

(1989) 09 KAR CK 0037
In the Karnataka High Court
Case No : W.P. No. 15389/1989

Durga Distillery

APPELLANT

Vs

Excise Commissioner and Another

RESPONDENT

Date of Decision : 22-09-1989

Acts Referred:

Karnataka Excise (Distillery and Warehouse) Rules, 1967 — Rule 3

Citation : (1989) 3 KarLJ 345

Hon'ble Judges : K. A. Swami, J

Judgement

Swami, J.-At the stage of preliminary hearing Sri T.R. Subbanna, learned Government Advocate, was directed to take notice for the respondents. Accordingly, he took notice. He has also secured the records. As the petition can be decided on the basis of the records produced by the learned Government Advocate and also the records produced by the petitioner along with the Writ Petition and the additional statement of facts, Rule is issued and the petition is heard for final disposal.

2. In this petition under Article 226 of the Constitution, the petitioner has sought for issue of a writ in the nature of mandamus (1) directing the Excise Commissioner-respondent-1 to issue licence for the manufacture of Indian made liquors out of rectified spirit as sought for by the petitioner and approved by Government, under the provisions of Karnataka Excise (Distillery and Warehouse) Rules, 1967, and also to issue the bottling licence under the provisions of Karnataka Excise (Bottling of Liquor) Rules, 1967 for enabling the bottling of, such liquor manufactured by the petitioner; (2) directing respondent-2 State Government to see to the issue of such licences forthwith by the Excise Commissioner, and (3) directing the respondents to pay compensation to the petitioner for the loss of income suffered by the petitioner by reason of the failure to issue the licence for the period 9-1-1988 till date and for such further period as may be taken for issue of such licences.

3. The case of the petitioner is that the State Government before the imposition

of the President's Rule accorded prior sanction for grant of licence to the petitioner to manufacture I.M.L. out of rectified spirit and also ordered for allotment of 25,000 litres of rectified spirit per month by its order dated 6-1-1988 bearing No. HD 51 EFL 84, addressed to the Excise Commissioner, Annexure-C; that in spite of the prior sanction granted by the State Government as per Annexure-C, the licence to manufacture I.M.L. out of rectified spirit has not been granted and allotment of quota of 25,000 litres of rectified spirit per month has not been made; that even after the imposition of the President's Rule, the State Government, on the report made by the committee appointed to go into all the applications and suggest the norms, issued a General Order No. HD 78 EEL 88 dated 7-6-1989. Annexure-O; that in accordance with the aforesaid general order Annexure-O the case of the petitioner fell within sub-clause (ii) of the Government Order, Annexure-O. Therefore the State Government issued another order dated 2-8-1989 bearing No. HD 160 EFL 88 directing the Excise Commissioner to grant the request of the petitioner for issue of a licence as previously instructed on 4-7-1989.

4. However, it is contended by Shri Subbanna, learned Government Advocate, that the Government Order dated 6-1-1988 has no efficacy in law, because on the date that order was passed there was no application filed in the prescribed form before the prescribed authority for grant of licence as required by the Karnataka Excise (Distillery and Warehouse) Rules, 1967 (hereinafter referred to as "the Rules"); that as per Rule 4 of the Rules, the power to grant is vested in the Commissioner and in exercise of that power if the Commissioner decides to grant the licence he has to grant the licence with the previous sanction of the State Government and in the facts and circumstances of the case if he decides to reject the application, the question of obtaining prior sanction from the State Government does not arise. Therefore it is submitted that as there was no application filed prior to 6-1-1988 before the Commissioner for grant of licence as per the Rules and there was no decision taken by the Commissioner to grant it, the approval granted by the State Government on the petition filed before the Chief Minister has had no efficacy in the eye of law.

5. If only the matter stood at that probably the submission made by the learned Government Advocate deserved to be accepted. Because as per Rule 3 of the Rules every person who wishes to obtain a licence to establish and work a distillery, shall make an application in Form No.1 to the Commissioner through the Deputy Commissioner of the District in which he wishes to establish a distillery, furnishing in duplicate full description of the premises, plan of the building wherein he proposes to locate the distillery together with a description of the still and all other apparatus and a treasury challan for having credited the fee prescribed in Rule 7. On receipt of such an application, the Deputy Commissioner, as per sub-rule (2) of Rule 3 of the Rules, is required to get it processed through the officer authorised by him and verify the particulars mentioned in the application and forward it along with his report to the Commissioner and thereafter the Commissioner has to examine the same. As per

Rule 4 of the Rules if the Commissioner on receipt of the application under Rule 3 and after such verification referred to therein may grant, with the previous sanction of the State Government, a licence in Form 2 subject to the rules and the conditions of the licence. Thus, the contention put forth by learned Government Advocate is fully supported by rules 3 and 4 of the Rules. On 6-1-1988, there was no application made to the Commissioner by the petitioner in the prescribed form as per rule 3 of the Rules through the Deputy Commissioner of the district in which he intends to or intended to establish a distillery. In the absence of such an application, the State Government could not have directly entertained the representation and passed an order. When the field is covered by the statute and the Rules framed thereunder and the Rules prescribe particular procedure and empower particular authority to exercise the power, merely because the prior sanction of the State Government is required to be obtained before granting the licence does not enable the State Government to ignore the statute and the Rules and the procedure prescribed and grant prior sanction without even an application filed before the appropriate authority in the prescribed form and the prior sanction is sought for by the granting authority. In the instant case the State Government directly entertained the application. The report was called for from the Excise Commissioner who by his letter dated 2-12-1987 made an adverse report which reads thus:

"No.EXE.DST DSL.97/87-88 Office of the Excise

Commissioner in Karnataka,

Bangalore,

Dt: 2nd Dec. 1987.

To

The Secretary to Government,

Home Department (Excise),

Vidhana Soudha,

Bangalore.

Sir,

Sub: Request of the Managing partner M/s. Sree Durga Distillery, Kaup, Dakshina Kannada District for the permission to manufacture IML out of rectified spirit and request for the allotment of rectified spirit-reg:

Ref: Government letter No.HD 17 1EFL 87(P) dated 19-11-1987.

With reference to the subject cited above, I am to inform you that this "distillery licence" to manufacture fenny, is issued under Sections 13 and 16 read with Rule 7 of Karnataka Excise (Distillery & Warehouse) Rules, 1967, for the specific purpose of manufacturing fenny. Accordingly, only Rs. 7500/- as licence fee has

been collected under Rule 7(1). Therefore the question of imposing unreasonable restriction or conditions restraining the manufacture of other types of IML like Whisky, Rum, Gin etc; does not arise. If we concede to this request, then we may have to permit all the distilleries which come under the category of Rule 7(1) (i) to manufacture all sorts of IML. Therefore, the request of the applicant does not stand to reason. Further the position of rectified spirit in the State has nothing to do in enlarging the scope of this distillery. In case in view of the improved position of rectified spirit, if the Government wants to issue new molasses based distillery licences, separate action has to be taken in this regard. Apart from this, there is restriction on issue of new licences for manufacture of IML. This is for your kind information."

However the file reveals that there were two letters dated 19-6-1987 and 29-10-1986 written by the MLA from Kallambella Constituency and Chief Whip, Karnataka State Legislative Assembly at pages 5 and 2 respectively in the File No. HD 51 FEL 84(P) for granting licence to the petitioner. The Government accorded prior sanction on 6-1-1988 as per Annexure in spite of the adverse report made by the Excise Commissioner. The highest that could have been done was to send the representation to the Excise Commissioner at the same time advising the party to present the necessary application addressed to the Commissioner in the prescribed form before the Deputy Commissioner of the District and further to direct the authorities to process it in accordance with law. Therefore the prior sanction granted by the State Government straightaway on 6-1-1988 in the absence of the application filed in the prescribed form and also in the light of the report of the Excise Commissioner dated 2-12-1987 reproduced above cannot at all be held to be in accordance with the Karnataka Excise Act, 1965, (hereinafter referred to as the Act and the Rules). No doubt under section 3(1) of the Act the State Government is the authority to appoint an officer not below the rank of a Deputy Commissioner as a Commissioner for the State of Karnataka, and the Excise Commissioner subject to the general or special orders of the State Government shall be the Chief Controlling Authority in all matters connected with the administration of the Act. The power of the State Government to issue general or special directions under Section 3(1) of the Act is intended to be exercised for issuing general or special directions for the better and efficient administration of the Act and not for issuing specific direction in a specific case ignoring, and contrary to the Rules, and the prescribed procedure. Therefore the order dated 6-1-1988 Annexure-C has had no efficacy in law.

6. As already pointed out, if the matter had stood at that, the relief sought for by the petitioner could not have been granted. But the subsequent development in the case is that after 6-1-1988, the petitioner has filed the application in the prescribed form before the prescribed authority. A Committee was appointed by the State Government on 8-6-1988 under the chairmanship of the Excise Commissioner with two members and a convenor to go into all the pending applications and to make a report regarding grant of licences. Under the chairmanship of the Excise Commissioner, the Committee went into the

applications pending as on the date it made the report. Pursuant to, and on consideration of, the report the State Government issued a general order No. HD 78 EFL 88 dated 7-6-1989, Annexure-O. Even thereafter also, the licence was not granted to the petitioner. Therefore, the petitioner was required to make a representation dated 18-7-1988 as per Annexure-S before the State Government. That representation was with reference to the application filed by the petitioner earlier and subsequent to 6-1-1988 in the prescribed form. Pursuant to that representation the State Government by the order dated 2-8-1989 bearing No. HD 160 EFL 88 Annexure-T informed the petitioner that the Excise Commissioner had already been requested to issue licence in favour of the petitioner firm taking into consideration the fact that the prior approval of the Government had been conveyed in Government Order No. HD 51 EFL 84(P) dated 6-1-1988 and in accordance with item (ii) of Government Order No. HD 78 EFL 88 dated 7-6-1989.

7. Learned High Court Government Advocate has also produced the entire file relating to the order dated 2-8-1989 and also the general order of the Government dated 7-6-1989. The order dated 2-8-1989 has been issued in the light of the aforesaid orders dated 6-1-1988 and 7-6-1989 and on the application filed by the petitioner in the prescribed form and considered by the Excise Commissioner. In this regard it is already pointed out that the Committee constituted by the State Government under the chairmanship of the Excise Commissioner went into all the applications including that of the petitioner and made a report. It was on the basis of this report the Government Order dated 7-6-1989 was issued. It was a general order. Under these circumstances, even in the absence of the Order dated 6-1-1988 the subsequent orders of the State Government dated 7-6-1989 and 2-8-1989 are Sufficient to hold that the application filed by the petitioner in the prescribed form for grant of licence in question, was considered in accordance with the Rules and the prior sanction was granted by the State Government in accordance with the Rules. The order dated 2-8-1989 specifically directs that the licence shall be issued in the light of the orders dated 6-1-1988 and 7-6-1989. The effect of the Govt. Order dated 2-8-1989 is to adopt the Government Order dated 6-1-1988. Hence, even though on the interpretation of Rules 3 and 4 of the Rules the submission of the learned Government Advocate in respect of the Government Order dated 6-1-1988 is justified, but in the light of the subsequent orders passed during the pendency of the application filed in the prescribed form by the petitioner, the petition is entitled to succeed.

8. For the reasons stated above, this writ petition is allowed in the following terms:

(A) The Excise Commissioner is directed to issue licence to the petitioner for the period from 1-7-1989 to 30-6-1990 as prayed for in the application dated 25-5-1989, filed in the prescribed form, produced as Annexure-V2, if all other requirements of the Rules are satisfied. As far as the prior sanction of the State

Government for granting the licence is concerned, as already pointed out, it has already been granted;

(B) The Excise Commissioner shall also allot a quota of 25,000 litres of rectified spirit per month subject to availability as is done in the case of other IML manufacturing units for the purpose of the distillery in question and subject to such orders of the State Government regarding modification of the quota of rectified spirit, if any, made by the State Government subsequent to 6-1-1988.

Compliance on or before 16th October, 1989.

A copy of this order shall be made available to learned Government Advocate, immediately.