(1963) 03 CAL CK 0004

In the Calcutta High Court

Case No : Civil Rivision Case No. 606 (w) of 1962

Balai Chandra Saha APPELLANT

Vs

Biswanath Saha and Others RESPONDENT

Date of Decision : 19-03-1963

Acts Referred:
Bengal Excise Act, 1909 — Section 8, 8(3)

Citation : 67 CWN 529

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Shaila Dhar Chowdhury, for the Appellant;Susil Kumar Biswas, Balai Ch. Roy, D. N. Das, Nirmal Kr. Ganguly (St.), N.C. Chakravarty, (Govt. Pleader) and Somendra Chandra Bose, for the Respondent

Judgement

Banerjee, J.—The petitioner, Balai Chandra Saha, is the licensed vendor of an excise shop at Purbasthali in the District of Burdwan, dealing in country-spirit, ganja, opium and bhang. He wanted to extend his business and applied for another licence in respect of another country-spirit shop at Guskara, in the District of Burdwan. He succeeded in obtaining a license for the unexpired period of the year 1961-62. The order of the Additional District Magistrate, dated July 25, 1961 settling the Guskara country-spirit shop with the petitioner is set out below :-

Considered the petition dated 21.7.61 of Sri Santosh Kumar Dutta, licensee of the combined Country-Spirit, Ganja Opium and Bhang shop at Galsi, to the effect that he is unable to take settlement of the Country-Spirit shop at Guskara for his failure to secure a suitable site for the shop. The orders dated 7.7.61, settling the Country-Spirit shop at Guskara with Sri Santosh Kuma Dutta are, therefore cancelled.

On considering the merits and demerits of the other candidates interviewed, in the light of the standing orders and instructions relating to settlement of Excise Shops, I find Sri Balai Chandra Sana, at present licensee of the Combined

Country-Spirit, Ganja, Opium and Bhang shop at Purbasthali, to be the most suitable candidate, and I accordingly settle the Country-Spirit shop at Guskara with him. He should, however, continue to hold his present licenses in addition to the one granted to him now, until they are resettled or until further orders.

The respondent No. 1, one Biswa-nath Saha, who was also an applicant for the Guskara Country-Spirit shop, felt aggrieved by the selection of the petitioner as the licensee for the shop and appealed against the order, granting licence of the shop to the petitioner, before the Excise Commissioner. By an order, dated February 7, 1962 the Commissioner of Excise dismissed his appeal. The said Biswanath Saha moved against the appellate order before the State Government, under the provisions of section 8(3) of the Bengal Excise Act. During the pendency of the petition for revision before the State Government, the licence in respect of the Guskara shop ended by effiux of time on March 31, 1962. Pending disposal of the revision petition, however, the Collector of Burdwan granted a renewal of the licence to the petitioner, for the licencing year 1962-63.

2. By an order, dated June 25, 1962, the State Government allowed the revision petition filed by respondent No. 1, Biswanath Saha, with the following observation:-

The learned Advocate for the petitioner contends that the respondent has no less than 10 entries in the Misconduct Register against him and that his records as an existing excise licensee is such that he should never have been promoted to this bigger shop in preference to his client. The records produced before me disclose that the respondent has in fact 10 entries against him in the Misconduct Register. It further appears that all these entries were not before the A.D.M. when he settled the shop with the respondent on 26.7.61, nor before the Commissioner of Excise when he heard the appeal on 27.1.62. One of these entries relates to a penalty of Rs. 50/- inflicted on the respondent for dilution and short measure of country spirit in a number of bottles in his Purbasthali shop. A country spirit vendor, who was penalised on such serious charges cannot be considered fit for promotion to a bigger country spirit shop. The respondent, who represented his case himself admits that he paid Rs. 50/- as compensation money in the proceedings that were taken against him on the charges as afore-said, but he contends that he was not present in the shop when the irregularities were detected and that his salesman, and not he, war-responsible for it. He submits therefore that he may not be deprived of his hard-earned promotion for no fault of his, but for the fault of his salesman. The Excise law puts a vicarious responsibility on an excise licensee making him responsible for the acts of his employees and I do not see why he should be absolved of this liability. The fact is that he was unable to prevent his salesman from committing such serious breaches of conditions of his license and this should disqualify him from holding the license of a bigger shop. The order of the A.D.M. Burdwan, settling the shop with the respondent, and that of the Commissioner of Excise, upholding the said order on appeal, cannot, therefore, be upheld.

The next question is whether the case should, after setting aside the order of the A.D.M. be sent back to him for a fresh settlement as suggested by the Superintendent of Excise representing the Excise Directorate, or a direction should be issued to the A.D.M. Burdwan, for granting the license to the petitioner as canvassed by his lawyer. The petitioner is said to have passed the School Final Examination and acquired experience of running a country spirit shop by acting as a salesman. He is a local man, appears financially sound and is reported to have an objection-free site for the shop at Guskara. As he thus seems to be quite a suitable candidate for the shop, I do not think any useful purpose will be served by remanding the case to the A.D.M., Burdwan, for a fresh settlement which will involve delay and lead to a fresh round of appeals and revision.

3. Pursuant to the order by the State Government, it is alleged, steps were being taken to take over the Guskara Country-Spirit shop from the petitioner. It was at this stage that the petitioner moved this Court, inter alia, praying for the quashing of the order of the State Government.

4. Two points were urged on behalf of the petitioner in support of this Rule.

5. It was contended, in the first place, that the petitioner for revision was directed against the selection of the petitioner as licensee of the Guskara Country-Spirit shop for the unexpired portion of the year 1961-62. That period having had expired, the revision petition became infructuous and the State Government should not have interfered with the licence granted to the petitioner for the year 1962-63, against which grant nobody had moved the State Government. It was contended, in the next place, that u/s 35 of the Bengal Excise Act, there was a finality attached to the decision of the Excise Commissioner and his decision, confirming the grant of the licence for the Guskara Country-Spirit shop to the petitioner, cannot be interfered with by the State Government.

6. The first branch of the argument has no substance in it. The point is already covered by a decision of this Court in (1) Matter No. 249 of 1961 (Ashoke Chandra Banerjee v. B.K. Sen unreported) in which it was observed :-

In my reading of the several extensions of license in favour of the petitioner, they were in reality renewals of the original grants to and the original selection of the petitioner. Consequently when the original grant was set aside by a higher authority, its renewal also stood automatically set aside and did not subsist for the period for which it was renewed. In this view I am fortified by a decision of the Supreme Court in V.C.K. Bus Service Ltd. Vs. The Regional Transport Authority, Coimbatore, , which was followed in this Court, by Sinha, J. in a decision reported in Protap Properties Private Ltd. Vs. State of West Bengal and Others, . The two reported, decisions are, it is true, under different Acts, one being under the Motor Vehicles Act and the other under the West Bengal Cinemas (Regulation) Act, but in my reading the position is the same under the scheme of the Excise Act. Therefore, although the later renewals were not the subject matters of appeals or revisions, still then they will be governed by the view which the'' State Government took in respect of the original grant of which they were renewals.

7. In the view expressed as above, the first branch of the argument is unworthy of being sustained and must be overruled.

8. The second branch of the argument is equally unsustainable. Section 8 of the Bengal Excise Act deals with Control, Appeal and Revision. Under that section there is an appeal to the Excise Commissioner from the order of the Collector and the State Government has power of revision over the order of the Collector and the Excise Commissioner. Section 8 is set out below:-

(1) The Collector shall, in all proceedings under this Act, be subject to the control of the Excise Commissioner, and shall, in such matters as the State Government may direct, be subject also to the control of the Commissioner of the Division.

(2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases to such authorities and under such procedure as may be prescribed by rule made u/s 85, clause (c).

(3) The State Government may revise any order passed by the Collector, the Excise Commissioner or the Commissioner of a Division or by any officer exercising the powers of an appellate authority under any rule made u/s 85, clause (c).

9. Section 35 appears in Chapter VI, headed as Licenses, Permits and Passes. Under the scheme of that Chapter, before the expiration of every period for which existing licences for the retail sale of spirit are in force, the Collector is to prepare a list, in the prescribed form, of places for which it is proposed to grant licences for the retail sale of spirit for consumption on the vendors'' premises, for the next period of settlement. After publication of the list, the Collector is to receive objections there to, if any, and also opinions, if any, from Municipalities, and thereafter the Collector is to submit the objections and the opinions to the Excise Commissioner. Section 35 of the Bengal Excise Act provides that:

The Excise Commissioner shall consider the list, objections and opinions so sent to him and may modify or annul any order passed or license granted by the Collector; and, notwithstanding anything contained in section 8, his orders shall be final:

Provided that, if there be any difference of opinion between-

(a) the Excise Commissioner, and

(b) the Commissioner of a Division, the Chief Executive officer of the Corporation of Calcutta or the Corporation of Calcutta ii the opinion of the said Corporation referred to in clause (ii) of sub-section (3) of section 33, has been recorded at a meeting of the Corporation, the matter shall be referred by the Excise Commissioner to the State Government whose decision shall be final.

10. The finality, that attaches to the decision of the Excise Commissioner, is in connection with the list prepared as aforesaid. If the Excise Commissioner, as an appellate authority, confirms, modifies or reverses the grant of an excise licence to a particular person, that order is always revisable by the State Government under the provisions of section 8 (3) of the Bengal Excise Act. This is the view which was also expressed by Sinha, J., in (2) Surendra Nath Bose v. State of West Bengal, (I.L.R. (1956) 1 Cal. 223) and by Bose, J., (as the Chief Justice then was) in (3) Kalidas Chakravartti v. State of West Bengal (Civil Rule No. 650 of 1954-unreported).

11. The position of law being as herein-before stated the second branch of argument urged on behalf of the petitioner must also fail. In the result this Rule is discharged but there will be no order as to costs.