(2024) 08 UK CK 0088

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2335 Of 2024

Prakash Chandra Brijwasi — APPELLANT

Vs

State Of Uttarakhand And Others — RESPONDENT

Date of Decision : 29-08-2024

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 11(1), 11(2)
Constitution Of India, 1950 — Article 14, 16

Citation : (2024) 08 UK CK 0088

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : Vinay Kumar, Suyash Pant

Final Decision : Disposed Of

Judgement

Pankaj Purohit, J

1. Heard learned counsel for the parties.

2. Petitioner was granted a license for running Foreign Liquor Shop at Bhatrojkhan in District Nainital. It is alleged by the petitioner that due to objection and agitation raised by the local residents at the behest of another liquor shop vendors, petitioner failed to run his shop for a period of three months w.e.f. April 2024 to June 2024.

3. Petitioner moved an application to District Magistrate, Nainital to grant exemption to him for payment of Monthly Minimum Guaranteed Duty of Rs.17,90,369/- . The said application moved by the petitioner met with rejection by the respondent No.3-District Magistrate, Nainital. Feeling aggrieved by the said rejection, he preferred an appeal under Section 11(1) of the UP Excise Act, 1910. The appeal filed by the petitioner was also met with the same fate and rejected on 20.08.2024.

4. It is vehemently submitted by learned counsel for the petitioner that on the

very next day i.e.22.08.2024 before the petitioner could have avail the remedy available to him against the order passed by the appellate authority, the District Magistrate Nainital has cancelled the license of petitioner's shop on the ground that the petitioner failed to deposit the Monthly Minimum Guaranteed Duty.

5. It is feeling aggrieved against the action of respondent No.3-District Magistrate Nainital, petitioner is before this Court by filing the present writ petition.

6. It is contended by learned counsel for the petitioner that the petitioner has got a remedy under the provisions of Section 11(2) of the UP Excise Act, 1910 to file revision against the said appeal and there is a limitation of 30 days for preferring the revision against the order passed by the Appellate Authority, the respondent-District Magistrate Nainital at in undue haste cancelled the license of the petitioner to run the liquor shop. Thus, he submits that the action on the part of the respondent No.3-District Magistrate is highly unreasonable and arbitrary against the mandate enshrined in the Article 14 and 16 of the Constitution of India.

7. On facts, it is also submitted by learned counsel for the petitioner that impugned order is factually incorrect inasmuch as the petitioner has already deposited Monthly Minimum Guaranteed Duty for the months of July 2024 and August 2024.

8. It is submitted by learned counsel for the petitioner that the petitioner would file the revision against the appellate order.

9. Per contra, learned State Counsel supported the order passed by respondent No.3-District Magistrate saying that the recovery of Rs.51,42,107/- was due against the petitioner and, therefore, the impugned order has been passed.

10. Having considered the submission made by the learned counsel for the parties and having gone through the material available in the writ petition meticulously, this Court is of the view that the petitioner cannot be denied to avail the right of revision as prescribed to him under Section 11(2) of the UP Excise Act, 1910. The order passed by the respondent No.3-District Magistrate, Nainital appears to be passed in great haste without waiting for a period of 30 days, which is a period, prescribed for preferring the revision against the appellate order.

11. In this view of the matter, petitioner is permitted to avail the remedy of revision as available to him under Section 11(2) of the UP Excise Act, 1910. He shall file the said revision within seven days from today before the State Government and the State Government shall decide the said revision as per law. In the meantime, the effect and operation of impugned order dated 22.08.2024 passed by respondent No.3-District Magistrate shall be kept in abeyance. Petitioner shall run his shop as he was running earlier before passing the impugned order.

12. In view of the above, writ petition is finally disposed of.

13. Pending application, if any, also stands disposed of.

