
(2005) 10 MP CK 0059
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4320 of 2005

Gwalior Distilleries Pvt. Ltd.

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 14-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 2 MPJR 401 : (2006) 1 MPLJ 498

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : M.P.S. Raghuvanshi, for the Appellant; Brijesh Sharma, Government Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.

petitioner/s by Shri M.P.S. Raghuvanshi, Advocate. respondents/State by Shri Brijesh Sharma, Govt. Advocate. petitioner a licensed liquor dealer having a foreign liquor license granted under M.P. Excise Act, feels aggrieved by the Order Annexure P/I dated 27-9-2005 passed by Excise Commissioner, Gwalior exercising power u/s 31(i)(kha) of the M.P. Excise Act suspending the FL9 licence of the petitioner.

petitioners are a company registered under Companies Act and have been granted FL9 licence by Excise Commissioner. Grievance of the petitioners is that even though they have not committed any violation of the terms and conditions of the license nor have they acted in contravention of any statutory rules or Regulation but by the impugned order passed on some inspection conducted by the Flying Squad on 21-9-2005, license of the petitioner was suspended. Inter alia contending that the suspension of the license cannot be done without issuing show cause notice and affording a reasonable opportunity of being heard, petitioner seeks interference by this Court. Inviting my attention to the

provisions of Section 31(1A) of the M.P. Excise Act, 1950, Shri M.P.S. Raghuvanshi Learned Counsel for the petitioner submits that under the statutory provision, even for passing an order of suspension of the license the authority has to record a reason for the proposed action, furnishes to the holder of the license a brief statement of the same and only after affording reasonable opportunity of being heard, license can be suspended. Shri M.P.S. Raghuvanshi, Learned Counsel for the petitioner pointed out that in the present case, license has been suspended on 27-9-2005 without issuing any show cause notice, without giving any opportunity of hearing and the show cause has been issued only on 7-10-2005 vide Annexure R/4 i.e. after filing of the present petition for cancellation of the license. It is the case of the petitioner that when notices were issued by this Court on 5-10-2005, and when the notices were served on the respondents for appearance before this Court, it was then only that the show cause notice for cancellation has been issued. Inter alia contending that even for suspending a license show cause notice, and opportunity of hearing is required to be granted, petitioner seeks quashing of the order of suspension.

On notice being issued, respondents have filed return. Shri Brijesh Sharma, Learned Counsel for the respondents has raised a preliminary objection with regard to maintainability of the present petition before this Court. It is pointed out by Shri Sharma that u/s 62(c) of the M.P. Excise Act, remedy of appeal is available before the Chief Revenue Authority i.e. Board of Revenue. Therefore, petition directly before this Court is not permissible. That apart, it is argued by Shri Brijesh Sharma that in accordance with the statutory rules, petitioner can challenge the order of suspension by filing representation before Excise Commissioner within seven days and therefore, petition directly before this Court is not appropriate remedy. That apart, pointing out that in the inspection conducted in the premise of the petitioner on 21st September, 2005, various irregularities were found, respondents seek dismissal of this petition.

I have heard Learned Counsel for the parties and perused the record. It is seen from the record that the authorities of the Excise Department had conducted a surprise check on the premises of the petitioner on 21-9-2005 at 1 PM and the only irregularity found at the time of checking was that the door for entry into the bottling room even though sealed by the department was not properly maintained and by pushing the door, the "L" drop falls and entry can be made in the bottling room and subsequently into the other premises where the spirit was kept and where manufacturing unit is situated. Inter alia finding irregularity in the matter of maintaining the door and entry to the room action is taken against the petitioner. Apart from the above, no other irregularity is pointed out.

Excise commissioner is authorized to cancel or suspend a license u/s 31 of the Excise Act, 1950. However, Sub-section (I-A) of Section 31 incorporated by Amending Act 23 of 1979 contemplates that before making an order cancelling or suspending a license, permit or pass under Sub-section (1), the authority aforesaid shall record in writing the reasons for the proposed action, furnish to

the holder thereof, a brief statement of the same and afford him a reasonable opportunity of being heard. In the present case, there is total violation of the aforesaid statutory provision. The order Annexure P/1 has been passed on 29-7-2005 but before passing of the aforesaid order, proposed statement in brief has not been supplied to the petitioner nor has he been afforded the reasonable opportunity of hearing as contemplated in this Sub-section before suspending the license. It is therefore, a case where mandatory requirement under the statutory provision has not been followed and the license has been cancelled without following the aforesaid statutory provision. Under such circumstances, question is as to whether, petitioner should be relegated to the statutory remedy available to file appeal u/s 62(c) of the Excise Act or this Court should entertain in the matter.

Normally, when a statutory remedy of appeal or revision is available to an aggrieved person, interference directly by this Court in a petition under Article 226 or 227 of the Constitution is not made. However, there are various exceptions to the aforesaid rule. Recently Supreme Court in the case of M/s Sanjana M. Wig v. Hindustan Petro. Corporation Ltd. reported in AIR 2005 SCW 4535 has considered the question of interfering in the matter without exhausting remedy of appeal and it has been held by the Supreme Court in the aforesaid case that discretion to entertain a writ petition can be exercised even if an alternate remedy is available, when it is found that the action taken and the order impugned is challenged on the ground of failure to follow principles of natural justice and when the order is passed without jurisdiction or any vires of the Act is challenged. In the present case, statutory requirement u/s 31 (I-A) contemplates an opportunity of hearing to be granted to the petitioner. This opportunity has admittedly been not granted to the petitioner. The show cause notice for cancelling the license is issued to the petitioner on 27-10-2005 after filing of the petition and issuance of the notice to the respondents on 5-10-2005, there being statutory violation of the mandatory requirement u/s 31(I-A) of the Act, which is violation of the principle of natural justice. Division Bench of this Court has also considered the question of interference in a petition under Article 226 of the Constitution in the case of P.C.C. Construction Company and Ors. v. D.R.T. Jabalpur, 2003 (1) MPJR 260 and a learned Single Judge in the case of Life Insurance Corporation of India v. Ramji Kewat and Ors. reported in 2002 (5) MPLJ 233 : 2002 (11) MPJR 69 have been held that in a case when statutory provision is violated or principle of natural justice is violated, interference can be made in a petition under Article 226 of the Constitution, in view of the aforesaid principle of law. I am not inclined to reject the petition on the ground of availability of alternate remedy. Action impugned and the order passed are per se illegal having been passed in total disregard to and in contravention of Section 31(I-A) of the Act and is therefore, liable to be quashed and is accordingly, quashed.

Petition is allowed. Order Annexure P/1 dated 27-9-2005 passed by the respondents is quashed. However, if the respondents want to take action against the petitioner, they are free to take action in accordance with law.

Petition is allowed and disposed of with the aforesaid.

C.C. as per rules.