(2009) 11 DEL CK 0177

In the Delhi High Court

Case No : LPA No. 481 of 2003

Institute of Chartered Acc. APPELLANT

Vs

Ashok Kumar Tyagi and Others RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:
Delhi Liquor Licence Rules, 1976 — Rule 33(1A), 33(B)

Citation : (2009) 11 DEL CK 0177

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : V.P. Singh, Rakesh Agarwal and Pulkit Aggarwal, for the Appellant; Darpan Wadhwa and Sheena Iype for R-4, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Delhi State Civil Supplies Corporation Limited obtained a licence from the Excise Commissioner to sell, on retail, liquor. One Ashok Kumar Tyagi, the writ petitioner, entered into an agreement with the said Corporation and offered his premises where from liquor could be sold. A contractual document was drawn up containing the terms of revenue sharing between Mr. Ashok Kumar Tyagi and Delhi State Civil Supplies Corporation Limited. In a nutshell, Mr. Ashok Kumar Tyagi was to get 121/2 % of the gross profit in respect of the sale of liquor from his premises.

2. A hue and cry was raised in the press. The reason for the hue and cry was that the premises in question was close to the office of the appellant. As per the appellant, the grant of the licence for vending alcohol violated Rule 33(1A) of the Delhi Liquor Licence Rules.

3. The Lokayukta, Government of NCT of Delhi, took cognizance of what had happened and passed an order requiring the authorities to explain as to under what circumstances the liquor vend was being permitted to be run from the premises in question. Further order was passed commenting adversely on the

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grant of the licence.

4. Based on the orders passed by the Lokayukta, the Commissioner Excise i.e. the Authority Competent to grant the licence passed an order on 27.09.2002 cancelling the licence.

5. Mr. Ashok Kumar Tyagi filed a writ petition praying that the order dated 27.09.2002 be quashed. He challenged the jurisdiction of the Lokayukta to inquire into the issue.

6. Opposing the writ petition, the appellant questioned the locus standi of Mr. Ashok Kumar Tyagi, urging that the licence not being issued in his name by the Commissioner Excise, the mere fact that Delhi State Civil Supplies Corporation Limited had entered into an agreement with him to sell liquor from his premises, gave no right to Mr. Ashok Kumar Tyagi to question the order dated 27.09.2002.

7. On the issue of locus standi of Mr. Ashok Kumar Tyagi to maintain the writ petition, the learned Single Judge has held as under:-

Having said so, still insofar as present writ petition is concerned, no relief can be granted to the petitioner. It is clear from the facts narrated above that licence to open L-2 vend was granted by the Commissioner of Excise to Delhi State Civil Supplies Corporation Ltd./Respondent No. 4. It is the licence in their favour which has been cancelled. Respondent No. 4 had taken premises of the petitioner on rent for which Rent Agreement was executed. No doubt as per the terms of the said Agreement the petitioner was entitled to charge 121/2% of the gross profit as rent compensation from Respondent No. 4. However, fact remains that the licence was not in favour of the petitioner and therefore the petitioner has no locus to file the present writ petition challenging the said cancellation. It was for Respondent No. 4 to challenge the cancellation of the licence.

8. But immediately, thereafter, the learned Single Judge proceeded to pass the following directions:-

However, although it is held that the petitioner has no locus standi to file this petition but as the findings at the same time are that the proceedings initiated and orders passed by the Lokayukta are without jurisdiction, and as impugned order dated 27.9.2002 passed by the Respondent No. 3 cancelling the licence is based on the order/recommendation of Lokayukta, it would be open for the Respondent No. 3 to reconsider the matter without being influenced by the order passed by the Lokayukta. On its own assessment the Respondent No. 3 should form an opinion as to whether it was not proper to have the L-2 vend at the aforesaid location keeping in view relevant provisions of law including Rule 33(1A) and Rule 33(B). He would also follow the prescribed procedure while taking such decision including observance of the principles of natural justice. Such a consideration be made and decision taken within a period of six weeks from today.

9. It is urged in the appeal that having held that Mr. Ashok Kumar Tyagi did not

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have any locus standi to maintain the writ petition, the same required to be dismissed and thus further directions issued by the learned Single Judge are liable to be set aside.

10. Indeed, once a Court holds that the writ petitioner has no locus standi to maintain an action, back handed relief cannot be granted. If a petition is not maintainable on account of the petitioner having no locus standi to maintain the petition, the question of granting any relief in the writ petition does not arise.

11. Thus, the directions issued by the learned Single Judge as noted in Para 9 above are hereby set aside.

12. It is urged by Mr. V.P. Singh, learned Senior Counsel that the consequence of the directions issued by the learned Single Judge being set aside, require directions to be issued that the liquor vend should be closed.

13. What has happened is that after the order dated 30.05.2003 i.e. the impugned order, was passed by the learned Single Judge, the Commissioner Excise has passed a fresh order restoring the licence in favour of the Delhi State Civil Supplies Corporation Limited and as result whereof the liquor vend is being run from the premises in question pursuant to the agreement between Ashok Kumar Tyagi and Delhi State Civil Supplies Corporation Limited.

14. But, said subsequent action of the Commissioner Excise has been challenged by way of an independent writ petition being WP(C) No. 9785/2004.

15. Needless to state, the said action would be adjudicated upon in the said writ petition. Suffice would it be to note and record that while deciding the said writ petition judicial notice would be taken of the instant order which has set aside the directions issued by the learned Single Judge vide order dated 30.05.2003.

16. The appeal is allowed. The direction issued and as noted in para 9 above is set aside.

17. No costs.

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