

(2016) 02 KAR CK 0030

In the Karnataka High Court

Case No : W.P. Nos. 56185 and 56499-56502/2015 (EXCISE)

Hamsamma and Others

APPELLANT

Vs

The Excise Commissioner in Karnataka and Others

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Hindu Succession Act, 1956 — Section 6
Karnataka Excise Act, 1965 — Section 68-B

Citation : (2016) 2 KantLJ 635

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : G.K. Bhat, Advocate, for the Appellant; H. Anantha, HCGP, for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J.—1. The petitioners are before this Court seeking that a mandamus be issued and direct respondent No. 3 to transfer the licence in Form CL-2 dated 16.06.2015 in favour of petitioner as per Rule 17-A of the Karnataka Excise Licences (General Conditions) Rules, 1967 ("Rules, 1967" for short).

2. Petitioner No. 1 is the wife of late H.K. Venkaswamy Naidu while petitioners No. 2 to 5 are his sons. There is no dispute to the fact that a CL-2 licence had been issued in the name of late H.K. Venkataswamy Naidu. The present dispute is with regard to the transfer of licence on his demise. The petitioners are seeking that on the demise of H.K. Venkataswamy Naidu, they being the legal heirs are entitled to seek for transfer of licence in their favour. Respondent No. 4 herein who is none other than the son-in-law of late H.K. Venkataswamy Naidu had however opposed such transfer of licence not only by filing a suit in O.S. No. 561/2015 in the Court of the Civil Judge, Arasikere, but had also filed the objections with the competent authority for transfer of licence through his wife viz, daughter of late H.K. Venkataswamy Naidu objecting to the transfer of licence to petitioner No. 3 herein. It is in that light, since the licence has not

been transferred, the petitioners are before this Court seeking issue of mandamus.

3. Learned counsel for the petitioners while seeking that a direction be issued would refer to Section 17-A of the Rules 1967, to contend that in the event of death of a licensee or lessee during the currency of the licence, the competent authority on an application is required to transfer the licence to the legal heirs and the petitioners being the legal heirs are entitled to such transfer. The provision contained in Section 68-B of the Karnataka Excise Act, 1965 is referred to contend that a suit before the Civil Court in respect of issue of licence would not be maintainable and therefore the suit as filed by respondent No. 4 cannot bar the relief that is sought by the petitioners herein. It is also contended that in any event, injunction that had been granted in the suit has been vacated and though a miscellaneous appeal has been filed, there is no interim order. In that light, it is contended that in any event neither respondent No. 4 can claim any right under a WILL which is relied upon nor through his wife since according to the learned counsel, the wife of respondent No. 4 though a daughter of late H.K. Venkataswamy Naidu cannot be considered as the legal heir keeping in view the scope of provision of Section 17-A of the Rules, 1967.

4. Learned Government Advocate as well as the learned counsel for the respondents however would oppose the contention put forth by the petitioners. Respondent No. 4 has filed objections to these petitions contending that the prayer as made by the petitioners is liable to be rejected. Respondent No. 4 seeks to sustain his right under the WILL dated 07.09.2015 and also refers to the reason for which such WILL has been executed as respondent No. 4 had made financial assistance in that regard.

5. Learned Government Advocate with reference to the file secured from the Office concerned would point out that an endorsement dated 18.11.2015 has been issued to petitioner No. 3 stating therein that in view of the dispute between the parties, the transfer of licence as claimed cannot be considered.

6. In the light of the above, the maintainability of the suit which is already filed by respondent No. 4 with reference to Section 68-B of the Excise Act need not be adverted to in detail inasmuch the suit is still pending before the Court below and it is for that Court itself to take note of the said provision and conclude with regard to the maintainability of the suit keeping in view the nature of relief prayed therein as otherwise any observations made in that regard would affect either of the parties in the suit.

7. Insofar as the contention that is put forth by the learned counsel for the petitioners by placing reliance on Section 17-A of the Rules 1967, a perusal of the Rule no doubt would indicate that the legal heirs of the deceased licensee may make an application to the Deputy Commissioner of Excise for transfer and such application could be considered for transfer of licence with the previous sanction of the Excise Commissioner in favour of such legal heirs. If in that light,

the petitioners have sought for transfer relying on the said provision and if the wife of respondent No. 4 who is the daughter of the deceased licensee has objected with regard to the transfer of licence, neither the Deputy Commissioner of Excise, the Excise Commissioner nor this Court in a writ proceedings can decide with regard to the appropriate person to be considered as the legal heir if all the legal heirs by themselves do not unitedly seek for transfer of licence and raise an inter se dispute.

8. Though the learned counsel for the petitioners would refer to Section 6 of the Hindu Succession Act, 1956, to contend that respondent No. 4 cannot be considered as the legal heir, the said consideration also would not be possible in a writ proceedings since there are several aspects that are matters of evidence which would have to be taken into consideration and a competent Court alone could decide that issue.

9. Therefore, in that light, if the provision is taken into consideration unless there is an agreement between the legal heirs to seek transfer of licence jointly in all their names or in the name of any one person with the consent of the others, this Court at this juncture cannot direct that the licence be transferred in the name of any one person where there are more than one legal heir.

10. Learned counsel for the petitioners no doubt would contend that petitioner No. 1 being the wife of late H.K. Venkataswamy Naidu, the benefit of transfer of licence be granted in her name. Even such consideration at this juncture would not be possible, firstly for the reason that petitioner No. 3 has been through out been claiming right for such transfer and the prayer in these petitions is also to that effect.

11. That apart, when I have already indicated that if there are more than one legal heir, it can only be in the joint names or in the name of one person as agreed by the others, in the absence of such agreement between the legal heirs, a direction in the writ petition to transfer the licence to one legal heir would not be possible.

12. Insofar as the claim as made by respondent No. 4 under a WILL, certainly the right of respondent No. 4 also cannot be adverted to in the instant writ petition since it is for the Competent Court to decide all these aspects of the matter. Therefore in such circumstance, I am of the opinion that the mandamus as sought cannot be issued. The parties are at liberty to avail their remedies in accordance with law.

In terms of the above, the petitions stand disposed of.