

(1970) 03 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13 of 1970

Mangilal	Vs	APPELLANT
District Excise Officer, Ajmer and Another		RESPONDENT

Date of Decision : 02-03-1970

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Excise Act, 1950 — Section 34, 9A
Rajasthan Excise Rules, 1956 — Rule 76

Citation : AIR 1971 Raj 46 : (1970) 3 WLN 159

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Advocate : Guman Mal Lodha and B.R. Mehta, for the Appellant; A.K. Mathur, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.P. Tyagi, J.—This writ application under Article 226 of the Constitution has been filed by petitioner Mangilal to challenge the order of the District Excise Officer, Ajmer dated 19th December, 1969, suspending the petitioner's license granted to him under the Rajasthan Excise Act, 1950.

2. The case of the petitioner is as follows:

3. The petitioner was given a license under the Rajasthan Excise Act, 1950 (hereinafter called the Act) for carrying on the business of selling country liquor in the town of Beawar. This license was granted for a period commencing from 1-4-1969 to 31-3-1970. It is alleged that the petitioner by filing a separate writ application before this Court had challenged the guarantee system on which the licenses were granted in the State by the Excise authorities for the sale of country liquor and that writ petition was admitted by this Court. This action of the petitioner resulted in the straining of the relations between the petitioner and the Excise Officers and it is said that it is out of a revengeful spirit that the respondents were out to find faults with the petitioner and to punish him. On

17-12-1969 the Inspector of the Excise Department came for the inspection of the petitioner's shop and it is said that he seized the entire stock from the petitioner's shop at Beawar and after two days the District Excise Officer suspended the petitioner's license on the alleged ground that the liquor in 127 bottles was found in the petitioner's show which was not in conformity with the prescribed standard. This order has been placed on the record as Ex. 1.

It is further alleged that the petitioner personally met the District Excise Officer and represented to him that the action taken against him was prompted by mala fides and revengeful spirit due to the action taken by him in the High Court to challenge the guarantee system introduced by the Department, but in spite of his efforts he could not get back the stock seized by the Department and it is said that the Department has arranged for the sale of the petitioner's stock of liquor on commission basis. This action of the Department has been challenged by the petitioner, inter alia, on the grounds that the respondent No. 1 was actuated to take such a drastic action against the petitioner out of a revengeful spirit and that the order of suspension of license has been passed without observing the rules of natural justice inasmuch as the respondent No. 1 did not give any opportunity to the petitioner to state his case and prove his innocence before suspending" his license. According to the petitioner, the suspension of the license is a punishment and it can be inflicted only when the licensee is found guilty of the violation of the conditions of his license or contravention of the provisions of the Act or any rules, orders or notifications issued under the Act. The petitioner's case is that the pre-requisite condition for the suspension of a license is the recording of a finding by the authorities about the guilt of the petitioner and such a finding could be given only after the petitioner was afforded an opportunity to state and prove his case before the authorities who wanted to punish him. In these circumstances, this writ application has been filed with a prayer that the order of suspension (Ex. 1) be quashed.

4. A reply has been filed on behalf of the respondents wherein the allegations of mala fide intention of the respondent have been vehemently opposed by the respondents. It is averred in their reply that the action of the petitioner of selling adulterated liquor and that too in loose bottles was against the terms of the license, specially conditions Nos. 6, 15, 19 and 24 which entailed the cancellation of the petitioner's license. It is further averred that the Inspector who had gone for the checking of the shop detected by means of hydrometer as many as 127 bottles of liquor of much below the prescribed strength and these bottles were seized in the presence of the authorised salesman of the petitioner and other witnesses who had put their signatures on the seizure memo which was prepared on the spot. This seizure of 127 bottles in the presence of the authorised salesman, according to the respondent, was a sufficient notice to the petitioner of the contravention of the provisions of the Act, the rules and the conditions of the license as detected by the Inspector.

It is also pleaded that after the order of suspension was issued, another notice to

show cause was why his license may not be cancelled was served on the petitioner and the enquiry for the cancellation of the license is in progress and if the petitioner is found guilty of committing any breach of the conditions of his license, the Department will be perfectly justified to take further steps to cancel the license and also to take criminal proceedings against the petitioner for contravening the provisions of the Act. It is contended that the Department is awaiting the report from the Chemical Examiner who is not available at present because of the retirement of the Chemical Analyst Mr. Bhargava and therefore delay is caused in taking further action against the petitioner. In these circumstances, it is prayed by the respondents that the writ petition be dismissed as the petitioner is not entitled to any relief.

5. Mr. Guman Mal has argued only one point before this Court, and it is that the order of suspension is a penalty which cannot be imposed on the petitioner without following the rules of natural justice, and since the District Excise Officer has issued the impugned order (Ex. 1) without giving any notice to the petitioner, it stands to be quashed as it has been passed in violation of the principles of natural justice.

6. The, power to cancel and suspend license is given to the Excise Officers u/s 34 of the Act, the relevant portion of which reads as follows:

"34. (1) Subject to such restrictions as the State Government may prescribe, the authority granting any licence, permit or pass under this Act may cancel or suspend it-- (a) XXX XXX XXX

(b) XXX XXX XXX

(c) in the event of any breach by the holder of such licence, permit or pass or by his servants, or by anyone acting on his behalf with his express or implied permission, of any of the terms or conditions of such licence, permit or pass;

(d) XXX XXX XXX

(e) XXX XXX XXX

(f) XXX XXX XXX

7. The State Government has prescribed in Rule 76 of the Rajasthan Excise Rules, 1956 three conditions in which the authority that has granted the license can cancel, suspend or modify the same and they are (a) to rectify clerical mistakes; (b) if the licence has been obtained by fraud; or (c) if the licensee has been guilty of the violation of a condition of his licence or the contravention of any provision of the Act or any Notification, order or rule issued under the Act.

8. Ex. 1 is the impugned order passed by the District Excise Officer on 19-12-1969 where in it has been mentioned that on the inspection of the petitioner's liquor shop at Beawar on 17-12-1969, 127 bottles of liquor of sub-normal standard have been found which action of the licensee is punishable u/s 58 (c) of the Act and it is against condition No. 6 of the license and, therefore,

the District Excise Officer thought it advisable to suspend the petitioner's license. He also ordered that the entire stock of liquor may be seized and that may be allowed to be sold on commission basis by some other competent person.

9. This order makes it clear that on the receipt of the report of the Inspector, the order of suspension was passed by the District Excise Officer without taking any explanation from the petitioner about the recovery of 127 bottles which according to the respondents contained liquor of below standard strength.

10. The question that arises for the decision of this Court is whether the order suspending the petitioner's license was issued by the District Excise Officer to penalise the petitioner or as is urged by the learned Deputy Government Advocate, it was issued in order to enable the Department to make enquiry for cancelling the petitioner's license. It is also urged by the respondents that since a notice for the cancellation of license has been served on the petitioner, the order suspending the license cannot be set aside till the enquiry for cancellation is over.

11. The show cause notice for cancelling the license of the petitioner was issued by the respondent on 8th of January, 1970 when the petitioner had already filed the writ application in this Court and this Court had issued a notice to the respondents to show cause why the suspension of the license may not be stayed. There is nothing on the record to show that at the time when the suspension order was issued by the District Excise Officer, a decision was taken by the officer to cancel the license of the petitioner for the alleged violation of the conditions of license and the provisions of the Act. If the suspension order had been passed in order to facilitate the enquiry for the cancellation of the petitioner's license then such an order could be issued only after the Department had taken a decision to initiate the proceedings for the cancellation of the petitioner's license.

Since the respondents have not placed any material on the record to show that they had decided before suspending the petitioner's license to launch an enquiry for the cancellation of the license, it is difficult for me to accept this plea of the respondents that the suspension order was issued pending the enquiry for cancellation and not as a penalty. The show cause notice for the cancellation was issued 20 days after the impugned order was passed and, therefore, there is no escape from the conclusion that the suspension of the license was ordered by the District Excise Officer to inflict punishment u/s 34 of the Act read with Rule 76 of the Rules. In these circumstances, I cannot accept the plea of the respondents that the suspension was ordered pending the enquiry for cancellation.

12. From the perusal of Section 34 of the Act and Rule 76 of the Rules, it is difficult to infer that the Department has been empowered by the Legislature to suspend the license pending the enquiry. The power of suspension of a license u/s 34 of the Act and Rule 76 of the Rules has not been conferred to facilitate the Department to carry on the enquiry for the cancellation of the license, but it has been given to the Department to inflict punishment and the order of suspension

if passed under these provisions shall be dealt with as if the penalty has been imposed by the Department. It may be noted that the licenses are generally granted for a period of one year and if this power of suspension of a license is taken as a power to afford facility to the Department pending the enquiry for cancellation of the license, then in that event after the enquiry if the licensee is found innocent then the suspension during the course of enquiry for the cancellation of license would automatically act as a punishment because during the period of suspension the entire business of the licensee shall be stopped.

The analogy of suspension of a Government servant pending an enquiry against his conduct relied upon by Mr. Chatterji stands on a different footing. Under the Rules, it is urged by Mr. Lodha, the Government servant if exonerated from the charge gets the entire emoluments even for the period of suspension, but a licensee cannot be reimbursed for the losses suffered by him during the suspension period if he is found innocent after the enquiry instituted for the cancellation of his license and, therefore, this power of suspension cannot be put at par with the power of suspension which is used against the delinquent officers during the course of the disciplinary enquiry against them.

13. Mr. Lodha in support of his arguments that suspension is punishment in such cases placed reliance on a Bench decision of this Court in *Krishna Gopal v. The Regional Transport Authority* ILR (1959) 9 Raj 1009. That was a case u/s 60 of the Motor Vehicles Act which confers similar power for cancellation or suspension of a permit in case of the breach of any condition specified in Sub-section (3) of Section 59 of that Act or of any condition contained in the permit. In that case, the permit of the petitioner was suspended pending enquiry for the cancellation of the permit on a charge that the vehicle was found over-loaded. The order of suspension was challenged in this Court on the ground that the permit was suspended without giving any opportunity to the petitioner.

The learned Judges, after considering the arguments of both the parties, came to this conclusion that the order of suspension was a quasi-judicial order as the Act provided a provision for filing an appeal against such an order. It was observed by the learned Judges:

"An order suspending a permit u/s 60 is an order of punishment and before such an order can be passed rules of natural justice require that a hearing should be given to the party intended to be punished. It was held in *K. Balagangadharan v. C. R. Traffic Board* AIR 1957 Tra.-Co. 141 that the proviso to Section 60 (1) cannot apply where the permits have not been cancelled but only suspended, yet rules of natural justice require that a person should be given a fair opportunity to state his case before he is punished."

14. In the present case, the law provides that the order of suspension of a license can be challenged in appeal u/s 9-A of the Act before the Excise Commissioner and, therefore, the observations made by the learned Judges in ILR (1959) 9 Raj 1009 can be applied to the facts and circumstances of the

present case.

15. Mr. Guman Mal further urged that even if the action of passing of the order of suspension of the petitioner's license is an executive act it is vitiated because such executive acts cannot be passed without giving opportunity to the person affected thereby. In this connection he places reliance on the observations of Hegde, J. in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, where it has been held:

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of Justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural Justice has undergone a great deal of change in recent years,.." If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries,.."

16. Even if it is admitted for the sake of arguments that the passing of an order suspending the license is an administrative order, it cannot be passed without following the rules of natural justice. This principle has been given recognition by the Courts of law that no decision shall be given against a party without affording him a reasonable opportunity to state his case (*audi alteram partem*). If any order is passed against a person that affects his rights without giving him an opportunity to state his case before the authority, then definitely the non-compliance with the principles of natural justice would result in injustice to the person aggrieved and such a decision of order of the authority which is passed in violation of the principles of natural justice cannot stand the scrutiny of the judicial Courts. In my opinion, the order of suspension of the petitioner's license stands vitiated due to the non-compliance of the principles of natural justice.

17. It is urged by learned Deputy Government Advocate that the petitioner had an alternative remedy of filing an appeal against the impugned order u/s 9-A of the Act. This Court has invariably laid down that the alternative remedy would not come in the way of the aggrieved party if the order has been passed in clear violation of the principles of natural justice. Since the license has been granted only for a limited period, therefore, the time factor is of great importance in such a case. In these circumstances, I am not impressed by this alternative argument advanced by the learned Deputy Government Advocate.

18. It is said that the Department has initiated an enquiry for the cancellation of the petitioner's license. That enquiry is quite separate from the order of suspension and even if the order of suspension is quashed, it will not in any way create an obstacle in the way of the Department to carry on an undressed enquiry in the matter.

19. For the reasons mentioned above, the impugned order passed by the District Excise Officer on 19th December, 1969 (Ex. 1) is hereby quashed. The petitioner

shall get his costs from the respondents.