
(1974) 01 DEL CK 0026

In the Delhi High Court

Case No : Letter Patent Appeal No. 210 of 1972

Gayco Private Ltd. and Another

APPELLANT

Vs

Excise Commissioner, Delhi State and Another

RESPONDENT

Date of Decision : 04-01-1974

Acts Referred:

Citation : (1974) ILR Delhi 585

Hon'ble Judges : Narain Andley, C.J.; S.N. Shankar, J

Bench : Division Bench

Advocate : B.N. Sen, S.C. Malik, Vijay Kishan, S.N. Chopra and B. Kirpal, for the Appellant;

Judgement

S.N. Andley, C.J.

(1) This letters patent appeal has been filed against the order dated August 4, 1972 of a learned single Judge dismissing the writ petition filed by the appellants for quashing certain orders of the Excise authorities as a result whereof the appellants were refused renewal of their L-1 license for the whole-sale and retail vend to the trade of foreign liquor. In January, 1967 the appellants were granted the aforesaid license under the Punjab Excise Act, 1914, hereinafter referred to as "the Act", as in force in Delhi. On or about June 6, 1970, the godowns of the appellants and the houses of some of its officers were raided and searched by the Police and the Excise authorities. It is alleged that four wooden boxes containing drums which contained about 180 lbs. of rectified spirit were recovered and it was also found that the liquor in stock was short by 1-1/2 bottles than what it should have been according to the stock register. A case was registered on June 7, 1970 with the Sadar Bazar Police Station against the appellants u/s 61 of the Act which provides a penalty for, inter alia, unlawful possession of any intoxicant. A few days later, a notice was issued to the appellants u/s 36 of the Act as to why their license be not cancelled or suspended but proceedings in pursuance of this notice were stayed by the Lieutenant Governor of Delhi pending the disposal of the aforesaid criminal case

u/s 61 of the Act.

(2) Because the grant of such license is for a year commencing on April 1 and expiring on March 31 in the next year, the appellants on January 1, 1971 applied to the Collector, who is the competent authority in this behalf, for a renewal of the license for the year commencing April 1, 1971. On January 14, 1971 the Collector issued a notice under rule 5.12 of the Delhi Excise Manual, Volume II, stating that he did not propose to renew the appellants' license. The relevant part of this rule provides :-

"5.12. Whenever it is proposed not to renew a license granted on a fixed fee, the authority competent to renew it shall give notice to the holder of such license, record objections, if any, put forward by the licensee, and pass a definite order in writing. The licensee may be given, on application, an authenticated copy of such order. Except with the special sanction of the Lt. Governor no such order of non-renewal shall be made after January 20th in respect of licenses for the following financial year...."

In compliance with this rule, the Collector gave an opportunity to the appellants of being heard personally or through authorised agent and fixed the hearing for January 18, 1971. The reasons for the issuance of the notice were stated therein thus:-

"WHEREAS unauthorised rectified spirit was recovered from your godown on the night of 6th/7th June, 1970 and criminal proceedings in respect thereof are pending in a court of law u/s 61-1-14 of the Punjab Excise Act (1914) as extended to Union Territory of Delhi; and whereas, show cause notices for cancellation/suspension of your license have already been issued and no final orders have been passed thereon by competent authority; now, Therefore, in exercise of the powers vested in me under rule 5.12 of Delhi Excise Manual, Volume II, I propose not to renew L. 1 license held by you."

(3) The appellants appeared before the Collector and asked for time. On January 20, 1971 the Collector finally passed an order that the license held by the appellants shall not be renewed for the coming financial year 1971-72. It appears that during the proceedings before him, the appellants requested for adjournments more than once but the Collector did not acceded to these requests and adjourned the proceedings only on one occasion and that too only for a day. Against the order of the Collector, the appellants filed an appeal before the Excise Commissioner. By his order dated February 10, 1971 the Excise Commissioner set aside the order of the Collector and remanded the case to him to be decided in accordance with law and principles of natural justice. He held that adequate opportunity had not been allowed to the appellants.

(4) On remand, the Collector went into the matter again but in terms of his order dated March 29, 1971 reached the same conclusion, namely, that the license of the appellants would not be renewed for the year 1971-72. It was urged before him that a criminal prosecution against the appellants u/s 61 of the Act and

proceedings for cancellation or suspension of license u/s 36 were pending and that the proceedings initiated by the notice under rule 5.12 were in the nature of parallel inquiry which could not be initiated. It was also contended that the notice issued by him under rule 5.12 was vague and that the appellants could not be required to lead their evidence on merits in defense to the allegations contained in the notice pending decision of the criminal case against them. The Collector held that proceedings in pursuance of rule 5.12 were not in the nature of inquiry and so there was no question of a parallel inquiry. He also held that the notice did set out grounds which were alleged to be violations of the various codes of conduct to which a licensee under the Excise law had to conform and it was, Therefore, not vague. The proceedings under rule 5.12, he said, were "only manifestation of the views of Collector not to renew the license of the licensee keeping in view his conduct in the past as to the observance or non-observance of the Excise Rules". Before the Collector, the appellants, it appears, did not dispute the factum of recovery of the rectified spirit as alleged in the show-cause notice. Their only contention was that this question could not at all be decided by the Collector in those proceedings. The Collector, in view of the non-denial of the fact of recovery observed that the conduct of the appellants in possessing unauthorised stock of rectified spirit disqualified them from continuing to hold the license. The appellants again filed an appeal to the Excise Commissioner which was dismissed by order dated February 22, 1972. The Excise Commissioner repelled the contention of the appellants that in considering the question of renewal of license the Collector had to decide objectively the grounds leading to the order of non-renewal. The writ petition which has given rise to this appeal was thereupon filed by the appellants and interim stay was granted by this Court in so far as operation of the appellate order of the Excise Commissioner was concerned. As a result of this order of stay, the excise authorities have been granting temporary licenses to the appellants upto now.

(5) Before the learned single Judge, it was urged that the show-cause notice under rule 5.12 was vague and that no proper opportunity had been allowed to the appellants. The refusal to renew the license, it was contended, amounted to cancellation of the license and the orders of the Collector and the Excise Commissioner, for this reason also, were bad. The learned Judge rejected these contentions.

(6) Before us also the appellants argued that the notice issued under rule 5.12 was vague because it only mentioned the pendency of proceedings but gave no particulars in regard to facts relating to recovery of rectified spirit. To our mind, that was not necessary. The notice mentioned three grounds for the proposed non-renewal of the license. The first was that unauthorised rectified spirit was recovered from the godown of the appellants; the second was that criminal proceedings in respect of it were pending in a court of law u/s 61 of the Act and the third was that show-cause notice for cancellation/suspension of the license had already been issued against the appellants. All these three grounds are objective facts which constitute the reason why the Collector proposed not to

renew the license of the appellants. The mention of these facts alone was sufficient. Proceedings envisaged in rule 5.12 are not punitive in the sense that they are taken to deprive a person of a right that he otherwise has in law. The proceedings are meant only to inform the mind of the Collector whether he should renew the license or not in the facts of a particular case. This would be clear on reference to section 43 of the Act. It reads as under:-

43."No person to whom a license, permit or pass may have been granted shall be entitled to claim any renewal thereof, and no claim shall lie for damages or otherwise in consequence of any refusal to renew a license, permit or pass on the expiry of the period for which it remains in force."

The non-renewal of a license as distinct from its cancellation or suspension is not the deprivation of a vested right of the holder of an expired license. The purpose of notice under rule 5.12 is simply to inform the person who has applied for the renewal of a license of the reasons why the authority competent to renew it does not wish to do so. It will be full compliance with the provisions of this rule if the notice issued by the Collector states facts on the basis of which he feels that the license should not be renewed. The notice in this case clearly set out these facts and we find no vagueness in it. We are in no doubt that the appellants after receipt of the notice knew why the Collector proposed not to renew the license. In proceedings under rule 5.12 the Collector was not to hold an inquiry as to whether the appellants were guilty u/s 61 or whether a case for cancellation or suspension of the license had been made out against them on merits. It was not necessary, Therefore, to state facts in the notice relating to recovery of the rectified spirit.

(7) Reference on behalf of the appellants in this connection was made to the cases reported in *Surath Chandra Chakrabarty Vs. State of West Bengal*, , *Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another*, and *Amulya Ratan Mukherjee Vs. Deputy Chief Mechanical Engineer, Eastern Rly. and Others*, and it was argued that according to these decisions the charges made against them should have been definite and specific and that material in support of the charges should also have been disclosed. *Swath Chandra Chakravarty*'s case related to a service matter where the appellant held a civil post in the West Bengal Fire Service. Charges were framed against him on the basis of which a departmental inquiry was held. It was in this context that it was observed that vague and indefinite charges and failure to supply statement of allegations would render the removal of the government servant void and inoperative. The case in *Northern Railway Co-operative Credit Society Ltd.* was also a service matter and related to an inquiry in the matter of dismissal of an employee leading to a reference u/s 10(1) of the Industrial Disputes Act, 1947. It was held that the employee should be told about the details of charges and the material available in support of the charges should be disclosed to him. *Amulya Ratan Mukherjee*'s case similarly was a case of dismissal as a result of a departmental inquiry. The charge sheet in this case was

found to contain allegations of fraud without giving its particulars which were not furnished to the petitioner in spite of objection. These cases relate to matters where the person against whom inquiry was initiated had a right of which he was sought to be deprived. That is not the case in regard to proceedings under rule 5.12 read with section 43 of the Act. They do not, Therefore, advance the case of the appellants.

(8) As stated earlier, the appellants before the Collector did not deny the statement in the show cause notice that unauthorised rectified spirit had been recovered from their godown on the night of 6th/7th June, 1970 as rightly found by the learned single Judge. The view taken by the Collector in the impugned order, in these circumstances, that the appellants' license should not be renewed is perfectly reasonable and just. It was argued before us that as a result of examination by the Chemical Examiner the substance alleged to be rectified spirit in the show cause notice was in fact found to be liquor of illicit origin. Whether it was one or the other, it makes not the slightest difference to the ultimate conclusion reached by the Collector because it is not disputed that neither rectified spirit nor liquor of illicit origin could be stocked by the appellants while holding an L-1 license.

(9) It was then contended that the refusal to renew the license amounted to cancellation of license and as such this was a deprivation of a right. Reference in support was made to Hans Raj Vs. Commissioner of Excise, Vikas Bhawan, New Delhi and Others, . The scheme of the Punjab Excise Act does not support this contention. A license once granted remains in force until the same is suspended or cancelled u/s 36 of the Act, but the case of a license which has expired by efflux of time is different. It is not automatically renewed to continue beyond the time prescribed therein nor is the holder of a license entitled to claim its renewal as of right (vide section 43). It is incorrect, Therefore, to say that non-renewal of the license entailed deprivation of any right. Facts in the case of Hans Raj v. Commissioner of Excise (supra) were different. In that case the license in favor of the firm had in fact been renewed from time to time. The petitioner claiming to be a partner of the firm in whose favor the license had been granted and renewed contended that the deletion of his name as a partner from the license during the period of its currency was illegal. A preliminary objection was taken that as the grant of the license was from year to year and the license of the particular year had expired on March 31, 1968 the writ had become infructuous. In this context the Bench observed that because it appeared that the L-2 license which had been granted by the authorities in the beginning had been renewed from year to year it could not be said that the rights of the holder of a license were terminated completely upon the expiry of the annual term. This observation is no authority for the proposition that the right to have the license renewed was a vested right and the decision of the excise authorities not to renew it amounted to deprivation of this right.

(10) We are in full agreement with the finding of the learned single Judge that

adequate opportunity had been allowed to the appellants by the Collector. In fact this finding was not assailed before us.

(11) We, Therefore, find that no case for interference with the order of the learned single Judge is made out. L.P.A. No. 210 of 1972 is, Therefore, dismissed with costs. Counsel's fee Rs. 200.00.