

(1986) 07 MAD CK 0045

In the Madras High Court

Case No : Writ Petition No. 3464 of 1986

K. Arumugasamy

APPELLANT

Vs

Superintendent of Central Excise, Sivakasi and Others

RESPONDENT

Date of Decision : 01-07-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 178(4), 180

Citation : (1986) 26 ELT 517

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Advocate : A.G. for A. Sivaji and S.S. Amritsagar, for the Appellant; N. Jothi, Additional Central Standing Counsel and M. Govind Swaminathan, for the Respondent

Judgement

S. Mohan, J.—The facts in this case are very simple. The petitioner obtained a Form L4 licence under the Central Excise Act and the rules framed thereunder for the manufacture of safety matches under name and style of Swastik Match Works which was granted to him on 9.1.1976. It has been renewed from time to time on 30.9.1979, 26.11.1982 and 16.11.1985. As it is, it has its currency till 31.12.1990. It appears that the petitioner has no experience in this line and therefore requests the second respondent in this writ petition to join him. Thereafter, on 3.8.1978, the Swastik Match Works Factory started manufacturing matches. A partnership consisting of four persons was formed on 30.8.1980 consisting of the writ petitioner, his sister, his wife and the second respondent. This partnership was to come into effect on 3.8.1978. The second respondent, on his own, seems to have started four other similar match factories. Thereafter, differences arose between the parties as a result of which on 31.3.1984, a release deed was executed by the wife and sister of the writ petitioner who were paid large sums of money in consideration of the release. Consequent to their going out of the partnership, on 1.4.1984, a new partnership was formed consisting of the writ petitioner and the second respondent. On 28.1.1986 O.S. 24 of 1986 was filed on the file of the Sub Court, Srivilliputtur, by the second

respondent for an injunction restraining the writ petitioner from carrying on business. Pending the suit I.A. 72 of 1986 was preferred. Again, another application I.A. 76 of 1986 was preferred for direction to Central Excise authorities for the issue of banderoles. This I.A. 76 of 1986 was allowed on 30.1.1986 by the learned Subordinate Judge whereupon I.A. 80 of 1986 was filed by the writ petitioner for stay. But that was not granted. The direction against him in I.A. 76 of 1986 was questioned in C.R.P. 341 of 1986. This court, by order dated 4.2.1986, granted interim stay. On 12.2.1986 the C.R.P. was allowed and the matter was remitted to the court below for fresh disposal. An interlocutory application under S. 34 of the Arbitration Act was taken out in O.S. 24 of 1986 by the writ petitioner. While the matter stood thus, the writ petitioner issued a notice on 5.3.1986 to the second respondent and third respondent for arbitration and also stating that the partnership would stand dissolved on and from 31.3.1986. To this there was a reply by respondents 2 and 3 on 15.3.1986. On 19.3.1986 the L4 licence issued under the Central Excise Act was amended by the first respondent. Questioning that the present writ petition has come to be preferred, however, on 4.6.1986, O.S. 88 of 1986 has been filed for dissolution of the partnership as well as rendition of accounts.

2. The only complaint, for the limited purpose of the writ petition by the learned Advocate General appearing for the petitioner is that before the impugned order dated 19.3.1986 came to be passed amending the licence and including the names of the second and third respondents. No notice was, however, issued to the petitioner. I may state that the third respondent is none other than the mother of the second respondent. According to him, on the ground of violation of the principles of natural justice, this order is liable to be set aside. Had only a notice been given to the petitioner, he would have drawn the attention of the authorities to the fact that the partnership no longer exists in view of the pendency of the civil proceedings. Then again, by notice dated 5.3.1986 he had made his unequivocal declaration for dissolution and again O.S. 88 of 1986 was filed by him for dissolution of partnership and rendition of accounts. Therefore, it has caused immense prejudice and he prays that the writ petition be allowed.

3. The learned counsel appearing for the department would first and foremost contend that under rule 178(4) of the Central Excise Rules, it was the duty of the petitioner to have informed about the formation of partnership. His failure to do so itself would mean that he is not entitled to notice. Even otherwise, under law, no action is necessary because neither the Central Excise Act nor the rules framed thereunder require a notice. In this case, as a fact, a notice was issued to the petitioner. On 3.1.1986 the petitioner wrote to the department that the power of attorney issued in favour of the second respondent had been cancelled whereupon the petitioner was asked by the Department by communication dated 6.1.1986 as to what prompted the petitioner to cancel the power of attorney. (I may state here that it is none of the functioning of the Department because power of attorney means reposing confidence in another). The second respondent, in the meanwhile, on 17.1.1986, furnished the material about the

formation of partnership and the manner in which the business had been carried on. Therefore, on 30.1.1986 a show cause notice was issued as to why the licence should not be amended and an enquiry was directed to take place on 4.2.1986. However, the letter containing the notice could not be served on the petitioner because the initial differed and the writ petitioner refused to receive.

4. Mr. S. Govindswaminathan appearing for the second and third respondents would submit that under law there is absolutely no necessity to issue a notice at all. Even though the licence was issued in the individual name of the writ petitioner, in view of Section 14 of the Partnership Act, that would belong to the partnership. Therefore, it became the property of the firm. Once the authorities were convinced that it was the property of the firm and in so far as the petitioner does not deny the existence of partnership, there is no necessity to give notice even assuming that notice is necessary. Further, Rule 180 of the Central Excise Rules clearly contemplates alteration of amendment of a licence. It is by exercise of that power the amendment had come to take place. In any event, having regard to the statement in paragraph 6 of the affidavit of the petitioner that he had drawn the attention of the authorities that an attempt was being made by the second and third respondents to have their names included, he was fully aware of the proposed amendment. Under these circumstances, the failure to issue notice does not prejudice the petitioner. Ultimately it is submitted that should this Court be not inclined to accept this contention, at least the matter could be remitted to the authority for issue of notice and rehearing. Taking clue from this argument the learned counsel for the department resiled from his original stand that no notice is necessary and that should notice be found to be necessary, the Department is prepared to give further notice and rehear the matter. To this the learned Advocate General would reply that should a notice be given, the petitioner should be permitted to put forth all defences open to him to as on today including the notice of dissolution dated 5.3.1986, the pendency of the civil proceedings, the scope of the order of injunction etc. About this aspect of the matter I shall consider after dealing with the legal position.

5. It is now too late in the day to contend that licence is not property within the meaning of Article 300A of the Constitution. Even assuming it is a privilege, it is a very valuable privilege. Section 52 of the Easements Act clearly tells us that a licence is purely personal to the grantee. Under these circumstances, if the personal property of the privilege of a person is sought to be deprived it is nothing more than elementary to say that it could be done so, if at all permissible, only after notice to the concerned parties. Failure to do so will undoubtedly mean violation of the principles of natural justice. Therefore, I have not the slightest hesitation in upholding the argument of the learned Advocate General. It really passed my comprehension to appreciate the argument of the learned counsel for the department that no notice is necessary. It is rather curious that the partnership was formed as early as August 1980 which was to come into effect from an anterior date 3.8.1978. The department was oblivious to this fact. May be because it did not have information. But how, all of a sudden,

when the second respondent furnished information on 17.1.1986 the department woke up, which was hitherto a Rip Van Winkle and then came to pass the impugned order on 19.3.1986, is anybody's guess. Be that so. Reverting to the question of notice, the learned counsel for the department cannot blow hot and cold because the records clearly show that the notice was issued on 30.1.1986 calling upon the petitioner to show cause why the amendment as prayed for by respondents 2 and 3 should not be carried out. Concerning this an enquiry was to take place on 4.2.1986. But that later was originally deposited because the addressee was out of station and later on returned to the sender with the endorsement "initials differ". Therefore, it is incorrect on the part of the department to contend that the petitioner "refused". There is absolutely nothing to suggest on record even indirectly to the effect that he refused. However, the argument proceeds upon this fact that the court could draw a presumption as to how the postman would know whether the initials differed or not. It is not a matter of giving evidence. This Court exercising powers under Article 226 of the Constitution of India, goes only by the records and cannot substitute what is not available on the records by ingenious arguments or innovative submissions. Therefore, I reject the contention on behalf of the department that the petitioner actually refused and the postman had made the endorsement "initials differ". These are purely conjectures not warranted under any circumstances. In so far as there is deprivation of the property, it cannot be gainsaid that there must be notice to the petitioner. It is no consolation to say that neither the Act nor the rules provides for notice. It is not a mere matter of form but substance in relation to the deprivation of property or privilege. Therefore, I equally reject the attempt of Mr. S. Govindswaminathan, learned counsel for the second and third respondents, to contend that no notice is necessary. Again, a curious argument in put forth by the Department that because the petitioner was clearing the goods, when there was a proposal to amend immediately steps had to be taken for amendment so that the right person could be caught. This again, is an argument borne out of desperation. Certainly, it cannot be pretended that the Department is so helpless against tax evaders. There are enough rules to bring them under the vertex of law.

6. Turning to Mr. Swaminathan's further arguments that because it is the property of the firm the licence belongs to the firm and therefore S. 14 of the Partnership Act would apply. In the absence of any denial about the existence of partnership, that is a matter which required to be adjudicated and cannot be unilaterally assumed. Then again, merely because the petitioner put forth certain objections to the first respondent that the second respondent and third respondent are trying surreptitiously to include their names in the licence, that cannot be tantamount to notice which is required, as I have held above, for the deprivation of the property. Therefore, looked at from any point of view, the petitioner is bound to succeed on the ground of want of notice.

7. Then the question is about the remit. I have already noted that though the learned counsel for the department would take the extreme stand that no notice

is necessary, later on he resiled from the stand and sailed with Mr. Swaminathan that should this court be not inclined to accept the contention, the matter might be remitted to the licensing authority for issue of a proper notice in the conduct of the enquiry. I should not penalise the parties for the extreme stand taken by the Department. Therefore, the matter will stand remitted to the licensing authority for fresh hearing after due notice to the parties, both to the writ petitioner (K. Arumugaswamy) and to the second and third respondents (S. T. Grahadurai and T. Lakshmithayammal) I make it clear that the impugned order is hereby quashed. I further make it clear that it is open to the writ petitioner to put forth all objections available to him as on today by way of answering the notice which is to be issued afresh. The writ petition will stand allowed with costs to be paid by the department. Counsel's fee is fixed at Rs. 1000. Should the Department issued a fresh notice and conduct enquiry as directed by me, it shall be done on or before 31.8.1986.