(2004) 02 CHH CK 0010

In the Chhattisgarh High Court

Case No : Writ Petition No. 45 of 2004

Panchu Ram Deshmukh — APPELLANT

Vs

State of Chhattisgarh and Others — RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Chhattisgarh Foreign Liquor Rules, 1996 — Rule 8(6)
Constitution of India, 1950 — Article 14, 19(1), 226, 227

Citation : (2004) 1 CGLJ 153 : (2004) 2 MPHT 8

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : Ravindra Shrivastava and Awadh Tripathi, for the Appellant; N.K. Shukla, Additional Advocate Gen. and Ranbir Singh, Government Advocate for Respondent Nos. 1 to 4 and Anand Kumar Tiwari, for the Respondent

Final Decision : Allowed

Judgement

L.C. Bhadoo, J.—The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India whereby the petitioner has challenged the order dated 27-12-2003 passed by the Deputy Excise Commissioner, Raipur whereby the Deputy Excise Commissioner clarified and modified the order dated 17-7-2003 (Annexure P-3) passed by the Collector (Excise) District Durg mentioning therein that in view of the Clause (a) of Sub-rule (6) of Rule 8 of the Chhattisgarh Foreign Liquor Rules, 1996 (hereinafter referred as ''Rules 1996''), the F.L. 3 licence holders are entitled to take liquor from any of the three shops of F.L. 1 mentioned at Item Nos. 20 and 21 of the Collector''s order (Annexure P-3).

2. The brief facts giving rise to filing of this petition are that the petitioner herein is a licence holder of F.L. 1 at Jharandalli of Dallirajhara Group for the year 2003-2004 up to 31st March, 2004, whereas the respondent No. 5 is also a holder of F.L. 1 licence of Dodilohara shop District Durg and respondent Nos. 6 and 7 are F.L. 3 licence holders of Dallirajhara. As per the Excise Rules F.L. 1

licence holders are those licence holders in which the licence in Form F.L. 1 shall be disposed of by auction/tender or under the ''Fee-per-bottle system'' or a combination of both the systems or in such other manner as the State Government may from time to time, by general or special order direct. The licensee, holding a licence in Form F.L. 1, shall sell foreign liquor in sealed bottles to consumers and to F.L. 2, F.L. 3 and F.L. 5 licensees. F.L. 3 licence holders are entitled to sell foreign liquor for consumption on the licensed premises to residents of such hotels for their own use or that of their guests and other casual visitors with meals and snacks. This licence may be granted to hotels having both lodging and boarding facilities of such scale and standard as may be determined by the State Government. Therefore, the respondent Nos. 6 and 7 who are F.L. 3 licence holders are hoteliers, as per the licence condition they are supposed to purchase the foreign liquor as per their requirement from the F.L. 1 licence holders after obtaining permit from the Officers of Excise Department respondent Nos. 2 and 4. The petitioner and respondent No. 5 who are F.L. 1 licence holders are entitled to sell foreign liquor in sealed bottles to the consumers and F.L. 3 licence holders.

3. The petitioner and respondent No. 5 got the F.L. 1 licence for the period 2003-2004, i.e., upto 31st March, 2004. The petitioner''s shop is at Jharandalli whereas the respondent No. 5''s shop is at Dallirajhara. As per the case of the petitioner the respondent Nos. 2 and 4 used to issue transport permit in favour of the petitioner''s shop for lifting the liquor by respondent Nos. 6 and 7 for consumption and use in their hotel. As per the order (Annexure P-3) the respondent Nos. 2 and 4 are required to issue permit to the respondent Nos. 6 and 7 to lift the foreign liquor from his shop in the first instance and in case a particular variety of liquor is not available with the petitioner then the respondent Nos. 2 and 4 are required to issue a permit to the respondent Nos. 6 and 7 to lift that particular liquor from Balod shop which is at serial No. 2 in Annexure P-3 and further if that particular liquor is also not available at the shop situated at Balod then the respondent Nos. 2 and 4 are required to issue permit to the respondent Nos. 6 and 7 to lift the liquor from Dodilohara shop, i.e., the shop of the respondent No. 5. It has been specifically mentioned in the order (Annexure P-3) passed by the Collector and this practice was continued in the year 2002-2003 and thereafter till 12-12-2003. However, the respondent Nos. 6 and 7 are interested to lift the liquor from the shop of the respondent No. 5 because the owner of the shop of respondent No. 5 is close relative of the respondent No. 7, therefore, from December, 2003 the respondent Nos. 2 and 4 started issuing permit in favour of respondent No. 5 which is evident from Annexure P-5. The shop of the respondent No. 5 is situated in other group, i.e., Balod and not in Dallirajhara group and as per the grouping scheme the respondent Nos. 6 and 7 are required to lift the liquor from the petitioner''s shop which falls in Dallirajhara Group and this act of the respondents has started affecting the business of the petitioner as the petitioner is paying monthly fee to the tune of Rs. 6,34,789/-. In order to achieve their object the respondent No. 7 filed a civil suit before the

Additional District Judge, Balod seeking order that the Excise Department be directed to allow him to lift the liquor from the shop of respondent No. 5. When the respondent No. 7 could not succeed in that civil suit he made a representation to the Excise Commissioner and the Excise Commissioner without giving any opportunity of hearing and giving notice to the petitioner allowed the representation of the respondent No. 7 and modified the order passed by the Collector (Annexure P-3) vide impugned order dated 27th December, 2003. Therefore, the order impugned dated 27-12-2003 (Annexure P-5) be quashed and the respondent Nos. 2 and 4 be directed to issue permit in favour of the petitioner as per Annexure P-3.

4. Return has been filed on behalf of the respondents and all the respondents have mentioned that as per Clause (a) of Sub-rule (6) of Rule 8 of the Rules, 1996 the respondent Nos. 6 and 7 are entitled to lift the foreign liquor as per their requirement from any one of the three shops, i.e., the shop of the petitioner situated at Jharandalli, shop at Balod or shop at Dodilohara; that being the spirit of the above provision of Clause (a) of Sub-rule (6) of Rule 8, the Deputy Excise Commissioner issued the impugned order (Annexure P-5), dated 27-12-2003 and even prior to that on 13/15-5-2002 the Additional Excise Commissioner issued a similar order and the Collector was under an obligation as per Clause (a) of Sub-rule (6) of Rule 8 to issue directions for issuance of permit under the order passed by the Excise Commissioner for lifting of the foreign liquor from anyone of the three shops mentioned above and the petitioner''s petition is devoid of any merit and the same be dismissed.

5. I have heard Shri Ravindra Shrivastava, learned Senior Counsel for the petitioner, Dr. N.K. Shukla, learned Additional Advocate General for the respondent Nos. 1 to 4 and Shri Anand Kumar Tiwari, learned Counsel for the respondent Nos. 5 to 7.

6. Learned Senior Counsel for the petitioner argued two folds, that as per the sprit of Clause (a) of Sub-rule (6) of Rule 8 of Rules 1996 the order of the Collector (Annexure P-3) is correct and it is in consonance of the sprit of the rule, whereas the order of the Deputy Excise Commissioner (Annexure R-7/5), dated 27-12-2003 and the Additional Excise Commissioner, dated 13/15-5-2002 are not in consonance with the sprit of the rule. The second argument of learned Counsel for the petitioner is that the Deputy Excise Commissioner passed the order dated 27-12-2003 on the representation made by the respondent No. 7 without giving any opportunity of hearing and issuance of show-cause notice to the petitioner which is violative of the principles of the natural justice.

7. On the other hand learned Counsel for the respondents argued that the impugned order of the Deputy Excise Commissioner dated 27-12-2003 and 13/15-5-2002 of Additional Commissioner are in consonance with the above Rule and the order (Annexure P-3) passed by the Collector is not in consonance with the sprit of the Rule.

8. In order to appreciate the arguments advanced by learned Counsel for the parties, it is useful to reproduce the Relevant Rules. Clause (a) and (b) of Sub-rule (6) of Rule 8 which are as follows :--

(6) Attachment of certain licences with the nearest F.L. 1, F.L. 1-A, F.L. 1-AA, F.L. 1-AAA, F.L. 10 or F.L. 10-A licences.-- (a) F.L. 2, F.L. 3, F.L. 4, F.L. 4-A or F.L. 5 licensee shall purchase foreign liquor from such F.L. 1, F.L. 1-A, F.L. 1-AA or F.L. 1-AAA licensee of the district as may be specified by the Collector in accordance with the general directions of the Excise Commissioner or State Government. Purchase of such brands or labels, that are not available with any F.L. 1, F.L. 1-A, F.L. 1-AA or F.L. 1-AAA licensee of the district, from any similar licensee of any other neighbouring district of the State, may be authorized by the Excise Commissioner in special circumstances.

(b) Similarly, every F.L. 1, F.L. 1-A, F.L. 1-AA or F.L. 1-AAA licensee shall, after paying duty and bottle fee in his district, procure his supplies of liquor from any F.L. 10, F.L. 10-A licensee functioning in the division in which the district is situated. In case a brand or label of foreign liquor is not available with any F.L. 10, F.L. 10-A licensee of the division, or if certain special circumstances warrant so, such F.L. 1, F.L. 1-A, F.L. 1-AA or F.L. 1-AAA licensee may be permitted by the Excise Commissioner to purchase such brand or label from any F.L. 10, F.L. 10-A licensee operating in any other neighbouring division.

9. The heading of the Clause (a) of Sub-rule (6) of Rule 8 starts with the wordings ''attachment of certain licences with the nearest F.L. 1'' and it has been mentioned in this Rule that the licensee shall purchase foreign liquor from such F.L. 1 licensee as may be specified by the Collector of the district in accordance with the general directions of the Excise Commissioner or the State Govt. So this Rule lays down that the F.L. 3 licensee is required to lift the liquor from the nearest F.L. 1 shop attached with the F.L. 3 shop and the language of the Rule is in singular form not in plural form and it is not disputed that the nearest shop F.L. 1 is of the petitioner''s shop which is said to be existing between the premises of the respondent Nos. 6 and 7, whereas the shop of Balod and Dodilohara are situated at a distance of more than 5 to 6 k.m. and looking to the sprit of this Rule the Collector Excise while issuing the licence to the respondent Nos. 6 and 7 issued the order (Annexure P-3) in which the respondent No. 7 has been shown at Sr. No. 21 who is F.L. 3 licence holder and against his name three shops have been shown at No. 1 Jharandalli, No. 2 Balod and No. 3 Dodilohara. In this order at Sr. No. 20 name of respondent No. 6 is shown who is also F.L. 3 licence holder and against his name also three shops are shown, i.e., at No. 1 Jharandalli, No. 2 Balod and No. 3 Dodilohara. The petitioner''s shop being nearest shop of the respondent Nos. 6 and 7, the Collector issued this order that in the first instance the F.L. 3 licensee will lift the liquor from shop No. 1 and in case the required liquor is not available at that shop then they will lift the liquor from the No. 2 shop and in case if with him also that liquor is not available then they are entitled to lift the wine from the shop No. 3 after obtaining permit from

the respondent Nos. 2 and 4 and this order is not only in respect of the petitioner and respondent Nos. 6 and 7; this order is in respect of 32 licence holders and against each F.L. 3 and F.L. 4 licence holders three shops have been shown from where those licensee are to lift the liquor in order of serial Nos. 1 to 3, as mentioned above. In clause (a) of Sub-rule (6) of Rule 8 the words has been used that ''licensee shall purchase foreign liquor from such F.L.1''; it has not been mentioned in this sub-clause that the F.L. 3 licensee is entitled to lift the liquor from anyone F.L. 1 licensee, and in second part of Clause (a) it has further been made clear that in case that particular liquor is not available in that attached shop then F.L. 3 licensee can take liquor from any other F.L. 1 licensee of other district and that is what has been done by the Collector in his order (Annexure P-3). In this connection if we look into Clause (b) it makes more clear in which it has been specifically mentioned that F.L. 1 licensee shall, after paying duty and bottle fee in his district, procure his supplies of liquor from any F.L. 10. F.L. 10 licensee functioning in the division in which the district is situated. Therefore, in Clause (a) the word ''such licensee'' has been used which specifies that F.L. 3 licensee has to lift the liquor from the attached F.L. 1 shop whereas in Clause (b) the words ''any such shop in the division'' has been used, which show that from any shop of F.L. 10 the F.L. 1 licensee can lift the liquor. Therefore, the legislature with specific purpose and has deliberately used the word ''such'' and ''any'' in clauses (a) and (b) that is why as per the petitioner''s case in the year 2002-2003 the practice which has been ordered in Annexure P-3 was being followed and same practice was adopted for 2003-2004 as per Annexure P-3 and even till December, 2003 from April, 2003 this practice was going on but all of a sudden abruptly, the Deputy Excise Commissioner on the representation of the respondent Nos. 6 and 7 changed the scheme without hearing and without giving notice to the petitioner and that too ignoring a stand taken by the department before the Additional District Judge in Civil Court where the respondent No. 7 had filed a civil suit challenging the order of the Collector (Excise) (Annexure P-3). In he circumstances merely on the representation of the respondent No. 7 during the pendency of the civil litigation regarding same issue and that to contrary to the stand taken by the department in the written statement, learned Deputy Excise Commissioner ought to have refrain himself from passing such an order that too without giving opportunity to the petitioner and particularly when the order of the Collector (Excise) (Annexure P-3) was in consonance with the existing practice and that was in consonance with the sprit of the sub-rule also.

10. A perusal of the written statement filed by the respondent/State before the Additional District Judge shows that the Department had taken the stand in Para 9 of the written statement that the plaintiff, i.e., respondent No. 7 herein, is not entitled for the relief sought that he may be allowed to lift the liquor from any of the three shops and in this written statement it has also been mentioned that Jharandalli shop is nearest shop to the respondent Nos. 6 and 7 and thereafter the shop of Balod and then the shop of Dodilohara are situated, and it has come on record that the respondent No. 5 is relative of respondent No. 7 that is why

he wants to lift the liquor from his shop even though it is at some distance.

11. In view of the above, the order/clarification issued by the Deputy Excise Commissioner (Annexure R-7/5), dated 27th December, 2003 and the circular dated 13/15-5-2003 issued by the Additional Commissioner (Excise) are contrary to the provisions of Clause (a) of Sub-rule (6) of Rule 8. Therefore, the impugned order of the Deputy Excise Commissioner is liable to be set aside on this ground.

12. It is an admitted position that the Deputy Excise Commissioner without giving show-cause notice to the petitioner or opportunity of hearing, only on the representation made by the respondent No. 7 issued the impugned order modifying the existing order (Annexure P-3) which has resulted in affecting the business of the petitioner and as has been held by the Apex Court in the matter of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , that the ''State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties''. Article 14 of the Constitution will be applicable to those exercise of power. The exercise of powers must be governed by the rule of law and must be informed by reasons. So whatever be the activity of the public authority it should meet the test of Article 14 of the Constitution. In that case a firm was carrying on the business of sale and distribution of all types of lubricants for a period of 18 years, supply of lubricants by the Indian Oil Corporation was stopped without any notice or intimation given to the firm, the action of the Corporation was held arbitrary.

13. Similarly the Hon''ble Apex Court in the matter of Canara Bank and Others Vs. Shri Debasis Das and Others, , has held that the adherence to the principles of natural justice as recognized by all civilized States is of supreme importance when a quasi judicial body embarks on determining disputes between the parties or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alterant partem rule. The principle is that no one should be condemn unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play.

14. It is an admitted position that as per the order (Annexure P-3) passed by the Collector, since April, 2003 the respondent Nos. 6 and 7 were continuously lifting the liquor in the first instance from the shop of the petitioner and so was the case in the previous year also but learned Deputy Excise Commissioner abruptly on the representation made by the respondent Nos. 6 and 7 changed the order (Annexure P-3) without giving opportunity and notice to the petitioner and which has affected the business of the petitioner and has resulted into affecting the

business of the petitioner therefore the same being violative of Articles 14 and 19(1)(g) of the Constitution of India. Therefore, on this ground the impugned order is liable to be quashed.

15. The respondent Nos. 5 to 7 have raised the objection that instead of filing this petition the petitioner ought to have approached the appellate authority, i.e., Excise Commissioner which has not been done. This plea raised by the respondent Nos. 5 to 7 is without any force for the reason that in the first instance even though the order impugned dated 27-12-2003 has been issued by the Deputy Excise Commissioner but the same has been passed on behalf of the Excise Commissioner therefore, there was no reason for the petitioner to file appeal before the Excise Commissioner. Therefore, there was no reason for the petitioner to file an appeal before the Excise Commissioner even otherwise it is a rule of discretion and not a rule of law and where the principle of natural justice is violated the petitioner is entitled to file writ petition directly. In the matter of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , it has been held by the Hon''ble Apex Court that the High Court may exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the present case as has been held above, principles of natural justice has been violated, therefore, the plea raised by the respondent Nos. 5 to 7 is without force.

16. In the result the petition succeeds and the petition of the petitioner is allowed. Order (Annexure R-7/5), dated 27-12-2003 passed by the Deputy Excise Commissioner in supersession of order passed by the Collector (Excise) (Annexure P-3) is quashed and set aside.

