(1959) 04 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Pet No. 201 of 1958

Dinshaw Framroz — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 02-04-1959

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Excise Act, 1915 — Section 31, 32, 33

Citation : (1960) JLJ 365

Hon'ble Judges : G.P. Bhutt, C.J;P.K. Tare, J

Bench : Division Bench

Advocate : M.R. Bhode and P.R Padhye, for the Appellant; S.B. Sen, Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Bhutt, C.J.—This is a petition under articles 226 and 227 of the Constitution of India for issue of a writ of certiorari quashing the order of the State of Madhya Pradesh, respondent No. 1, dated 28-5-1958, and of a writ of mandamus to the Deputy Commissioner, Balaghat, respondent No. 2, to issue a license in form F.L. 1 of the Madhya Pradesh Excise Act. 1915, in pursuance of the order of the State of Madhya Pradesh, dated 27 10 1956

2. The petitioners formed a partnership to carry on excise trade in the name of "Dinshaw & Brothers"" and applied to the Minister of Excise. Madhya Pradesh, on 1-10-1956 for issue of a license for the sale of foreign liquor in form F. L, 1 of the Madhya Pradesh Excise Ac.. The application was made for the town of Balaghat which is a wet area The State of Madhya Pradesh by order, dated 27 10 1956. granted the permission in the following terms.

The State Government has decided to open a new shop of foreign liquor at Balaghat city and to grant a license of that shop to Shri Dinshaw & brothers, Wali Manzil, Kamptee Road, Nagpur No. 1

This order was signed by the Under-Secretary to Government of Madhya Pradesh, Separate Revenue Department, by order of the Governor of Madhya Pradesh.

3. On 1-11-1956 the petitioners deposited the necessary duly and fee in the Balagh treasury and also made an* application to the Deputy Commissioner Balaghat, for issue of a license in form F.L. 1, A telegram. to the same effect was issued by them to the Deputy Commissioner of Excise, Madhya Pradesh, on 12-11-1956 and they also made an application and sent a telegram to the State of Madhya Pradesh on 16-11-956 with the same request. Subsequently, they sent a telegram on 24-11-1956 to the Excise Commissioner, Madhya Pradesh, for issue of the necessary license. On 18-5-1957 they received a query from the District Excise officer. Balaghat, enquiring from them the amount spent by them in connection with the opening of a foreign-liquor shop at Balaghat. A reply thereto was sent by them to the Deputy Commissioner with copies to the Excise Commissioner and the Slate of Madhya Pradesh on 27-5-1958 in which they wrote as below:

The loss in business since November 1956 as well as the expenditure on the staff, premises, etc. till today is considerable and these could have been saved to us, had the F.L. 1 license been granted by your office without delay on receipt of our application and as per orders contained in Madhya Pradesh Government Memo dated 27-8 -56. Although we can look upon Government to compensate us for our above losses, we are agreeable, without prejudice, not to claim from Government these losses, in case the F L 1 license is granted to us immediately and thus the business is made to start without any more un due delay

They, however, received a copy of a letter, dated 28-5-1998, from the Government of Madhya Pradesh, Separate Revenue Department, to the Excise Commissioner, Madhya Pradesh. That letter is in these terms:

The State Government does not think it proper to grant a license of foreign liquor for Balaghat to Messrs Dinshaw & Brothers, The record received from you, vide the: confidential letter No. 1571 dared 15-3-58, is returned herewith

4. It appears that on 15-11-1956 one Tej lal Tembhrey, Member of the State Legislative Assembly; moved the Deputy Commissioner, Balaghar to call a meeting of the District Advisory Committee or the District Excise Advisory Committee on the question of opening a foreign liquor shop in the town of Balaghat. it was stated in his letter that the public was displeased with the order of the State of Madhya Pradesh permitting a shop of that kind to be opened in the town. The Deputy Commissioner, Balaghat, accordingly called a meeting of the Excise Advisory Committee which met on 22 November 1956 and unanimously decided that "no license for shops of foreign liquor be granted as it is against the policy of State prohibition". It was represented to us by the Government Advocate during the course of the argument that the State Government had not considered it proper to issue the license in form F.L.I to the

petitioners on account of their policy in respect of prohibition As this matter was not clear; we called upon the Government Advocate to show to us any formal decision of the State of Madhya Pradesh in that regard. No such formal order was brought o our notice, but an affidavit was filed by the District Excise Officer, Balaghat, an officer-in-charge of the present case in which it was Stated that the Government were following a policy of not opening a foreign liquor shop at Balaghat and that it was on that account that an application made by one Shri A.M. Naidu for grant of a license for sale of foreign liquor in the town of Balaghat was rejected by the State of Madhya Pradesh The letter that was sent to Shri A.M. Naidu in this connection is reproduced below:

Shri a. M. Naidu may please be informed that the question of granting license to him does not arise as the Government do not contemplate opening another shop at Balaghat.

This letter, it would be noted, is not clear as to whether the State of Madhya Pradesh did not contemplate opening of any foreign liquor shop in the town of Balaghat. This policy was also not mentioned in the letter of the State of Madhya Pradesh to the petitioners dated 28-5-1958, as a ground for not thinking it proper to grant to them. a license of foreign liquor.

5. While this is so it cannot be stated categorically that the State of Madhya Pradesh was not influenced by the resolution of the Excise Advisory Committee passed in its meeting, dated 22 November 1956. It cannot, therefore, be he''d that the action of the State of Madhya Pradesh in passing the order, dated 28-5-1958, was to achieve a collateral object not connected with the excise policy of the Government, The decision of this Court in Ahmed Hossain Mian Vs. The State ILR 1951 Nag. 959, is not attracted to this case

6. Rule I of para 77 of the rules made under the Excise Act deals with the constitution of the Urban Advisory Committees. Sub-rule (1) of rule II of the para deals with matters on which the Deputy Commissioner shall consult the Urban Advisory Committees. it is reproduced below:

The Deputy Commissioner shall consult the Advisory Committee of the Municipal or Cantonment areas concerned on all important excise matters directly affecting the consuming public and not concerned with the organization, discipline or procedure of the Excise Department, and in particular before making any change in-

(a) the number of excise shops for the sale of country liquor, intoxicating drugs and foreign liquor under license forms F.L.I. 1, 2 and 3, and their distribution in the several wards of the area; or

(b) the sites of shops licensed for the sale of liquor which way be consumed on the premises.

7. It was urged in this connection that what this sub-rule contemplates are matters which directly affect the consuming; public, namely, the persons who are

actually using the liquor for which the issue of a license is contemplated We do not think that such a narrow interpretation can be given to this sub-rule. The Urban Advisory Committee is required to take it to consideration the interests of all persons who are addicted to drinking liquor while considering whether a foreign liquor shop should be allowed to be opened in any particular municipal area. It is, therefore, not correct to contend that the resolution passed by the Excise Advisory Committee was wholly without jurisdiction and could not be taken into consideration by the State of Madhya Pradesh while deciding whether any foreign liquor shop should be allowed to be opened in the town of Balaghat.

8. Section 31 of the Madhya Pradesh Excise Act deals with the power of the licensing authorities to cancel or suspend a license and lays down the conditions which may authorize them to exercise that power Section 32 of the Act deals with the power of the licensing authorities to withdraw licenses in cases which are not covered by section 31. that section is reproduced below:--

32 (1) Whenever the authority which granted any license under this Act considers that such license should be withdrawn for any cause other than those specified in section 31, it shall remit a sum equal to the amount of the fees payable in respect thereof for fifteen days, and may withdraw the license either-

(a) On the expiration of fifteen days'' notice in writing of its intention to do so, or

(b) forthwith without notice.

(2) If any license be withdrawn under clause (b) [of sub-section (1), the aforesaid authority shall, in addition to remitting such sum as aforesaid, pay to the licensee such further sum (if any) by way of compensation as the Excise Commissioner may direct.

(3) When a license is withdrawn under sub-section (1), any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him, after deducting the amount (if any) ''due to the Government.

Section 33 deals with the surrender of a license by a person holding a license. The explanation attached to that section provides that the words, ''holder of a license'', as used in the Section include a person whose tender or bid for a license has been accepted, although he may not actually have received the license.

9. While therefore, the holding of a license is not necessary for purposes of section 33, it appears on like reasoning that section 32 is not confined to cases where a license has been actually issued in pursuance of an order of the licensing authority. As section 32 is applicable even when a license has been issued, ft follows that the power conferred by that section can also be exercised before the license is issued Where, therefore, there is an order in favor of any particular person for issue of a license and the licensing authority refuses to implement that order subsequently, it should amount to withdrawal of the license within the meaning of section 32. The order of the State of Madhya Pradesh, dated 28

5-1958, must, therefore, be deemed to be related to the power conferred on the licensing authorities under this section. No person, whose license is withdrawn or in whose favor the licensing authority refuses to implement the order to issue a license, can therefore complain of the non-continuance or non-issuance of the license, and all that he can claim is monetary compensation for the action that has been taken against him.

10. In the view taken above, the various authorities that were cited before us do not, as a matter of fact, apply to the present case. We may, however, briefly refer to them.

11. Rex vs. Woodhouse (1906) 2 K. B- 501 was a case where the licensing justices acting under the Licensing Act, 1904, were not competent to grant provisional licenses to the applicant for renewal of their licenses without first considering judicially objections made to the renewal of licenses. It was on that account that the provisional licenses that were issued to the applicants were quashed and a writ of mandamus was issued to hear and determine the applications for renewal of the licenses in accordance with law. So also in Rex vs. The London Country Council (1931) 2 K.B. 215, the County Council had in granting the license viola'' ted the provisions of the Sunday Observance Act 1780. and on that account the order passed by it granting the license to be operative on days prohibited by the said Act was held to be without jurisdiction In Errington vs. Minister of Health (1939) 1 K.B. 249 the local authority making a clearance order u/s 1 of the Housing Act, 1930, submitted the order to the Minister of Health for confirmation and as the Minister had not complied with the provisions of para "4 of the First Schedule to the Act of 1930 while confirming the order of the local authority, the order passed by the Minister was quashed. In all these cases, therefore, the authorities concerned had violated the provisions of law under which they were empowered to act. The present is not, however, a case of that kind. Here, even if a license was granted to the petitioners, it could be withdrawn u/s 32 of the Madhya Pradesh Excise Act without notice. The contention of the petitioners, therefore, that the State of Madhya Pradesh was bound to hear them before withdrawing its order, dated 27-10-1956, cannot be maintained.

12. Our attention was also drawn to the copy of the letter, dated. 8-5-19:8, from the Government of Madhya Pradesh, Separate Revenue Department, to the Excise Commissioner, Madhya Pradesh, in which it is not stated that the letter was issued by order of the Governor of Madhya Pradesh, This may be a formal defect in expressing the action taken by Government, but since the State of Madhya Pradesh has in their affidavit confirmed the said action, the remedy of the petitioners is merely to claim compensation for the withdrawal of the order, dated 27-10-1956. The State of Madhya Pradesh was, it is evident, ready to compensate the petitioners and will no doubt decide that matter expeditiously when the petitioners put in their claim.

13. The petition accordingly fails and is dismissed; but, in the circumstances of

the case, there shall be no order as to costs. The outstanding amount of the security deposit shall be refunded to the petitioners.

