
(2012) 10 AHC CK 0238

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5401 of 2011

Jai Prakash Tiwari

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Constitution of India, 1950 — Article 47
Uttar Pradesh Excise Act, 1910 — Section 11(1)

Citation : (2012) 10 ADJ 478

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Hemant Kumar Mishra and Arti Ganguly, for the Appellant;

Final Decision : Allowed

Judgement

Hon"ble Dr. Satish Chandra, J.—By this writ petition, the petitioner has assailed the appellate order dated 19.3.2006 passed by the Additional Excise Commissioner (Licencing and Industrial Development) Uttar Pradesh in Appeal No. 10 of 2003 u/s 11(1) U.P. Excise Act, 1910 as well as the revisional order dated 3.12.2009 passed by the Special Secretary Excise in Revision No. 57 of 2007. The brief facts of the case are that the petitioner was a licence holder for the country wine, Sherpur Para, District Faizabad for the excise year 2002-2003. The petitioner has not uplifted the quota prescribed of the country wine during the excise year. So, the opposite parties cancelled the licence and forfeited the security by the impugned orders. Finally, the opposite party has issued the recovery certificate dated 18.8.2011 (Annexure 1). Being aggrieved, the petitioner has filed the instant writ petition.

2. With this background, Sri Hemant Kumar Misra, learned counsel for the petitioner submits that the petitioner did his best to uplift the quota, but could not uplifted the quota of the country wine during excise year. So, the petitioner has failed to deposit the licence fee on the prescribed date. He further submits that now the uplifting of the quota is not required as per the ratio laid down by

this Hon"ble Court in case of Rakesh Singh Vs. State of U.P., , where the petitioner was also having a licence of country liquor shop and he was unable to uplift the quota. So, his licence was cancelled by the District Excise Officer.

3. Learned counsel for the petitioner also relied Para 62 of the said judgment, which is reproduced as follows : 62. Accordingly, the writ petition is allowed and the reliefs are moulded. A writ in the nature of certiorari is issued quashing the order contained in Annexure 1 to the writ petition and the circular dated 9.3.2009 contained in Annexure 10 to the writ petition consequential benefit.

A writ in the nature of mandamus is issued directing the respondents to refund the security deposited by the petitioner forthwith say, within a period of two months.

A writ in the nature of mandamus is issued commanding the State Government to consider and take appropriate steps by making necessary changes in the statutory provisions with regard to MGQ and other provisions under which the sale of liquor is encourage and licencees are compelled to lift the sell the liquor to fulfil the quota which is increased every year keeping in view the observations made in the body of present judgment.

No orders as to costs.

Sri D.P.S. Chauhan, learned standing counsel justified the impugned orders.

After hearing both the parties, it appears that in the case of Rakesh Singh (supra), the Division Bench of this Court upheld that the condition for upholding the minimum quota of country wine is against the Directive Principles enshrined in Article 47 of the Constitution. The reliance was placed on the ratio laid down in the following cases :

1. Municipal Council, Ratlam Vs. Vardichan and Others, ;
2. Tapan Kumar Sadhukhan Vs. Food Corporation of India and Others, ; and
3. The Municipal Corporation of Greater Bombay Vs. M/s. New Standard Engineering Co. Ltd., .

In the instant case, the facts and circumstances are identical to the case of Rakesh Singh (supra) as agreed by both the parties.

When it is so, then following the ratio laid down in the case of Rakesh Singh (supra), all the impugned orders passed by the lower authorities, are hereby set aside.

The writ petition is allowed in terms of the ratio laid down in the case of Rakesh Singh (supra).