

(1995) 08 KAR CK 0008
In the Karnataka High Court
Case No : W.Ps. No's. 7674 to 7682 of 1995

Hanumantha Raju

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-08-1995

Acts Referred:

Contract Act, 1872 — Section 29
Karnataka Excise (Amendment) Act, 1994 — Section 24

Citation : (1995) ILR (Kar) 3072 : (1996) 5 KarLJ 719

Hon'ble Judges : Rajendra Babu, J

Bench : Single Bench

Advocate : M.R. Naik, for the Appellant; H. Rangavittalachar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Babu, J

1. In these Petitions, petitioners are calling in question the validity of Act 2/1994 which came into force with effect from 8th October, 1993 by which Section 24 of Karnataka Excise Act was substituted enabling the State Government to accept payment of a sum or levy such licence fee or privilege fee as may be prescribed in consideration of grant of lease or licence or both by or under the Karnataka Excise Act. Section 3 of the Validation Act provides that Rule 8 of the Karnataka Excise (Sale of Indian & Foreign Liquor) Rules are valid notwithstanding any Judgment to the contrary on the basis that the said Rule had been framed under the Karnataka Excise Act as amended by Act 2 of 1994.

2. Identical contentions urged in support of the challenge to the validity of the said provisions of the Act or the reasonableness thereof have been considered in Writ Petition Nos. 20344 to 20421/1995 and connected matters (disposed of on 27/7/1995) Karnataka Wine Merchants Association Vs. State of Karnataka, and rejected. Hence I need not advert to these contentions.

3. The learned Counsel appearing for the petitioners in these Cases, however, urged that there are some additional points to be considered in these Cases. The petitioners had been granted licences for the period 1/7/1991 to 30/6/1992 and 1/7/1992 to 30/6/1993. The stand of the petitioners is that if as contended for the State that u/s 24 of the Act, the State Government parcels away its right or privilege to trade in liquor - Indian or foreign - in consideration of a sum to be accepted by way of licence fee or privilege fee, the licences granted to the petitioners would be in the nature of a contract and the consideration for the contract is as set forth in the relevant licences and after the period of licence is over, it is not open to the State to unilaterally seek to enhance the licence fee and collect the same. In other words, the contention put forth on behalf of the petitioners is that the licence fee sought to be collected is by way of consideration for parting with the privilege to trade in liquor and the same could not be enhanced unilaterally after the period of licence is over as the licence is in the nature of a contract; (ii) that Act 2 of 1994 itself has come into force with effect from 8th October, 1993 and therefore in respect of those periods covered by the licences prior to that date, there is no power for enhancement on the part of the Government; (iii) that there is no specific provision under the statute to collect licence fee which had been short levied or collected at a lesser rate than fixed.

4. The learned Government Advocate appearing for the respondents submitted that - the licences were granted on the relevant dates in respect of each of the petitioners subject to several conditions as has been agreed to between the parties. In fact, in case of the petitioners pursuant to the Circular issued by the Excise Commissioner, agreements had been entered into by which the petitioners agreed to pay not only the existing fee but also licence fee likely to be enhanced for the relevant years. Therefore, the learned Government Advocate submitted that when the petitioners had agreed to pay the enhanced licence fee, it is no longer open to them to contend that the respondents cannot collect the enhanced licence fee pursuant to the provisions of Act 2 of 1994.

5. The learned Counsel for the petitioners submitted that the agreements, if any, to pay enhanced licence fee are hit by Section 29 of the Indian Contract Act. The agreements in question are void as their meaning is not certain, or capable of being made certain.

6. The contention that Act 2/1994 itself having come into force on 8th October, 1993 the provision cannot be applied for a period anterior to that date, is concerned, is plainly not tenable because what comes into force on 8th October, 1993 is Act 2/1994. That Act by Section 2 makes it clear that Section 24 has been substituted and shall be deemed to have always been substituted. That means, right from the inception of the Act itself, the said provision of Section 24 should be deemed to have been introduced into the Act by replacing the earlier provision, If that is the true effect of the said provision, I do not think, the petitioners can merely rely upon Section 1(2) of the Act in support of their

contention.

7. The contention that after the period of licence is over it is not open to the respondents to enhance the licence fee and seek to collect the same has only to be stated to be rejected because the petitioners had agreed to pay such enhanced licence fee and subject to which licence had been granted.

8. Now, I will advert to the contention that the agreement entered into between the parties is vague and not capable of being made certain and therefore void. For purpose of clear understanding of the matter, let me set out two samples of the agreements:

(1) "I have credited the existing licence fees for the year 1991-92.

I am aware that the licence fee for the year 1991 -92 is going to be enhanced and hence in such a case I am ready to pay the difference of licence fee immediately after hearing from you."

(II) xxx xxx xxx "I am a partner of M/s Malaprabha wines, at M.K. Hubli, having CL.2/C.L. 9 licence for the year 1990-91. I have applied for the regrant of the said licence for the year 1991 -92. I have credited the existing licence fee for the year 91-92. I am aware that the licence fee for the year 91-92 is going to be enhanced and hence in such a case I am ready to pay the difference of licence fee immediately after hearing from you."

A careful perusal of these agreements will make it clear that not only the liability to pay the existing licence fee is discharged, but it is also made clear that licence fee for the relevant year is going to be enhanced and in that event he is ready to pay the difference of licence fee immediately on hearing from the Department. Although the agreements as extracted above could have been spelt-out in explicit terms leaving no scope for ambiguity of any nature by referring either to the statements of the Chief Minister or the concerned Excise or Finance Minister on the floor of Legislature where a proposal is made to enhance the licence fee or pending litigation before the Courts challenging such enhancement or any other such relevant circumstances to make things clear. Merely because such circumstances are not set out in the agreement, can it be stated that the agreement is void for uncertainty? A contract which is intended to be binding on a party is certainly enforceable even though certain terms may not have been precisely set forth in the agreement, if the nature of the said terms can be ascertained from the surrounding circumstances. Fact remains that this Court in 1974(2) Kar.L.J. 200 V.S. Narayanaswamy v. State of Karnataka and Ors. has held that the State was not capable of levying or collecting licence fee of the present nature and the matter had been carried to Supreme Court and the Supreme Court disposed of the said matter on 21/8/1991. Thus, there was a litigation pending between the parties as to whether licence fee could be lawfully collected at a particular rate by parting with the privilege of vending in Indian or Foreign liquor. Further, in every Budget Speech made by the Chief Minister or Finance Minister this fact is brought out that licence fee was to be fixed at

enhanced rate. Moreover, when the Department on the basis of budget proposals sought to levy such fees or collect the same either pursuant to the Draft Rules or the Rules framed under the Act, such action had been challenged before this Court and they were all pending. In the circumstances, it cannot be said that the parties concerned could not give a meaning to the expressions used in these agreements to state that what the enhancement could be and with reference to what period or the rate of enhancement and what the difference could be. When these aspects were clearly in the mind of the parties at the time of entering into agreements, I do not think the petitioners would be justified in contending that the contract between the parties is void for uncertainty.

9. The argument that there is no power to demand or collect short levied licence fee in the absence of a specific provision under the statute may not be of much significance in this case because of the agreements entered into between parties and the nature of licence fee being consideration for contract. Thus we are in the realm of contract and not power being exercised by any authority over the citizens under a statute such as in case of collection of compulsory exactions like tax or fee. In such latter cases necessarily there ought to be a specific provision for collection of short-levy. Therefore, the Decision in *NUTRINE CONFECTIONARY COMPANY PVT. LTD v. STATE OF MYSORE AND ORS.* 1970 (2) Mys.L.J. 214, may not be of any relevance to the present case. When the parties have agreed to pay the licence fee, as may be enhanced, the contention that the respondents have no power to enforce such a clause in the absence of a specific provision in the statute is not tenable at all.

10. Some of the learned Counsel appearing for the petitioners submitted that the State is in a dominant position and therefore could dictate terms to the petitioners and they had no option but to accept whatever terms were offered by the respondents. Thus the petitioners were compelled to agree to whatever terms the State suggested however unconscionable they be and therefore, it is not open to the respondents to give effect to the agreement by which the petitioners agreed to pay the enhanced licence fee. In this context, reliance was placed on the Decision of the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, and drew my attention to the imposition of higher licence fee and acceptance of petitioners paying the higher licence fee is not part of the agreement between the two equal bargaining parties and therefore there being inequality in the bargaining power of the parties such clause is void. It is clear that this is a case where the petitioners accepted to carry on trade in liquor subject to the policy of the State, When the policy of the State has been explained in the Budget presented to the Legislature and after following the procedure u/s 71 of the Karnataka Excise Act relevant Rules have been framed after inviting objections from the concerned persons and the licence fee has been fixed under those Rules it is very, difficult to visualise the situation contemplated in the *Central Inland Water Transport Corporation Case* to arise in these Cases. The Supreme Court in that case made it clear that the cases which fall within or outside a particular category can

neither be enumerated nor fully illustrated and the Court must judge each case on its own facts and circumstances. The licence to be granted is in the nature of a contract, but even so, all the terms thereof are prescribed under Statutory Rules framed after publication of a draft, calling for objections, considering such objections with the further requirement of laying such Rules in the Legislature. This kind of contract which contains the terms laid down under Statutory Rules comes into existence after following a hybrid procedure which is both contractual and statutory.

11. The learned Counsel for the petitioners further urged relying upon the provisions of Section 71 of the Karnataka Excise Act that before the Rules are brought into force, laying procedure has not been followed and it is a requirement of Section 71 that such Rules must be placed before the Legislature as set forth therein. This very aspect has been considered by a Division Bench of this Court in ANANTHAKRISHNA v. STATE OF KARNATAKA AND ORS 1993 (2) KARLJ 327. This Court noticed that the question whether laying of Rules before the two Houses of Legislature is mandatory or not has also been considered in State of Karnataka Vs. Anjanappa and Co., wherein it has been held that the requirement relating to laying of the Rule was only directory and cited that Decision with approval. If that is the position, I do not think the procedure of laying not having been followed would be fatal to the enforcement of the provisions of Rule. But that does not mean that the executive which framed the Rules can ignore to place such Rules before the Legislature as required u/s 71 of the Act for if such a procedure is not followed for all time, a time may come when this Court may pronounce that non-laying of the Rules before the Houses would render the Rule ineffective. However, for the time being the Rules though not having been laid before the Legislature, cannot be said to be enforced by the executive and the contention to the contrary cannot be accepted.

12. In some of the Petitions, Constitutional validity of Act 2 of 1995 is also challenged. Challenge to the said Act is not pressed in view of the fact that separate Petitions have been filed by the petitioners or certain other persons. Reserving liberty to pursue those Petitions or proceedings, the learned Counsel for the petitioners do not press the said prayer for the present.

13. It is contended that some of the petitioners may not have executed the agreements of the kind referred to earlier. The learned Government Advocate brought to my notice a Circular issued by the Excise Commissioner on 19th June, 1991 asking the authorities to obtain agreements of the kind referred to earlier and in case such agreements are not executed, not to give licences. If that is so, it is very difficult to conceive of a situation where the petitioners would not have executed such agreements and the respondents would have granted licences to them in the absence of execution of such agreements. In case any of the petitioners have not executed such agreement, it is open to them to point out to the concerned authorities the same and work out their respective remedies.

14. Petitioners having failed on all the contentions, these Petitions are liable to

be dismissed. However, it would be appropriate to grant time to the petitioners in the same terms as stated in Writ Petition Nos. 20344 to 20421/1995 and connected matters, disposed of on 27/7/1995 for payment of amounts due and not collected pursuant to Interim Order passed by this Court. If the petitioners pay-off such amount on or before 31/12/1995, respondents shall not take any coercive action.

Rule discharged accordingly.