
(2002) 01 MP CK 0085
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6097 of 2001

Devendra Kumar

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 10, 65, 71, 78, 8

Citation : (2002) 4 MPLJ 179

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Manish Datt, for the Appellant; R.S. Jha, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for issue of a writ of certiorari for quashment of the order dated 3-10-2001, Annexure P/2, whereby the decision of the State Government dated 10-9-2001 has been communicated by the Deputy Commissioner, Excise, Gwalior, indicating that a policy decision has been taken to the effect that apart from the districts, namely, Mandsour, Neemach, Ujjain, Shajapur and Ratlam the poppy- straw which was covered under the licences that expired on 31-3-2001 should be destroyed within 30 days.

The facts as have been unfurled in the writ petition are that the petitioner was granted a licence under the Narcotic Drugs and Psychotropic Substances (Madhya Pradesh) Rules, 1985 [hereinafter referred to as "the Rules"] to effect wholesale transaction in regard to poppy-straw. The said licence was valid till 31-3-2001. After expiry of the period the petitioner applied for renewal of the licence under Rule 37-R of the Rules but the same was not renewed. It is putforth that as on 31-3-2001 the quantity of 265 Qnts. 31 Kgs. 500 Gms. poppy-

straw was in possession of the petitioner and he submitted an application to the Excise Officer, Sehore so that, the poppy-straw should not be destroyed. The said application, as is apparent was filed vide Annexure P/3 on 31-10-2001. It is putforth in the writ petition that a poppy-straw merchant of Calcutta had made an offer to purchase the same by depositing requisite export fees by his letter contained in Annexure P/4, but no permission has been granted and a decision has been taken to destroy the poppy-straw.

No return has been filed by the respondents. Mr. R.S. Jha, learned Deputy Advocate General for the State has fairly stated that as a pure question of law arises, in the case no return is necessary.

Mr. Manish Datt, learned counsel for the petitioner raised threefold contentions namely, (i) when the petitioner had applied for renewal of the licence as envisaged under the Rules there is no justification to destroy the poppy-straw which is in his possession; (ii) he has indicated in Annexure P/3 that he had submitted the application to the competent officer prior to 31-10-2001 but as no action has been taken, he may be permitted to sell the stock to the purchaser who is from Calcutta; and (iii) the application which was filed having not been decided by the competent authority, such coercive steps are wholly unwarranted.

Mr. R.S. Jha, learned Deputy Advocate General for the State, combating the aforesaid submission urged that the petition is totally silent with regard to filing of the application. That apart, it is nowhere mentioned that the petitioner had arranged a licensee of the poppy-straw. It is urged by him that the licensee should be within the district and, therefore, the proponement made by the learned counsel for the petitioner is of no consequence. It is also putforth by him that Annexure P/3 in the last line vaguely indicates that he had filed an application for grant of disposal of the poppy-straw through an interstate licensee, but the said application has not been brought on record. It is canvassed by Mr. Jha that renewal of licence does not release the petitioner from the main operational sphere of the relevant rule.

To appreciate the rival submissions raised at the Bar, it is apposite to state that the Narcotic Drugs and Psychotropic Substances Act, 1985 (Cent. Act 61 of 1985) was brought into existence in the year 1985. On the basis of powers conferred on the State Government under sections 8, 10, 65, 71 and 78 of the Act, the rules were framed and the same came into effect from 14-11-1985. Chapter I of the Rules deals with definitions. Rule 2(g) defines "licence" means a licence granted under these rules. Chapter II deals with Opium Rules and Chapter III deals with Narcotic Drugs Rules which are not relevant for the present purpose. Chapter III-A deals Poppy-straw Rules. Rule 37-A lays down prohibition of poppy-straw. Rule 37-B provides for establishment of depots for sale of poppy-straw. Rule 37-D stipulates sale of poppy-straw. Rule 37-E provides Licensing authority and licence fee. It is apposite to quote Rule 37-D of the Rules. It reads as under:

"37-D. Sale of poppy straw. -- No person shall sell poppy straw except under a wholesale licence granted in Form P.S.II, or a retail sale licence granted in Form P.S. III, for medical or scientific purposes:

[Provided that a cultivator licensed under rules framed u/s 9 of the Act may, during the period from the 1st April to the 31st July, without licence sell poppy straw directly relatable to the crop produced by him to a person holding licence in Form P.S.II/III of the State Government:

Provided further that a cultivator may during the period from the 1st April to 31st July keep such poppy straw as are directly relatable to the crop produced by him and shall either sell or destroy by burning within this period the poppy straw in his possession.]"

It is not disputed at the Bar that the petitioner was granted the licence under Rule 37-D of the Rules. The same is apparent from the licence which has been brought on record as Annexure P/1. The other sub-rules are not relevant except the Rule 37-M. It reads as under:

"37-M. Disposal of balance. -- The following conditions shall apply to the disposal of balance of poppy straw left with a licensee holding a licence under this Chapter after cancellation or determination of his licence:--

(a) If the licensee has obtained a new licence for the same article which is to come into force immediately on the expiry of the old licence and is granted for the same place or premises may retain his balance of stock of poppy straw for the purposes of the new licence;

(b) If the licensee's new licence is for different place or premises he shall on the expiry of the old licence forthwith deposit his stock of poppy straw with such person as the District Excise Officer may by general or special order appoint for the purpose and shall not remove it thence to the new shop except under a permit granted by an Excise Officer not below the rank of Sub-Inspector;

(c) if the licensee has been granted no other licence has shall deposit his balance of poppy straw provided in clause (b) and with the prior sanction of the District Excise Officer may dispose it of in lump sum to any other licensee of the poppy straw. The stock shall then be transported to the place or premises of such licensee under a permit granted by an Excise Officer not below the rank of sub-inspector. In the event of the former licensee being unable to dispose of his balance of poppy straw within 30 days from the date of expiry of his licence the person to whom the new licence has been granted in his stead or if no such new licence has been granted any licensee of the poppy straw may be required, under penalty of forfeiting his licence to purchase the article at such price as the District Excise Officer may, fix and in any quantity not exceeding that which the District Excise Officer may determine to be ordinarily saleable by him in two months:

Provided that if the poppy Straw is unfit for use the whole of it or, if the quantity

is unreasonably large the excess may be destroyed under the orders of the District Excise Officer. The licensee shall not be entitled to any compensation for any loss suffered in consequence of action taken under this rule."

Rule 37-M(c) of the Rules is pertinent. On a scanning of the said rule it is quite vivid that if a licensee who has been granted no other licence is under an obligation to deposit the balance of poppy-straw provided in clause (b) of the said Rules and he may dispose of the same with the prior sanction of the District Excise Officer in lump sum to any other licensee of the poppy-straw. Thereafter the provision lays down the procedure with regard to transportation of the stock. The consequences are provided if the licensee does not do it within 30 days. The proviso is of immense relevance as that confers powers on the District Excise Officer to destroy the poppy-straw if it becomes unfit for use the whole of it or, if the quantity is unreasonably large.

It is not disputed that the term of the licence expired on 31-3-2001. The petitioner might have applied for renewal as contemplated under Rule 37-R of the Rules. In this case I am not concerned, whether licence should be granted or not. It is discernible that filing of an application for renewal does not enable the petitioner to get away from the mischief of the Rule as provided under Rule 37-M(c). The said rule applies in full force. Hence, submission of Mr. Manish Datt on that score is repelled.

The next aspect of argument putforth by Mr. Datt, learned counsel for the petitioner that he had applied within 30 days as there is reference to the same in Annexure P/3. The said application has not been brought on record. The mere reference vide Annexure P/3, dated 31-10-2001 does not assist the petitioner. That apart, it is submitted by Mr. Jha, learned counsel for the State that the petitioner was given the licence in Form PS-III. This fact was seriously disputed by Mr. Datt. To appreciate the submission, I have carefully perused Annexure P/1 and on a scrutiny of the same it transpires that the petitioner had deposited Rs. 2,48,000/- towards licence fee. I have scrutinized the Form PS-II which is appended to the Rules. In the Form PS-II the licence fee is more than that of the Form PS-III. That apart, the Form PS-III provides a different aspect and the explanation at the beginning therein is quite different than that of Form PS-II. The Form PS-II clearly stipulates import-export, whereas the Form PS-III does not provide the same. Be that as it may, as the petitioner has nowhere stated in the petition that he had arranged a licensee who was inclined to purchase the stock of poppy-straw from him; the two conditions precedent which are to be satisfied; or an application has to be filed within 30 days and there must be other licensee who is entitled to purchase. In absence of any averment on that score, submission of Mr. Datt, learned counsel for the petitioner is unacceptable.

Another facet that deserves mention is that, had the petitioner filed an application within a period of 30 days, proper steps, possibly could have been taken, but he chose to remain silent till the Government passed the order and thereafter this case was filed on 21-11-2001. The aforesaid factor also weighs

against the petitioner.

In view of the aforesaid premises, I am of the considered opinion, that the petitioner cannot claim the benefits under Rule 37-M of the Rules and no relief can be granted to him.

Resultantly, the writ petition, being devoid of merit, stands dismissed. However, there shall be no order as to costs.

Writ petition dismissed.