(2020) 06 J&K CK 0065

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 922, 1001 Of 2020, Civil Miscellaneous No. 2514, 2281, 2494, 2495, 2608, 2612 Of 2020, CCP (S) No. 169 Of 2020

Anil Kohli APPELLANT

Vs

Union Territory Of J&K And Others RESPONDENT

Date of Decision : 30-06-2020

Acts Referred:

Jammu And Kashmir Excise Act, 1958 — Section 3(A), 11, 12, 20, 22, 25
Jammu And Kashmir Liquor License And Sale Rules, 1984 — Rule 5, 14, 36, 40

Citation : (2020) 06 J&K CK 0065

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : M.K. Bhardwaj, Gagan Kohli, K.D.S. Kotwal

Final Decision : Disposed Off

Judgement

Javed Iqbal Wani, J

1. Petitioner initially filed WP (C) No. 922/2020 and during its pendency filed WP (C) No. 1001/2020. Pleadings in both the petitions are complete, as such, on the consensus of counsel for the parties, are taken for consideration and final disposal.

2. In Petition WP(C) No. 999/2020 petitioner seeks following reliefs:

"To quash and set aside the order dated 15-03-2020 passed by the respondents by the issuance of writ, order or direction in the nature of certiorari.

To command and direct the respondents to de-seal shop of the petitioner i.e. M/S Shalimar Wine Shop, Wasser Lach Khazana Kishtwar and allow him to run the same as per the license already granted and renewed till 2023, by the issuance of writ, order or direction in the nature of mandamus."

"The back ground facts those stem out from the petition are as under:" Petitioner claims to have been holding a license under J&K Excise

Act SVT. 1958 read with the J&K Liquor License and Sale Rules 1984 (hereinafter for short Act and Rules) issued by the official respondents bearing No. 337/ JKEL-2 for possession and retail sale of Indian made liquor including Beer for consumption off the premises. In pursuance of the aforesaid license, petitioner claims to have been running a wine shop under the name and style of "M/S Shalimar Wine Shop" and contends to have been paying excise duty, annual license fee as also other taxes regularly without any default. Petitioner further states that the said license used to be renewed from time to time by Excise Commissioner upon depositing renewal fee and latest having been renewed for the year 2018-2019 to 2020-2023. Petitioner further states that his wine shop was previously located on the National Highway and pursuant to the directions and guidelines issued by the Hon'ble Supreme Court, requiring all the wine shops located on National Highways to shift from there, the petitioner also came to be permitted by the official respondents vide order No. 54/2016 dated 21-1-2016 read with corrigendum dated 21-01-2016to shift/relocate the wine shop to Wasser Lach Khazana in the premises of one Mr. Balwant Singh resident of Kuleed Kishtwar. Petitioner further states that ever since the wine Shop was relocated/shifted from its original place, the petitioner has been conducting business activities therein strictly in accordance with the rules, regulations and guidelines issued by the Excise Department from time to time, and without violation of any provision of law. Petitioner further states in the petition that on 12-12-2017, respondent No. 5 wrote a communication to the respondent No. 2 for a direction to the authorities for shifting of wine shop situated near DC Office Complex, Kishtwar within seven days as otherwise the respondent is compelled to seal the wine shop keeping in view the directions of the then Hon'ble Chief Minister and feeling aggrieved thereof, the petitioner states to have filed writ petition bearing No. 2094/2017 before this court challenging the said communication and that this court passed an order on 20-12-2017 directing the respondents not to take any coercive action against the petitioner in pursuance of communication dated 12-12-2017. Petitioner has further stated in the petition that the license granted to him in the year 2005 had been granted after fulfillment of all the statutory requirements as provided in the Act and Rules as also orders issued from time to time. Petitioner further states in the petition that a hand written notice dated 15-03-2020 had been pasted outside his shop, contents whereof revealed that the Excise Taxation Officer has sealed/locked the shop of the petitioner. It is this order/written notice dated 15-03-2020 which is being challenged by the petitioner in the present writ petition.

3. Per contra respondents in their objections filed in opposition to the writ controvert and resist the petition on the grounds inter alia, that the petitioner neither challenged order dated 18-03-2020 nor order dated 14-03-2020 which orders had been issued by Excise Commissioner, after it had been found upon inspection and verification of the records,that "M/S Shalimar Wine Shop" is being run unauthorizedly and illegally without proper permission/NOCs under the Excise Act and Rules as such necceciating sealing of the same and suspension of

license vide orders supra. It is next submitted by the respondents in their objections that the petitioner has violated the provisions of Act and the Rules having obtained license in question from the erstwhile licensees namely Javed Iqbal, Mrs. Zubaida Khanam, Shri Ramesh Kohli fraudulently upon manipulating records with the aid and assistance of insiders from the department. Besides above, the respondents in their objections have also contended that the writ petition raises serious questions of facts and that the petition is misconceived having been filed on mere conjectures and that the petition does not disclose infringement of any legal, fundamental or statutory right entitling the petitioner to claim any relief. The respondents thus have tried to project the aforesaid facts and circumstances while relying upon material thereto as a potent weapon to dislodge the case set up by the petitioner and thus sought dismissal of the petition.

4. During the pendency of the aforesaid petition, petitioner has filed OWP No. 1001/2020 against the official respondents impleading Excise Commissioner in person as respondent No. 2 therein. The petitioner beseeches and seeks the following reliefs in the above petitions:

"To quash and set aside the Order No. 418-EC of 2020 dated 14-03-2020, Order No. 421 of 2020 dated 18-03-2020, communications dated 13-05-2020 and communication No. EC/EXC-2020-21/445-46 dated 22-05-2020 by the issuance of writ, order or direction in the nature of certiorari."

The background facts under the shade and cover of which the petitioner claims relief, as aforesaid, are identical to those urged in the above earlier petition. Besides the petitioner has further avowed in the above petition that after filing of the earlier petition bearing WP (C) No. 922/2020 and passing of an interim order therein, on 19-03-2020 the petitioner came to know about order No. 418-EC of 2020 dated 14-03-2020, whereby the respondents had directed ETO not to allow the petitioner to carry on his trade and business unless petitioner obtain requisite NOCs from District Magistrate with a further direction that DEC (Executive Jammu) shall work out the penalties to be imposed for the violation period as also order No. 421 of 2020 dated 18-03-2020 whereby the liquor license of the petitioner had been suspended with immediate effect and communication dated 15-04-2020 whereby the Deputy Excise Commissioner had been appointed as an Enquiry Officer, communication dated 13-05-2020 addressed to District Development Commissioner and communication dated 22-05-2020 addressed to concerned ETO to immediately identify a place for opening of departmental store. The petitioner next states that the aforesaid orders and communications issued by the respondent No. 2 are illegal, arbitrary,unjustified, discriminatory and violative of the principles of natural justice. The petitioner in this petition as well claims to have been running the liquor shop validly without violating any provision of the Act or Rules or other orders in place and that he has been paying regularly all taxes, charges whatever due and that the outlet was relocated/ shifted pursuant to a valid order issued by the official respondents and that the respondent No. 2 arbitrarily for extraneous and mala fide considerations had issued the aforesaid impugned orders and addressed the impugned communications without issuing a notice to the petitioner.

5. The petitioner has next contended in the petition that the ordersand communication under challenge have been issued without jurisdiction and that the respondent No. 2 is contemplating to reopen a settled issue qua the license as also relocation of the shop in question without any lawful justification. It is also being stated by the petitioner that the respondent No. 2 has got two notices issued in newspapers during lockdown deliberately and intentionally instead of serving the same directly upon the petitioner and that the impugned orders and communications are bad in law and could not have been passed/issued against the petitioner in terms of provisions of the Act and Rules.

6. Per contra the respondents have resisted and controverted this petition of the petitioner as well on almost identical grounds those which have been urged in the aforesaid earlier petition bearing WP (C) No. 922/2020. Additionally it is being stated in the objections by the respondents that the whole exercise in the matter undertaken by the department against the petitioner is not an isolated case but against many license holders initiated upon a policy decision taken by the Finance Department in a meeting held on 3rd February, 2020 under the chairmanship of the Financial Commissioner, Finance Department whereby it had been ordered to hold an enquiry qua the grant of various manipulated licenses and to find out delinquent officers/officials involved therein, and that the said decision was taken to improve the overall work of the Department. The respondents in their objections reiterate their stand taken for sealing of the shop/ premises of the petitioner as also suspension of his license. The respondents in their objections have further stated that the petitioner in consequence to the interim order passed in the earlier petition by this court was called upon to complete formalities within one month which he failed to do and that the communication dated 22-05-2020 came to be addressed as per mandate of law which got necessitated on account of Covid-19 lockdown, aimed at generating revenue and prevent loss to the State exchequer inasmuch as to stop bootlegging and illicit distillation of liquor in the area. The respondents in their objections while justifying the issuance of the above impugned orders and communications deny to have violated any of the rights of the petitioner. The respondents on the basis of aforesaid objections thus have sought dismissal of this writ petition as well.

Heard learned counsel for the parties and considered their respective submissions which they made while reiterating the contentions urged in their respective pleadings with supported documents/materials.

7. The wharf and woof under the shade of which the entire controversy raised here inboth the petitions revolves, is that the petitioner, who admittedly holds a license issued under the Act and the Rules is being alleged to have secured the same by misrepresentation and manipulation and is also alleged to have

relocated/shifted his outlet from original place to the new place without following the mandate of the provisions of the Act and the Rules including non-furnishing and non-production of various NOCs. The petitioner is alleged to have been running the business activity in question illegally with the aid and assistance of insiders of the department and that the petitioner could not be permitted to continue to run and operate the business activity notwithstanding renewal of the license in question. The petitioner however, claims to be holder of a valid license, running and conducting business activities thereunder the said license without violating any provisions of the Act, Rules and orders issued by the official respondents in the matter from time to time and has been paying all the taxes, charges and license fee without any default whatsoever. The respondents, besides above, seem to have ordered an enquiry into the matter pursuant to communication dated 12-04-2020 as also got the communication dated 22-05-2020issued under the Act and the Rules purportedly for generating revenue so as to prevent loss to the State exchequer inasmuch as to stop bootlegging and illicit distillation of liquor in the area, whereas petitioner alleges that the issuance of communications dated 12-04-2020 and 22-05-2020 is infact an under hand exercise by respondent No. 2 formala fide and extraneous considerations.

8. Law relating to import and export, transport, manufacture, sale and possession of intoxicating liquor and intoxicating drugs in the J&K State are regulated under aforesaid J&K Excise Act, Svt.1958 read with J&K Liquor License and Sale Rules, Svt.1984 framed in exercise of powers conferred by Section 3A, 12 and 25/J&K Excise Act, 1958. Section 11 of the Act read with Section 20 and Rule 5-14 deal with the grant of licenses and other allied matters, whereas Section 22 read with Rule 36 deal with shifting or closure of vend and Rule 40 deal with suspension or cancellation of the license at the discretion of the Excise Commissioner. Though the aforesaid provisions related to suspension or cancellation of license or other related issues do not provide for issuance of a notice or giving an opportunity of being heard to a license holder in the eventanyaction is contemplated to be taken thereunder yet based upon principles of reasonableness, fairness and equity, an immediate requirement of following the principles of natural justice being a facet of non-arbitrariness would be deemed to be imbedded in the aforesaid provisions of the Act and Rules, more so when the Act and the Rules do not expressly exclude the principles of natural justice.

9. Looking to the controversy involved in both the petitions from the above angle, prima facie it appears that the respondents have taken recourse to the sealing of the shop/premises of the petitioner inasmuch as suspension of his license pursuant to orders dated 14- 03-2020, 18-03-2020 without issuing any notice to the petitioner or else provided him an opportunity of being heard. The respondents instead have issued notices to the petitioner after the issuance of the aforesaid impugned orders and communications this in the process essentially putting the cart before the horse. The whole exercise has been

undertaken by the respondents mechanically and in haste the fall out of which would manifestly demonstrate a considerable prejudice to the petitioner, in that petitioner is sought to have been deprived of his trade and business which he has been carrying on since long. Nothing could have prevented the official respondents to follow the minimal principles of natural justice in the matter while intending to take an action against the petitioner admittedly prejudicial to his rights and interests.

The legal position in this regardis well settled by a long line of decisions of the Hon'ble Apex Court and reference in this regard to the following would be advantageous. AIR 2004 SC 1280 titled as "Mangilal vs. State of Madhya

Pradesh" wherein the Hon'ble Supreme Court lays down that "where the statute is silent about the observance of principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of the parties are considerably affected."

Similarly, in AIR 1981SC 818 titled as "Swadesh cotton Mills vs. Union of India" the Hon'ble Supreme Court while considering the doctrine of natural justice has enunciated that"principle of natural justice aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law but supplement it." These rules operate only in areas not covered by any law validly made. They are means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are: notice of the case to be met and opportunity to explain.

In 2015 Vol. 08 SCC 519 titled as "Dharam Pal Satyapal Ltd. vs. Deputy Commissioner of Central Excise Guwahati and Ors." the Hon'ble Supreme Court has reiterated the view that principles of natural justice are applicable to judicial, quasi-judicial and administrative authorities even if not provided for in the statute, where the decision of authority concerned would result in civil or evil consequences.

In view of above,the aforesaid impugned orders and communications, in law, do not stand the test of fairness and reasonableness besides being violative of the principles of the natural justice hence are liable to be quashed.

10. Now looking to the controversy in both the petitions from another angle i.e. particularly in view of serious allegations leveled by the respondents against the petitioner (though denied by the petitioner) qua the veracity and validity of the license in question, alleged fabrication and manipulation resorted to, and relocation of his business premises allegedly without following the provisions of the Act and the Rules particularly non-submission of requisite documents/NOCs inasmuch as running of the business activities by the petitioner under the said license illegally with the aid of insiders of the department warrants a thorough probe and enquiry by the official respondents and the said enquiry also becomes more imperative in view of nature of the trade carried on by the petitionerwhich in law is not being permitted to be carried on with absolute or uncontrolled

liberty, but is subject to reasonable restrictions. The aforesaid issues otherwise also, being complicated disputed questions of fact may not appropriately be tried in these petitions, as such, also, would warrant a probe/enquiry by the official respondents.

11. In view of preceding analysis after evaluating, scanning and considering the pleadings of the parties, material placed therewith, provisions of the Act and the Rules made there under, as well law as referred to hereinabove, theimpugned orders dated 15-03-2020, 14-03-2020, 18-03-2020 and impugned communications dated15-04-2020, 13-05-2020, 22-05-2020 in both the petitions being WP(C) No. 922/2020 and WP (C) No. 1001/2020are quashed. However, same shall not come in the way of the official respondents to holdand conduct an enquiry into the validity and genuineness of the license of the petitioner as also all other matters related there with particularly those having been noticed and identified by the official respondents. It would be needless to reiterate that the said enquiry, if contemplated by the official respondents against the petitioner shall be conducted fairly, reasonably, transparently as also associating the petitioner therein.

It is made clear that nothing in this Judgment shall be construed to be an expression of any opinion about the issues and matters those are left to be looked into in an enquiry, if chosen to be held by the official respondents

12. Petitions disposed of accordingly. No order as to costs.

13. The contempt petition No. 169/2020 which had arisen out of an interim order passed on 19-03-2020 by this Court in WP (C) No. 922/2020 as also connected CMPs, in view of above shall stand also settled.

