
(2012) 02 KAR CK 0008
In the Karnataka High Court
Case No : Writ Appeal No. 10266 of 2011 (Excise)

Ashok

APPELLANT

Vs

The Regional Commissioner, Gulbarga and Others

RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Citation : (2013) 2 KarLJ 85

Hon'ble Judges : H.G. Ramesh, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : Avinash A. Uploankar, for the Appellant; Sriyuths Manavendra Reddy, Government Advocate and R.S. Sidhapurkar, for the Respondent

Final Decision : Allowed

Judgement

H.G. Ramesh, J.—Heard. This writ appeal is directed against the order of a learned Single Judge dated 17-11-2011 made in Writ Petition No. 82140 of 2011. By the impugned order, the learned Single Judge has dismissed the writ petition filed by the appellant challenging the notice dated 28-6-2011 (Annexure-H) issued to him by respondent 3, namely the Deputy Commissioner of Excise, Gulbarga, asking him to produce No Objection Certificate from the Archaeological Survey of India to consider his application for grant of excise licence (CL-7) for the year 2011-12. The sole contention urged by the learned Counsel for the appellant is that there is no provision of law which requires No Objection Certificate from the Archaeological Survey of India to consider the appellant's application for grant of excise licence (CL-7) to do business in liquor. He further submitted that the learned Single Judge has not examined the legality of insisting No Objection Certificate from the Archaeological Survey of India.

2. Learned Counsel appearing for the Archaeological Survey of India supported the notice dated 28-6-2011 (Annexure-H) by referring to Sections 20-A, 20-B and 20-C of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 ("the Act" for short). The aforesaid three sections were inserted in the Principal Act by Act No. 10 of 2010. It is relevant to refer to the said sections:

20-A. Declaration of prohibited area and carrying out public work or other works in prohibited area--Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred metres in all directions shall be the prohibited area in respect of such protected area or protected monument:

Provided that the Central Government may, on the recommendation of the authority, by notification in the Official Gazette, specify an area more than one hundred metres to be prohibited area having regard to the classification of any protected monument or protected area, as the case may be, u/s 4-A.

(2) Save as otherwise provided in Section 20-C, no person, other than an Archaeological Officer, shall carry out any construction in any prohibited area.

(3) In a case where the Central Government or the Director General, as the case may be, is satisfied that--

(a) it is necessary or expedient for carrying out such public work or any project essential to the public; or

(b) such other work or project, in its opinion, shall not have any substantial adverse impact on the preservation, safety, security of, or, access to, the monument or its immediate surrounding.

It or he may, notwithstanding anything contained in sub-section (2), in exceptional cases and having regard to the public interest, by order and for reasons to be recorded in writing, permit, such public work or project essential to the public or other constructions, to be carried out in a prohibited area:

Provided that any area near any protected monument or its adjoining area declared, during the period beginning on or after the 16th day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, as a prohibited area in respect of such protected monument, shall be deemed to be the prohibited area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted by the Central Government or the Director-General, as the case may be, for the construction within the prohibited area on the basis of the recommendation of the Expert Advisory Committee, shall be deemed to have been validity granted in accordance with the provisions of this Act, as if this section had been in force at all material times:

Provided further that nothing contained in the first proviso shall apply to any permission granted, subsequent to the completion of construction or reconstruction of any building or structure in any prohibited area in pursuance of the notification of the Government of India, in the Department of Culture (Archaeological Survey of India), Number S.O. 1764, dated the 16th June, 1992 issued under Rule 34 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, or, without having obtained the recommendations of the

Committee constituted in pursuance of the order of the Government of India, Number 24/22/2006-M, dated the 20th July, 2006 (subsequently referred to as the Expert Advisory Committee in orders dated the 27th August, 2008 and the 5th May, 2009).

(4) No permission, referred to in sub-section (3), including carrying out any public work or project essential to the public or other constructions, shall be granted in any prohibited area on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010 receives the assent of the President.

20-B. Declaration of regulated area in respect of every protected monument-- Every area, beginning at the limit of prohibited area in respect of every ancient monument and archaeological site and remains, declared as of national importance under Sections 3 and 4 and extending to a distance of two hundred metres in all directions shall be the regulated area in respect of every ancient monument and archaeological site and remains:

Provided that the Central Government may, by notification in the Official Gazette, specify an area more than two hundred metres to be the regulated area having regard to the classification of any protected monument or protected area, as the case may be, u/s 4-A:

Provided further that any area near any protected monument or its adjoining area declared, during the period beginning or after the 16th day of June, 1992 but ending before the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President, as a regulated area in respect of such protected monument, shall be deemed to be the regulated area declared in respect of that protected monument in accordance with the provisions of this Act and any permission or licence granted for construction in such regulated area shall, be deemed to have been validly granted in accordance with the provisions of this Act, as if this section had been in force at all material times.

20-C. Application for repair or renovation in prohibited area, or construction or reconstruction or repair or renovation in regulated area--(1) Any person, who owns any building or structure, which existed in a prohibited area before the 16th day of June, 1992, or, which had been subsequently constructed with the approval of the Director General and desires to carry out any repair or renovation of such building or structure, may make an application to the Competent Authority for carrying out such repair or renovation, as the case may be.

(2) Any person, who owns or possesses any building or structure or land in any regulated area, and desires to carry out any construction or reconstruction or repair or renovation of such building or structure on such land, as the case may be, may make an application to the Competent Authority for carrying out construction or reconstruction or repair or renovation, as the case may be.

3. In our opinion, Sections 20-A, 20-B and 20-C of the Act referred to above do not impose any kind of restriction on carrying of any business activity of buying or selling of goods which include liquor in the prohibited or regulated area. They all refer to imposing prohibition or restriction to carry out any construction or reconstruction or repair or renovation in the prohibited or regulated area. Therefore, the Deputy Commissioner of Excise, Gulbarga, erred in law in insisting for No Objection Certificate from the Archaeological Survey of India to consider the appellant's application for grant of excise licence (CL-7) to do business in liquor.

4. However, learned Counsel for the respondents submitted that the construction of the building in which the appellant is carrying on the business is illegal. If it be so, it is certainly open to the concerned statutory authorities including the Archaeological Survey of India to take action relating to the alleged illegal construction in accordance with law. This order will not come in their way to initiate action in the matter in accordance with law. In the result, we make the following order-

The order of the learned Single Judge dated 17-11-2011 made in W.P. No. 82140 of 2011 is set aside. The notice dated 28-6-2011 at Annexure-H, insofar as it relates to seeking production of No Objection Certificate from the Archaeological Survey of India to consider the appellant's application for grant of excise licence (CL-7) to do business in liquor, is quashed.

Appeal allowed.