

(1977) 08 AHC CK 0018
In the Allahabad High Court
Case No : Civil Misc. Writ No. 3952 of 1972

Ganga Prasad

APPELLANT

Vs

Zila Abkari Adhikari, Banda and Another

RESPONDENT

Date of Decision : 11-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Excise Act, 1910 — Section 29, 31

Citation : AIR 1978 All 41

Hon'ble Judges : J.M.L. Sinha, J; D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : R.S. Dubey, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Sinha, J.—This writ petition has been filed by Ganga Prasad under Article 236 of the Constitution challenging the validity of the proceedings proposed to be taken by the respondents for recovering certain amounts from him as land revenue.

2. The facts leading up to this petition can briefly be stated as under:

The petitioner obtained Theka of Deshi Sharab at Kalinjar, Banda, for the years 1970-71 and 1971-72. One of the conditions of the auction was that the petitioner shall take at least 430 liters per month of Deshi Sharab for sale at his shop and that, in case he failed to lift the aforesaid quantity of liquor, he would have to pay as compensation an amount equal to the excise duty leviable on the uplifted quota. It appears that the petitioner failed to lift the aforesaid quantity of liquor from the warehouse during the periods 1970-71 and 1971-72. The District Excise Officer, Banda, therefore, sent a notice to him on 15-3-1972 for the recovery of Rupees 1,442.20 for the year 1970-71 and a letter dated 11th May, 1972 for recovery of Rs. 186 for the year 1971-72 as arrears of land revenue. Aggrieved against the aforesaid notices and the action proposed thereunder, the petitioner filed the present writ petition.

3. In the counter-affidavit sworn on behalf of the respondents it is stated that the aforesaid amount was payable by the petitioner under Clauses 3 (a), 3 (b) and 3 (c) of the licence. It is also averred in the counter-affidavit that the contents of the aforesaid clauses were made known to all the bidders, who participated at the time of the auction, and, consequently, the petitioner could not challenge the recovery of the aforesaid amounts.

4. The sole question for consideration in the present petition is whether the condition in the licence, that the petitioner shall lift a fixed quantity of liquor from the warehouse every month and, in the event of default, he shall be liable to pay compensation equal to the excise duty leviable on the amount of the quota uplifted, was a valid and enforceable condition.

5. In the case of Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, the impugned clauses of the licence came up for consideration and the Supreme Court, placing reliance on an earlier decision in Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc.,

"We have, therefore, not the slightest hesitation in holding that the demand made by the appellants though disguised as compensation, is in reality a demand for excise duty on the uplifted quantity of liquor which is not authorised by the provisions of the Act."

In view of the above rule laid down by the Supreme Court, it must be held that the impugned condition of the licence in the instant case also was invalid and unenforceable.

6. Learned Standing Counsel, however, urged that the petitioner offered his bid in the auction with full knowledge of the terms and conditions of the licence and he cannot, by the present writ petition, be permitted to wriggle out of the contractual obligations arising out of the acceptance of his bid. Reliance was placed by the learned Standing Counsel for this argument on the decision of the Supreme Court in the case of Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, .

7. In our opinion, the case relied upon by the learned Standing Counsel is clearly distinguishable. In that case the petitioners were the highest bidders in an auction for getting rights to sell liquor at two vends. The bids were accepted and the petitioners were granted licence to sell the liquor in lieu of a lump sum consideration viz. the bid money. The Supreme Court held that the right in regard to intoxicants belongs exclusively to the State and it is open to the State to part with their rights for a consideration. The Supreme Court held that it was a case of contractual obligation which cannot be subject of writ jurisdiction. The Supreme Court however, clarified by further observing (in para 56): (at p. 1133 of AIR) :

"The amounts charged to the licensees in the instant case are, evidently, neither in the nature of a tax nor of excise duty."

The Supreme Court further on said (at p. 1133 of AIR):

"By "licence fee" or "fixed fee" is meant the price or consideration which the Government charges to the licensees for parting with its privileges and granting them to the licensees. As the State can carry on a trade or business, such a charge is the normal incident of a trading or business transaction."

The Supreme Court thereafter made a reference to an earlier decision in the case of Bhajan Lal v. State of Punjab (Civil Appeals Nos. 1642 and 1643 of 1968 decided on 21-8-1972 (SC)). In that case one of the conditions of the licence was of the same nature which is impugned in the instant case, and the Court observed:

"This argument overlooks the significant difference between the rule struck down in Bhajan Lal's case and in Jage Ram's case, and the amended Rules now in force. Under the old Rule 36 (23-A) still-head duty which was admittedly in the nature of excise duty was payable by the licensee even on quota not lifted by him. The Rule and condition No. 8 founded on it were therefore struck down in Bhajan Lal's case as being beyond the scope of Entry 51 of List II, the taxable event under the impugned Rule being the sale and not the manufacture of liquor. Rule 36 was amended on March 31, 1967 in order to meet the judgment in Bhajan Lal's case but the High Court found in Jage Ram's case that even under the amended Rule, still-head duty which was in the nature of excise duty was payable on uplifted quota of liquor. The position obtaining under the Rules as amended on March 22, 1968 which are relevant for our purposes is in principle different as the still-head duty is now only 0.64 paise as against Rs. 17.60 per liter which was in force under the old Rules and excise duty as such is no longer payable on uplifted quota. The principle governing the decision in Bhajan Lal's case and Jage Ram's case cannot, therefore, apply any longer."

8. From the above observation it would appear that, even in the case of Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, , the Supreme Court approved that, if the rules or the conditions contained any clause of the nature that was impugned in the instant case, it would be bad in law. We thus fail to find that there is any variance in the rule laid down by the Supreme Court in the case of Har Shankar (supra) and the rule laid down by the Supreme Court in the case of Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, . The latter case squarely covers the point that is in issue before us and we see no reason whatsoever as to why we cannot act upon it.

9. Therefore, placing reliance on the decision of the Supreme Court in the case of Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, we find that the respondents could not re-cover from the petitioner any amount as compensation on the uplifted quota of liquor.

10. This petition is accordingly allowed. The notices dated 15th March, 1972 and 11th May, 1972, are quashed and the respondents are directed to desist from

realising the amount of compensation specified in the aforesaid notices as arrears of land revenue. No order is, however, made as to costs.