(1970) 12 DEL CK 0021

In the Delhi High Court

Case No : Letter Patent Appeal No. 142 of 1970

Gayco Private Limited and Others — APPELLANT

Vs

A.A. Khwaja and Others — RESPONDENT

Date of Decision : 08-12-1970

Acts Referred:

Citation : (1970) ILR Delhi 453

Hon'ble Judges : Hardayal Hardy, J;D.K. Kapur, J

Bench : Division Bench

Advocate : D. Mukherjee, Urmila Kapoor, M.L. Rawal, S.N. Chopra, R.L. Tandon and R.L. Roshan, for the Appellant;

Judgement

Hardayalhardy, J.

(1) The appellants in this appeal andL.P.A. No. 143 of 1970 under clause 10 of the Letters Patent werepetitioners in two writ petitions filed by them under Article 226 ofthe Constitution which have been dismissed by a learned Single Judge. (2) Gayco Private Limited is appellant No. 1 and will hereafter be described as the company while the other two appellants Shri B. R. Chawlaand Shri Vinod Chawla are the Chairman and General Manager respectively of the company. The appellant Gayco Private Limited holds alicense for whole-sale and retail sale vendor of foreign liquor to thetrade only in Form L-l. The license is issued under the Delhi Liquorlicense Rules, the authority competent to grant the license being theLt. Governor who has been imp leaded as respondent No. 2 while theother two respondents are Shri A. A. Khwaja, Collector of Excise (respondent No. 1) and Delhi Administration (respondent No. 3).

(3) Between 7-6-1970 and 8-6-1970, the houses and godowns of the company at Basti Harphool Singh and Sadar Thana Road were searched by Shri N. K. Jain, Excise Inspector and it was found that the actual stock of Whisky was short by one and one-quarter bottles. from the godown in Sadar Thana Road, four wooden cases were also foundcontaining four small drums of rectified spirit. The

total contents filled180 bottles. Although the raid was alleged to have taken place on twodifferent dates, actually it is the continuous range of the two raids, thattook place one after the other. The raid was organized under thesupervision of the Deputy Superintendent of Police (Crime) on thereport of the Excise Inspector Shri N. K. Jain. On 10-6-1970 the Lt.Governor passed the following order :-

"IN my opinion notice should be issued for both theoffences. How much period shall be given for submissionof reply-it should be minimum."

(4) On 11-6-1970, the Collector of Excise Delhi (respondent No. 1) issued two separate notices to the company in respect of the seizure made in the above two raids. He however took care to sign the said notices as"for competent authority". The seizure of 180 bottles of rectifiedspirit was alleged to be a contravention of rule 5.35(20) of the ExciseManual, Volume Ii, rendering the license of the company in Form Lliable to cancellation. The company was asked to show cause why itslicense should not be suspended/cancelled.

(5) In respect of the shortage of one and one-quarter bottles of Whisky it was alleged that the provisions of rule 5.35(15) of the Delhi Excise Manual, Volume Ii were contravened. The company was asked toshow cause why its license should not be suspended for that reason.When the so-called rectified spirit filling 180 bottles was sent for Chemical analysis on 12-6-1970, the report dated 18-6-1970 disclosed thatthe said liquid was neither country liquor nor foreign liquor but wasliquor of illicit origin. In reply to the show cause notice, the companychallenged the jurisdiction of the Collector to issue the same. Thepresent writ petitions were filed on 24-6-1970 and this court stayedfurther proceedings in pursuance of show cause notices.

(6) In the petitions, the validity of the issue of show cause notices was challenged by the appellants on five separate grounds. It however seems that when the original petitions were before the learned Single Judge, Shri M. C. Chagla who was then appearing on behalf of theappellants had pointed out that a prosecution had already been launchedagainst them u/s 61 of the Punjab Excise Act, 1914. Heargued that action to suspend or cancel the license could be taken u/s 36(d) after the appellants were convicted in the said prosecution.

(7) The Collector of Central Excise filed a counter-affidavit wherein it was stated that he was authorised to reply to the petition not only onhis own behalf but also on behalf of the other two respondents. In theaffidavit it was pointed out that the notices were issued by him "for thecompetent authority" meaning thereby that they were issued under the orders of the appropriate authority which in the context meant the Lt.Governor. The Collector is required to find facts after a proper inquiryand submit his report. The final decision would have to be taken bythe Lt. Governor in accordance with law. The allegations of malafides were denied. The provisions of Section 36 of the PunjabExcise Act and those of Rules 5.35(20) and 5.35(15) of the DelhiLiquor license Rules were attracted to the

issue of the notices and theproceedings started against the appellants were Therefore in the natureof a fact finding inquiry, pursuant to the directions of the Lt. Governorand the practice that is generally followed in such cases. The thirdpoint which was raised by Mr. M. C. Chagia was no doubt not raisedin the petitions and as such there was no reply to it in the counter-affidavits, but the point was raised before the learned Single Judge andwas answered against the appellants.

(8) At the hearing of the appeals, the main question raised byMr Mukerjee, learned counsel for the appellants, is that the learnedSingle Judge had erred in holding that though the Lt. Governor was the proper authority to deal with the question of suspending or canceling the license, the inquiry against the appellants was being made bythe Collector. His argument is that u/s 36(c) the authoritygranting any license, permit or pass under the Punjab Excise Act, 1914,has got the power to cancel or suspend it in the event of any breach bythe holder of such license, permit or pass or by his servants, or by anyone acting on his behalf with his express or implied permission, of any of the terms or conditions of such license, permit or pass. And thatauthority is the Lt. Governor himself. Any action taken by the Collector in hearing the evidence and submitting his report to the Lt. Governor, is a violation -of the rule and any decision based thereon, even bythe Lt. Governor, would be vitiated.

(9) In support of the view taken by the learned Single Judge, a reference has been made by him to the Supreme Court''s decision in Pradyat Kumar Bose Vs. The Hon''ble The Chief Justice of Calcutta High Court, . That was a case in which a Registrar andAccountant General of the High Court on its Original Side, was dismissed by the Chief Justice of Calcutta High Court after an enquirywas made by Mr. Justice Das Gupta. After he was given opportunityby the Chief Justice to show cause, he was dismissed by the order of the Chief Justice. One of the questions raised on behalf of the appellant was whether the Chief Justice could delegate the enquiry into thecharges to another Judge instead of making the inquiry himself. It washeld by the Supreme Court that the objection to the validity of dismissal on the ground that the delegation of enquiry, amounted to adelegation of power, was without substance because the exercise ofpower to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power and it is well-settled that astatutory functionary exercising such a power cannot be said to havedelegated his function merely because he has deputed a responsible andcompetent official to enquire and report on the allegations made againstthe appellant.

(10) In that very case, a reference was made to the Board of Education v. Rice and others 1911 AC 179 where a functionary whohad to decide an administrative matter was held to have obtained thematerial on which he was to act in such manner as may be feasible andconvenient, provided only the affected party "has a fair opportunity tocorrect or contradict any relevant or prejudicial material."

(11) Reference was also made in that very case to Local Government Board v.

Arlidge 1915 AC 210 (s) where the learned Chancellor observed that "in the case of the Local Government Board it isnot doubtful what this (ordinary) procedure is. The Minister at thehead of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for allthat is done in his department. The volume of work entrusted to himis very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, andhe has discharged his duties if he sees that they obtain these materialsfor him properly. To try to extend his duty beyond this and to insistthat he and other members of the Board should do everything personallywould be to impair his efficiency."

(12) The contention urged by Mr. Mukerjee is that the case of Pradyat Kumar Bose was a case of dismissal and Therefore did not involvea quasi-judicial act, but was an administrative act. In such a case, IT is permissible for the authority to allow the necessary facts to begathered by some one else and then pass the order of dismissal. Butso far as judicial and quasi-judicial acts are concerned, the enquiry hasto be made by the authority which has ultimately to pass the final order.

(13) In the present case, the act of suspension or cancellation of the license is a quasi-judicial act and Therefore the whole of the enquiry has to bemade by the Lt. Governor. According to the learned counsel, it is truethat while granting a license the Lt. Governor has to act administratively.But once a license has been granted and has ordinarily to run up to aparticular period, any mid-term cancellation or suspension calls for ajudicial or quasi-judicial approach.

(14) It seems to us that the basic contention advanced by Mr. Mukerjee is right. We have not the least doubt in our mind that while considering the question of granting a license the authority has to act in an administrative manner, although in the case of Ghaio Mal and Sons v. TheStale of Delhi AIR 1958 Scr 1424, the Supreme Court hadordered that the case of grant of an L-2 license should be consideredby the Chief Commissioner by inviting applications from intendinglicensees including the appellants and M/s. Gainda Mal Hemraj andgranting the same to the most suitable party. It is well known thatthereafter the case was heard by the Chief Commissioner in the presenceof all the parties. But that is not what the Supreme Court had ordered.The only order made by the Court was that applications should beinvited by the. intending licensees. The distinction between an administrative and a judicial or quasi-judicial act may appear at times to be indefinable, but the distinction is there none-the-less. As was said byDas J. (as he then was)in Re Banwarilal Roy (1944) 48 Cal W N 766 that "a judicial or quasi-judicial act, on the otherhand, implies more than mere application of the mind or the affirmationof the opinion. It has reference to the mode or manner in which thatopinion is formed. It implies "a proposal and an opposition" and adecision on the issue. It vaguely connotes "hearing evidence and opposition" as Scrutton L.J. expressed it. The degree of formality of theprocedure as to receiving or hearing of evidence may be more or

lessaccording to the requirements of the particular statute, but there is anindefinable yet an appreciable difference between the method of doingan administrative or executive act and a judicial or quasi-judicial act."

(15) While granting a license, the authority has to consider the claims of various applicants. It may. if it considers necessary, record evidence or may not do it at all. The circumstances which enable it to come to the right conclusion may involve opportunities of getting evidence ormaterial from other sources, but once a decision is arrived at, it cannotbe challenged on the ground that the procedure adopted by the authoritywas irregular. It may be challenged on the ground of mala fides. biasor it may be challenged on the ground of want of authority but itcannot be challenged on the ground that action has been taken withoutrecording evidence or without giving an oral hearing to the persons whohad applied for an order as applicants.

(16) Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, is the case on which considerable reliance has been placed by Mr. Mukerjee. The criteria to ascertain whether a particular act is a judicial act oran administrative act, have been laid down with clarity by Lord JusticeAtkin in Rex v. Electricity Commissioners, Ex Parte London ElectricityJoint Committee 1924 1 K.B. 17 elaborated by Lord JusticeScrutton in Rex v. London County Council, Ex Parte Entertainmentsprotection Association Ltd. 1931 2 K.B. 215 and authoritativelyre-stated by the Supreme Court in Province of Bombay Vs. Kusaldas S. Advani and Others, . What was laid down in these caseswas that (a) the body of person must have legal authority; that (b)the authority should be given an opportunity to determine questionseffecting the rights of subjects and (c) they should have a duty to actjudicially.

(17) That case of Khusaldas S. Advani , Dass J. (as he then was) analysed the scope of the third condition at page 725. We are however,not concerned in the present case with the first of the. two conditions. But with regard to the second condition, namely, that if astatutory authority has power to do any act which will prejudiciallyeffect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing the actand the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the ''authority is required by thestatute to act judicially.

(18) The present case, there are no two parties. The only party thereis, are the appellants themselves whereas the second party is the authority which has to take a decision. The question however is whetherthe authority is required by the statute to act judicially. If the authority is required to act judicially the decision will have to be regarded as a quasi-judicial one. On the other hand if the authority is notrequired by the statute to act judicially, the question will have to beconsidered whether the decision that it may ultimately arrive it, will bethe decision of a quasi-judicial act or an administrative act.

(19) Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, the scope of the concept of judicial act was consider by Sinha J. who delivered the judgment of the court. At page 408 itwas said: "Whether or not an administrative body or authority functions as a purely administrative one or in a quasi-judicial capacity,must be determined in each case, on an examination of the relevantstatute and the rules framed there under."

(20) Shivji Nathubhai Vs. Union of India (UOI) and Others, the Supreme Court while considering the question ofrule 54 of the Mineral Concession Rules, 1949, held that in exercisingits powers of review under rule 54 the Central Government acted judicially and administratively. While dealing with this contention it wasurged by Mr. G S. Pathak, counsel for respondent No. 3, that rule 54gave full power to the Central Government to act as it may deem "justand proper" and that it is not bound even to call for the relevant record and other information from the State Government before deciding anapplication for review. The Supreme Court held that that was so, butthere was nothing in the rules which showed that the statutory rulesnegatived the duty to act judicially. What the rules requires was thatthe Central Government should act justly and properly; and that is whatthe authority which is required to act judicially must do. The fact thatthe Central Government is not bound even to call for records again doesnot negative the duty cast upon it to act judicially; for even courts havethe power to dismiss appeals without calling for records.

(21) In the present case, rule 36(c) of the Punjab Excise Act, 1914 reads as under:-

"SUBJECTto such restrictions as the State Government mayprescribe, the authority granting any license, permit or passunder this Act may cancel or suspend it:

(C)in the event of. any breach by the holder of suchlicense, permit or pass or by his servant or by anyone acting on his behalf with his express or impliedpermission, of any of the terms or conditions of suchlicense, permit or pass."

(22) It seems to us that there is implicit in this section a duty to act quasi-judicially. Once a license has been granted by the Government it becomes the duty of the authority granting such license to inquire into the event of any breach by the holder of such license. This duty can only be performed if the person to whom the license was granted orothers whose names are mentioned in clause (c) of Section 36, shouldbe given a notice and they should be heard before the action of suspending or cancelling the license is taken against them. It is no doubttrue that the Lt. Governor is the authority to grant such a license andthere is no power of appeal or review against his order. But the actionthat he takes, is open to judicial review by a High Court and is alsoopen to further review by the Supreme Court. He has to act fairly andjustly. The order made by him is Therefore a quasi-judicial act. Butassuming we are not right in this, the duty of

the Lt. Governor to actfairly and justly is still there and the appellants will have a properopportunity of correcting or contradicting any relevant or prejudicialmaterial.

(23) The only question that remains to be considered is whether the necessary facts for reaching the conclusion must also be determined bythe authority granting the license. It has been made sufficiently clearbefore us that after the facts are enquired into by the Collector and hisreport is submitted to the Lt. Governor, the final decision will have tobe reached by the Lt. Governor. This fact was clearly stated in thecounter-affidavit filed on behalf of the respondents by the Collector.An indication to that effect was also given by the learned counsel for therespondents when the appeals against the judgment of the learnedSingle Judge were being admitted. Normally, an action for recordingevidence is taken by the authority who is empowered in law to reachthe final decision in the case. In the present case however, havingregard to the nature of the duties which the Lt. Governor has to perform, a decision for recording of evidence and collecting other materialscan very well be left to an authority below him. It is not as if theCollector will finally decide the matter. His duty is merely to collectthe material.

(24) In Gullapalli Nageswara Rao, Subba Rao J. for the majority, made certain statements on which very strong reliance has been placedby Mr. Mukherjee. What had happened in that case was that a scheme was proposed by the General Manager of a Road Transport undertaking that it was necessary in public interest that the road transportservice should be run or operated by the Road Transport Undertaking.This scheme was proposed u/s 68C of the Motor Vehicle Act,1939. Under S. 68D any person affected by the scheme had the rightto file objections thereto before the State Government. Under rule 8the representation was to be filed before the Secretary to Government in charge of Transport Department who was more or less an officerrepresenting the Road Transport Undertaking. Under Rule 10 thescheme was to be considered after the receipt of the objections by the Government. It was held by Subba Rao J. that under the Act and theRules framed there under, the State Government should hear the dispute.but in the case the Secretary in charge of the Transport Department, whois not the State Government, gave the hearing. Though the formal orders were made by the Chief Minister, in effect and substance, theinquiry was conducted and personal bearing was given by one of theparties to the dispute itself. It is one of the fundamental principles ofjudicial procedure that the person or persons who are entrusted with theduty of hearing a case judicially should be those who have no personalbias in the matter. It was in these circumstances that it was held :-

"PERSONALhearing enables the authority concerned to watch the demeanour of the witness and clear up his doubtsduring the course of arguments, and the party appearing topersuade the authority by reasoned arguments to accept hispoint of view. If one person hears and another decides, thenpersonal hearing becomes an empty formality. We thereforehold that the said procedure followed in this case also offendsanother basic principle of judicial procedure."

(25) In our opinion, the above case has no relevance to the questioninvolved in the present case. We have already said that in that casethere was a provision for the objections being placed before one authority and the ultimate decision being taken by another authority.

(26) That apart, the observations of Subba Rao J. were not meant to laydown a universal rule, because the rules of natural justice may be excluded by a statute where no question of fundamental rights is involved. In the case, of Gullapalli the petition was under Article 32 of theConstitution and the rights involved were under Article 19(l)(g) ofthe Constitution. In the present case it cannot be disputed that runningand sale of liquor by a private party is not a fundamental right of theappellants. Even otherwise there is nothing in Section 36(c) whichprovides for the entire proceedings being held by the Lt. Governor himself even though it may be said that the proceedings for cancellationor suspension of the license are of a quasi-judicial nature.

(27) There is one other case to which a reference may be made. The case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . Hegde J. who spoke for the Court, after setting out thedistinction between administrative power and quasi-judicial power which according to him presented a thin dividing line and is beinggradually obliterated, turned to the question of natural justice and aftersetting out the first principles, observed :-

"VERYsoon thereafter a third rule was envisaged and thatis that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or un-reasonably." and thenadded .... "If the purpose of the rulesof natural justice is to prevent miscarriage of justice one failsto see why those rules should not be made applicable toadministrative enquiries. Often times it is not easy to drawthe line that demarcates administrative enquiries from quasijudicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicialin character. Arriving at a just decision is the aim of bothquasi-judicial enquiries as well as administrative enquiries.An unjust decision in an administrative enquiry may havemore far reaching effect than a decision in a quasi-judicialenquiry".

(28) Reference was made by the learned Judge to the decision of the Supreme Court in Suresh Koshy George Vs. University of Kerala and Others, where the Vice-Chancellor had appointed a retiredprincipal of an Engineering College to inquire into the misconduct of astudent in an examination because the principal of the college was thefather of the student, it was held that the Vice-Chancellor had neitherbreached any statutory rule nor contravened any principle of naturaljustice.

(29) The next question raised by Mr. Mukerjee is that the proceedings u/s 61 must precede and come to a conclusion that the appellants are guilty of the offence charged against them. Till then theproceedings u/s 36(c) cannot be

taken. This very argumentwas advanced before the learned Single Judge and was dealt with byhim as under :-

"ITseems to me that action u/s 36(c) is entirelyindependent of the prosecution u/s 61. It is truethat action u/s 36(c) can be taken only after theholder of a license is convicted. But the same restriction isnot applicable to action u/s 36(;c). Shri Chaglaquestioned whether action u/s 36(c) would be proper if the petitioners were acquitted in the prosecution launched against them u/s 61. The answer would bethat the standards of proof and the criteria of decisions u/s 36(c) and section 61 are not the same. It is entirelypossible Therefore that the conclusions in the proceedings u/s 36(c) and section 61 may be inconsistent with eachother. But the Legislature has itself intended that such aninconsistency is permissible. There is no indication in thePunjab Excise Act, 1914 that action u/s 36(c) isto be deferred till the conclusion u/s 61(1). Maqbool Hussain Vs. The State of Bombay, and in Tukaram G. Gaokar v. R. N. Shukla AIR1963 Sc 1050 such simultaneous proceedings whichcould result differently from each other were found to be unobjectionable by the Supreme Court."

(30) We are in complete agreement with what has been said by the learned Single Judge.

(31) The third point relates to mala fides. The basis of the appellants''objection is that Vijay Chawla (son of appellant No. 2) and Shri B. R.Chawla entered into a bid along with Shri Nanak Singh and others for the grant of a country liquor contract, for the year 1969-70 in respectof the country liquor shops in Delhi, then known and styled as BhuliBhatiari, Karol Bagh, New Delhi, and also at Shahdara under the nameand style of Messrs Nanak Singh and Co. Certain other persons hadalso joined them but ultimately Shri Nanak Singh purchased their respective shares and thus Vijay Chawla was the only partner of NanakSingh. Since Nanak Singh was managing the entire affair of the aforesaid country liquor shops and was not depositing the license fee due tothe Delhi Administration, the aforesaid Vijay Chawla informed theExcise Commissioner, Vikas Bhavan, Delhi on 5-3-1970 that sinceNanak Singh had not deposited any amounts after the first payment, theExcise Commissioner should take steps to attach the daily sale proceedsof the aforesaid two shops. On 26-5-1970 Vijay Chawla sent throughhis brother Vinod Chawla (appellant No. 3) another letter pointing therein that in spite of his letters no action had been taken againstShri Nanak Singh.

(32) Information was also laid about the activities of Shri Nanak Singhwho had taken the Country Liquor Bonded Wharehouse from Messrs.Jain and Co. for the year 1969-70 where the country liquor was bottledfor supply to the country liquor licensees of Delhi and Shri Nanak Singhwas manufacturing the liquor in excess and was selling the same on the shops without the knowledge of the afore-said Vijay Chawla and hadpocketed lacs of rupees. appellant No. 2 thereupon informed Shri GyanChand Inspector Anti-Corruption Branch, Delhi Police and the Superintendent of Police, Anti-Corruption Branch Delhi about these nefariousactivities of Shri Nanak Singh and on this information a raid was

conducted by the Superintendent of Police, Anti-Corruption Branch Delhion the country Liquor Bonded Wharehouse where from spirit for bottling 16000 bottles was recovered in excess over the stack. The appellants''allegations are that the raid on their premises between 7-6-1970 and8-6-1970 was the result of the above reports made by them as theCollector, the Excise Inspector Shri N. K. Jain and Shri Nanak Singhare all mixed up together.

(33) With regard to the question of recovery of money from Shri Nanak Singh it is submitted in the counter-affidavit that a sum ofRs. 46,11,000.00 was payable in respect of the two shops. But apenalty of Rs. 36,000.00 for delay in payment was levied on 4-3-1970.Meanwhile by 10-3-1970 the entire un-paid amount has been paid anda sum of Rs. 1,39,181.00 alone remains outstanding for which recoveryproceedings are still going on. As regards the charge regarding theBonded Wharehouse, it is stated in the counter-affidavit that the transfer by Jain and Co. was not permissible under the rules. It is howeveradmitted that a considerable quantity of country liquor in excess of theauthorised stock, has been seized by the Anti-Corruption Branch ofDelhi Police along with some Excise officials. It is however denied thatany information was given by appellant No. 2 or that he had submittedany applications as he now claims to have done.

(34) It may be that there is some dispute between the appellants and Shri N. K. Jain who is stated to be an Excise Inspector in Delhi. Itmay also be that the Collector has a soft corner for Shri N. K. Jain.There may also be something in the matter of dispute with regard tothe Country Liquor Bonded Wharehouse for which the appellants layclaim to have informed Shri Cyan Chand, Inspector Anti-Corruption Branch, Delhi Police. But all these are matters which can only beplaced by the appellants before the Lt. Governor. These are not thematters in which this court can go in these proceedings. Whether thepresent complaint against the appellants was inspired by Shri N. K. Jainor by Shri Nanak Singh or by the Collector himself, are matters whichthe appellants will certainly be justified in placing before the Lt.Governor. So far as the present proceedings are concerned we are notin a position to say as to how far there is truth in the submissions madeon their behalf.

(35) The result of the fore-going discussion is that there is no merit in these appeals which fail with costs.

