1909 or under the 1998 Election Closure Rules. They further contend that once the suspension was rescinded on 22.08.2019, the licences ought to have been restored for the balance period and could not have been subjected to a fresh consideration. The appellants also challenge the separate treatment of Rule 4(q) licence holders and contend that there was no sufficient basis for denying them the benefit of their remaining licence period.

10. These two appeals have been filed against the dismissal of the writ petition and the adoption of the common judgment dated 27.09.2019. The appellants seek restoration of the balance period of their licences and challenge the legality of the suspension, the subsequent non-revival of the licences and the fresh consideration proposed by the Excise authorities.

11. The crux of the dispute relates to the validity of the suspension of the appellants' Rule 4(q) licence during the 2019 General Election and the refusal to restore the licences for their unexpired period after the suspension order was rescinded. The appellants contend that the suspension and subsequent non-revival were not supported by the provisions of Bengal Excise Act or the applicable Rules and that the

authorities could not subject already granted licences to a fresh consideration.

MAT 418 of 2023:-

12. The appeal being MAT 418 of 2023 has been filed against the judgment and order dated 08.10.2021 passed by a learned Single Judge in WPA No. 7930 of 2020, (Goutam Mondal & Ors. v. State of West Bengal & Ors.), whereby the writ petition filed by the appellants was dismissed.

13. The appellants are excise licensees who were granted temporary licences for running foreign liquor "Off" shops under the relevant provisions of the West Bengal Excise Rules. The licences were initially granted for a period of six months. The appellants state that they had fulfilled the prescribed requirements, deposited the requisite licence fees and complied with the terms and conditions attached to the licences. They were carrying on business and were also paying the monthly licence fees and other dues to the State.

14. During the subsistence of the licences, the operation of the liquor shops was suspended in connection with the General Election by order dated 02.03.2019. According to the appellants, the said suspension gave them an expectation that the licences would be permitted to operate after the election.

15. Thereafter, by order dated 22.08.2019, the Excise Commissioner indicated that the question of continuation of the

temporary licences was under consideration before the Excise Directorate and that the applications would be examined having regard to the competing interests of the economy and the public at large. The appellants' case is that, while the issue regarding continuation of their licences was still under consideration, Notification No. 2067-F.T. dated 27.12.2019 was issued, whereby the relevant category of licence under Rule 4(v) was omitted from the West Bengal Excise (Selection of New Sites and Grant of Licence for Retail Sale of Spirit and Certain Other Intoxicants) Rules. According to the appellants, the effect of the notification was to discontinue the category of licence under which they had been carrying on their business.

16. The appellants challenged the said action before the Writ Court. Their principal contention was that, having already obtained the licences after complying with the statutory requirements and having paid the requisite fees, they had a right to continue the licensed business during the period of validity of the licences. It was also contended that the State authorities could not take away the benefit of the licences in the manner adopted without following the statutory scheme under the Bengal Excise Act, 1909.

17. The appellants particularly relied upon Sections 30, 31 and 37A of the Bengal Excise Act, 1909. Their contention is that Sections 30 and 31 deal with the grant of licences at new and existing sites, while Section 37A deals with selection of persons to whom licences may be

granted. According to the appellants, when the relevant licence category was originally introduced by the notification dated 03.10.2018, the provisions of Sections 30, 31, 37A, 85 and 86 were invoked. However, while omitting the said category by Notification No. 2067-F.T. dated 27.12.2019, the State authorities relied upon Sections 85 and 86 alone. The appellants therefore contend that the amendment was made without properly exercising the powers contemplated under Sections 30, 31 and 37A and was consequently without jurisdiction.

18. A further contention of the appellants is that the learned Single Judge erred in treating the licence merely as a privilege and in holding that no vested right had accrued in their favour. According to the appellants, although the State has the power to regulate the liquor trade, once a licence had been granted for a specified period after fulfilment of the prescribed conditions, the licensee had a right to carry on the licensed activity during the subsistence of the licence.

19. The appellants also contend that they had complied with the conditions of the licences, including the requirement relating to reporting the arrival of consignments of liquor to the Collector. They further state that they had deposited the requisite fees and that the business was generating revenue for the State.

20. Another issue raised by the appellants is the alleged differential treatment between their licence category and other categories of liquor licences. According to them, liquor shops operating under other

categories continued to remain open, whereas the category under which they were operating was discontinued. They contend that this aspect required consideration with reference to Article 14 of the Constitution. The appellants also rely upon subsequent notifications issued by the State, including Notification No. 193-F.T. dated 11.02.2022, concerning the regulation and licensing of dealing in foreign liquor. According to the appellants, the subsequent licensing arrangements demonstrate that the State had not prohibited the business of foreign liquor altogether and that licences continued to be granted to other persons. They contend that the subsequent treatment of existing and new licence holders was relevant to their claim and ought to have been considered.

21. The appellants further complain that their representations, including the representations dated 08.08.2019 and 25.10.2021, were not properly considered by the authorities. They also allege that relevant notifications and materials concerning the subsequent grant of licences were not properly placed before the Writ Court. Apart from the challenge to the excise notification, the appeal also raises issues concerning the proceedings in which punishment/contempt was allegedly imposed upon the appellants. The appellants contend that the punishment was based upon an earlier order which, according to them, was itself erroneous and was under challenge. They therefore contend that the consequential punishment could not have been sustained

without first examining the correctness of the underlying order and the legality of the action of the authorities.

22. The principal issues arising for consideration in this appeal are:

1. Whether the Notification No. 2067-F.T. dated 27.12.2019 was validly issued under the Bengal Excise Act, 1909 and the relevant Rules.

2. Whether the State authorities could omit the relevant category of licence by exercising powers under Sections 85 and 86 of the Bengal Excise Act, 1909 without invoking the provisions of Sections 30, 31 and 37A.

3. Whether the amendment dated 27.12.2019 could affect licences which had already been granted to the appellants and were subsisting at the relevant time.

4. Whether the appellants, after fulfilling the prescribed requirements and obtaining the licences, acquired a legally enforceable right to carry on the licensed business for the period of validity of the licences.

5. Whether the learned Single Judge was correct in holding that the appellants did not have any vested right in continuation of the licence.

6. Whether the discontinuance of the appellants' category of licence, while other categories of liquor licences continued to operate, amounted to arbitrary or discriminatory treatment.

7. Whether the impugned action of the State authorities was liable to be examined with reference to Articles 14, 19(1)(g) and 21 of the Constitution.

8. Whether the absence of reasons in the impugned notification/action was relevant to the question of arbitrariness and whether the Court could independently supply reasons for the decision of the State.

9. Whether the subsequent notifications, including Notification No. 193-F.T. dated 11.02.2022, and the grant of licences to other persons were relevant to the appellants' claim.

10. Whether the representations submitted by the appellants were required to be considered and disposed of by the authorities.

11. Whether the consequential proceedings for punishment/contempt against the appellants could be sustained when the appellants were disputing the legality of the underlying order and the action of the authorities.

23. The appeal has essentially been filed because the appellants are aggrieved by the dismissal of their writ petition and by the finding that they had no vested or enforceable right in respect of the licences granted to them. The appellants seek reconsideration of the legality of the Notification dated 27.12.2019, particularly its effect upon licences

already granted to them. They also challenge the manner in which the State authorities exercised their statutory powers and contend that the action was arbitrary, without proper consideration of the existing licences and the appellants' representations.

24. The appellants further seek consideration of their contention that other licence holders were permitted to carry on the liquor business while their category of licence was discontinued, and that the subsequent licensing policy of the State was relevant to the determination of their claim. The appeal also seeks interference with the consequential punishment/contempt proceedings, on the appellants' contention that such proceedings were founded upon an order whose correctness and legal basis were themselves disputed. The dispute in the appeal is therefore between the appellants' claim that an already granted excise licence gave them a right to continue the licensed business for its period of validity and the State's power to alter or discontinue a particular category of licence in exercise of its statutory and regulatory powers. The principal questions before the Appellate Court are consequently the validity and effect of the Notification dated 27.12.2019, the extent of the rights arising from the licences already granted, the statutory competence of the authorities, the alleged differential treatment of the appellants, and the legality of the consequential proceedings against them.

Submissions from the Bar:

25. Mr. Mitra the learned Senior Advocate appearing for the appellants has cited the decision of **Sudhamoy Mondal vs. Collector of Bankura and ors. Reported in 92 C.W.N. 138** in support of his contention that when a licensee starts a liquor shop under temporary licence he has to make a huge infrastructure and logistic support for such business and in doing so, he has to incur a huge expense since he has an expectation that if he runs the business in accordance with the rules and regulations, he may obtain the regular licence. Although he was granted temporary licence for a limited period, the nature of business demands investment of a huge sum of money.

26. Mr. Mitra has further submitted that the doctrine of legitimate expectation is also to be taken into consideration. In this regard, he has relied upon the judgment of Hon'ble Apex Court pronounced in the **State of Jharkhand and Ors. Vs. Brahmputra Metallics Limited, Ranchi & Anr., Reported in (2023) 10 SCC 634**. From the said judgment it transpires that although the Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution. The said decision also pointed out with the aid of previous judgments of the Hon'ble Apex Court that mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but

failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law.

27. Mr. Mitra has also relied on the ***State of M.P and Ors. Vs. Nandlal Jaiswal & Ors. Reported in (1986) 4 SCC 566*** in support of his contention that principles laid down in this case were not considered by the learned Single Judge in the impugned judgment. Mr. Mitra has further pointed out that the temporary licensee has a legal right to apply for regular licence. The excise Commissioner has no power to suspend licence under Section 42 and general election cannot be a ground for suspension of such licence. It is only the Collector who can issue suspension orders. Nothing was disclosed to show that the Excise Commissioner issued any instruction to suspend the liquor licence. Mr. Mitra has further argued that the appellants are not claiming implementation of any fundamental right to trade in liquor, but are claiming implementation of legal rights of renewal.

28. Challenging such submission Mr. Shiv Sankar Banerjee appearing for the State states that trade and business in intoxicating liquors is res extra commercium. It is a settled proposition of constitutional law that no citizen possesses a fundamental right under Article 19(1)(g) of the Constitution of India to claim as a matter of

absolute entitlement, the grant, renewal or continuation of a license for the manufacture, sale or distribution of liquor.

29. Mr. Banerjee has further submitted that there is a statutory bar in automatic renewal of the liquor licence. Section 37 of the Act of 1909 explicitly provides for the grant of a license for the retail sale of any intoxicant during any period "not exceeding six months." As the temporary license of the appellants expired by efflux of time the same neither can be revived nor extended.

30. Mr. Banerjee has further pointed out Section 42 of the Bengal Excise Act, 1909 vests the licensing authority with the plenary statutory power to cancel or suspend a license. Section 26 of the 1909 Act explicitly empowers the District Magistrate or Sub-Divisional Magistrate to close shops where intoxicants are sold for the preservation of public peace.

31. Mr. Banerjee has argued that the submission of the appellants is fallacious. According to him, the central premise of the appellants' case is the assertion that having once been granted a temporary license under Rule 4 (q) they have fulfilled all the pre-conditions and their premises must automatically be treated as an "existing site." The appellants argued that the authorities cannot revisit the site selection conditions and must grant regular licenses or permit the continuation of business without requiring compliance with the procedures laid

down for new sites. There can be no promissory estoppel against the exercise of legislative or statutory executive power. It is not correct there was any foundational loss caused to the licensee by the omission of rule 4(q). In support of his above contentions he has relied upon several judgments i.e. **State of Kerala v. Kandath Distilleries reported in (2013) 6 SCC 573, Khoday Distilleries Ltd. Vs. State of Karnataka reported in (1995) 1 SCC 574, Excise Commissioner, U.P. Allahabad v. Ram Kumar reported in (1976) 3 SCC 540, State of Kerala vs. Six Holiday Resorts Private Ltd. Reported in (2010) 5 SCC 186, State of Gujarat vs. Dipak Babaria reported in (2014) 3 SCC 502, State of M.P. vs. Nandlal Jaiswal reported in (1986) 4 SCC 566, Kerala Bar Hotels Association v. State of Kerala reported in (2015) 16 SCC 421.**

Court's view:

32. Needless to mention, the appellants do not have a fundamental right in carrying out their liquor business in view of the decisions discussed in the judgments of the learned Single Judge and also in view of decisions cited from the side of the respondent State. The carrying out of such business may be a privilege or a legal right, but it is also constitutionally guaranteed that such privilege or legal right, whatever it may be, cannot be curtailed without showing any cogent ground. Our constitutional "grundnorm" is that a procedure or process can be said to be in conformity with the constitutional

safeguards only when such process or procedure is just, fair, and right. In other words, a process or procedure can be said to be just, fair, and right when it is based on the established principles of law. In this case, the temporary licenses were suspended in view of the ensuing general election in the year 2019. It is found that even after the general election was over, the suspension of such temporary licenses was not withdrawn and, consequently, some of the appellants had to move the High Court and only after interference from the High Court, such suspension order was rescinded on 22.08.2019. No reason was forthcoming from the contents of the said order dated 22.08.2019 as to why such licenses remained suspended even after the general election of 2019 was over. Even if we go through the suspension order dated 02.03.2019, it is found that the temporary licenses which were given effect from 01.01.2019 were ordered to be suspended until further orders. The said suspension order was issued by the Excise Commissioner, West Bengal. Section 42 of the Bengal Excise Act, 1909, mentions that the authority who granted the license, permit, or pass under the Act of 1909 may cancel or suspend the same on certain conditions. The temporary licenses were granted by the Collector of District, Nadia, and in view of Section 42 of the Bengal Excise Act, such suspension could be done by the said Collector. However, no doubt, the Excise Commissioner has been given certain powers under the Bengal Excise Act, 1909, but there is

no mention in the said suspension order under which provision of law or rule he issued such suspension. Undoubtedly, for public peace and tranquility, such an order for dry days can be implemented, but it is not clear, even after the general election was over, what was the reason for keeping the temporary licenses under suspension.

33. It is true that the State has the absolute right to cancel or suspend temporary licenses, but after granting a temporary license, if the State chooses to suspend it for an indefinite period, the State is under an obligation to disclose the reasons for such action. In this case, the order dated 22.08.2019 did not indicate any reason for the suspension of temporary licenses for a prolonged period even after the general election was over. The temporary licenses were given for a period of six months. It is found that within a few days, the said licenses were suspended and were kept under suspension till long after the general election was over. Does this show that the process adopted by the State was backed by acceptable reasons? The appellants invested huge sums of money and purchased stocks of wine, foreign liquor, etc. Now suddenly, the said licenses were kept under suspension without sufficient reason, even after the completion of the general election of 2019 and the formation of the new Government. It is true that the State has absolute rights, but when they grant a temporary license for a limited duration, it is reasonably expected that the State authorities should consider the condition and position of the

appellants—who are businessmen, not criminals—in accordance with relevant rules and regulations, and therefore, the State authorities should have disclosed appropriate reasons for such prolongation of the suspension order. Without taking appropriate steps, the State cannot be allowed to say that the appellants do not have any right simply because the stipulated period of six months has elapsed. The action on the part of the State authorities in this regard is unjust and unconscionable. In the order dated 09.09.2021 passed in WPA 1585 of 2020, the learned Single Judge was pleased to observe that such suspension order was made only for the purpose of public health, etc. However, no such reason was reflected in any of the orders issued from the side of the State authorities in this regard. Therefore, it has been very rightly argued from the side of the appellants that the Court cannot supplant reasons in favour of the State authorities.

34. In our view, although the appellants do not have any fundamental right in running a liquor shop, the privilege or legal right granted to them cannot be withdrawn without assigning any conscionable reason. The Bengal Excise Act, 1909, and the rules made thereunder are very specific as to when suspension or cancellation of temporary licenses can be done. In this case, the State authorities have failed to show any ground of default or anything of a like nature on the part of the appellants necessitating the suspension or the prolongation of the suspension order.

35. Most unfortunately, the order dated 22.08.2019 specifically mentioned that the Excise Commissioner was considering the issue of temporary licenses expiring due to efflux of time and that within 10 weeks a concrete decision would be taken in that regard. Pending consideration, Notification No. 2067-F.T. dated 27.12.2019 and Notification No. 2068-F.T. dated 27.12.2019 were issued, and the category of license under Rule 4(q) of the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003, was withdrawn. It is true that the category of license under Rule 4(q) aforesaid became non-existent on and from 27.12.2019. However, it appears that the temporary licenses granted to the appellants were neither cancelled nor revived. The State cannot take the plea in this type of situation that the temporary licenses of the appellants had expired by efflux of time without giving them the opportunity to run their businesses for the stipulated period. Had there been any acceptable ground shown by the State authorities, the Court could have considered the same. Without showing any reason and without showing any default on the part of the appellants, the State cannot assert that the appellants' temporary licenses expired due to efflux of time. If we accept this proposition, then our constitutional scheme would be at stake, and the arbitrariness, unfairness, and unjust action of the State authorities would be given priority over the lawful and just actions of individuals. The State has absolute rights,

but such rights should be exercised with fairness and reasonableness, free from arbitrariness, whims, or caprice. It appears to us that the Hon'ble Single Judges in the order dated 09.09.2021 (modified on 13.09.2021), the subsequent order dated 16.09.2021, and the order dated 27.09.2019 of another coordinate Bench were not properly assisted in this regard, and hence these points were not taken into consideration from the angle discussed above.

36. Therefore, I find merit in the submissions of the learned counsel for the appellants, and in view of the peculiarity of these circumstances, we direct the respondent State to allow the appellants to run their businesses for the balance period as stipulated in their temporary licenses so that they can clear out the stock piled up in their respective shop rooms. The appellants shall be allowed to run their shops on and from **15th December, 2026**, till the completion of the balance portion of their six-month term.

37. In the order dated 09.09.2021 in WPA 1585 of 2020, the appellants were granted liberty to file a fresh application, which liberty was not challenged by the State authorities by filing any appeal against that order.

38. Accordingly, the appellants are granted liberty to file appropriate applications under Rule 9(1)-F of the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants) Rules, 2003. If such applications are

filed, the concerned State authorities shall dispose of the same in accordance with law within three months from the date of application. Furthermore, any pending representations filed on behalf of the appellants—particularly that of Goutam Mondal and others—shall also be disposed of by the State authorities within a period of three months from this date in accordance with law. Consequently, the notification nos. 2067-F.T. dated 27.12.2019 and 2068-F.T. dated 27.12.2019 be kept in abeyance till the balance period of temporary licenses ends and only for that purpose, so far as the appellants in three aforesaid appeals are concerned.

39. Accordingly, **MAT 812 of 2024, MAT 847 of 2022 and MAT 418 of 2025 are disposed of**. No costs. Connected applications, if any are also disposed of.

40. All parties shall act in terms of the server copy of the order downloaded from the official website of this Court.

41. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all necessary formalities.

I Agree.

(ARIJIT BANERJEE, J.) **(APURBA SINHA RAY, J.)**