
(2010) 03 MP CK 0084
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2416 of 2010

K.K. Jhariya

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226
Madhya Pradesh Excise Act, 1915 — Section 39

Citation : (2010) ILR (MP) 1585 : (2011) 2 MPHT 267 : (2011) 2 MPLJ 437

Hon'ble Judges : S.R. Alam, C.J;Alok Aradhe, J

Bench : Division Bench

Judgement

Heard on the question of admission.

Petitioners in the instant writ petition have impugned the legality and validity of the orders dated 16.2.2010 contained in Annexures P/1 to P/2 by which Petitioners have been informed that District Excise Committee has taken a decision not to renew the existing licence of the Petitioners to run the liquor shops. By the aforesaid orders Petitioners have been further debarred from participating in the tender proceedings.

Admittedly, Petitioners were partners of one Vaibhav and Company, which was granted licence to run the liquor shops for the year 2008-09, However, for the subsequent .year i.e. 2009-10, Petitioners were granted separate licences in their individual names. On 23.4.2009, 9,500 bulk litres of illicit liquor was seized on the eve of elections. In the course of enquiry, aforesaid illicit liquor was found to be belonging to Vaibhav and Company of which the Petitioners were admittedly the partners.

Collector, Narsinghpur issued a show-cause notice dated 12.1.2010 to the Petitioners on the ground that the stock of illicit liquor which has been seized, belongs to M/s Vaibhav and Company and Petitioners are partners of the aforesaid company. It was further stated that Petitioners are running various liquor shops in the year 2009-10. The Collector by the aforesaid notice asked the

Petitioners to submit their explanation within a period of seven days regarding violation of the terms and conditions of the licence granted to them. Pursuant to the aforesaid notice, Petitioners submitted their reply in which inter-alia it was alleged that Petitioners have no concern with the stock of illicit liquor which has been seized on 23.4.2009. It was further stated in the reply that Petitioners were partners of M/s. Vaibhav and Company prior to 31.3.2009. Accordingly, a prayer was made that proceedings be dropped against the Petitioners.

Collector vide order dated 27.2.2010 (Annex. P/7) found that the explanation submitted by the Petitioners was not satisfactory. The Petitioners have violated Clause 5(Kha) of the terms and conditions of the licence and Section 39(c) of the M.P. Excise Act, 1915. Accordingly, a fine of Rs. 1,00,000/- was imposed on the Petitioners.

District Committee thereafter vide orders contained in Annexure P/I to P/3 held that Petitioners are not entitled for renewal of their licence under Clause 9 (i) and Clause 11 (c) of the policy and the Petitioners were further debarred from participating in the tender process.

Clause 9 (i) of the Excise Policy provides that licence of those .existing . licencees shall be renewed who are not involved in serious irregularities. Clause 11 of the policy provides for disqualification of the persons from participating in the process of tender. Clause 11 (c) provides that an existing licensee shall be disqualified from participating in the process of tender if his conduct as a licensee is not satisfactory in the opinion of the District Committee.

Shri Bhawe, learned senior counsel vehemently contended that the illicit liquor which was seized belonged to M/s Vaibhav and Company and Petitioners had ceased to be the partners of M/s Vaibhav and Company and, therefore, Petitioners had no concern, with the stock of illicit liquor which was seized. It was further argued that Petitioners were granted licence in their individual capacity for subsequent year i.e. 2009-10. It was further contended that for the breach of licence conditions committed by Vaibhav and Company, the Petitioners cannot be penalized.

On 23.4.2009, 9,500 bulk litres of illicit liquor belonging to Vaibhav and Company was seized on the eve of elections of which admittedly the Petitioners were the partners. It is not in dispute that a fine of Rs. 1,00,000/- has been imposed on the Petitioners. In this connection, it is relevant to notice that right to renewal of existing licensee is not a statutory right, but a right created under the policy which is in the nature of executive instructions. The Petitioners therefore do not have any indefeasible right to seek the renewal of their licence. In Mohd. Hafeez Khan Vs. State Transport Appellate Tribunal, Gwalior and Others, Full Bench of this Court while dealing with nature of partnership held as follows:

We have first to examine as to what is the legal connotation of "partnership". Their Lordships of the Supreme Court in Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay, have observed that partnership is merely an association of

persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners, while in the case of a company it stands as a. separate juristic entity distinct from its share-holders.

It is relevant to mention here that Petitioners in their reply to the show cause notice filed before the Collector, did not file any document in support of their contention that on 23-4-2009, Vaibhav and Company was not in existence and that Petitioners were not the partners of the said firm. Even before this Court no such documents have been filed.

Apart from this, it is a matter of common knowledge that on account of consumption of illicit liquor, many people have lost their lives and it has created havoc in the society. In the instant case, illicit liquor was seized in huge quantity. In the absence of any document on record to show that M/s Vaibhav and Company was not in existence on 23-4-2009 or that the Petitioners were not the partners of the aforesaid firm, it cannot be held that Petitioners had no connection with illicit liquor which was seized on 23-4-2009.

At this stage it is also relevant to mention that Constitution Bench of Supreme Court in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, while dealing with the right to deal in business of intoxicants held that there is no fundamental right to do the business or deal in intoxicants. The Supreme Court in case of *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others*, while considering the question whether Section 43 of Bengal Excise Act under which the licence of a liquor contractor was withdrawn had violated the constitutional provisions under Articles 14 and 19(1)(g) of the Constitution, repelled the contention with regard to violation of Article 14 and held that in view of injurious effect of excessive consumption of liquor on health, this trade or business must be treated as a class by itself and it cannot be treated on the same basis as other trades while considering the challenge on the ground of Article 14. Another Constitution Bench of Supreme Court in *State of Punjab and Another Vs. Devans Modern Breweries Ltd. and Another*, held that permissive privilege to deal in liquor is not a right at all.

We are of the considered opinion that District Level Committee which consists of the Collector, S.P., Dy. Commissioner of Excise, Zila Panchayat Officer and Assistant/District Excise Officer has rightly come to the conclusion that Petitioners are not entitled to renewal of their existing licence. We also cannot lose sight of the fact that right to seek renewal under the policy is dependant on terms and conditions laid down in the excise policy, The Petitioners have been found to be not entitled to renewal on the basis of material available on record with District Committee. The decision of District Committee can neither be said to be arbitrary nor based on no material.

In view of the aforesaid discussion, we are of the view that the action of the Respondents in refusing to renew the licence in favour of the Petitioner is neither arbitrary nor is violative of the constitutional guarantee contained in Article 14 of

the Constitution. The action of the Respondents in refusing to renew the licences of the Petitioners are based on justifiable grounds. Hence, no case is made out for interference in exercise of powers under Article 226 of the Constitution of India.

Consequently, the writ petition deserves to and is hereby dismissed.