(2014) 05 RAJ CK 0123

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2479/2014

Kamal Singh APPELLANT

Vs

Rajasthan Tax Board and Others RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Probation of Offenders Act, 1958 — Section 4(1)
Rajasthan Excise Act, 1950 — Section 19, 4(1), 54, 9A(3)

Citation : (2014) 05 RAJ CK 0123

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Advocate : Dinesh Mehta, Advocate for the Appellant; M.S. Singhvi, Senior Advocate, Assisted by Mr. Hemant Dutt, for Respondent No. 4 and Mr. Sachin Acharya, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Govind Mathur, J.—The Commissioner Excise, Government of Rajasthan, by a notice dated 31.1.2014, invited tenders for grant of licence for wholesale and retail sale of lanced poppy heads. The petitioner as well as the respondent No. 4 Shri Mahendra Singh submitted applications for grant of licence relating to Barmer-I and Nimbahera-I joint group. After adhering the process for grant of licence, the sanction was granted in favour of the respondent No. 4 under a letter dated 18.2.2014. On receiving a complaint about eligibility of the respondent No. 4 to have the licence for the sale of lance poppy heads, the Commissioner Excise called upon him vide letter dated 22.2.2014 to explain as to why the sanction issued be not withdrawn. The District Excise Officer, Barmer scrutinised the allegations made in the complaint and arrived at the conclusion that the respondent No. 4 was convicted for an offence punishable under the Excise Act and he also concealed necessary information about his conviction. On basis of the findings arrived the sanction granted to the respondent No. 4 was cancelled and the same was tendered in favour of the petitioner under a letter dated 28.2.2014.

2. The respondent No. 4 by way of filing an appeal before the Excise Commissioner assailed the cancellation of the sanction granted to him and also the grant of the same to the petitioner. The appeal came to be accepted by order dated 25.3.2014 passed by the Commissioner Excise.

3. To challenge the order dated 25.3.2014 passed by the Commissioner Excise the petitioner preferred a revision petition before the Rajasthan Tax Board as per provisions of Section 9-A(3) of the Rajasthan Excise Act, 1950 (hereinafter referred to as ''the Act of 1950''). The registry of the Tax Board fixed the revision petition and stay petition annexed thereto for consideration on 19.5.2014. Looking to the delay in posting the revision petition as well as the stay application for consideration, the petitioner has approached this Court by way of filing this petition for writ.

4. The petitioner has challenged the order passed by the Commissioner Excise dated 25.3.2014 on several counts. A caveat has been lodged on behalf of the respondent NO. 4 to oppose admission of the writ petition and any order on the stay petition.

5. At the threshold, it is submitted by learned counsel for the caveator respondent No. 4 that in the instant matter the petitioner is having an efficacious alternative remedy, therefore, he should not be permitted to invoke extraordinary jurisdiction of this Court and further that the petitioner as a matter of fact has already availed the alternative remedy by way of filing revision petition, therefore, he cannot be permitted to pursue two remedies simultaneously.

6. While meeting with the objections raised by learned counsel for the respondent No. 4, the submission of Shri Dinesh Mehta, learned counsel for the petitioner, is that in the instant matter the respondent No. 4 misled the Excise Commissioner by playing a fraud before the court of learned Additional Chief Judicial Magistrate, Beawar, District Ajmer. It is pointed out that the respondent No. 4 was facing a criminal case for the offence punishable u/s 19/54 of the Act of 1950 and he accepted his guilt, however, by representing himself as an old man of 81 years he obtained the benefit of probation as per Section 4(1) of the Probation of Offenders Act. According to learned counsel the actual age of the respondent No. 4 is less than 20 years, but by representing himself as an old man of 81 years he played a fraud with the court and the cognizance of this fraud can be taken by this Court under Article 226 of the Constitution of India and not by the Rajasthan Tax Board, thus, the remedy said to be available is not efficacious one.

7. In rejoinder, it is submitted by learned counsel for the respondent No. 4 that respondent Mahendra Singh submitted an application before the court of learned Additional Chief Judicial Magistrate, Beawar accepting his guilt and in the

application aforesaid he mentioned his age as 18 years and he nowhere pretended himself as an old man. In the order passed by learned Additional Chief Judicial Magistrate the age of the petitioner is shown as 81 years, but that is an error on the part of the court concerned.

8. Heard learned counsel for the parties.

9. It is not in dispute that the petitioner is having an alternative remedy and he has availed that also. The reason given for ignoring the remedy aforesaid is that the respondent No. 4 as per the petitioner obtained an order as per Section 4(1) of the Probation of Offenders Act by playing fraud and notice of that can be taken by this Court under Article 226 of the Constitution of India but not by the Rajasthan Tax Board in its revisional jurisdiction.

10. I am having no doubt that the remedy under Article 226 of the Constitution of India can very well be availed despite having a statutory alternative remedy, if that is ill-suited to meet the demands of extraordinary situations where private or public wrongs are inextricably mixed up and the prevention of public injury and the vindication of public justice require for invoking the extraordinary authority of the High Court under Article 226 of the Constitution of India. However, in these circumstances also the court is required to have good, sufficient and cogent reasons to bypass the statutory remedy.

11. In the case in hand, an effort is made by learned counsel for the petitioner to canvas that the fraud said to be played by the respondent No. 4 is not only a private ill-deed but is indeed a public wrong and, therefore, to meet this circumstance the petitioner is entitled to invoke powers of this Court under Article 226 of the Constitution of India.

12. I am not at all impressed with the argument advanced. In this petition for writ challenge is given only to the order dated 25.3.2014 passed by the Excise Commissioner with a prayer for awarding the licence for the lanced poppy heads to the petitioner. No prayer is made to take cognizance of the fraud said to be committed by the respondent No. 4 before the Additional Chief Judicial Magistrate, Beawar. For the sake of argument, even if it is assumed that the petitioner would have questioned the fraud said to be committed by the respondent No. 4 in this petition for writ, then too the remedy of writ would have not been proper for that. The appropriate remedy available is by way of invoking inherent powers of this Court as per provisions of Section 482 Code of Criminal Procedure and no such petition has yet been filed by the petitioner.

13. Be that as it may, having considered all the facts averred in the petition for writ and the arguments advanced by learned counsel for the petitioner, I do not find any distinction in the cause agitated by the petitioner before the Rajasthan Tax Board and in the instant petition for writ. The distinction sought to be made on basis of the fraud said to be committed by the respondent No. 4 though is referred in body of the petition, but no relief based thereon is claimed. The petitioner as such is availing two remedies simultaneously. In the background

noticed above, I am of the considered opinion that instant one is not a case fit to invoke extraordinary jurisdiction of this Court by ignoring statutory remedy available to the petitioner under the Rajasthan Excise Act, 1950.

14. The preliminary objection raised by the caveator respondent, thus, sustains. Hence, the writ petition is dismissed.

