(1994) 02 KL CK 0045

In the High Court Of Kerala

Case No : O.P. No''s. 1175, 1567, etc. of 1994-M

Ashok Kumar APPELLANT

Vs

State of Kerala and Another RESPONDENT

Date of Decision : 18-02-1994

Acts Referred:

Kerala Abkari Shops (Disposal in Auction) Rules, 1974 — Rule 5(10), 5(15), 5(19), 6(28), 8(1)

Citation : (1994) 02 KL CK 0045

Hon'ble Judges : P. Krishnamoorthy, J

Bench : Single Bench

Advocate : P.V. Baby, for the Appellant; D. Somasundaram, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Krishnamoorthy, J.—The question involved in these Original Petitions is as to whether the arrears of Excise Duty payable under Rule 8(1) of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 (hereinafter referred to as ''the Rules'') can be appropriated from the security deposit made by the Abkari Contractors under Rule 5(10) of the Rules.

2. Under Rule 8(1), before starting the auction in each group of arrack shops, the auctioning officer shall announce that permits will be issued to the contractors to import/purchase a designated quantum of duty paid Rectified Spirit. The rule further provides that the contractors shall remit the Excise Duty on the designated quantum of Rectified Spirit each month. If it is not remitted on or before the 10th day of each month, the same may be remitted on or before 25th day of that month with 18 per cent interest on the Excise Duty. The rule further provides that the failure on the part of the licensee to pay up the amount of Excise Duty and interest shall entail the consequences similar to those prescribed in Sub-rule (28) of Rule 6 for failure to pay the kist due from him. Petitioners in these O.Ps. who are Abkari contractors defaulted payment of the Excise Duty due

from them and accordingly the Excise authorities appropriated those amounts with interest from the deposits made under Rule 5(10) and directed the contractors to recoup the amount towards the security deposit. It was further ordered that in case it is not done, the licences issued to the Petitioners will be cancelled without further notice. The action of the Excise authorities in appropriating the security deposit towards arrears of Excise Duty is challenged in these O.Ps. as violative of the provisions contained in the rules.

3. The main contention raised by Counsel for the Petitioners is that under Rule 8(1) of the rules, in case there is default in payment of Excise Duty and interest, it shall only entail the consequences similar to those mentioned in Rule 6(28). It is further contended that under Rule 6(28) power is given to the Assistant Excise Commissioner subject to confirmation by the Board of Revenue to cancel the licence and order a resale at the risk of the licensee. The above sub-rule further provides that any sum due from a licensee on account of kist, tree tax or otherwise may be recovered from his deposit, if any made by him at the commencement of the lease or collected under the Revenue Recovery Act. It is the contention of Petitioners that only after cancellation of the licence with the confirmation by the Board of Revenue, the procedure for appropriating the arrears of Excise Duty from the deposit arises and before that the authority has no jurisdiction to realise the arrears of Excise Duty from the deposit made.

4. Thus, the question mainly depends upon the interpretation of Rule 6(28). The fact that there are arrears of Excise Duty is not disputed. Rule 8(1) of the rules provides that failure on the part of the licensee to pay up the amount of Excise Duty and interest under this clause shall entail him the consequences similar to, those prescribed in Sub-rule (28) of Rule 6 for failure to pay the kist due from him. It is thus clear that the provisions contained in Rule 6(28) of the rules are applicable to arrears of Excise Duty as well Rule 6(28) provides that where the licensee fails to pay the kist due from him for any month, the Assistant Excise Commissioner, subject to confirmation by the Board of Revenue may cancel the licence and order a resale. The rule further provides that any losses on account of such cancellation and resale shall be borne by the defaulting licensee. Rule 6(28) further provides that any sum due from a licensee on account of kist, tree tax or otherwise may be recovered from his deposit, if any made by him at the commencement of the lease or collected under the Revenue Recovery Act. The question to be decided is as to whether for recovery of arrears of Excise Duty from the deposit made by the contractor, is it necessary to cancel the licence. In other words, the question is as to whether the Excise authorities are entitled to recover the same from the deposit only after canceling the licence.

5. On an anxious consideration of the provisions I do not think that the contention of the Petitioners can be accepted. Rule 6(28) provides for the action which the Excise authorities are entitled to initiate in the case of a defaulting contractor. In the first part of Rule 6(28) it is provided that when there is default, the Assistant Excise Commissioner may cancel the licence subject to the

confirmation by the Board of Revenue. The word used therein is ''may''. Thus, I am clearly of the opinion that it is not always necessary that the Assistant Excise Commissioner should cancel the licence for the default committed by the contractor in payment of kist or Excise Duty, as the case may be. No doubt, he is entitled to cancel the licence as well but it is not obligatory on his part he should cancel the licence in all cases of default. As stated earlier, the sub-rule provides that any sum due from a licensee on account of kist, etc., may be recovered from his deposit. There is nothing which prevents the Assistant Excise Commissioner from exercising this power in the first instance itself without cancelling the licence. It is not as if all the provisions contained in Rule 6(28) are cumulative but I am of the opinion that they are independent and the Excise Commissioner is entitled to resort to any of the modes mentioned in that rule and that it is not always necessary that he should cancel the licence before he recovers the amount from the security deposit. The last portion of Rule 6(28) is to the following effect:

If any adjustment is made from the deposit the licensee shall be bound to replace the sum adjusted from his deposit within fifteen days of receipt of notice from the Excise Officer in charge of the Division in which his shop is situated.

This provision clearly indicates that it is not necessary in all cases that the licence should be cancelled before appropriating the arrears from the deposit amount. If the licence is already cancelled, no question of any security deposit arises and the above provision clearly indicates that the Excise authorities are entitled to invoke any one of the provisions contained in Rule 6(28) and that the cancellation of the licence is not a condition precedent for invoking the other provision contained in Rule 6(28).

6. Even otherwise, from the provisions of the rules it is clear that the Respondents are entitled to recover the arrears of Excise Duty from the deposit made. As stated earlier, the deposit is made under Rule 5(10). Rule 5(15) provides that the contractor should enter into an agreement with the Government in Form No. 11. The form of agreement and the licence issued to the contractors were produced by the Government Pleader. In the agreement for the year in question, the provision for payment of Excise Duty on the designated quantum of Rectified Spirit is also included. The agreement further provides:

From the above provision in the agreement also it is clear that the authorities are entitled to recover any amount due from the contractor from the security deposit which he has made.

7. Rule 5(19) of the rules is to the following effect:

(19) The deposits referred to in Sub-rule (10) shall be taken as security for the due performance of the conditions of the licence. They shall be credited towards kist due for the two or more Installments as the case may be, of the contract unless previously appropriated under the rules.

In the licence issued to the Petitioners it is clearly provided that the contractor shall pay every month the Excise Duty on the designated quantum of Rectified Spirit before the 10th and if not paid within that time it shall be paid before the 28th of every month with 18 per cent interest. Thus, it can be seen that the payment of Excise duty is a condition of the licence. Under Rule 5(19) of the rules, the security deposit shall be a security for the Excise Duty as well and accordingly the authorities are entitled to enforce recovery of the sum from the security deposit made under Rule 5(10).

8. I have already held that Rule 6(28) of the rules and the other rules entitled the Excise authorities to recover the arrears of Excise Duty from the security deposit. Rule 6(28) further provides that if any adjustment is made from the deposit, the licensee shall be bound to replace the sum adjusted from his deposit within 15 days of receipt of notice from the Excise Officer in charge of the Division. Accordingly the direction given by the Excise Officer to recoup the security deposit is perfectly valid and legal.

9. The validity of the levy of Excise duty is under challenge before this Court and the matter is now pending before the Full Bench. Accordingly the payment of Excise duty by the Petitioners will be subject to the decision of the Full Bench in those cases.

10. In view of what is stated above, I do not find any merit in these Original Petitions and accordingly they are dismissed in limine.

