
(2007) 10 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 13444 of 2005

Hotel Basant Residency

APPELLANT

Vs

The Excise Commissioner, Bangalore Division, Karnataka
Appellate Tribunal and Sri Jain Swetamber Murthipujak
Mandir (Popularly known as Gandhinagar Jain Temple) and
Others

RESPONDENT

Date of Decision : 26-10-2007

Acts Referred:

Karnataka Excise Licences (General Conditions) Rules, 1967 — Rule 5

Citation : (2008) 1 KarLJ 89 : (2007) 4 KCCR 353 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : H. Ramachandra, for H.R. Anathakrishna Murthy and Associates, for the Appellant; Sheela Anish, AGA for R-1 and 2 and Basavaraju Belavangala, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This writ petition is directed against the interim order passed by the Karnataka Appellate Tribunal, Bangalore in a pending appeal in No. 131 of 2005 and on IA-I, where under the petitioner, who had questioned the order dated 13-1-2005 passed by the excise commission, withdrawing the CL-7 licence that had been issued in favour of the petitioner and had declined to grant stay of withdrawal of the licence pending considering of the appeal.

2. The writ petitioner contends, inter alia, that the order passed by the single member of the tribunal is in violation of the procedural law; that when the appeal was admitted, there was no scope for rejecting the application for stay; that it indicates lack of application of mind; that the dispute regarding distance between the place of business of petitioner wherein the permission was granted to utilize a CL-7 licence, and the temple located across at the instance of the trustees of which temple the licence had come to be withdrawn by the commissioner, was

duly verify by the Deputy Commissioner before the issue of the licence; that the distance was well within the permitted limits even in terms of the Rule 5 for issue of CL-7 licence; that notwithstanding bringing these aspects of facts to the notice of the tribunal, the tribunal has rejected the application for stay; that it is liable to be set aside etc.

3. I have heard Sri H Ramachandra, learned Counsel for the petitioner, Ms Sheela Anish, learned Additional Government Advocate for respondents 1 and 2 and Sri Basavaraju Belavangala for the third respondent.

4. What is very vehemently urged by the learned Counsel for the petitioner is that this Court had initially granted an interim order of stay as prayed for, that the withdrawal of licence had been stayed in this writ petition; that this order had been granted after calling for a factual report through a commissioner, who reported that the distance between the bar and the temple was 61.50 mtrs; that it being beyond the distance of 50 mtrs as mentioned in the proviso to Rule 5 of the Karnataka Excise Licences (General Conditions) Rules, 1967 [for short, the Rules], which reads as under:

5. Restriction in respect of location of shops: (1) xxx

(2) The Deputy Commissioner of Excise shall after making such enquiry as he deems fit approve the premises of liquor shop so selected and thereafter the description of the premises of liquor shop shall be entered in the licence to be issued:

Provided that the Deputy Commissioner of Excise may, with the prior approval of the Excise Commissioner and for reasons to be recorded in writing, permit the location of any shop within a distance of 100 metres, but not less than 50 metres from the distance institutions, hospital, office or locality specified in Sub-rule (1) within the city municipality or city corporation limit.

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that there was no occasion for the commissioner to withdraw the licence; that it had been erroneously withdrawn, who has approved the same earlier; that there was prima facie case in favour of the petitioner for granting the interim stay; that the tribunal has committed an error in declining the order of stay.

5. Sri Basavaraj Belavangala, learned Counsel for the third respondent, on the other hand, submits that the very grant of CL-7 licence is bad since the inception; that there was absolutely no compelling reasons to waive the general embargo under Rule 5 of the Rules in locating the hotel or the bar with CL-7 licence; that even in terms of the report of the commissioner, as received by this court, the distance being 100 metres and there being no reason at all which had been recorded and as had been noticed by the commissioner for grant of special approval, there is absolutely no prima facie case in favour of the petitioner; that the tribunal has rightly declined the interim stay sought for and no merits in the writ petition and the writ petition deserves to be dismissed.

6. Ms Sheela Anisha, learned AGA, appearing for the respondents 1 and 2, submits that as the main appeal is pending, it is proper for the tribunal to decide the appeal rather than focussing on the interim prayer.

7. A perusal of the impugned order indicates that the tribunal has examined all contentions of the petitioner and the third respondent in great detail and on an examination of the issue, found that grant of licence obviously clashes with the interest of a protected institution under Rule 5 of the Rules; that the location of the temple being well within 100 metres from the location of the hotel, in fact the tribunal was of the view that the distance between the two places was of 60 metres, as reported by the Deputy Commissioner of Excise and therefore being of the view that the balance of convenience lies in favour of the third respondent rather than the petitioner herein and declined to grant stay and accordingly rejected the application for stay.

8. An examination of the well considered order indicates that the tribunal has bestowed its attention to all aspects of grant of interim order of stay; that it was satisfied that it was not a proper case for grant of interim stay and in exercise of its discretion declined to grant the interim order prayed for.

9. While the order is a well considered order in the discretion of the tribunal and there is absolutely no scope for interference in a petition under Article 227 of the Constitution of India, even an examination on the legal aspects of the of the statutory provision governing the situation indicates that the embargo is upto 100 metres between the place where the CL-7 licence is utilized and a temple or such other institutions etc.

10. Sri Ramachandra, learned Counsel for the petitioner has relied on the decision of the Supreme Court in the case of Mool Chand Yadav and Another Vs. Raza Buland Sugar Company Limited, Rampur and Others, , in support of the petitioner's prayer in the application before the tribunal and that the tribunal has not even considered this decision.

11. I am of the view that even without referring to this decision of the Supreme Court, the tribunal has applied all the principles laid down therein and has examined the relevant aspects for grant of interim order of stay and being of the opinion that there was no justification to grant an interim order as prayed for, as such an order is perfectly justified. No scope for interference in the absence of any special or compelling reasons forthcoming, as indicated from the record or as placed before the court by the learned Counsel for the petitioner for waiving the general rule of maintaining a distance of 100 mtrs and also in the absence of any compelling reasons to grant a CL-7 licence as recorded by the commissioner within a distance of 100 mtrs, the order passed by the tribunal is unexceptionable, both on facts and in law.

12. In the result, this writ petition is dismissed by levy of costs of Rs. 5,000/- (Rupees five thousand only) on the petitioner payable to the third respondent, which is to be deposited before this Court by the petitioner and on such deposit,

is permitted to be withdrawn by the third respondent through its counsel. The cost shall be paid or deposited by the petitioner within four weeks from today, failing which, the registry is directed to issue a certificate in favour of the third respondent for recovery of the cost as though it is a decree passed by the civil court.