**(1995) 07 DEL CK 0071**

**In the Delhi High Court**

**Case No :** Civil Writ Appeal No. 2501 of 1995

Jagatjit Industries Limited and Others APPELLANT

Vs

The Collector of Excise RESPONDENT

**Date of Decision :** 19-07-1995

**Acts Referred:**

**Citation :** (1995) 59 DLT 559

**Hon'ble Judges :** Dr. M.K. Sharma, J;D.P Wadhwa, J

**Bench :** Division Bench

**Advocate :** A.B. Divan, M.G. Ramachandran, P.H. Parekh, Rohit Tandon, S. Bhartari and A.K. Nigam, for the Appellant;

## Judgement

M.K. Sharma, J.

(1) This writ petition is directed against the order passed by the Collector rejecting the application for renewal of excise (L-I) license granted to the petitioner-Company under the Punjab Excise Act, 1914, as extended to the territory of Delhi for the wholesale vend of Indian made Foreign Liquor Products (IMFL Products) in the territory of Delhi.

(2) The petitioner-Company has been supplying Imfl products in the territory of Delhi for many years. The petitioner-Company was granted a license for wholesale vend (L-I) license in the year 1991-92. Under the provisions of the Excise Laws as applicable to the facts and circumstances of the present case the license for wholesale vend is granted for a period of one year to be renewed annually. The license granted to the petitioners was renewed annually in the years 1993-94 and 1994-95. On 28.4.1995 the petitioner-Company submitted its application for renewal of the wholesale vend excise license for the year 1995-96 in accordance with the excise policy and regulations applicable to the territory of Delhi.

(3) Mr. Anil Dewan, appearing for the petitioner-Company submitted before us that similar applications for renewal were filed by other manufacturers of Imfl

product on or about the same time when the petitioner-Company submitted its application for renewal. It is submitted that although the applications of other manufacturers for renewal of their licenses were decided in a course of 4 to Ii days from the date of their application and the said other applicants were also given time to remove the -deficiencies which the Collector found in their applications for renewal, but no such decision was taken for renewal of license of the petitioner company and the same was kept pending without any reason.

(4) It appears from the record of the case that the petitioner-Company earlier approached this Court through Civil Writ PETITION No. 2290/1995 seeking a direction of this Court for renewal of its (L-l) license granted under the Punjab Act, 1950 for the years 1995-96. This Court by order dated 29.6.1995 directed the respondents to take a decision on the application of the petitioners dated 28.4.1995 for renewal of their excise license within 7 days from 26.6.1995. In pursuance of the aforesaid direction and order passed by this Court the application for renewal filed by the petitioners was taken up for consideration on 26.7.1995 and a show cause notice was served on the petitioners on 29.6.1995 at about 8.15 p.m. stating inter alias that the renewal application filed by the petitioner-Company was incomplete and deficient and that no iota of particulars or details was given. By the said notice the petitioners were directed to be present at 4 p.m. before the Collector on 30.6.1995.

(5) It has been stated in the writ petition that the petitioner-company''s written request for supply of the list/details of the alleged deficiencies were not acceded to by the Collector and the petitioner-Company was directed to note the list of deficiencies from the file note at about 5 p.m. and was called upon to respond by 6.30 p.m. It is further stated in the writ petition that the petitioner-company''s request that the matter be taken up on 3.7.1995 was not acceded to on the ground that as per order dated 26.6.1995 passed by this Court in Civil Writ Petition No. 2290/1995 the case has to be decided by 30.6.1995 itself. At that stage, it is stated in the writ petition, the petitioner-Company requested for extension of time until 7.30 p.m. on 30.6.1995 to file its reply, which was orally acceded to by the Collector. However, when the petitioner-Company sent the reply no person in the Collector''s office or at his house was available to receive the reply. Subsequently, to the utter surprise of the petitioner-Company the Collector passed the impugned order dated 30.6.1995 rejecting the renewal application.

(6) In reply to the aforesaid statements made in the writ petition a small counter affidavit has been filed by the Collector of Excise, Delhi. In the said counter affidavit filed by the Collector on behalf of the respondents it has been stated inter alias that upon receipt of the order of this Court the application of the petitioner for renewal was taken up for further ''scrutiny and such scrutiny revealed deficiencies in the application filed by the petitioner-Company and the application was liable to be dismissed in terms of Clause 5 of the Public Notice issued by the respondent (at page 45 of the Paper Book). Consequently, a show

 

cause notice was also issued to the petitioners and duly served upon them on 29.6.1995 directing the petitioners to file their objections on or before 4 p.m. of 30.6.1995 inasmuch as in terms of the order of this Court a decision was required to be taken within one week of the said order. It is further stated in the said counter affidavit that the answering respondent with a view to enable the petitioner to comply by explaining and /or removing the deficiencies was further pleased to extend time till beyond working hours on that day itself i.e. by 6.30 p.m. inspire of such extension granted the representative of the petitioner did not appear before the answering respondent within the extended time, and consequently the answering respondent on the basis of the material before it passed the order dated 30.6.1995.

(7) It thus appears to us that the respondent thought it fit to give an opportunity to the petitioner company to remove the deficiency in the application filed by it for renewal of its license. The said deficiencies have also been set out in the impugned order as follows :-

(I)The income tax clearance certificate is valid only up to 9.12.1994. (ii) Bulk of the export verification certificate (EVCs) are not attested. (iii) Copy of distillery certificate filed, mentions of Annexure, but no such annexure is filed. Besides, in support of renewal of license, a no attested photo copy of a letter purportedly issued by Assistant Excise & Taxation Commissioner, Patiala is filed. Signatures of concerned authority are not there on the letter. (iv) Certificates given in respect of supplies of liquor during 1993-94,199495 to All India Market (excluding Delhi and export), Csd and export outside India are neither original copies, nor attested copies from excise authorities but photo copies of purportedly attested copies or original. (v) The Chemical Analysis report and the spirit base report are photo copies of attested copies of attested copies of purportedly original report. Both these reports are undated. (vi) While the application is made for Aristocrat Whisky, Chemical analysis report, spirit base report and labels are filed in respect of Aristocrat Finest Indian Whisky. (vii) Only photo copy of Sales Tax Clearance certificate is filed.

(8) The application for renewal of its license was submitted by the petitioner as far back as 28.4.1995. The aforesaid deficiencies, it appears to us, were brought to the notice of the petitioner-Company only on 30.6.1995 at 4 p.m., at the time of hearing of the show cause notice. It appears from the statements made in the counter affidavit and from the submissions made by the learned Counsel appearing for the respondent that the respondent gave time to the petitioner-Company to remove the aforesaid deficiencies till 6.30 p.m. of the same day. It is stated by the petitioner in the writ petition that although its request for extension of time till 7.30 p.m. on 30.6.1995 was acceded to orally by the Collector, but when the petitioner Company sent its reply there was none to receive the same in the Collector''s office. The aforesaid statement made in the writ petition has not been denied by the respondents in their counter affidavit. Besides, about 2 hours time to remove all the deficiencies, in our opinion, could not be said to be

a reasonable time to make good the deficiency in the application for renewal as pointed out by the Collector. An opportunity of hearing which is envisaged in the observance of the principles of natural justice cannot be an empty formality and the same must be full, fair and reasonable opportunity. In the instant case the respondent failed to afford full opportunity to the petitioners to make good the deficiencies was pointed out. In our opinion, no prejudice would also have been caused if the Collector had given reasonable time to the petitioner-Company to make good the deficiency in his application for renewal as pointed out by the Collector. In our considered view, there is violation of the principles of natural justice in the instant case in rejecting the application of the petitioner-Company.

(9) In that view of the matter we feel that it is a fit case where the impugned order rejecting the application for renewal is liable to be set aside and quashed. Accordingly, we hereby set aside and quash the impugned order passed by the Collector rejecting the application for renewal of excise (L-l) granted to the petitioner-Company and remit the matter back to the Collector and direct the respondents to allow reasonable time to the petitioners to submit their objections and/or remove the deficiencies in the application filed by it for renewal of its license as pointed out by the Collector and on hearing the petitioner and/or its representative, pass order in respect of the grant of renewal of license to the petitioner-Company in accordance with law. We have no hesitation in our mind that the decision with regard to renewal of the license to the petitioner-Company would be taken as expeditiously as possible. Although we have held that there has been violation of the principles of natural justice the petitioners are nevertheless themselves to be blamed as for this purpose they insisted that only one week''s time be given to the Collector to take decision in the matter, though at that time submission of the respondent was that at least two weeks time be given. However, on that count we cannot find fault with the Collector in not agreeing to the request of the petitioners for extension of time, as in our view, he was bound by the direction given by this Court to decide the matter within one week. In view of the observations made above, though we allow the petition, but in the circumstances the petitioner will pay costs amounting to Rs. 5,000.00 payable to Indian Council of Legal Aid & Advice, Chamber No. 3, Lawyers Chambers, Delhi High Court, New Delhi.

 