(2000) 05 MP CK 0038

In the Madhya Pradesh High Court

Case No : Writ Petition No. 676 of 2000

Baboo Lal Shivhare APPELLANT

Vs

Municipal Corporation, Gwalior and others RESPONDENT

Date of Decision : 09-05-2000

Acts Referred:

Madhya Pradesh Excise Act, 1915 — Section 31
Madhya Pradesh Foreign Liquor Rules, 1996 — Rule 31(1, 8, 8(3)

Citation : (2001) 1 MPHT 35 : (2000) 2 MPJR 48 : (2001) 2 MPLJ 461

Hon'ble Judges : S.P. Shrivastava, J

Bench : Single Bench

Advocate : Shri R.D. Jain and Mr. S.K. Jain, for the Appellant; Shri V.S. Chaturvedi and Shri K.N. Gupta, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.P. Srivastava, J.

Heard the learned counsel for the parties.

Perused the record.

The contesting parties have exchanged their affidavits and with their consent, this writ petition is being disposed of finally at this stage.

The petitioner feels aggrieved by an order dated 24-2-2000 issued by the Commissioner (Ayukt), Nagar Palika Nigam, Gwalior pursuant to the order passed by the Collector, whereunder cancelling the F.L. 2 licence granted in his favour for the year 1999-2000 for the remaining part of the year, it had been directed that the application seeking renewal of the said licence was to be kept pending till the disposal of the criminal case, against him initiated under the Excise Act.

It may be noticed that the Commissioner (Ayukt), Nagar Palika Nigam, Gwalior had purported to act upon the direction issued by the Collector contained in the letter dated 10-1-2000 with a view to implement the same.

The petitioner has prayed for the quashing of the direction contained in the letter dated 10-1-2000 referred to in the order passed by the Commissioner dated 24-2-2000, a copy of which has been filed as Annexure P-2. He has further prayed for the quashing of the order dated 31-3-2000 passed by the Abkari Ayukt, Madhya Pradesh upholding the order of the Commissioner, Nagar Palika Nigam, Gwalior. A direction requiring the respondents to permit the petitioner to continue his business and accept the licence fee for the next year has also been sought for.

In the return filed by the respondent-Corporation in opposition to the writ petition, a copy of the resolution passed by the Mayor-in-Council of the Nagar Palika Nigam, Gwalior in its meeting held on 14-2-2000 has been filed.

A perusal of the aforesaid resolution indicates that the Mayor-in-Council had passed the aforesaid resolution as a consequence to the directions issued by the Collector referred to in the order of Ayukt, Nagar Palika Nigam, Gwalior dated 24-2-2000.

A perusal of the counter-affidavit/return filed by the Corporation further indicates that it was subsequent to the passing of the resolution of the Mayor-in-Council in its meeting dated 14-2-2000 that the Ayukt, Nagar Palika Nigam, Gwalior had issued the order dated 24-2-2000.

In the circumstances indicated hereinabove, therefore, it is obvious that the Ayukt, Nagar Palika Nigam, Gwalior, who had issued the order dated 24-2-2000, was seeking to implement the resolution of the Mayor-in-Council dated 14-2-2000 and the Mayor-in-Council itself had passed the aforesaid resolution consequent upon the direction issued by the Collector, which had been referred to not only in the resolution of the Mayor-in-Council but also in the order issued by the Ayukt, Nagar Palika Nigam, Gwalior.

The learned counsel for the petitioner has strenuously urged that in the present case, the Collector, who had issued the direction contained in its letter dated 10-1-2000, which was sought to be implemented not only by the Mayor-in-Council but also by the Ayukt, Nagar Palika Nigam, Gwalior pursuant to the passing of the aforesaid resolution, had no jurisdiction to cancel or suspend the licence. In this connection, the learned counsel for the petitioner has placed reliance upon the decision of this Court in the case of Lalchand Jaiswal Vs. Municipal Corporation, Murwara (Katni) and others, reported in 2000 (1) MPJR 106.

This Court in its aforesaid decision while considering the implications arising under Rule 8 of the M.P. Foreign Liquor Rules, 1996 had clearly held that the aforesaid rule did not confer the power to grant the licence on the Municipal Commissioner. On a consideration of the relevant provision, it was indicated that the "Corporation" and the "Commissioner" were two different authorities. It was observed that as Rule 8 (3) of the Rules, 1996 confers power to grant F.L. 2 and 3 licences on the Municipal Commissioner, it could not be exercised as a "Municipal Commissioner" and had to be exercised by the "Corporation" which is a distinct Municipal authority.

It was also observed in the aforesaid decision by this Court that the question of renewal of the licence could be considered only by the "Corporation" which is a municipal authority under the Act and could not be done by the Municipal Commissioner. The decision making power as contemplated under the rules stood vested in the "Corporation" which had to be exercised in the manner in which the corporation is required to take decision under the law.

It may be noticed that the provisions contained in Rule 31 of the M.P. Excise Act, 1915 which stood vested in the "Corporation" regulate the procedure to be adopted for cancelling or suspending the licence. Rule 31 (1-A) clearly provides that before making an order cancelling or suspending a licence permit or pass under sub-section (1), the authority aforesaid shall record in writing the reasons for the proposed action, furnish to the holder thereof a brief statement of the same and afford him a reasonable opportunity of being heard.

The learned counsel for the petitioner has strenuously contended that in the present case the power and jurisdiction envisaged u/s 31 of the M.P. Excise Act, 1915 stood vested in the "Corporation". With the transfer of the jurisdiction on the enforcement of the aforesaid rule, the Collector ceased to have any jurisdiction in the matter relating to the cancellation or suspension of the licence as in question.

In the present case, it is urged that the Mayor-in-Council had not taken any decision in the matter either relating to cancellation of the licence or for the suspension of the licence. The Corporation had only purported to implement the decision taken by the Collector. The contention is that since the Corporation, which stood vested with the jurisdiction to cancel or to suspend the licence, itself had not taken any decision and had mechanically without application of mind had passed the resolution seeking to implement the direction of the Collector, the impugned orders cannot be held to be sustainable in law.

The learned counsel for the respondent-Corporation has tried to urge that the resolution passed by the Mayor-in-Council was in fact a decision of the "Corporation".

A bare perusal of the aforesaid resolution itself negatives the contention of the learned counsel for the respondent-Corporation. The resolution passed by the Mayor-in- Council does not contain any reasons. This resolution on the face of it appears to be consequential upon the direction issued by the Collector, who after the amendments in the rules ceased to have any jurisdiction in the matter of cancellation/suspension of the F.L. 2-3 licence. The order passed by the Ayukt, Nagar Palika Nigam, Gwalior as has already been indicated by this Court in the aforesaid decision in the case of Lalchand Jaiswal (supra) could not be taken to be a decision of the Corporation. Further, this order also in the present case is nothing else but in the nature of the consequential order passed by the Collector, who had himself no jurisdiction in the matter.

In the aforesaid circumstances, without going any further, this writ petition is disposed of finally with the direction that the Corporation shall take a decision in accordance with the law in the matter relating to the cancellation or suspension of the licence in question granted to the petitioner within a period not later than one month from the date of the production of the certified copy of this order before the concerned authority, unaffected by the observations/directions issued by the Collector in his letter dated 10-1-2000 or the observations made by the Abkari Ayukt in his order dated 31-3-2000, a copy of which has been filed as Annexure P-1.

There shall however be no order as to costs.

C.C. as per rules.

Writ Petition allowed.

