

ITEM No.101

Court No. 1

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.5792/1998@  
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D.M. & Collector, Govt. of W.B. & Ors. Appellant (s)

VERSUS

Rana Mukherjee & Anr. Respondent (s)

(With Office Report)  
(With I.A. No. 2/99 : Application for permission to take  
the counter affidavit on behalf of the respondent on record)

Date : 12/12/2000 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE R.C. LAHOTI  
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Appellant (s) Mr. Bhaskar P. Gupta, Sr. adv.  
Mr. H K Puri, adv.  
Mr. S K Puri, adv.  
Mr. Rajesh Srivastava, adv.  
Mr. Ujjwal Banerjee, adv.  
Ms. Anindita Gupta, adv.

For Respondent (s) Mr. A K De, adv.  
Mr. Ashok K Mahajan, adv.

UPON hearing counsel, the Court made the following  
O R D E R

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Mr. Bhaskar P. Gupta, learned Senior counsel  
started arguments at 11.20 A.M. and concluded at 3.25  
P.M. Thereafter, Mr. A K De, learned counsel argued  
the matter till 3.30 P.M.  
The matter remained part-heard.

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(Kanchan Jain)  
AR-cum-PS

(Prem Prakash)  
Court Master

CORAM & APPEARANCE AS BEFORE@@  
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Mr. A K De, learned counsel started at 10.45 A.M. and concluded at 2.10 P.M. Hearing concluded.  
I.A. No. 2/99 is allowed.  
The appeal is disposed of in terms of the signed order. There will be no order as to costs.

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(Kanchan Jain) (Prem Prakash)  
AR-cum-PS Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5792 OF 1998@@  
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The District Magistrate & .....Appellants  
Collector, Govt. of West Bengal  
& Ors.

VS.

Smt. Rama Mukherjee & Anr. ....Respondents

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This appeal by special leave is directed against the order of the Division Bench of the Calcutta High Court dated 11th August, 1998.

In the view that we propose to take, we do not consider it necessary to advert to the detailed facts of the case but shall refer only to certain relevant facts which are as follows:

Respondent No. 1 - Smt. Rama Mukherjee had been making applications for grant of license to vend Foreign Liquor in the area of Habra Station, P.S. Habra. According to her, she had been making applications since 1972. Since the applications were not considered by the authorities in accordance with the prescribed procedure and no decision was taken on her applications, she filed a Writ Petition, being  
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C.O. 11612 (W) of 1993. The Writ Petition came to be heard by Mrs. Ruma Pal, J. (as her Lordship then was). Without considering the merits of the case of respondent No. 1 in any manner whatsoever, the learned Judge after taking note of the petition, to which no counter affidavit had been filed, directed the appellants (the State Authorities) to consider the case of respondent No. 1 for issuance of temporary and/or regular license for settlement of Foreign Liquor (F.L.) 'off' shop within the area of Habra Station. The appellants were directed to consider the case within a period of 8 weeks and in the event a temporary license was granted, the same was directed to be renewed from time to time till annual settlement was made. A further direction was issued to the appellants to dispose of the matter after giving her an opportunity of being heard and producing all such documents as she may like in support of her case. These directions were issued by learned Single Judge of the High Court on 16th September, 1993. Pursuant to the order of the learned Single Judge, respondent No. 1 as well as respondent No. 2 were granted hearing. An application was made in November, 1993 before the Additional District Magistrate. That  
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application came to be decided by the Additional District Magistrate on 30th November, 1993. In that decision, inter-alia, the Additional District Magistrate held that the site for which license was being requested for had not been proposed for settlement during that financial year. The order of the Additional District Magistrate was put in issue by respondent Nos. 1 and 2 through Writ Petition C.O. No. 448(W) of 1994. That Writ Petition was decided on 6th April, 1994 in favour of the respondents. A perusal of the order of the learned Single Judge - Sh. Paritosh Kumar Mukherjee, J. shows that it was based on a wrongful factual matrix inasmuch as it was assumed that the site at Municipal Super Market within the vicinity of Habra Police Station for which the license was sought for by the respondents was an 'approved' site. There was no basis for this factual statement. Based on this wrong factual matrix, direction was given by the learned Single Judge for grant of a temporary license in respect of Indian Made@@  
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Foreign Liquor (IMFL) 'off' shop at Municipal Market Habra in the District of North 24 Parganas in favour of the respondents, within a period of six weeks from the date of communication of the order. The  
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Authorities were further directed to renew the same from time to time until regular and/or annual settlement was made. The judgment in C.O. 448/94 dated 6.4.1994 was impugned before the Division Bench by the State. The appeal was admitted for consideration and in the meantime the Division Bench directed stay of the order of the learned Single Judge to the extent it had directed grant of temporary or regular license in favour of respondents. The Authorities were, however, directed to consider the grant of temporary IMFL 'off' shop license to respondent No. 1 only within the area of Habra within a period of 15 days from the date of the order. The Additional District Magistrate thereafter, pursuant to the directions of the Division Bench, considered the prayer of respondent No. 1 and on 1.12.1994 rejected the same. An appeal, filed by respondent No. 1 before the Excise Commissioner, met the same fate on 9th February, 1995. Thereafter, a Revision was filed by the respondent against the order of the Excise Commissioner before the Principal Secretary, Excise Department. That Revision was rejected on 4th April, 1996. The order of rejection of the Revision was put in issue through another Writ Petition C.O. No. ...5/-

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17482 (W) of 1996. Sh. V K Gupta, J. disposed of the Writ Petition by directing the Authorities 'to grant' the license within four weeks. The learned Single Judge based the order on a 'concession' made by learned advocate appearing for the State. We, however, find that the concession made by the learned advocate was only to the effect that the State would have 'no objection in considering the petitioner's request for grant of the aforesaid temporary license and to renew the same in her favour.' By no stretch of imagination could this concession be construed as a concession on behalf of the State to 'grant the license'. The appellants put in issue the order of the learned Single Judge dated 30th April, 1997 in an Appeal before the Division Bench. Before the Division Bench, a plea was raised that the concession made by the counsel was unauthorised and that in fact concession had not been made in the terms in which the learned Judge had understood it. The Division Bench declined to entertain the plea and refusing to interfere with the order of the learned Single Judge dated 30th April, 1997 gave liberty to the appellant to file a review petition. We are informed that the review petition was filed and the same is still ...6/-

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pending. While the matters stood thus, the main appeal against the order of the learned Single Judge

dated 6th April, 1994 in Writ Petition C.O. No. 448(W) of 1994 came up for hearing. The Division Bench, in the operative part of the order, directed as follows:

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"The appellants are directed to take steps in accordance with law for considering of granting regular settlement of annual licence in respect of I.M.F.L. 'Off' shop at the declared site (area) at Habra within the vicinity of Habra P.S. in the District of North 24 Pargana, preferably within six months from the date of communication of this order. Pending settlement of such annual and/or regular licence in I.M.F.L. 'off' shop site at Habra, the authorities concerned are directed to grant temporary license in respect of I.M.F.L. 'Off' shop at Habra in the District of North 24 Parganas in favour of the writ petitioner/respondent no. 1 within a period of 30 days from the date of communication of this order and renew the same from time to time, till annual and/or regular settlement is made. The writ petitioner will be entitled to assert her claim for issuance of annual and/or regular licence before licensing authorities at the time of grant of such settlement and the said authorities are directed to consider the said prayer of the writ petitioner on merits in accordance with law."

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This judgment of August 11, 1998 is the judgment impugned before us in this appeal.

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We have heard learned counsel for the parties and examined the record.

It appears that in the three Writ Petitions, and the two Writ Appeals which had been filed in the High Court, emphasis was laid more on reading of Rules divorced from facts than on the factual basis, to which the Rules could be applied. That has led to utter confusion being created. We find from a perusal of the record that various steps, which are required to be taken by the State for declaring a site as suitable for grant of license as well as for selection of the licensee and making annual settlements have not been taken. Learned counsel for respondent Nos. 1 and 2 is right in contending that the respondents have been waiting all this time, about three decades, for their application to be considered in the manner provided by law but nothing has happened. Partially

they have to thank themselves for this because of the various Writ Petitions and other Departmental proceedings which were taken in this case. Be that as it may, we find that the matter does not brook any further delay.

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There is an application filed by the respondents for grant of temporary/regular license for vending IMFL. Notice dated 13th August, 1993 has the list of proposed new sites for grant of licenses attached to it. Item No. 4 of that list is for the area "Habra station area or its vicinity on either side". The site for which the respondents have sought a license, according to the learned counsel, falls within Habra Station area and its vicinity. Learned counsel for the appellant, however, submits that that is a matter which requires to be looked into by the authorities. In the background referred to by us, we direct as follows:

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1. The State, through Special Secretary, Excise, shall take a final decision on the application filed by respondent Nos. 1 and 2 for grant of the license. Within a period of four weeks from the date of this order, the respondents as well as the appellant may file their written submissions in support of their respective cases before the Special Secretary.

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2. Within six weeks thereafter the Special Secretary, Excise shall make an order with regard to the selection of site. In the event, the site is selected/approved for which the respondents have applied for a license, then appropriate steps, as required by the Rules for selecting the licensee, shall be taken within three months from the date of the decision of the selection of the site for grant of license for IMFL 'off' shop. Final order in that behalf shall be made within four weeks from the date of the final decision of the licensee.

3. In the event, the above time-schedule is not adhered to for any reason, Special Secretary, Excise would be entitled to consider the request of the respondents for grant of temporary

licence in accordance with the Rules and if a temporary license is so granted, the same may be kept renewed from time to time till final decision is taken by the Special Secretary with regard to the grant of license.

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The appeal is, accordingly disposed of with the above directions. There will, however, be no order as to costs.

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.....J.  
(R. C. LAHOTI)

.....J.  
(SHIVARAJ V. PATIL)

New Delhi  
December 13, 2000.