(2000) 05 AHC CK 0064

In the Allahabad High Court

Case No : C.M.W.P. No. 323 of 2000

Kesar Enterprises Ltd. and another — APPELLANT

Vs

State of U.P. and others — RESPONDENT

Date of Decision : 22-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Excise Act, 1910 — Section 11(2)

Citation : (2000) 3 AWC 1931 : (2000) AWC 1931

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : S.P. Gupta, T.P. Singh and Arun Tandon, for the Appellant; A.K. Misra and S.C., for the Respondent

Judgement

M. Katju, J.—Heard Sri S. P. Gupta, T. P. Singh and Arun Tandon for petitioners, learned standing counsel and Sri A. K. Misra for respondent No, 3.

2. The petitioners have challenged the impugned order dated 3.4.2000 passed by the State Government and the consequential order dated 3.4.2000 passed by the Excise Commissioner, U. P. and prayed for a mandamus to consider the claim of the petitioners for allotment of district Sultanpur for the excise year 2000-2001 in accordance with law.

3. Several affidavits have been filed in this writ petition and in our opinion, since disputed questions of fact are involved in this case, the petitioners should avail of the alternative remedy u/s 11(2) of the U. P. Excise Act before the State Government.

4. We have already held in Writ Petition No. 144 (Tax) 144 of 2000, M/s. Cocks India Ltd. v. State of U. P. and others, decided on 15.5.2000 that Section 11 (2) grants power to the State Government to reconsider its own order. Section 11 (2) of the U, P. Excise Aci states as follows :

"11 (2) The State Government may either suo motu or on application by an aggrieved person call for and examine the records relating to any order passed in any proceedings under this Act, for the purposes of satisfying itself as to the correctness legality or propriety of any such orders or as to the regularity of such proceedings : and, if in any case ft appears to the State Government that such order or proceedings should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly."

5. A perusal of Section 11 (2) shows that the State Government can examine the record relating to any order passed in any proceeding under this Act for the purposes of satisfying itself as to the correctness, legality or propriety of any such order. This power of the State Government u/s 11 (2) Is thus not limited to examining orders of authorities subordinate to the State Government ; it can examine and correct or modify/annul even its own order. Since Section 11 (2) states that the State Government can examine records relating to any order passed in any proceedings under this Act, this obviously means that it can examine even its own order for satisfying Itself as to the correctness, legality or propriety of any such order or as to the regularity of such proceedings, and, if in any case it appears to the State Government that such order or proceedings should be modified, annulled, or reversed it can do so.

6. In our opinion, Section 11 (2) enables the State Government to modify or annul its own order and its power is not limited to considering orders of subordinate authorities.

7. Since disputed questions of fact are involved in this case, we are of the opinion that the petitioners should approach the State Government through the Secretary concerned and the State Government shall decide the said application within two weeks from date of production of a certified copy of this order In accordance with law after hearing the parties concerned.

8. Learned counsel for parties undertake to appear before the Secretary concerned of the State Government with copy of this order on 29.5.2000 and the State Government shall decide the matter within two weeks thereafter.

9. With these observations, the writ petition is finally disposed of.

