

(2013) 01 KAR CK 0088

In the Karnataka High Court

Case No : Writ Petition No. 100033 of 2013 (Excise)

Raju Guttedar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Citation : (2013) 01 KAR CK 0088

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Avinash A. Uploankar, for the Appellant; Manvendra Reddy, Govt. Advocate, for the Respondent

Judgement

N. Kumar, J.—Sri Manvendra Reddy, learned Government Advocate is directed to take notice for respondents. This writ petition is filed seeking a writ in the nature of mandamus declaring that the act of the respondents i.e., closure of shop is illegal and without the authority.

2. Case of the petitioner is that he is a valid licence holder in possession of licence granted under rule 3(2) in Form No. CL-2 of Excise Act, 1965. He has paid the entire fee prescribed and the licence was renewed up to 30.06.2013. Petitioner made a request for permission to shift CL-2 licence to Ramsamudra village at premises shop No. 46/12-13, Shahapur Taluka, Yadgir District. By an order dated 22.12.2012 permission was granted. Shifting fee of Rs. 86,250/- was paid by the petitioner. One Smt. Aruna W/o Shahikanth Chinchnsoor filed an appeal against the order of shifting before the Excise Commissioner. The Excise Commissioner has passed an order staying the shifting till 10.01.2013. By an order dated 26.12.2012, the second respondent came to the shop of the petitioner, seized the goods under panchanama and has locked the same. The said act of seizure and locking threatens the fundamental rights of the petitioner to carry on business in vending liquor. Therefore, he has preferred this writ petition challenging the act of the second respondent

3. I have heard the learned counsel for the petitioner.

4. Vending of liquor is not a fundamental right. It is the right, which is regulated by the statutory provisions. That right has to be exercised under the scheme of the Act. Petitioner has been given a CL-2 licence. He is also permitted to shift from one place to another. He has paid the requisite fee. However, the Excise Commissioner in an appeal has stayed the order of shifting. In pursuance of the stay order of shifting, the second respondent has locked the premises, seized the material. If such an action is hurting the interest of the petitioner, it is because of the stay order granted by the Excise Commissioner. His remedy is to approach the Excise Commissioner and contend before him that the order of shifting is valid order and it has been acted upon and the stay order is preventing him from to carry on business. Therefore, he can either request for vacating of the stay order or dismissal of the appeal. When the second respondent has seized the liquor from the shop, locked the premises, it is to give effect to the stay order passed by the Excise Commissioner, it cannot be found fault with. In these circumstances, writ petition is not the remedy. Petitioner has to approach the Excise Commissioner and work out his remedy there. When the permission to shift is granted, petitioner has deposited the requisite amount and he has also shifted his business, the Excise Commissioner to dispose of the pending appeal as expeditiously as possible, as the licence itself would be for a period of one year. In that view of the matter, I pass the following order:

ORDER

The writ petition is dismissed. However, the Commissioner of Excise shall dispose of the appeal, which is pending before him within thirty days from the date of communication of this order.

Learned Government Advocate is permitted to file memo of appearance within four weeks from today.