(2020) 10 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1165 Of 2020, Civil Miscellaneous No. 3368, 3369 Of 2020

Kashmir Wine And Provision Store — APPELLANT

Vs

Union Territory Of J&K And Others — RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:
Jammu and Kashmir Excise Act, 1958 — Section 4, 4(a), 20, 22
Jammu & Kashmir Liquor License And Sale Rules, 1984 Rules — Rule 14
Constitution Of India, 1950 — Article 14, 19, 21, 226

Citation : (2020) 10 J&K CK 0001

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : K. S. Johal, Surpreet Johal, K. D. S. Kotwal

Final Decision : Disposed Of

Judgement

Javed Iqbal Wani, J

1. In this petition, petitioner seeks following reliefs:

i) "The Show Cause Notice No.Notice/DECEJ/Exc/584-85 dated 06.06.2020 issued by respondent No.3;

ii) The communication No.EC/Exc/2020-21/550-52 dated 05.06.2020 issued by respondent No.2; May kindly be quashed.

AND

By issuing further appropriate writ, direction or order in the nature of writ of Mandamus, respondents be commanded to allow the petitioner to continue work on the basis of license granted in his favour being License No. 9/JKEL-2 dated 28.02.1980, transferred in the name of the petitioner on 24.02.1994 and continue supplying liquor to the petitioner for selling from its shop on the basis of the License afore-stated, without interception whatsoever.

AND

By issuing further appropriate writ, direction or order in the nature of writ of Prohibition, prohibiting the respondents from proceeding further on the basis of Show Cause Notice and communication impugned (supra) and taking any punitive action against the petitioner.

AND

Such other additional or alternative order as this Hon'ble Court deems fit and proper in the facts and circumstances of the case be also passed in favour of the petitioner.

2. The aforesaid reliefs in the petition are being sought on the premise that the petitioner is holder of a liquor license bearing No. 09/JKEL-2 vested unto him on 24.02.1994, (after the earlier license being a partnership concern was dissolved and the name of the partners therein were deleted), issued under and in terms of the Jammu & Kashmir Excise Act SVT. 1958, and the Jammu & Kashmir Liquor License and Sale Rules, 1984 Rules (herein after for short the Act and the Rules).

(2a) It is being stated by the petitioner in the petition that the license stands renewed from time to time and is renewed for the year 2022-2023 by the competent authority.

(2b) According to the petitioner a Show Cause Notice bearing No. Notice/DECEJ/Exc/584-85 dated 06.06.2020 came to be issued by respondent No. 3 purportedly on the basis of a communication bearing No. EC/Exc/2020-21/550-52 dated 05.06.2020 issued by respondent No. 2, (herein after for short impugned notice and impugned communication) copy whereof was never furnished to the petitioner alleging in the said impugned notice that it has been observed that the license has been transferred outside the legal heirs/family in violation of the rules.

(2c) It is being further stated by the petitioner in the petition that he has filed supplementary reply against impugned notice on 04.07.2020 while denying the allegation leveled therein consequently withdrawal of the notice was requested thereof.

(2d) Petitioner challenges the impugned Notice dated 06-06-2020 along with impugned communication dated 05-06-2020 inter alia amongst others on the ground that the notice and communication supra have been issued without any jurisdiction and competence in violation of Article 14, 19 and 21 of the Constitution in as much as that the respondents are bound by the principles of Promisery Estoppel and Legitimate expectations.

3. Per contra, respondents in their objections filed in opposition to the writ petition refute and controvert the contentions raised and grounds urged in the petition and have sought dismissal of the petition inter alia amongst others on the following premise and grounds: -

(3a) That none of the legal statutory or fundamental rights of the petitioner has been violated which would warrant the exercise of extraordinary writ jurisdiction of this Hon'ble Court the petitioner, therefore, deserves outright dismissal.

(3b) That the petitioner has raised disputed question of facts which cannot be adjudicated through the medium of this writ petition, as such, the writ petition deserves to be dismissed.

(3c) That the present writ petition filed by the petitioner is grossly misconceived both in law as well as on facts as such, deserves on outright dismissal.

(3d) That the present writ petition does not disclose any infringement of any legal, fundamental or statutory right of the petitioner, so far as the answering respondent is concerned which being sine-quo for maintaining a writ petition under Article 226 of the Constitution of India, as such, the present writ petition filed by the petitioner deserves on outright dismissal.

(3e) That there is no infringement of any fundamental, legal or statutory rights of the petitioner warranting indulgence by the Hon'ble Court, as such the writ petition is liable to be dismissed.

(3f) That at the outset the answering respondents deny each and every averment made by the petitioner unless the same is specifically admitted by the answering respondent.

(3g) That by virtue of the present writ petition the petitioner has thrown challenge to the Show Cause Notice dated 06-06-2020 simpliciter. It is submitted that the writ petition prima facie is not maintainable as no prejudice or infringement of any rights of the petitioner has occurred due to the issuance of the Show Cause Notice. The Hon'ble supreme Court has consistently held in that writ petition against Show Cause Notice is premature and therefore deserves to be dismissed."

4. Heard the appearing counsel for the parties and perused the record produced by learned counsel for the respondents.

5. The learned counsel for the petitioner on one hand while making his submissions reiterated the pleas taken in the writ petition and prayed for grant of the reliefs sought in the writ petition fundamentally on the grounds that the impugned show cause notice has been issued without any competence and jurisdiction by the respondent No. 3 in as much as the impugned notice otherwise also is not framed and constructed in proper form, as such, violate principles of natural justice and in the process cause serious prejudice to the petitioner.

6. Learned counsel for the respondents on the other hand while controverting the submissions made by the learned counsel for the petitioner sought dismissal of the petition primarily on a maiden ground that the writ petition is not maintainable against impugned show cause notice in view of law laid down by

the Hon'ble Supreme Court in case titled as "Special Director & Anr. Vs. Mohd Ghulam Ghouse and Anr., reported in 2004 (3) SCC 440" and judgement of Division Bench passed in "M/s Crown Industries and Anr. Vs, Union of India and Ors., (OWP No. 483/2014....) dated 10.02.2015".

7. In the aforesaid backdrop, the central issues those emerge for consideration of this court for adjudication in this petition are crystalized and framed here under:

I. Whether the impugned show cause notice dated 06-06-2020 has been issued without any competence and jurisdiction.

II. Whether the frame, form and nature of the impugned show cause notice is proper, fair and reasonable serving the principles of Audi Alteram Partem---Natural Justice.

8. Before adverting to the aforesaid issues, it would be appropriate to refer hereunder to the provisions of the Act and the Rules supra, which are relevant and germane to the controversy: -

Section 4 of the Act provides for appointment of Excise and Taxation Officer and reads as under;

"The Government may appoint such officers as it thinks fit to be Commissioner, Deputy Commissioners, and Excise and Taxation Officers; and the officers so appointed shall exercise such powers as may be conferred and perform such duties as may be required by or under this Act.

Notwithstanding anything contained in sub-section (1) the government may appoint any person as Joint Commissioner Enforcement to exercise powers under such provisions of the Act as it may, by notification, in the Government Gazette specify and also appoint such other persons to assist him as it deems fit."

Section 4(a) Provides for delegation of power conferred by section 4 and reads as under: -

"The government may delegate any of the powers conferred by section 4 to any of the officers named therein, and may further empower them to appoint such other servants as are necessary for the carrying out of this Act.

Every person appointed in exercise of such delegated power may be suspended or dismissed by the officer who appointed him."

Section 20 of the Act provides for forms and conditions of licenses and reads as under:

1. Every license or permit granted under this Act shall be granted---

(a) on payment of such fees (if any),

(b) for such period,

(c) subject to such restrictions and on such conditions, and

(d) shall be in such form and contain such particulars, as the Government may direct, either generally or in any particular instance, in this behalf.

2. The Government may, by order, delegate all or any of its powers under sub-section (1) to the Commissioner subject to such conditions, if any, as be specified in the order.

Section 22 of the Act provides for power to recall licenses and reads as under: -

"The Commissioner may cancel or suspend any license or permit granted under this Act-

(a) if any fee or duty payable by the holder thereof be not duly paid; or

(b) in the event of any breach by the holder of such license or permit, or by his servants, or by any one acting with his express or implied permission on his behalf, of any of the terms or conditions of such license or permit; or

(c) if the holder thereof is convicted of any offence against this Act or any other law for the time being in force relating to the Excise revenue, or of any cognizable or non-bailable offence; or

(d) where a license or permit has been granted on the application of the holder of an exclusive or other privilege, or of a farmer of duties under this Act, on the requisition in writing of such person; or

(e) if the conditions of the license or permit provide for such concealment or suspension at will; or

(f) if the holder of the license or permit resorts to illegal transportation of liquor from the distillery."

Rule 14 of the Rules reads as under: -

Every license issued under the provisions of the Jammu and Kashmir Excise Act and the rules framed thereunder shall be renewed before the expiry of its period of validity if the Licensing Authority approved the continuation of license through the same licensee and in respect of the same premises. A new license shall, however, be required where a license has determined by reasons of surrender, cancellation or order of non-renewal or for any other reason or where it is proposed that a license in respect of premises or persons not previously licensed, should be issued;

Provided that no license shall be deemed to have been renewed on its expiry unless the Licensing Authority issues the express orders for its continuation:

Provided further that: ....

Issue No. 1

9. It is an admitted position that the petitioner is holding a liquor license being JKEL-2, one amongst the classes of licenses provided under Rule 4 of the Rules

supra wherein for grant and renewal of said license, Excise Commissioner, is provided to be the competent authority. The license of the petitioner admittedly is issued and renewed by the Excise Commissioner.

10. Before testing the legality of the impugned show cause notice dated 06.06.2020, it becomes imperative to extract and reproduce here under communication bearing No EC/Exc/2020-21/550-52 dated 05.06.2020 addressed by respondent No. 2- Excise Commissioner to respondent No. 3, -Deputy Excise Commissioner, in that, the said communication has formed the basis for issuance of impugned show cause notice by the respondent No. 3 and that the said communication being not part of the pleadings was summoned by this court from the respondents along with the respective relevant record of the license of the petitioner and was accordingly produced by the learned counsel for the respondents.

The Deputy Excise Commissioner, (Executive), Jammu

No: EC/Exc/2020-21/550-52 Dated: 05-06-2020

Subject: Services of Notices.

Sir,

You may kindly refer to your letter No. 2088/DECEJ/Exc/549 dated 04-06-2020, by virtue of which 19 more licenses have been licensees (JKEL-2).

Before proceeding further, you may issue notices to them including two licenses of Kashmir Division. It may also be checked whether the provisions of rule 30 have been adhered in these cases for having obtained NOCs etc. from concerned authorities.

The requisite information should reach this office within a week's time positively.

Yours faithfully,

(Rajesh Kumar Shavan), KAS

Excise Commissioner, Jammu & Kashmir

Copy to the:

1. Financial Commissioner, Finance Department, Civil Secretariat, Jammu.

2. Deputy Excise Commissioner, (Accounts), Jammu.

11. As is revealed from the perusal of the aforesaid communication, the respondent No. 3 pursuant to his letter dated 04.06.2019, has furnished particulars of around 20 licensees to the respondent No.2 amongst which figures the case of the petitioner figuring at serial No. 1 in the annexure appended to the aforesaid letter dated 04.06.2020. The said annexure in the column of remarks reflects the particulars of original licensees as also deletions and insertions of the new licensees along with the numbers and dates of the orders issued in this

regard.

12. What emerges from above is that the respondent No. 2 on the basis of letter of respondent No. 3 dated 04.06.2020 and annexure appended therewith directed the respondent No. 3 vide letter dated 05.06.2020 supra to issue notices to the 19 license holders figuring in the annexure supra along with 2 license holders of Kashmir division. The respondent No. 2 further directed in the said letter supra to the respondent No. 3 to check whether provisions of Rule 30 have been adhered in these cases for having obtained NOCs from concerned authorities.

13. Perusal of the record supra would manifestly demonstrate that respondent No. 2 while directing issuance of impugned notice against the petitioner has merely taken into account letter dated 04.06.2020 and annexure appended thereto supra containing the particulars of the licensees, licenses and order Nos., with dates in the remarks column therein the said annexure furnished to him by respondent No. 3 and instead of proceeding against the petitioner himself for alleged possession of unauthorized license entrusted the said task to the respondent No. 3 who while issuing the impugned notice can by no sense of imagination be said to have performed only a ministerial act.

14. Once the respondent No. 2 had chosen to adhere to and follow the principles of natural justice in the matter while intending to proceed against the petitioner qua his alleged unauthorized license, he was in law obliged himself to consider the matter with independent application of mind fairly and reasonably and upon assuming satisfaction thereof strictly to follow the mandate of the Act enshrined in Section 4 read with Section 22 of the Act and not to delegate the power so possessed by him upon respondent No. 2, in view of well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgement and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another.

15. The impugned show cause notice manifestly are issued by respondent No. 3 without any power and authority, in that, neither the Act nor the Rules expressly empower respondent No. 2 to delegate his powers enshrined in Section 4 read with section 22 of the Act, as such, the impugned notice being clearly unfounded in law do not stand the test of legal scrutiny having been issued without competence and jurisdiction by respondent No. 3.

16. In view of above consequently writ petition is held maintainable against the impugned show cause notice, in view of law laid down in the judgement of the Apex Court titled as "Siemens Ltd. Vs. State of Maharashtra & Ors., reported in 2006 (12) SCC 33",.

17. The maiden objection raised by the learned counsel for the respondents qua maintainability of the writ petition in view of above is turned down. Reliance placed by the learned counsel for respondents in support of the objection on

judgement supra of the Apex Court viz "Special Director & Anr. Vs. Mohd Ghulam Ghouse and Anr., and Division Bench judgement viz "M/s Crown Industries and Anr. Vs, Union of India and Ors.," do not lend any support to the respondents primarily because the Apex Court do not in all cases forbid entertaining of the petition against a show cause notice and secondly that the Division Bench judgement supra is quite distinguishable and in fact reiterates the legal position regarding filing of writ petition against a show cause notice.

Issue No. 2

18. In view of aforesaid finding regarding the legality of impugned show cause notice, dealing with issue No. 2 may not be warranted, yet having regard to the facts and circumstances of the case, this court deems it proper and appropriate to deal with issue No. 2 as well.

19. Before dealing with issue No. 2 it would be advantageous and appropriate to refer to Apex Court Judgement in case titled as "Dharampal Satyampal Limited Vs. Deputy Commissioner of Central" reported in 2015 (8) SCC 519, wherein the nature, scope and applicability of the principles of natural justice came under consideration and it has been noticed in paras 21, 24 and 28 as under:

"21. In common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision-making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (sic an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as "natural justice". The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (i) rule against bias i.e. nemo debet esse judex in propria sua causa; and (ii) opportunity of being heard to the party concerned i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a "reasoned order".

"24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanizing factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong."

"28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not."

20. As is seen from above the concept and doctrine of principles of natural justice- Audi Alteram Partem and its application in justice delivery system is not new. It no doubt is a procedural requirement, but it ensures a strong safeguard against any judicial or administrative order or action adversely affecting the substantive rights of an individual.

21. The first principle of natural justice is that there should be no bias and the rule against the bias is expressed in maxim that "no one must be judge in his own cause."

22. The second broad principle is that "no party should be condemned unheard." This right to be heard precisely would mean that the party must know the case he has to meet. The party must have reasonable opportunity to present his case. The requirement of a show cause notice flows directly from the above second principle. A show cause notice is more than a notice.

23. What should be a proper show cause notice and its purpose has been dealt with by the Apex Court in case titled as "Gorkha Security Services Vs. Government (NCT of Delhi) and Others" reported in 2014 (9) SCC 105, where under in para 21 following is noticed:

"21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show cause notice is to make the noticee understand the precise case setup against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing this requirement becomes all the more imperative having regard to the fact that it is harshest possible action."

24. Looking to the frame, form and nature of the impugned show cause notice in the light of aforesaid legal principles and propositions, it is evident and manifest that the form of impugned show cause notice is not in tune with the principles laid down by the Apex Court in "Gorkha Security Services Vs. Government (NCT of Delhi) and Others" supra.

25. Perusal of the impugned show cause notice would reveal that same has been mechanically prepared in a cyclostyled form addressed with hand written name of the noticee and with a general allegation that the license held by the petitioner has been transferred outside the legal heirs / family in violation of the Rules without precisely setting up case against the petitioner based upon the relevant record, The nature of proposed action therein the impugned notice is also not provided. To sum up the impugned notice providing so called opportunity of hearing and explanation to show cause seems to have been an idle formality and farce undertaken by the respondents.

26. The impugned show cause notice cannot in law said to be proper show cause notice standing the test of fairness, reasonableness and adherence to the principles of natural justice, notwithstanding the supplementary reply submitted thereto by the petitioner which reply in view of above can safely said to be insignificant. The petitioner in this view of the matter could said to have suffered considerable prejudice, in that, the respondents on the basis of impugned show cause notice admittedly intended to proceed qua the license held by him for carrying on his trade and business in order to earn his livelihood.

27. This court has earlier considered and dealt with identical and similar issues as are framed herein the instant petition in WP (C) No. 1179/2020, WP (C) No. 1122/2020, WP (C) No. 1205/2020, WP(C) No. 1197/2020, WP(C) No. 1206/2020, WP(C) No. 1208/2020, WP(C) No. 1210/2020, WP(C) No. 1211/2020, WP(C) No. 1212/2020, WP(C) No. 1213/2020 and WP(C) No. 1214/2020 and in terms of judgement dated 25.09.2020, allowed the said writ petitions. The judgement supra squarely covers the instant petition as well and as such, the instant petition is disposed of in line with the judgement supra as under: -

"Regard being had to the aforesaid facts and in view of the preceding analysis, instant petition succeed and is allowed, as a sequel to which the impugned show cause notice bearing Nos. Notice/DECEJ/ Exc/584-85, is quashed.

The respondents are directed to forebear from causing any interference to the petitioner in conduct of his business under and in terms of his license held by him validly as on date, unless there is any other legal impediment thereto."

28. It is made clear that this court did not express any opinion or make any observation qua the allegations leveled against the petitioner in regard to his license and should the respondents decide to contemplate /initiate an enquiry against the petitioner qua the said allegations, they shall be free to contemplate / initiate the same notwithstanding the quashing of the impugned show cause

notice supra. The respondents in that event shall strictly follow the mandate of the Act and the Rules as well as principles of Audi Alteram Partem/ Principles of Natural Justice.

29. Disposed of along with all connected CM(s).

30. Registry to remit back the record to learned counsel for respondents.

