

**(1992) 10 KAR CK 0001**  
**In the Karnataka High Court**  
**Case No : W.A. No. 1734 of 1992**

K.P. Ramesh

APPELLANT

Vs

State of Karnataka

RESPONDENT

**Date of Decision :** 28-10-1992

**Acts Referred:**

Karnataka Excise Licences (General Conditions) Rules, 1967 — Rule 15, 15A, 63, 64, 67

**Citation :** (1993) ILR (Kar) 1767 : (1993) 2 KarLJ 358

**Hon'ble Judges :** K.A. Swami, Acting C.J.; L. Sreenivasa Reddy, J

**Bench :** Division Bench

**Advocate :** R. Nagendra Naidu, for the Appellant;

**Final Decision :** Dismissed

## **Judgement**

K.A. Swami, Ag.C.J.

1. This Writ Appeal is preferred against the order dated 17th February 1992 passed in W.P.No. 3063/1992.

2. The Petition is filed with an avowed object of advancing public interest. In the Petition, the petitioner has sought for quashing the Notification No. FD 4 PES 92 dated 25.1.1992 issued by the State of Karnataka and to grant such other reliefs as may be deemed fit under the facts and circumstances of the case.

2.1. It may be pointed out here itself that the impugned Notification amends the Karnataka Excise (General Conditions) Rules, 1967 (hereinafter referred to as the "Rules") by inserting Rule 15-A relating to waiver of interest etc. Thus in substance, the petitioner has sought for a declaration that Rule 15-A of the Rules is invalid and inoperative and consequently to quash the Notification.

2.2. The learned Single Judge has rejected the Writ Petition holding that the scheme of the Act cannot be understood by merely, looking at the particular provision of law, that the entire Act has to be looked into; that the object of Rule

15-A is to recover the amounts due, with expedition and with that object if the Government makes the concession in the matter of interest for justifiable reasons, the Rule cannot be held to be bad in law. It is also further held by the learned Single Judge that if in a given case exercise of power is arbitrary, the matter may be challenged before the Court and the Court can interfere in exercise of its power of judicial review. Aggrieved by the Decision of the learned Single Judge, the petitioner has come up in Appeal.

3. It is contended on behalf of the appellant-petitioner that having regard to the provisions contained in Sections 63, 64 and 67 of the Karnataka Excise Act, 1965 (hereinafter referred to as the "Act") and Rule 15 of the Rules, Rule 15-A is beyond the Rule making power of the State.

4. To test the correctness of this contention, we may first refer to the definition of the expression "Excise Revenue". Section 2(11) of the Act defines this expression as follows:

2(11). "Excise revenue" means revenue derived or derivable from any duty, fee, tax, rent, fine or confiscation imposed or ordered under the provisions of this Act or any other law for the time being in force relating to liquor or intoxicating drugs."

Section 63 of the Act provides for recovery of Government dues. One of the items is excise revenue also. It does not state anything about the interest to be levied on the arrears of excise revenue. Section 64 provides: "In the event of default by any person licensed or holding lease under this Act, all his distillery, brewery or warehouse or shop or premises, fittings or apparatus and all stocks of intoxicants, materials for the manufacture of the same held in or upon any distillery, brewery, warehouse or shop or premises, shall be liable to be, attached in satisfaction of any claim for excise revenue or in respect of any losses incurred by the State Government through such default and to be sold to satisfy such claim which shall be first charge upon the sale proceeds". Section 67 of the Act states the limits of the power of exemption of the State Government. It reads thus:

"67. Power to State Government to exempt, etc.- The State Government may, by notification, and subject to such restrictions and conditions as may be specified in such notification.-

a) exempt or reduce which prospectively or retrospectively the excise duty levied u/s 22 or the licence fee payable by or under this Act, in respect of any liquor sold:

"i) for use or consumption by the members of the Armed Forces including para Military Units of union;

ii) for use of bona fide medicinal, scientific, industrial or such like purpose; or

iii) to any industrial concern or class or classes of industrial concerns;

b) exempt any intoxicant from any of the provisions of this Act, other than those of Chapter V, in any specified area or for any specified period or occasion".

Thus all the aforesaid three provisions do not whisper about the interest to be levied on the arrears of excise revenue. No other provision is brought to our notice prescribing levy of interest at a certain rate on the excise revenue. Rule 15 of the Rules which is framed in exercise of the rule-making power of the State Government as contemplated u/s 71 of the Act provides for levy of interest on the excise revenue arrears. It also provides the manner of recovery and other actions to be taken in the event of non-payment of excise rentals. Thus the levy of interest on the excise rentals and recovery of the same is provided by Rule 15 of the Rules. When the State Government levies interest in exercise of its rule-making power, in exercise of the same power it can also provide for reduction of interest or waiver of interest under the prescribed circumstances. Rule 15-A, the validity of which is challenged, provides for waiver of interest. It reads thus:

"15-A: Waiver of interest etc.-

"Notwithstanding anything contained in these rules, the State Government may, if it considers necessary so to do in the interest of expeditious recovery of arrears of revenue, waive the interest payable under Rule 15 fully or partly, and may grant such instalments as it thinks fit, for payment of arrears of principal amount and the interest due, if any, payable under Rule 15".

No provision of the Act is brought to our notice nor any Rule of interpretation is stated before us which disables the State Government from framing such a Rule. The validity of the Rule has to be challenged on the same ground on which the constitutionality of the enactment passed by the Legislature is challenged, and in addition to it, one more ground is available in the case of validity of the Rules, namely, the amplitude of the very power of rule-making, as the Rule-making authority cannot travel beyond the power conferred upon it and it cannot frame a Rule contrary to and beyond the scope of the provisions of the Act. As already pointed out, no provision of the Act has been pointed out to us which places the impugned rule beyond the power of the rule-making authority or indicates that the impugned Rule is contrary to any of the provisions contained in the Act. We have already pointed out that interest is levied only under Rule 15 of the Rules which is framed in exercise of the rule-making power. If that be so, it follows that in exercise of the very rule making power, the State Government can either modify Rule 15 by modifying the rate of interest or mode of recovery or by completely waiving the interest. Therefore, we are of the view that Rule 15-A cannot be held to be beyond the rule-making power of the State Government. As pointed out by the learned Single Judge if in a given case the power under Rule 15A of the Rules is exercised arbitrarily it is open to challenge the same by way of public interest litigation for judicial review before this Court. Hence we see no ground to admit this Appeal. It is accordingly dismissed.