
(2008) 04 MP CK 0036
In the Madhya Pradesh High Court

Madan Mohan Chaturvedi	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Constitution of India, 1950 — Article 19, 226

Citation : (2008) ILR (MP) 2776 : (2008) 3 MPHT 311 : (2008) 3 MPLJ 487

Hon'ble Judges : Sanjay Yadav, J;A.K. Gohil, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Abhay Gohil, J.

The appellant being aggrieved with the order dated 31-12-2007 passed by the learned Single Judge in Writ Petition No. 6001/07 has filed this Writ Appeal u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005.

Briefly stated, the facts of the case are that appellant/petitioner has filed writ petition under Article 226 of the Constitution of India stating therein that though he is not having any liquor licence, but he intend to obtain the licence for selling the liquor. Therefore, as per the recent liquor policy of 2006-07, he should also be treated at par with the existing licence holders. It is further contended that the Government has issued liquor policy for the year 2006-07 and has taken decision that the licence of the existing licence holders shall be renewed after payment of 20% extra licence fees. It is further contended that, this decision of the Government is contrary to the provisions of Rule 8 of M.P. Foreign Liquor Rules, 1996 (hereinafter shall be referred as "Rules of 1996"). It is further contended that though he is not the licence holder but by issuing such a policy he has been restrained from applying for licence as the Government will renew the existing licences on payment of extra fees and this policy is violative of Fundamental Rules and Article 19 of the Constitution of India. Return was filed

by the Government and Government supported the policy and it was submitted that the policy is not violative of Rule 8 or any fundamental right of the petitioner.

By the impugned order, the learned Single Judge dismissed the Writ Petition holding therein that the right to carry on business of liquor is not a fundamental right though the petitioner has right of equality before the law. Learned Single Judge has further held that until and unless validity of Rule 8 under which the shops are allotted is challenged, this Court cannot strike down the said rules. Learned Single Judge has also considered the provisions of Rule 8 of Rules of 1996 and it was held that this rule does not provide that application shall be invited every year and the learned Single Judge was of the view that it is a contractual matter until and unless the State acted arbitrarily or malafidely, no interference can be made in the contractual matters and dismissed the petition, against which the petitioner has filed this writ appeal.

We have heard the learned Counsel for the parties and perused the record. Shri S.N. Kirar, learned Counsel for the appellant submitted that during the pendency of writ petition, the petition was amended and he has prayed for quashment of policy, which was Annexure R-1, but the amended petition was not considered. His contention was that without amending the rules of Rule 8, a contrary policy cannot be issued and a person cannot be debarred from filing an application for getting the licence FL-1 and the decision taken by the Government and published by the Commissioner is contrary to law and the Government cannot take any decision for renewal of old licences on the basis of enhanced fees but the Government has to invite applications for grant of licence and by issuing the aforesaid policy, Government has indirectly debarred the petitioner from filing any application for grant of licence of liquor.

In reply Shri Vivek Khedkar, learned Govt. Advocate submitted that according to the policy Annexure R-1, Government has authorized the Commissioner to renew the licences on payment of 20% extra licence fees. The policy is in accordance with the Rules of 19% and the aforesaid rule does not prohibit the Government to adopt the aforesaid mode. It was further submitted that lot of shops are lying vacant for allotment through licences, but the appellant has not filed any application for grant of any licence for any of the area and still 17 blocks are lying vacant where shops are not allotted to anybody else. It was further submitted that the appellant is free to apply for licence under those blocks but he cannot be treated as licensee for the purpose of renewal of existing shops without he being the licence holder.

After considering the rival contentions of the learned Counsel for the parties, first of all we have considered the provisions of Rule 8(1)(a) of the Rules of 1996, which reads as under:

8. Sale of Foreign Liquor.--(1) Categories of licences.--Licences for the sale of foreign liquor shall be of the following categories and the mode of grant of these licences shall be as indicated hereunder:

(a) F.L. 1 (Licence for retail sale of foreign liquor in sealed bottles, not to be consumed on the premises).-- The licence in form F.L. 1 shall be granted individually on fixed basis licence fee and licence tee, by inviting applications for each shop, and if the number of applications are more than one then by disposing of applications by draw of lottery or in such other manner as the State Government may direct from time to time. The F.L. 1 licensee shall sell foreign liquor in sealed bottles to consumers and to F.L. 3, F.L. 4, F.L. 4-A and F.L. 5 licenses:

Provided that if no application is received, then the State Government may grant licence in such other manner as directed by general or special order.

This Rule specifically provides that the licence in Form F.L. 1 shall be granted individually on fixed basis licence fee and licence fee, by inviting applications for each shop, and if the number of applications are more than one then by disposing of applications by draw of lottery or in such other manner as the State Government may direct from time to time. This provisions makes it clear that licence in Form F.L. 1 shall be granted individually by inviting applications for each shop and if the number of applications are more than one then by disposing of applications by draw of lottery or in such other manner as the State Government may direct from time to time. It was argued that provision after words-- "or in such other manner as the State Government may direct from time to lime", is only applicable for draw of lottery and not for exempting from inviting applications. The provision added to this clause is also clear that if no application is received, then the State Government may grant licence in such other manner as directed by general or special order. If one reads the latter provision of this clause after the word "or", it would be clear that the same provides the power to the Stale Government to deal the subject in any other manner as the State Government may direct from time to time. Therefore, these words cannot be read in isolation but they have to be read in generality as they control the earlier provisions which includes the grant of licence on individual basis on fixed basic fee and licence fee by inviting the applications.

From the aforesaid provision of Rule 8(A), it is amply clear that the State Government is having power to issue directions from time to time with regard to the grant of licence in Form F.L. 1 and under this provision if directions have been issued, or policy decision has been taken that is within the power of the Government. We are impressed with the submissions made by the learned Government Advocate that the State has not granted licences for the 17 blocks and they are lying vacant, if any party or the petitioner is interested in taking licences under those 17 blocks they are free to apply and in the policy there is no bar that their applications cannot be considered, where licence has not been issued.

As was pointed out that in the W.P. No. 1099/06, the Division Bench at Main Seat, Jabalpur has refused to interfere in the matter of the aforesaid policy on the ground that it is a matter of academic interest and petitioner is not licence

holder he cannot come to the Court for this purpose. The similar situation exists in this case.

Therefore, in our considered opinion that the appellant may apply for licence under the blocks which are lying vacant. Thus, no case is made out for any interference by this Court. Consequently, this appeal fails and is hereby dismissed.