(2003) 10 AHC CK 0191

In the Allahabad High Court

Case No : C.M.W.P. No. 294 of 1995

Hotel Hindustan International APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 09-10-2003

Acts Referred:

Uttar Pradesh Excise (Wholesale and Retail Vend of Foreign Liquor) (VIIIth Amendment) Rules, 1994 — Rule 10
Uttar Pradesh Excise Act, 1910 — Section 40, 77
Uttar Pradesh Excise Manual — Rule 10(a)

Citation : (2003) 6 AWC 5235

Hon'ble Judges : Umeshwar Pandey, J;M. Katju, J

Bench : Division Bench

Advocate : Mukesh Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the impugned demand notice dated 31.1.1995 issued by the District Excise Officer, Varanasi vide Annexure VII to the writ petition and the G.O. dated 10.1.1995 issued by the Respondent No. 1 vide Annexure-8 to the writ petition. The Petitioner has also prayed for a mandamus directing the Respondents to renew the Petitioner''s licence for the Excise year 1995-96 after charging the renewal fee.

2. Heard learned Counsel for the parties.

3. The Petitioner is a four star Hotel and it is alleged that it caters mostly for foreign tourist and earns foreign exchange. The Star rating was granted by the Hotel and Restaurant Approval and Classification Committee, Department of Tourism, Government of India on 14.7.1988 vide Annexure-1 to the writ petition.

4. It is alleged in paragraph 3 of the petition that the Petitioner applied for and was granted on 24.7.1989 a Restaurant Bar licence for retail sale of foreign

liquor to all customers for consumption in the premises of its restaurant in Form FL-7C, as contemplated under Rule 10 (a) (iv) of paragraph 654 of the U.P. Excise Manual Volume 1, 1974. Photostat copy of the licence is Annexure-2 to the writ petition. The licence was renewed in the year 1990-91, 1991-92 and 1992-93 by Notification dated 28.3.1992. The licence in Form FL-7C was changed to FL-7A and the fee was increased for the Excise year 1992-93. The licence was renewed in the year 1993-94 and the licence fee paid was Rs. 2,50,000.

5. By notification dated 31.3.1994 published in the U.P. Gazette dated 25.6.1994, Rule 10 of paragraph 654 was amended by the U.P. Excise (Wholesale and Retail Vend of Foreign Liquor) (VIIIth Amendment) Rules, 1994, copy of which is Annexure-3 to the writ petition. It may be mentioned that Rule 10 provides for the categories of Hotel, Dak Bungalow or Restaurant Bar Licenses. By the amendment dated 25.6.1994 two new categories of licenses were introduced namely Composite licence in Form FL-6 and Composite licence in Form FL-6A. Form FL-6 is for 1, 2 and 3 star hotels and Form FL-6A is for 4 or 5 star hotels for sale of liquor in the premises of the hotels. Form FL-7A was retained by the aforesaid amendment for consumption of liquor in the premises of Restaurants of 4 or 5 star hotels.

6. It is alleged in paragraph 14 of the writ petition that the Petitioner serves/sells foreign liquor only to customers for consumption only in the premises of the Restaurant and no foreign liquor is served/sold outside its premises or in the rooms. For Excise year 1994-95 the Petitioner deposited Rs. 1,00,000 and applied for renewal of his licence and also requested for extension of time for the deposit of the balance amount of licence fee. The Respondent No. 4 on 31.5.1994 served a notice on the Petitioner dated 31.5.1994 demanding Rs. 5,00,000 on the basis of the Notification dated 31.3.1994 issued by the Excise Commissioner, since according to the District Excise Officer, Varanasi a composite licence in Form FL-6 was to be issued in place of Form FL-7C. True copy of the notice dated 31.3.1994 is annexed as Annexure-IV to the writ petition. Thereafter, by order dated 20.6.1994 the Petitioner''s licence was cancelled vide Annexure-V to the writ petition. In response to that letter the Petitioner wrote a letter dated 30.6.1994 to Respondent No. 4 informing him that the Petitioner has already paid Rs. 3,00,000 and he requested for renewal of his licence vide Annexure-6 to the writ petition. It is alleged in paragraph 19 of the petition that thereafter the Petitioner was permitted to carry on the business of his FL-7A licence by the Respondents.

7. Thereafter by notice dated 31.1.1995 issued by the Respondent No. 4 the Petitioner was permitted to pay Rs. 3,00,000 as the balance amount of licence fee for the Excise year 1994-95 on the basis of the G.O. dated 10.1.1995 vide Annexure-VII to the writ petition. It is alleged in paragraph 22 of the writ petition that the G.O. dated 10.1.1995 mentioned in the notice dated 31.1.1995 makes it compulsory for 4 and 5 star hotels to obtain a composite licence in Form FL-6A. True copy of the G.O. dated 10.1.1995 is annexed as Annexure-8 to the writ

petition.

8. The Petitioner''s grievance is that by the G.O. dated 10.1.1995 he has been forced to obtain a composite licence in Form FL-6A. It is alleged in paragraph 24 of the petition that the G.O. dated 10.1.1995 has not been issued u/s 40 of the U.P. Excise Act and has not been published in the Gazette as contemplated by Section 77 of the Act. The Petitioner has alleged that since he is only selling/ serving liquor in the approved premises of the Restaurant no composite licence is required in Form FL-6A and he cannot be compelled to take a composite licence in Form FL-6A and serve/sell liquor even in the hotel rooms.

9. A counter-affidavit has been filed by the Respondents and we have perused the same.

10. In paragraph 8 of the counter-affidavit it is alleged that although Form FL-7A Restaurant Bar licence was retained in the amended Rule but due to its deletion by the amendment dated 31.3.1994 renewal for the year 1994-95 of the Petitioner''s licence was not possible. In paragraph 9 of the same it is stated that under the Amended Rule 10, the State Government has introduced a new category of licence viz., FL-6A composite for all 4 or 5 star residential hotels, and it was desired by the State Government that all 4 or 5 star hotels having FL-6A or FL-7A licence previously should get their licenses converted into FL-6A composite licence. It is alleged that all other 4 or 5 star hotels of Varanasi except the Petitioner got their licenses converted to FL-6A composite licence by depositing Rs. 6,00,000. The FL-6A composite licence provides the facility to 4 or 5 star hotels to serve liquor by retail sale to its customers either in rooms or in restaurants situate in the premises of the hotels. The notice dated 31.5.1994 issued by the District Excise Officer, Varanasi to the Petitioner clearly stated that under the amended Rule the Petitioner has to take FL-6A composite licence. The Petitioner submitted letter dated 30.6.1994 in the office of the Respondent No. 4 for renewal of his FL-7A licence without complying with the notices dated 31.5.1994 and 20.6.1994 issued by the Respondent No. 4 to the Petitioner. By these letters the Petitioner was directed to deposit the balance amount of fee required to convert his licence to a FL-6A composite licence. The Petitioner was allowed to carry on the business in good faith and in anticipation that he will get his licence converted to FL-6A composite licence by depositing the balance amount of Rs. 3,00,000 at the earliest but the Petitioner did not do so. Hence, his licence had to be cancelled.

11. It is alleged in paragraph 16 of the counter-affidavit that the State Government has exclusive privilege in liquor trade and hence the Petitioner cannot challenge the Rules. The Petitioner is the owner of a 4 star hotel having rooms and restaurant and hence only Form FL-6A composite licence could be given to him under the amended Rules. It is alleged in paragraph 21 of the counter-affidavit that the Respondents are ready to convert the Petitioner''s licence into FL-6A composite licence provided the Petitioner deposits the balance fee of Rs. 3,00,000.

12. On the facts of the case we find no merit in this petition. It is well settled that no one has a fundamental right to do business in liquor vide Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, etc. The State Government has exclusive privilege in connection with the business in liquor and it can grant this privilege on such conditions as it deems fit to anyone. Hence if the State Government has taken a Policy decision to grant a composite licence in Form FL-6A for all 4 or 5 star residential hotels, this Court cannot interfere in such Policy decision.

13. It is well settled that in Policy matters, this Court should not ordinarily interfere vide Union of India (UOI) and Another Vs. International Trading Co. and Another, ; Krishnan Kakkanth Vs. Government of Kerala and ohters, ; and Tata Cellular Vs. Union of India, . As held by the Supreme Court in Tata Cellular v. Union of India (supra),judicial review is not against the decision but against the decision making process and this Court can only interfere on Wednesbury principles.

14. The judiciary must exercise self-restraint in such matters and should not interfere in matters really belonging to the domain of the Executive or the Legislature. If the Executive authorities have decided to give a composite licence in Form FL-6A to 4 or 5 star Hotels, it is not for this Court to sit in appeal over such a Policy decision. This Court should realise its limitations. It is not an expert in such matters and the Court should ordinarily respect the decision of the Executive in such administrative decisions. Judicial restraint enhances the prestige and respect of the Judiciary and helps to maintain its independence. The Government must be given wide latitude to adopt whatever policy it deems proper, unless of course such Policy is in clear violation of any statutory or constitutional provision. We do not find any violation of any statutory or constitutional provision by the impugned Government Order, or the action of the Respondents.

15. Learned Counsel for the Petitioner has submitted that the Petitioner should not be forced to obtain a composite licence in Form FL-6A. He has also submitted that the G.O. dated 10.1.995 has not been issued u/s 40/77 of the Act and has no statutory force as it has not been published in the Gazette. Hence, he has submitted that the said G.O. cannot be enforced against the Petitioner.

16. In our opinion the G.O. dated 10.1.1995 only clarifies the Gazette Notification dated 31.3.1994. Annexure-III to the writ petition which has published the amended U.P. Excise (VIIIth Amendment) Rules and hence no exception can be taken to the said G.O. Hence the decision of the Supreme Court in State of U.P. v. Kishori Lal, AIR 1980 SC 680,relied on by the Petitioner''s counsel has no application. If the Petitioner does not wish to take a liquor licence, he is not bound to take it but if he wishes to take it he has to take it in accordance with the amended Rules.

17. Thus, there is no force in this petition and it is dismissed. Interim order is vacated.