

(2015) 02 KAR CK 0157

In the Karnataka High Court

Case No : Writ Petition No. 102040 of 2015 [Excise]

Raviraj Enterprises

APPELLANT

Vs

The Commissioner of Excise in Karnataka BMTC Complex and
Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Karnataka Excise Act, 1965 — Section 61(3)

Citation : (2015) 02 KAR CK 0157

Hon'ble Judges : A.N. Venugopal Gowda, J.

Bench : Single Bench

Advocate : Mohan Bhat, Advocate, for the Appellant; K. Vidyavathi, AGA, for the Respondent

Judgement

A.N. Venugopal Gowda, J.—Challenge in this petition is to an order passed dismissing I.A. No. 1 by the Karnataka Appellate Tribunal (for short "the Tribunal"), in an appeal filed under Section 61(3) of the Karnataka Excise Act, 1965.

2. Background facts in a nutshell are as follows:

The petitioner is a CL-2 licensee. Alleging that the business premises of the petitioner is within objectionable distance from a certain institution, a show cause notice was issued by the 2nd respondent, as to why he should not be directed to shift the business to some other premises. A reply was submitted stating that the rigour of Rule 5 may be relaxed, since he has been carrying on the business in the same place for several years and that power conferred on the authority to relax the applicability of the rule by obtaining the prior approval of the first respondent. The 2nd respondent passed an order dated 18.07.2014 and directed the petitioner to shift the business. An appeal filed before the first respondent having been dismissed, second appeal along with I.A. No. 1, for grant of interim stay was filed before the Karnataka Appellate Tribunal. Since the decision on I.A. No. 1 was deferred, a writ petition filed was disposed of permitting the petitioner

to move the Tribunal for grant of stay. The Tribunal having dismissed I.A. No. 1, this writ petition was filed.

3. Sri Mohan Bhat, learned advocate, submitted that the appeal having been "admitted" and the record of the case having been called for from the respondents and there being prima facie case for consideration, the order passed refusing to stay the impugned orders in the appeal, is wholly arbitrary and against the settled principles of law. He further contended that there being prejudging of the case, on account of wrong approach to the matter, the impugned order calls for interference.

4. Smt. K. Vidyavathi, learned AGA, on the other hand, contended that in view of the findings recorded by the respondents in the orders passed by them, the Tribunal is justified in refusing to grant interim stay. She submitted that there being no merit, this petition deserves to be dismissed. She further submitted that, since the main appeal is pending, it would be appropriate for the Tribunal to decide the appeal with expedition.

5. Considered the rival contentions and perused the writ record. The question for consideration is, whether the impugned order is liable to be quashed?

6. The grant or refusal of interim stay is no doubt a matter of judicial discretion, which has to be exercised in a reasonable manner by taking into consideration the relevant factors. There shall not be any wrong approach to the case. The appellate forum should weigh the balance of convenience while considering an application filed for grant of stay. The injury that would result from the non-grant of stay should be considered in the context, that in case the appeal is ultimately allowed, the injury that would be caused on account of dislocation during the pendency of the appeal, far outweighs the injury, if any, by continuing to carry on the business in the present licensed premises.

7. In *Munilakshamma Vs. Deputy Commissioner*, challenge was to an order refusing to grant an order of stay pending disposal of an appeal filed before the Deputy Commissioner against the order of the Assistant Commissioner passed in a case arising under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978. In the said factual background, it was held as follows:

"4. When a statute provides a remedy by way of appeal to the Appellate Authority against the impugned order, such a legal remedy should not be frustrated by an order of refusal to grant a stay of the operation of the impugned order because the implementation of the impugned order would not only disturb the status of the appellant but also defeat the very purpose for which the remedy is sought before the Appellate Authority. Once the impugned order is implemented the appeal could not serve any useful purpose."

8. Principles relating to grant of stay pending disposal of the case before the forum concerned has been made clear in a catena of decisions. On establishing a

prima facie case and balance of convenience, interim order of protection should be granted, as otherwise, the very object of preferring the statutory appeal, which has since been admitted for consideration and decision on merit, would get defeated. The denial of interim relief would cause grave injury to the petitioner, since he has remitted the licence fee and has been carrying on business. Before deciding the appeal, if the appellant/petitioner is made to shift the business to another place or close the business and the appeal, if is ultimately decided in his favour would cause irreparable injury. The Tribunal has failed to consider the balance of convenience and hardship that would result by the refusal of stay. There is wrong approach to the matter by the Tribunal.

9. A perusal of the impugned order indicates that the Tribunal has prejudged the case, which is clear from the following:

10. Since the approach of the Tribunal to the matter i.e., prejudging of the case is illegal, there is reasonable apprehension in the mind of the petitioner that his case may not be decided on its merit and in accordance with law. In the circumstances, it would be appropriate to direct that the matter shall be heard by a different bench, than the one which passed the impugned order.

In the result, the impugned order as at Annexure-F is quashed. The orders questioned in the appeal vide Annexures - C and D herein, pending before the Tribunal are stayed. The appeal shall be assigned by the Chairman, to another bench, for hearing. The respondents shall submit the records relating to the impugned proceedings vide the orders as at Annexures - C and D, on or before 13.03.2015, to the Tribunal, to which date the appeal shall be preponed by the Tribunal for hearing and decided with expedition, on or before 10.04.2015. Adjournment, if any sought by the appellant shall be refused and the case decided before the said date.

No costs.

Smt. K. Vidyavathi, learned AGA is permitted to file memo of appearance within a period of four weeks.