

(1973) 09 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 21 of 1969

Kidar Nath and Co.

APPELLANT

Vs

The State of Himachal Pradesh etc.

RESPONDENT

Date of Decision : 25-09-1973

Acts Referred:

Partnership Act, 1932 — Section 69, 69(1), 69(2), 69(3), 69(4)

Citation : (1973) 2 ILR HP 943

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : T.S. Munjral, for the Appellant; Bhagirath Das, Baldrishan and R.K. Punshi, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—The Petitioners carry on the business of selling liquor. They were granted liquor licences for the financial year 1968-69 for selling liquor in different parts of the District of Simla. The Petitioners say that because of the various reasons alleged by them they were unable to lift their appointed quota of liquor and to pay the instalments of the licence fee, and the Respondents are threatening proceedings for recovery of the licence fee remaining unpaid as arrears of land revenue. On February 3/4, 1969, the Excise and Taxation Officer, Simla issued a notice to the Petitioners stating that license fee in respect of L-14 Shops, Simla, for the months of November, 1968 to January, 1969 amounting to Rs. 3,06,993 had not been paid and that payment should be made immediately otherwise strict action would be taken according to the rules. The Petitioners apprehend that besides commencing proceedings for recovery of the liecence fee due as arrears of land revenue the licences may also be cancelled. The Petitioners pray that the notice be quashed and mandamus be issued directing the Respondents not to place the Petitioners on the Excise black-list.

2. The Excise and Taxation Officer, Simla, who is Respondent No. 5, has filed a return. He has raised a preliminary objection. He contends that the petition is not

maintainable by reason of Sub-section (3) read with Sub-section (2) of Section 69 of the Indian Partnership Act. The submission is that the Petitioners are attempting to enforce rights arising out of their liquor licences, and as liquor licences are contracts the writ petition will not lie unless the Petitioners constitute a registered firm. It is urged that there is no evidence on the record indicating that the Petitioners are a registered firm. It seems to me that the preliminary objection must be sustained.

3. Sub-section (2) and (3) of Section 69 of the Indian Partnership Act, 1932, provide:

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of Sub-section (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from contract....

From the case set out by the Petitioners in the writ petition it is apparent that the Petitioners are seeking to enforce their rights arising from the licences granted to them. It is on the basis of their licences that the Petitioners contend that they have a right to sell liquor and they have committed no breach warranting the cancellation of the licences or recovery of any licence fees. This is therefore a writ petition filed by the Petitioners for enforcing rights arising from their licences. The question is whether (a) a writ petition falls within the terms of Section 69, and (b) a liquor licence represents a contract.

4. So far as the first part of the question is concerned, it seems to me that a writ petition can be comprehended within the expression "other proceeding" u/s 69(3) of the Act. The expression is capable of the widest meaning. That is clear from Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd., where the Supreme Court said:

In our judgment, the words "other proceeding" in Sub-section (3) must receive their full meaning untrammelled by the words "a claim of set off." The latter words neither intend nor can be construed to cut down the generality of the word "other proceeding". The Sub-section provides for the application of the provisions of Sub-section (1) and (2) to claims of set-off and also to other proceedings of any kind which can properly be said to be for enforcement of any right arising from contract except those expressly mentioned as exceptions in Sub-section (3) and Sub-section (4).

5. So far as the second part of the question is concerned, there is authority for holding that a liquor licence arises out of contract.

6. The business of selling liquor can be carried on only with the permission of the Government. The permission is embodied in a contract between the Government and the dealer, the contract being expressed by way of a licence. In Cooverjee B.

Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, the Supreme Court referred to it as a contract, and in The State of Orissa and Others Vs. Harinarayan Jaiswal and Others, the Supreme Court while explaining the nature of licences granted for selling liquor observed:

Revenue is collected by the grant of contracts to carry on trade in liquor and these contracts are sold by auction. The grantee is given permission on payment of the auction price.

The Punjab and Haryana High Court has, in Karnal Distillery Company Ltd. Vs. State of Punjab and Others, referred to the conditions of a licence as the terms of a contract.

7. It would seem therefore that a licence granted under the Excise Acts for the sale of liquor originates in a contract and its terms represent the conditions of the contract.

8. Learned Counsel for the Petitioner have placed a number of decisions before me. They include The D.F.O. South Kheri v. Ram Sanahi Singh (1970) C.W.R. 194 . K.N. Guruswamy Vs. The State of Mysore and Others, . State of Mysore and Others Vs. D. Cawasji and Company and Others, , Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc., . Shree Ganesh Trading Co., Saugor Vs. The State of Madhya Pradesh and Others, , Himmatlal Harilal Mehta v. State of Madhya Pradesh AIR 1054 S.C. 403, Balu Ram Goel v. The Union of India AIR 1972 Del 5 . Firm Gobardhan Das Kailasnath Vs. Collector of Mirzapur, , and Bala Dat Vs. The Union of India (UOI) and Others, . These cases merely deal with the point whether a writ petition is a proper remedy for relief where a breach of a licence is complained of. They do not decide that a liquor licence does not represent a contract. Indeed, in Mjs Shree Ganesh Trading Co., Saugor (supra), the Full Bench of the Madhya Pradesh High Court spoke of a right to collect tendu leaves as originating in contract.

9. As the liquor licence embodies a contract and the Petitioners seek to enforce a right arising from it, and further as it has not been shown that the Petitioners constitute a registered firm it is clear that the present writ petition is not maintainable.

10. In the circumstances it is not necessary to consider the further preliminary objection of the Respondent that as the liquor licence represents a contract, no writ will issue granting relief for breach of a liquor licence.

11. The petition fails and is dismissed with costs, which I assess at Rs. 100.