(1969) 02 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ No. 191 of 1968

Hans Raj — APPELLANT

Vs

Commissioner of Excise, Vikas Bhawan, New Delhi and Others — RESPONDENT

Date of Decision : 27-02-1969

Acts Referred:

Citation : AIR 1970 Delhi 107

Hon'ble Judges : Prakash Narain, J;Narain Andley, J

Bench : Division Bench

Advocate : S.N. Chopra and S.L. Bhatia, for the Appellant; D. Narasaraju Brijbans Kishore, J.N. Aggarwal, Ravinder Narain and C.L. Itorora, for the Respondent

Judgement

S.N. Andley, J.—We are confining our decision in this writ petition to the question whether the impugned order dated 7\\17th February, 1968 was passed in violation of the provisions of sub-section (5) of Section 15 of the Punjab Excise Act. 1914 or the principles of natural justice. This order came to be passed in the circumstances hereinafter stated.

2. The petitioner; respondent No. 3 and respondent No. 4 are sons of late Ishar Dass. The deceased was the holder of an L-4 license issued to him under the Act for the retain sale of liquor in a restaurant. The deceased was the sole proprietor of the Esplanade Bar and Restaurant, Chandni Chowk, Delhi. He died on or about June 2, 1946. There after, on March 14, 1947, a deed of partnership was executed between the petitioner and respondents 3 and 4, being the successors and heirs of the deceased, In respect of the business carried on under the style of Esplanade Bar and Restaurant. In 1948, these three persons also purchased the United Coffee House, New Delhi. In 1951, the petitioner ceased to be a partner of the business carried on in the name of Esplanade Bar and Restaurant and respondents Nos.3 and 4 ceased to be Partners in the United Coffee House, New Delhi.

3. The L-4 license was discontinued on or about August 13..1956 in accordance with the prohibition policy and in its place an L-2 license was, it is alleged granted to Krishna Lal & Co.. The L-2 license was for wholesale and retail sale of liquor. At this time, respondents Nos. 3 and 4 were the partners of Krishan Lal & Co. aforesaid.

4. Another partnership deed was entered into on July 1, 1964, whereby respondent No. 5 son of respondent No.3 was taken in as a partner of kishan Lal & Co. And on July 27, 1964, an application was made for the inclusion of respondent No. 5 as a Partner in respect of the L-2 license.

5. Another partnership deed was entered into on July 1, 1966 whereby the petitioner also came in as a partner of Kishan Lal & Co. Therefore, a this time, the partners of Kishan Lal & Co. Were the petitioner and respondents Nos. 3 to 5. Since the petitioner had become a partner of Kishan Lal & Co., an application was made on December 10, 1966, for including his name also on the aforesaid L-2 license. It is the contention of the petitioner that written statements were made by respondent No. 3 on his own behalf and as attorney for respondent No.5 and by Respondent No. 4 supporting the application which had been filed on December 10, 1966.

6. On April 19, 1967 another deed of partnership was executed between the petitioner and respondents Nos. 3 to 5 in which, inter alia, the respective shares of the partners wee redetermined. It is alleged that prior to this partnership deed, respondent No. 3 had, on April 5, 1967made an application to the Excise authorities for withdrawal of his earlier application for including the name of the petitioner in L-2 license.

7. The District Excise Officer passed an order on June 9, 1967 which was communicated to Kishan Lal & Co. By his letter dated June 14. 1967. By this letter the aforesaid firm was informed that the request for the inclusion of the names of respondent No. 5 and the petitioner had been allowed subject to the responsibilities for all obligations under the Excise law. In fact, a further communication dated June 20, 1967 was addressed by the District Excise Officer to Kishan Lal & Co. Stating that the names of the petitioner and respondent No. 5 had been included in the L-2 license as partners and the L-2 license was itself returned to the firm.

8. Then on November 7, 1967 respondent No. 3 sent a representation to the Lt. Governor, Delhi, in which, broadly speaking, it was contended that respondent No. 3 was always the sole proprietor of the aforesaid L-2 license and continued to be so. He prayed that the two names added to the L-2 license should be deleted. Upon this representation, a notice dated November 28, 1967 was issued to the petitioner and respondent Nos. 3 to 5 to show cause "why the addition of either or both the names of Shri Jagmohan and Shri Hans Raj in the said license as per order dated 9-6-1967 of the Collector of Excise. Delhi be not imitated." Upon receiving this notice, the petitioner, by his letter dated December 4, 1967

requested the Excise Commissioner to furnish copies of the records detailed therein. Some further correspondence followed between the petitioner and the Excise authorities, the result of which was that copies of only some of the documents asked forby the petitioner were supplied to him while the copies of other documents were not supplied on the ground that they were confidential notes on the file. By another letter dated December 19, 1967, the petitioner asked for inspection of certain records as also of the two licenses which had been granted from time to time. He further requested that he may be given one week''s time, after such examination, for a personal hearing. It is stated by the petitioner in this letter that it was necessary for him to have this inspection in order to prove that the license had never been transferred as alleged by respondent No. 3. This request was not acceded to by the District Excise Officer as in apparent from his letter dated December 30, 1967.

9. This matter ultimately came up before the Excise Commissioner on December 27, 1967. The order passed by the Excise Commissioner is annexure ''III'' to the counter filed by respondent No.3. It appears from this order that the petitioner and respondents Nos. 3 and 4 appeared before him and the Excise Commissioner accepted the representation by respondent No.3 of respondent No.5. Respondent No. 3 appears to have asserted before the Excise Commissioner about the filing of his application dated April 5, 1967 for withdrawal of his representation dated December 10, 1966 and, as to this the excise Commissioner has stated that this application for withdrawal is not on the file. It further appears from the file. It further appears from the order that respondent No.3 was asked to file an attested copy of the said application along with the copy of the endorsement in acknowledgment of its receipt and also an affidavit regarding its presentation. This order further states that the petitioner requested for copies of the statements which had been made by respondent No. 3 for himself and on behalf of Respondent No. 5and by respondent No.4 and it was pointed out to bim that the statements were undated and had not been recorded either by the Collector of Excise or Excise Commissioner or the District Excise Officer.

However, the Excise Commissioner made an order that there would be no objection to copes of the aforesaid statements being furnished to the petitioner. This order then records the filing of a representation by the parties concerned to appoint their brother-in-law, Shri Hans Raj, to settle their affairs and for that purpose the grant of one week''s time. Then in the penultimate paragraph the Excise Commissioner directed the parties to file their final written statements by January 8, 1968 failing which the case was to be decided ex parte.

10. It is not disputed by the respondents that no proceedings took place on January 8,1968, as,in the meantime, the file had been called for by an Executive Councilor. It need only be stated that the parties did not appear before the Excise Commissioner on any subsequent date and, on 7/17th February, 1968, the Excise Commissioner passed the impugned order whereby he held that inasmuch as the application for including the name of the petitioner had not been signed by

all the partners, it was not an application as contemplated by Rule 5.7 of the Delhi Liquor License Rules. Accordingly, he ordered the deletion of the names of the petitioner and respondent No..5 from the L-2 license.

11. Mr. Narasaraju, who appears for the Commissioner of Excise and the Delhi Administration, respondents Nos. 1 and 2 respectively, has raised two preliminary objections. The first preliminary objection that he was raised is that the grant of a liquor license is a grant from year to year and the license having expired on March 31, 1968, the writ has become infructuous. It is true that a license under the Delhi Excise Act is a license which is granted for the period 1st April in any year to 31st March in the subsequent year but it is not correct, in our opinion, to say that there is always a fresh grant of a license. Rules talks of the renewal of a license and so does Section 43 of the Act. In fact also, it appears that the L-2 license which was granted by the authorities in the beginning has been renewed from year to year. It cannot, Therefore, be said that the rights of the holder of a license are terminated completely upon the expiry of the annual term. The Act and the Rules contemplate renewal of the very same license and that being so, we do not find any substance in the preliminary objection.

12. The second preliminary objection which has been raised is that a firm cannot be the holder of a license and it is only the partners of the firm who hold the license in their individual names. This objection also has no substance because Rule 5.4 of the Delhi Liquor License Rules talks of the grant of a license, inter alia. Specifically to a partnership of firm.

13. The petitioner has complained that a hearing as contemplated by sub-section (5) of Section 15 of the Act or by the principles of natural justice was not afforded to him by the Excise Commissioner who decided the matter in the absence.. Mr. Narasaraju on the other hand argues that a hearing contemplated by sub-section (5) of Section 15 and by the principles of natural justice was given to the parties when the Excise Commissioner passed his order dated December 27, 1967 and thereafter it was merely a question of the parties filing their written statements on the date fixed by that order. We have summarised the order dated December 27, 1967 which had been passed by the Excise Commissioner and we find it difficult to accept the contention of Mr. Narasaraju that any of the matters in controversy between the parties were decided on this date after hearing the parties.

All that this order did was to state that the application for withdrawal alleged to have been filed by respondent No. 3 on April 5. 1967 was not on the file; that copies of the statements made by or on behalf or respondents Nos. 3 to 5 be given to the petitioner and that the parties file their written statements by January 8, 1969. None of the points which were in controversy between the parties can be said to have been decided by this order. If that is so, it cannot be contended that the order dated 7/17th February, 1968 which was ultimately passed by the Excise Commissioner and which is impugned by this writ was passed after giving a reasonable opportunity to the petitioner or to any of the parties concerned. Sub-section (5) of Section 15 provides that no order shall be made under this section which adversely affects the rights of any person upon whom an obligation is imposed by or under this Act, without giving such person a reasonable opportunity of being heard. That the order dated 7/17th February, 1968 affects the rights of the petitioner cannot be doubted, because him claim that his name should remain as a partner of Kishan Lal & Co. On the L-2 license has been decided adversely to him. That being so, this order has to be quashed.

14. We, Therefore, issue a writ of certiorari quashing the order passed by the Excise Commissioner, respondent No.1, on 7/17th February, 1968 and we also issued a writ of mandamus directing him to hear the matter afresh and to decide it according to law.

15. The petitioner will have his costs of the petition. Counsel''s fee is fixed at Rs. 200/-. The costs are recoverable from respondents Nos. 1 and 2.

16. Petition allowed.