(2018) 08 RAJ CK 0144

In the Rajasthan High Court

Case No : Civil Writ No. 8893 of 2012

Lekh Raj Mewara And Anr @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 23-08-2018

Acts Referred:
Rajasthan Excise Act, 1950 — Section 9, 9A
Constitution of India, 1950 — Article 226

Citation : (2018) 08 RAJ CK 0144

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : Rajesh Joshi, Rohit Mutha, Shridhar Mehta

Final Decision : Dismissed

Judgement

Heard learned counsel for the parties. Perused the material available on record.

By way of this writ petition filed under Article 226 of the Constitution of India, the petitioners have approached this Court for assailing the order

(Annex.13) dated 30.7.2012 passed by the District Excise Officer, Jodhpur whereby whilst rejecting the representation of the petitioners, excise duty

to the tune of Rs.30,55,250/- imposed upon the petitioner by an earlier demand notice dated 6.2.2007 was reaffirmed.

Shri Rajesh Joshi learned senior counsel assisted by Shri Rohit Mutha Advocate has vehemently and fervently submitted that the impugned order is

without jurisdiction and also stands vitiated because the contract inter-se between the petitioners and the Excise Department under which, the excise

vending licence was granted to the petitioner stood concluded long back and thus, no recovery proceedings in lieu of any liability under a conditional

contract could have been initiated against them. Drawing the Courtâ??s attention to the terms and conditions of the country made liquor licence

issued to the petitioners, Shri Joshi vehemently urged that the petitioners had cleared off all the dues under the said licence with the Excise

Department within the contract period. The Excise Department gave an option to the petitioners to opt for sale of India Made Foreign Liquor (IMFL)

and beer and granted them composite liquor licences for shops beyond 5 Kms. from the municipal limits of Jodhpur by taking recourse of Clause 30 of

the licence conditions. The amount reckoned by the DEO for grant of such composite licences was duly deposited by the petitioners. After conclusion

of the licence period, the bank guarantees submitted by the petitioners were released unconditionally. He urged that initial notice (Annex.7) dated

6.2.2007 as well as the final order dated 30.7.2012 are absolutely illegal, arbitrary, without jurisdiction and were passed in gross violation of principles

of natural justice and hence, deserve to be struck down.

Per contra, Mr.Shridhar Mehta associate to Dr.Sachin Acharya Advocate representing the respondent Excise Department raised a preliminary

objection regarding maintainability of the writ petition urging that the same is fit to be dismissed on this anvil because the statutory remedy of filing an

appeal under Section 9A of the Rajathan Excise Act is available to the petitioners for challenging the impugned order. On merit, he drew the

Courtâ??s attention to the Conditions of sale of IMFL and beer licence and urged that it is clearly stipulated therein that composite licence fee to the

tune of Rs.3 lacs per shop would be chargeable within the municipal limits of Jaipur and Jodhpur cities. He further urged that it is in reference to this

specific condition and the Clause 30 of the composite liquor licence issued to the petitioner, that the demand of the additional licence fee which

escaped notice previously was raised from the petitioners under the impugned notices.Â He urged that the Excise Officer definitely has jurisdiction to

raise the impugned demand and thus, the impugned order cannot be termed to be without jurisdiction. He further submitted that before passing the

impugned order, the Excise Officer considered in detail each and every objection raised by the petitioner for challenging the questioned demand notice

and dealt with the same in an objective fashion and therefore, the impugned order cannot be termed as having been passed without application of mind

as well. On these grounds, he craved dismissal of the writ petition.

To counter the preliminary objection raised by learned counsel for the respondent Department, Shri Joshi cited the following judgments:-

(1) R.N.Products Vs. State of Rajasthan & Ors. reported in MANU/RH/0206/1989 (D.B.Civil Writ Petition No.487/1989) decided on 3.5.1989

(2) M/s.Samrat Bottlers Pvt. Ltd. V. State of Rajasthan & Ors. reported in 1988(2) RLR 577

Â He urged that when the impugned order is passed without jurisdiction or is grossly arbitrary, capricious and discriminatory, and is passed without

application of mind to the material facts/statutory provision, the alternative remedy of appeal cannot come in the way of the litigant for seeking

extraordinary remedy of writ jurisdiction conferred upon this Court by Article 226 of the Constitution of India.

I have given my thoughtful consideration to the arguments advanced at the Bar and have gone through the material available on record.

Firstly, I proceed to deal with the preliminary objection raised by Shri Mehta regarding maintainability of the instant writ petition. The Honâ??ble

Division Bench Judgment in the case of R.N.Products (supra) which was heavily relied upon by Shri Joshi dealt with a situation wherein, the renewal

of licence was refused to the concerned applicant in an arbitrary, capricious and discriminatory manner. In those circumstances, the Honâ??ble

Division Bench went on to hold that the circumstances warranted exercise of writ jurisdiction by this court and the alternative remedy of appeal would

not come in the way of the litigant. Similar was the situation in the case of M/s.Samrat Bottlers Pvt. Ltd. (supra)Â wherein, the Excise Commissioner

acted in a discriminatory manner while refusing to grant licence to the writ petitioner whose application was at par with other licensees. In the case of

Banwari Lal Vs. State of Rajasthan & Ors. (S.B.Civil Writ Petition No.6496/2015) decided on 10.9.2015 the above referred judgments of Division

Bench were relied upon to lay down the same principle. Manifestly, on appreciation of the facts of the case at hand, it is clear that the facts

adjudicated by Honâ??ble Division Benches in the cases of R.N.Products & M/s.Samrat Bottlers (supra) were totally distinguishable because in both

of these cases, challenge was made to the refusal of the licence applied for by the writ petitioners concerned by acting in a grossly arbitrary,

capricious and discriminatory manner. No such arbitrary or discriminatory action is manifested from the demand notices impugned in this writ petition.

A simple ground is raised in the writ petition that the demand under the impugned notice/order has been raised contrary to law. Manifestly, even if the said ground is accepted for a moment, the order if amounting to an illegal one, would be subject to challenge to appeal under Section 9 of the

Rajasthan Excise Act.

In this background, this Court holds that the judgments relied upon by Shri Joshi are totally distinguishable and the writ petition is liable to be dismissed

on the ground of availability of remedy of statutory appeal to the petitioners.

Having decided this issue against the petitioners and upon the perseverance of Shri Joshi, I now proceed to decide the matter on merits. The principal

argument of Shri Joshi to challenge the impugned order was that the Excise Officer could not have applied the Clause No.4.2 of the IMFL licence

while raising the demand of alleged deficit excise duty from the petitioners and that since the contract had been concluded and thus, no recovery could

be effected at such a late stage. The Excise Officer while considering the petitionersâ?? representation elaborated in the impugned order dated

30.7.2012 as below:-

â??Jh ys[kjkt esokM+k }kjk tks/kiqj dh nâ??s kh efnjk nqdkuksa ds vuqKki= vkoaVu gsrq fufonk izLrqr djrs le; jktLFkku ljdkj vkcdkjh foHkkx }kjk

tkjh foKfIr]fufonk izi= fnâ??kk&funsZâ??k ,oa â??krsZa vkfn dk iw.kZ v/;;u djus ds ckn gh fufonk izLrqr dh xbZ FkhA Jh ys[kjkt iq= ykypan

esokM+k }kjk fnukad 14-03-2005 dks LosPNk ls fufonk izLrqr dh xbZ FkhA bl fufonk dks vkcdkjh vk;qDr jktLFkku mn;iqj }kjk Lohdkj fd;k rFkk tfj,

vknsâ??k Ã?ekad i0 23 Â¼6Â½ vkc0@ys[kk@2005@490 fnukad 17-03-2005 Lohd`fr Jh ys[kjkt esokM+k ds i{k esa tkjh dh xbZA bl Lohd`fr esa ;g

mYys[k fd;k x;k fd ^^;fn vki Hkkjr fufeZr fonsâ??kh efnjk ,oa ch;j dh nqdkuksa dks ysus ds fodYi dk mi;ksx dj bu nqdkuksa dk lapkyu djuk pkgrs

gSa rks bl Lohd`fr dh fnukad ls 10 fnol ds vUnj&vUnj viuk fodYi i= e; nqdkuksa ds LFkku dh lwph lacaf/kr ftyk vkcdkjh vf/kdkjh dks izLrqr djsa rFkk

mu nqdkuksa ds fy, fodYi ds lkFk fu/kkZfjr vkosnu i= â??kqYd dh jkfâ?k tek djkosaA blds vykok fodYi izLrqr djus dh fnukad ls 5 fnol ds vUnj&vUnj

mu nqdkuksa gsrq n;s ykbZlsUl Qhl dh jkfâ?k Hkh tek djkosaA bl gsrq i`Fkd ls tkjh funsZâ??kksa ,oa â??krksaZ rFkk tkjh fd;s tkus okys vuqKk

i=ksa dh â??krksaZ dh ikyuk Hkh vkidks djuh gksxhA Hkkjr fufeZr fonsâ?kh efnjk ,oa ch;j dh nqdkuksa ds laca/k esa vU;Â funsZâ?k ,oa

â??krksaZ rFkk tkjh fd;s tkus okys vuqKk i=ksa ds lac/ak esa vkoâ?;d tkudkjh lacaf/kr ftyk vkcdkjh vf/kdkjh ls izkIr dj ldrs gSaA^^ ;g Lohd`fr i= Jh ys[kjkt esokM+k }kjk fnukad 19-03-2005 dks izkIr fd;k x;kAâ??

From a bare perusal of the aforequoted portion of the impugned order, it is manifest that the petitioner voluntarily sought the five composite liquor

shops within the municipal limits in accordance with the terms and conditions of the licence and the excise duty. Even the acceptance dated 17.3.2005

was issued in favour of the petitioner requiring him to deposit the requisite application/licence fees. The applicable licence fee for the IMFL/beer

vends within the municipal limits of the Jodhpur City is prescribed by Clause No.4.2 of the IMFL Licence condition which stipulates that a sum of

Rs.3 lacs would be payable per shop. Whether or not the shops in question are located within the limits of the Jodhpur Municipal area which is one of

the grounds raised by the petitioners to challenge the impugned demand is purely a disputed question of fact and cannot be gone into while exercising

the extraordinary writ jurisdiction conferred upon this Court by Article 226 of the Constitution of India. Furthermore, it is true that while making the

initial assessment, the said non-deposit by the petitioners seems to have escaped the notice of the Excise Authorities concerned, but that by itself

would not mean or imply that recovery could never be effected if the facts came to light at later stage. Since the demand notice was issued within the

limitation provided for filing a civil suit, it cannot be termed to be delayed or time barred. Furthermore, while filing the application for releasing the bank

guarantees, the authorised representative of the petitioners gave a written undertaking that in case, any dues are found in relation to the excise licence

of the corresponding year, the petitioners would voluntarily deposit the same.

In this background, both the pleas advanced by Shri Joshi for assailing the impugned orders are considered non-tenable.

As an upshot of the above discussion, the writ petition as well as the stay application are dismissed as being not maintainable and so also on merits.

