

(1998) 06 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 27070 of 1997

B.C. Narasimha Murthy

APPELLANT

Vs

The Commissioner of Excise, Bangalore and Others

RESPONDENT

Date of Decision : 30-06-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 112, 114
Karnataka Excise Act, 1965 — Section 26
Penal Code, 1860 (IPC) — Section 481, 482, 483, 484, 485

Citation : (1998) ILR (Kar) 2596 : (1998) 5 KarLJ 491

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : Sri M.R. Achar, for the Appellant; Smt. Sujatha, Government Pleader and M/s. Kumar and Kumar, for the Respondent

Judgement

1. The petitioner is aggrieved by the order of renewal of licence of excise in his premises by respondent 2 in favour of respondents 3 and 4. The petitioner has claimed to be the owner of the premises and it is stated that the letter of no objection was given by him to the third respondent to obtain CL-2 licence to run liquor shop in the name of Maruthi Wine Depot and the licence was granted in 1985. A registered power of attorney was also executed in favour of the petitioner to run the business of Maruthi Wine Depot. There was no business carried on for the intervening period and on 6-1-1992 the petitioner has entered into an agreement with respondent 4 for running the shop for a period of four years. It is stated that the agreement dated 6-1-1992 came to an end in 1996 and therefore the respondents have no right to apply even for renewal of the licence, after that date. It is on the basis of the so-called conspiracy between respondents 3 and 4 licence is stated to have been granted. Respondent 4 had filed a suit in O.S. No. 2576 of 1996 against the third respondent for grant of permanent injunction restraining the petitioner from interfering with or dispossessing the 4th respondent from the premises. That suit is still pending.

2. The petitioner has submitted a representation on 13-6-1996 to respondents for not renewing the licence CL-2 for the year 1996-97, but nothing was done. The third respondent has terminated the power of attorney in favour of the petitioner on 26-6-1996. The petitioner is stated to have again made representation on 4-6-1997 to the respondents 1 and 2 for not renewing the licence for the year 1997-98 as he being the owner is not willing to continue the premises under the lease agreement. The licence was renewed.

3. It is stated that under Rule 4 of the (Sale of Indian and Foreign Liquor) Rules, 1968 the applicant has to specify the location of the premises, where he has to conduct the business and his right to carry on the business is restricted to the place mentioned therein. Under Rule 5 of the said Rules the Deputy Commissioner has to make enquiry and if he is satisfied only then the licence can be granted. It is admitted that at the time of the initial grant of licence no objection was taken by the petitioner, but after the lease itself has come to an end by efflux of time, the licence could not be renewed.

4. Learned Counsel for the petitioner submitted that renewal stands on the same footing as that of grant of fresh licence as observed in the case of N.S. Shethna Vs. Vinubhai Harilal Panchal, . It is further submitted that the consent of the landlord is a condition precedent for grant of such licence as was observed in the case of Pallava Granites Industries India (P) Ltd. Vs. Government of Andhra Pradesh and others, . Reliance was also placed on the decision in M.C. Chockalingam and Others Vs. V. Manickavasagam and Others, , wherein it was held that the tenant not being in lawful possession of the premises, licence cannot be granted after the expiry of the lease. This judgment was followed by this Court in the case of Kanthamma v S.A. Sudharshan and Another and it was held that if the owner disputes the lawful possession of the site, building or equipment with the tenant, then licence cannot be renewed or granted.

5. I have considered the above submissions. The provisions for grant of licence are contained in Section 26 of the Karnataka Excise Act, 1965 which is as under:

"26. Form and conditions of licence, etc.-

(1) Every licence or permit granted under this Act shall be granted on payment of such fees, for such period, and subject to such restrictions and on such conditions, and shall be in such form and shall contain such particulars, as may be prescribed.

(2) The conditions prescribed under sub-section (1) may include provision of accommodation by the licensee to Excise Officer at the licensed premises or the payment of rent or other charges for such accommodation at or near the licensed premises and the payment of the costs, charges and expenses (including the salaries and allowances of the Excise Officers) which the State Government may incur in connection with supervision to ensure compliance with the provisions of this Act, the rules made thereunder and the license"".

Rules have been framed as the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 and Rules 4, 4-A and 5 are relevant for the purpose of grant of licence, which are as follows:

"4. Application for license.

(1)Any person desiring to obtain a licence under these rules shall make an application to the Deputy Commissioner of the District if the sale is within a district or to the Excise Commissioner, if the sale is in more than one District in that behalf in Form CL-A1.

(2)The application shall contain the following particulars namely.-

(i) Name and address of the applicant.

(ii)If the applicant is a company or a firm, the names and addresses of all the Directors or partners of the company or firm;

(iii)Location of the premises where the applicant intends to conduct the business under the license;

(iv)If the sale is in more than one district, the names of districts.

4-A. Registration of application.-

(1)The Excise Commissioner or Deputy Commissioner, as the case may be, shall register every application immediately on its receipt in the register prescribed if the application does not contain the prescribed particulars or otherwise is not in order, the Excise Commissioner or Deputy Commissioner shall return such application to the applicant for re-submission under a written endorsement. If the applicant fails to re-submit such application within fifteen days from its receipt from the Deputy Commissioner such application shall be deemed to have been rejected.

(2)Every application received under sub-rule (1), shall be entered in the register prescribed and shall be allotted a registration number in the serial order specifying the time and date of its receipt.

(3)The Deputy Commissioner shall consider and dispose applications received under sub-rule (1) having regard to their date of receipt.

5. Grant of license, on receipt of the application under Rule 4, and subject to the provisions specified in Rule 4-A the Deputy Commissioner or the Excise Commissioner, as the case may be, may require such other particulars as he may deem necessary and may make enquiries for verification of the particulars furnished by the applicant and also such other inquiries as he deems fit. If the Deputy Commissioner or the Excise Commissioner, as the case may be is satisfied that there is no objection to grant the licence applied for, he may grant the licence on payment of the fee prescribed under Rule 8 for such licence:

Provided that no such licence shall be granted by the Deputy Commissioner

except with the previous sanction of the Excise Commissioner:

Provided further that while considering the applications for grant of CL-7 licence, the Deputy Commissioner shall ensure that the applicant is in a position to provide good accommodation and facilities to the customers and the standard of refreshments, food and service are provided for. If the Deputy Commissioner is of the opinion that the hotel or the boarding house does not conform to the minimum standard required for running a hotel or boarding house or not suitable to grant licence, he may reject such application after giving reasons therefor".

Under Section 29 of the Act, the licence granted can be cancelled or suspended. Section 29 reads thus:

"Power to cancel or suspend licence, etc.-

(1) Subject to such restrictions as the State Government may prescribe, the authority granting any licence or permit under this Act may cancel or suspend it-

(a) if any duty or fee payable by the holder thereof is not duly paid; or

(b) in the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or

(c) if the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act; or

(d) if the holder thereof is convicted of any cognizable and non-bailable offence or of any offence under the Dangerous Drugs Act, 1930, or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, or under the Trade and Merchandise Marks Act, 1958 or under Sections 481, 482, 483, 484, 485, 486, 487, 488 or 489 of the Indian Penal Code or of any offence punishable u/s 112 or 114 of the Customs Act, 1962; or

(e) if the conditions of the licence or permit provide for such cancellation or suspension at will.

(2) Where a licence or permit held by any person is cancelled under clause (a), clause (b), clause (c) or clause (d) of sub-section (1), the authority aforesaid may cancel any other licence or permit granted to such person under this Act or under the Opium Act, 1878.

(3) The holder shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof".

6. From the perusal of the above provisions, I am of the opinion that none of the judgments relied on by the learned Counsel for the petitioner are applicable to the facts of the present case. In the case of N.S. Shethna, supra, there was Rule 107 of the Bombay Cinema Rules, 1954 conferring power on the Licensing Authority to renew the cinema licence provided that an application in the manner laid down in Rule 102 has to be made. Except that it would not be necessary for

any such application for renewal to attach. No objection certificate or Building permission issued under Rules 6 and 93. Rule 102 required certain documents to be submitted along with the application. The Apex Court observed that renewal of a licence is not a matter of course. The fact that the Licensing Authority can in proper circumstances refuse an application for renewal and is not precluded from imposing different conditions and can grant it for a different period coupled with the absence of any rules for renewal are all indications leading to the result that renewal is a fresh grant and is not merely continuation of the licence previously issued.

7. In this case the dispute was that the licence was issued for the year 1960 for which show cause notice was issued. In the year 1961 the licence was renewed and the dispute was as to whether the show-cause notice issued for 1960 would be considered as the show cause notice in relation to the year 1961 as well. It is in this context the above observations of the Apex Court have been made. Even if it is considered that the renewal is not a matter of course, then the petitioner cannot get any benefit because the conditions which could be imposed are as specified in the Act and the Rules made thereunder. No such violation of any of the conditions have been stated, in the present case. The contention with regard to violation of Rules 4 & 5 is being considered separately.

8, Regarding the judgment in the case of M.C. Chockalingam, *supra*, it may be observed that Rule 13 of the Madras Cinema Regulation Rules, 1957 was interpreted in that case which is as under:

"10. With regard to the submission on the interpretation of Rule 13, we may read the same:

"If the applicant for the licence is the owner of the site, building and equipment, he shall produce to the Licensing Authority the necessary records relating to his ownership and possession thereof. If he is not the owner, he shall, to the satisfaction of the Licensing Authority, produce, documentary evidence to show that he is in lawful possession of the site, building and equipment.

The rule has got two parts. The first part deals with an applicant for the licence who is the owner of the site, building and equipment and the second is not such an owner. In the present case, the second part of Rule 13 is material since the respondent, who was the licensee is not the owner of the site, building and equipment. This position is admitted by both the parties. It is therefore, clear that under Rule 13 the respondent is required to produce documentary evidence to show that he is in "lawful possession" of the site, building and equipment. The only documentary evidence he showed with regard to his possession is the expired lease. Further the appellants had themselves applied for the grant of a licence and they resisted the respondent's right to possession of the property after expiry of the lease. In these circumstances, it is necessary to consider whether the High Court's view that such a possession is lawful possession is correct or not".

The above rule was interpreted as the condition precedent for "lawful possession" was contemplated under the rules. At para 15 the Court observed thus :

"Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it".

It is further held that:

"Juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession".

The word "lawful possession" which was interpreted in this case are not existing in the Excise Act or the Rules made thereunder. Therefore, the contention for grant of licence as is applicable under the Madras Cinemas Regulation Act and Rules made thereunder cannot be made applicable in the case of liquor licence. The Judgment rendered in the case of Kanthamma, supra, is also based on interpretation of Rule 6 of the Karnataka Cinema Rules, 1971 where also the applicant has to produce documents with regard to possession of site, building and equipment. The same condition is not existing under the Excise Act.

9. The decision rendered in the case of Pallava Granites, supra, is also not relevant. That case was pertaining to mining lease. It was observed by the Apex Court that "right to excavate the mines from the land of private owner is based on the agreement; unless the lessor gives his consent, no lessee has a right to enter upon his land and carry on mining operations. The right to grant mining lease to excavate the mines beneath the surface is subject to the agreement of the land owners". It was in these circumstances the condition for consent of the landlord was necessary.

10. It may be observed that the licence has to be granted by the Excise Authorities on the basis of fulfilling the requirements of the Act and the Rules made thereunder. Though the requirement of any consent of the landlord is not specifically there, but for administrative convenience it has been obtained as in the present case. Once the consent is obtained for, thence for the subsequent period it is not necessary that such consent has to be obtained for renewal of licence every year. Grant of licence cannot be regulated by the whim of the owner of the premises. There is no provision under the Act or the Rules for refusal or cancellation of the grant of licence or renewal in a situation when subsequently the landlord changes his mind. The whim of the landlord would not determine the fate of the tenant. The question whether there is a valid lease or tenancy in existence cannot be examined in the proceedings under Article 226 of the Constitution when a suit is also pending. The right of the tenant does not come to an end automatically with the termination of lease/tenancy. In these circumstances, I do not think that any case is made out for interference under the extraordinary jurisdiction under Article 226 of the Constitution.

11. Writ petition is accordingly dismissed.