

(1996) 04 KAR CK 0025
In the Karnataka High Court
Case No : Writ Petition No. 11033 of 1993

B. Raghavendra

APPELLANT

Vs

Excise Commissioner, Bangalore and Others

RESPONDENT

Date of Decision : 09-04-1996

Acts Referred:

Contract Act, 1872 — Section 56
Karnataka Excise Act, 1965 — Section 21

Citation : (1997) 2 KarLJ 313

Hon'ble Judges : G. C. Bharuka, J

Judgement

1. The petitioner had obtained lease of retail vend of liquor for the year 1992-93. According to him, because of some public disturbances, he could not operate his shops in the areas assigned to him as is evident from Annexures-A and B. According to him, because of the said closure for reasons beyond the control of the petitioner, he had sustained substantial financial losses. Accordingly, he has come up before this Court with a prayer to direct the 1st and 2nd respondents to grant pro rata deduction in the rate of kist amount for the said period of closure.

2. A prayer similar to the present one had already been rejected by a Division Bench of this Court in the case of Rajamalliah C. and Others v State of Karnataka and Others, 1985(2) Kar. L.J. 541. In para 23 thereof, it has been held as follows:

"Unforeseen events which prevented vend of liquor will not alter the character of price paid/agreed to be paid for purchase of privilege. The petitioners have stipulated to pay lumpsum amounts as the price for exclusive privilege for vend of liquor. The amount agreed to be paid is considered as the value of that right and will not depend upon loss or profit. Licensee can enjoy the privilege so long as the conditions and restrictions imposed are complied with. Terms of contract indicate that they were aware of such eventualities. Person who entered into a contract with eyes wide open must accept the burden of the contract along with its benefits. The dictum of lord Atkinson in Matthey v Curling, 1922(2) AC 180 at

P. 234 (M), which reads thus:

"a person who expressly contracts absolutely to do a thing not naturally impossible is not excused for non-performance because of being prevented by the Act of God or King's enemies.... or vis major"....

has been approved by the Supreme Court in *Satyabrat Ghose v Mugneeram, Bangur and Company and Another*, AIR 1954 SC 44".

After holding that the contract was one and indivisible which we have set out earlier and in continuation of that very finding, the learned Judge proceeded to observe thus:

"They are not entitled to claim pro rata deduction. If accepted, Court may have to embark upon to modify the term of the contract as well as provision providing for grant of privilege, which is impermissible. Petitioners cannot be permitted to import into the contract a stipulation to the effect that their liability ceases if vend of liquor is prevented on account of unforeseen events. It is well-settled that, where there is a positive contract to do a thing, the contractor must perform it or pay damages although in consequence of unforeseen events, the performance of contract has become unexpectedly burdensome or even impossible".

3. The said enunciation of law has been followed with approval by the Full Bench of this Court in the case of *Girish and Others v State of Karnataka and Others*, 1994(1) Kar. L.J. 421.

4. The said Full Bench judgment was taken to the Supreme Court in Special Leave Petition (C) Nos. 2853 to 2859 of 1994 and Special Leave Petition (C) No. 2904 of 1994. It was dismissed by an order dated 11-2-1994 which reads thus:

"Heard learned Counsel for the petitioners.

We find no infirmity in the High Court's view resulting in disposal of the writ petitions filed under Article 226 of the Constitution. Learned Counsel for the petitioners referred to the observations made in para 44 of the judgment as subsequently modified by order dated 12-1-1994 (as appearing at page 117 of the Paper Book) to submit that the High Court has also held that a Civil Suit

would be barred. Obviously, the reference to the Civil Court made in the High Court's judgment related only to the ground agitated in the High Court and decided by it. Nothing more is required to be said in this context. The special leave petitions are dismissed".

5. In view of the said judicial pronouncements, the legal principle that emerges is that if a person purchases a right to vend liquor under and in accordance with the statutory provisions for a certain price, then, he cannot claim any remission thereof on the ground of its non-exercise, even for no fault of his, unless the statutory provisions or the terms of the contract so provide. This is so because necessity of providing for grant of such remission is not an essential attribute of

reasonableness requiring it to be implicitly read in the statutory instruments so as to save it from the vices unconstitutionality. In the present case, petitioner has failed to refer to any express or implicit stipulation, either statutory or contractual, on the basis of which he can successfully found his claim of remission.

6. In the said view of the matter, petitioner is not entitled to the relief sought for. Writ petition is accordingly dismissed.