
(1981) 10 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1460 of 1981

Ram Kishan Vijai Vargiya

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 01-10-1981

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 300A

Citation : (1981) WLN 267

Hon'ble Judges : M.L. Shrimal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Shrimal, J.—Heard learned Counsel for the petitioner.

2. The main questions which need to be determined in this writ petition are;--

(i) whether the petitioner can claim a renewal of his licence as of right, even though he did not have the licence to sell Indian made foreign liquor after April 1, 1980;

(ii) whether the Notification No. GSR 50, dated April 21, 1981, (Ex. 2) annexed with the writ petition is invalid;

(iii) whether the petitioner has the locus standi to get the above Notification quashed, even though he does not hold a subsisting licence.

3. The facts giving rise to this petition are that the petitioner was granted a licence of retail sale of foreign liquor and Indian made foreign liquor in the year 1954 under the provisions of the Rajasthan Excise Act, 1950 (hereinafter to be referred to as "the Act"). It was renewed from time to time and the licence remained valid upto March 31, 1980 and thereafter no renewal was granted as the scheme of total prohibition had been imposed with effect from April 1, 1980.

4. The State Government, in exercise of its powers u/s 41 of the Act, framed

Rules known as the Rajasthan Excise Rules, 1956 (hereinafter to be referred as "the Rules of 1956"). In the year 1972 the additional Rules known as the Rajasthan Foreign Liquor (Grant of Wholesale Trade and Retail-Off Licence) Rules, 1972 (hereinafter to be referred to as "the Rules of 1972") were promulgated with effect from the date of their publication in the Official Gazette. These Rules provided for the grant of a licence subject to the charging of initial fee in addition to excise duty and the fee payable under Rule 69(1) of the Rule of 1956. The initial fee under the Rules of 1972 was prescribed as Rs. 10,000/- for retail sale off licence for foreign liquor in an area where the population is one lakh persons and above. It has also prescribed an initial fee of Rs. 6,000/- for renewal of licence for retail sale. The Rules of 1972 have been amended by the State Government vide Notification, published in the Rajasthan Gazette, Extraordinary, dated August 21, 1981. The initial fee prescribed under Rule 3 of the Rules of 1972 has been revised and it has been prescribed as Rs. 50,000/-.

5. The State Government has decided to grant the retail sale-off licences for foreign liquor and Indian made foreign liquor and beer in Jaipur City. According to the petitioner, they are to be granted to the holders of old licences. The application for grant of licence and fee are required to be submitted by September 30, 1981. The fear of the petitioner is that he will not be granted a licence unless he deposits the amount of Rs. 50,000/- as the initial fee of the licence under the amended Rules. His grievance is that the petitioner had a licence upto March 31, 1980 and his licence could not be renewed on account of the change of policy of the State Government as it had imposed total prohibition in the State. As soon as the Notification regarding prohibition was lifted, he became entitled to the renewal of his licence on payment of the fee provided under the Rules of 1956 and the Rules of 1972 cannot be made applicable to the case of the petitioner. His old application, dated February 29, 1980 lying with the Department, should be considered as an application for renewal of licence and "the same should be accepted without making him to pay the initial fee. In the alternative he submits that the amendment introduced in the Rules of 1972, vide Notification dated August 21, 1981, be declared invalid.

6. I have given careful consideration to the arguments advanced by the learned Counsel appearing for the petitioner. It is an admitted fact that at present the petitioner does not possess any licence of retail sale-off Indian made foreign liquor. A bare perusal of Section 37 of the Act reveals that no person to whom a licence has been granted under the Act can claim the renewal of a licence or can claim for compensation on termination of non-renewal thereof. Time and again the Hon'ble Supreme Court in a number of cases has held that none claim any right to do liquor trade. Reference in this connection may be made with advantage to Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner Ajmer and Ors. (1) and P.N. Kaushal etc. v. Union of India and Ors. (2). Similar observations have been made by this Court in Gehlot Engineering Wine Store v. State of Rajasthan (3). Hon'ble Lodha, J. after considering all the above noted judgments and others cases in detail has

endorsed the same view in *Ramesh Chandra Paliwal v. State of Rajasthan* S.B. Civil Writ Petition No. 861 of 1979, decided on October 26, 1979.

7. The State Government, in exercise of this power, conferred u/s 41 of the Act, have made elaborate Rules which deal with licence, settlement of fee, duration and number of licences, location of shop, the procedure for settlement and renewal and non-renewal of licence to certain persons. A perusal of the Act and the Rules makes it clear that no person has any absolute right to sell liquor and that the purpose of the Act and the Rules is to control and restrict the consumption of intoxicating liquors. Such control and restriction are obviously necessary for the preservation of public health and morals and to raise revenue and the State Government is within its rights to lay down conditions regarding payment of initial fee for grant of retail sale-off licence relating to Indian made foreign liquor and foreign liquor. The provisions of Articles 14, 19 or 300A of the Constitution of India are not attracted in this case.

8. The question of renewal of a licence can arise only when there exists an existing licence and there is no gap in between the expiry of the licence and the grant of the new licence. As the total prohibition was in force in the State of Rajasthan, by no stretch of imagination it can be said that the petitioner's old licence could be renewed from April 1, 1980. As no licence could be granted for the intervening period, the applications which are to be submitted by the prospective licensees are required to be considered as applications filed under Rule 3 of the Rules of 1972.

9. Moreover, the State Government has not passed any order upto now to the disadvantage of the petitioner. Neither any licence has been granted in his favour, nor the grant of licence has been denied to him.

10. As such this writ petition is also liable to be dismissed on another ground of its being pre-mature. Imaginary threat cannot provide the cause of action as a petition can lie only if the right is invaded. It will be futile to issue a writ unless the petitioner can show that in the event of his grievance being remedied, he will still be entitled to file a writ petition as of right. Under the Scheme of the Act and the Rules no such right can be said to have been vested in the petitioner.

11. The writ petition being without any merit is dismissed summarily.