(1989) 05 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition No. 487 of 1989

R.N. Products APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 03-05-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1990) 1 WLN 318

Hon'ble Judges : N.S. Verma, J;J.R. Chopra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.S Verma, J.—The petitioner before us was granted a licence for establishment of a bonded were house on 6-10-1987 by the Excise Commissioner, Rajasthan Udaipur. This licence permitted the petitioner to establish and a run a bonded Ware-house for the receipt and storage of Indian made foreign liquor under bond, whether bottled or in bulk or both of Indian manufacture transported or imported into Rajasthan from any place within the Indian Union as approved by the Excise Commissioner, for refuse, bottling, transport or export in bond or on payment of duty Within or outside the State. The petitioner was required to establish a bonded Ware-house and a bottling plant in the city of Jodhpur as per the terms and conditions mentioned in the said licence. The licence was granted in pursuance of the provisions of s. 17(d) of the Rajasthan Excise Act, 1950 (Act No. 11 of 1950) here in after called ''the Act.'' The licence, inter alia, stated that the bonded were house was to be established within one month of the grant of licence. This term of one month stood substituted by a term of six months, vide notification Ex. 3.

2. The petitioner failed to establish a bonded Ware-house and a bottling plant within six months of the grant of licence. The case of the petitioner is that immediately after grant of licence, the petitioner made efforts to enter into colloboration agreements with various renewned distilleries. There was a delay in

conversion of the petitioner''s agricultural land at Boranada near Jodhpur City into industrial land because the district authorities were ousy with famine relief operations. Later on, they became busy with Panchayat elections. When the petitioner failed in getting his agricultural land converted into an industrial land, he eventually, obtained a plot from RIICO at Boranada vide letter dated 14-7-1988 (Ex 10). In the mean while, in pursuance of letter Ex. 5 of the Excise Commissioner. Udaipur, the petitioner deposited a sum Rs. 25,000/ being renewal fees of the licence for the year 1988-89 vide challan Ex. 6 dated 27-2-1988. Immediately after acquiring the plot, the petitioner started construction of the bottling plant and he almost completed the construction of the plant by August, 1988. The petitioner kept the excise authorities informed about this progress from time to time as would be evident from letters Ex. 7/1, Ex. 7/2, Ex. 7/3, Ex. 7/4, and Ex 7/5. It was submitted that the excise authorities were aware of the progress made by the petitioner. The Inspector, Excise, Jodhpur, also informed the District Excise Officer, Jodhpur, of this progress vide letter Ex.P 6 dated 10-5-1988. By this letter, the Excise Inspector confirmed the truth of the progress report submitted by the petitioner to the District Excise Officer. The District Excise Officials were enquiring about the progress of the petitioner''s work till as late as 16-6-1988 as would be evident from Ex. 8 and Ex 8A. The petitioner has averred that eventually he wrote to Commissioner of Excise, Rajasthan, Udaipur, to renew the licence. The petitioner is said to have enclosed with his letter Ex. 9A, the allotment letter Ex. 10. This request to the Excise Commissioner was repeated vide Ex. 12 dated 17-9-1988 wherein the petitioner mentioned that he had completed construction of the factory shed. It was intimated, inter alia, that water treatment plant and bottling line were lying ready with the manufactures are the collaborator was also ready to finalise the deal of supplying the spirit but for the renewal of the licence. It would be interesting here to mention that no renewal was granted during the year 1987-88. The period for application for renewal for the year 1988-89 was to expire on 28-2-1989 and, therefore, the petitioner submitted a new application to the Excise Commissioner, Udaipur, Ex. 15 dated 21-2-1989 requesting him to renew his licence for the period 4-1989 to 31-3-1990 The petitioner submitted demand draft of Rs 25,000/- as licence fee for renewal and prayed that the renewal may be granted for the years 1-4-1988 to 31-3-1989 and 1-4-1989 to 31-3-1990. In the meanwhile, the petitioner approached the Hon''ble Minister in the Excise Department vide Setter dated 8-7-1988; likewise, he approached Hon''ble the Chief Minister of Rajasthan vide Ex. 14 but to no avail.

3. The case of the petitioner is that in repect of M/s Agro Alwar Mart, Alwar, M/s Shivalik-ka Nema, Jaipur and M/s Ajanta Chemicals, Alwar, the licences have been renewed even though the aforesaid licences had failed to start construction within six months from the date of issue of licence. Upon such averments, it was prayed that an order, direction or a writ including a writ in the nature of mandamus or any other writ be granted and respondents he ordered to renew the licence of the petitioner immediately.

4. The respondents have opposed the writ petition on various counts. Certain preliminary submissions have also been made regarding the maintainability of the writ petition. It has been submitted that u/s 9A of the Act, the petitioner could have filed an appeal to the Divisional Commissioner from the order passed by the Excise Commissioner and since the petitioner has not availed of this remedy, the writ petition deserves to be dismissed. It was next submitted that there is no fundamental right in a citizen to carry on trade or business in liquor. Section 37 of the Act provides that no one can claim renewal o licence as a matter of right and, therefore, the writ petition was barred by virtue of this provision. It was next pleaded that Excise Commissioner had full authority even to revoke, cancel or determine the licence in the event of infringement of any of the conditions of licence. In this case the petitioner infringed condition No. 13 of the licence by not establishing a bonded were house within the prescribed time nor did he get any plan approved from the Excise Commissioner for construction. It was pleaded that the Excise Commissioner had, infact, declined to renew the licence of the petitioner as back as 19-7-1988 vide Annex. R1 sent to District Excise Officer, Jodhpur, who in his turn, sent a copy of the same to the petitioner vide endorsement dated 23-7-1988 The Excise Inspector, Jodhpur, also brought this fact to the notice of the petitioner vide a registered letter sent to the petitioner vide Annex. Rule 3, dated 25-8-1988 the postal receipt whereof is Annex. Rule 3B.

5. It was next pleaded that the writ petition raises complicated and disputed questions of facts as to the performance of the conditions of the licence by the petitioner. It was pleaded that the petitioner had no right to claim any renewal of his licence, which was granted to him on 6-10-1987 and which had expired on 31-3-1988. It was pleaded that it was incumbent on the petitioner to establish a bonded ware-house within the period of one month of the grant of licence. It was also incumbent on him to Obtain approval of plan showing the location of the building including store rooms and office etc.

6. On merits, it was pleaded that the petitioner had failed to establish bonded ware-house within the time prescribed by condition No. 13 of the licence; he had failed to submit any plan for approval of the Excise Commissioner for construction of the ware-house. The petitioner obtained land as late as July, 1988 i.e. after four months of the expiry of the period of licence. The decision of non-renewal of the licence of the petitioner was already whith in the knowledge of the petitioner in July, 1988 itself. He avoided acceptance of the letter refusing renewal of the licence, which had been sent by registered post. It shows that the petitioner has not come with clean bands before the Court. It was submitted that the petitioner cannot take advantage of the correspondence which ensured after the expiry of the period of licence. It was denied that the petitioner made huge investment for construction of building a factory.

7. As regards Ex. 5 dated 12-1-88, it was submitted that it was based on routine information given to all existing licencee and it was for the Excise Commissioner

to renew the licence. The Excise Commissioner''s decision not to renew the licence was a perfectly valid decision because the petitioner was not even having a piece of land prior to July, 1988. Upon such averments, it was submitted that the petitioner was not entitled to any renewal and the writ petition deserves to be dismissed.

8. In its rejoinder to the reply filed by the respondents, the petitioner reiterated that it was not disputed by the respondents that in case of two licencees, namely, Ajanta Chemicals and M/s. Agro Alwar Mart, Alwar, licences had been renewed even after expiry of about a period of twelve months from the grant of licence though in their licences also condition No. 13 provided that the licencees shall establish bonded ware-house within one month or the grant of licence Reference was made to this Court''s decision in D.B. Civil Misc. Writ Petition No. 3427/88, Samrat Bottlers (P) Ltd. v. State of Rajasthan and Ors. reported in 1988 (2) RLR 577 and on the strength of his decision, it was submitted that the case of the petitioner is similar to that of the petitioner in the aforesaid writ petition M/s. Samrat Bottlers Pvt Ltd. It was pleaded that the refusal to renew the licence of the petitioner was violative of Article 14 of the Constitution of India as the cases of M/s Samrat Bottlers Pvt. Ltd. and the petitioner were similar. It was denied that the petition received a letter Ex. R2 or Rule 3. It was denied that the petitioner avoided to take the letter in question. As regards the plan for the bonded ware-house, it was submitted that it had been filed along with application itself. It was submitted that the sole ground for not renewing the licence of the petitioner was that he had not established the bottling plant within six months. The order refusing renewal was not-passed on the ground that the petitioner had not submitted the plan of the building for approval. Hence, submission on this score was after thought.

9. We have heard learned Counsel for the petitioner as also learned Counsel for the respondents.

10. Learned Counsel for the petitioner submits that his case stands on an identical footing with that of M/s Samrat Bottlers Pvt. Ltd. as also cases of M/s. Agro Alwar Mart, Alwar and M/s. Ajanta Chemicals, Alwar. The Excise Commissioner has arbitrarily and capriciously refused the renewal of licence in his favour while licences had been revewed by him in favour of M/s. Agro Alwar Mart, Alwar and M/s. Ajanta Chemicals, Alwar. In all the three cases, the licensees could not start bottling the liquor within the period prescribed by the licence. Yet renewal of licences of M/s. Samrat Bottlers Pvt. Ltd and that of petitioner was refused although the licences of M/s. Agro Alwar Mart, Alwar and M/s. Ajanta Chemicals, Alwar, were renewed. It is submitted that this is hostile descrimination, which is arbitrary and capricious and could not be countenanced. It is submitted that the various preliminary objections raised here in, were also raised in the writ petition filed by M/s. Samrat Bottlers Private Limited and were negatived. This case is squarely covered by the decision of the Bitten Bench of this Court rendered in the case of M/s. Samrat Bottlers Pvt. Ltd. v. State of

Rajasthan and Ors. and, therefore, the writ petition should be accepted. Learned Counsel for the respondents has made an endeavour to show that the case of the petitioner stands on a different footing from the two licencees in whose favour renewal had been granted and also different from the case of M/s. Samrat Bottolers Pvt. Ltd. and hence, the writ petition deserves to be dismissed.

11. We have considered the rival contentions and have carefully perused the material placed on record. First, we may deal with preliminary submissions of the respondent. This is true that an appeal lies to the Divisional Commissioner u/s 9 A of the Act against an order passed by the Commissioner, Excise. This is also true that the petitioner has not availed of this remedy by filing an appeal before the Divisional Commissioner u/s 9A of the Act. But, we cannot lose sight of the Met that according to the petitioner, the refusal of the application for renewal was never conveyed to him by the Commissioner. We have no reason to doubt the correctness of this stand of the petitioner Excise Commissioner claims to have issued Annexures R-I, R-II and R-III to the petitioner. Annex. R III-A specifically mentions that since the petitioner was non available, he could not be served with the order of refusal to renew the licence. Annex R III-A mention that the order of refusal is being sent by registered A/D. A postal receipt Annex. R III B has been placed on record but, significantly enough, postal acknowledgment showing that the letter under reference had been received by the petitioner, has not been placed on record. As against this, there is specific averment of the petitioner supported by affidavit of Ramesh Chand that the letter under reference was never received by the petitioner. The postal acknowledgment would have been the best evidence to establish that the order refusing renewal of licence had been served on the petitioner Since this has not been done, we have no reason to doubt the statement of the petitioner that the letter of refused renew in the licence was never received by him. But there was no occasion for the petitioner to file any appeal against the order of the Excisce Commissioner Annex. RI, which had never been brought to him notice.

12. More over, when the petitioner has come with a clear cut case that the Excise Commissioner has acted in an arbitrary and capricious manner in refusing to renew his licence, the fact that the petitioner did not avail of the remedy of appeal, should not come in his way. This view has been expressed in Samrat Bottlers P. Ltd. v. State of Rajasthan and Ors. (1988 (2) RLR 577) and we are entirely in agreement with the view that existence of an alternative remedy is not an absolute bar to exercise of the powers under Article 226 and despite the fact that an alternative remedy exists this Court can in a proper case, whether the alternative remedy has been availed or not, if satisfied that the State or its Officer have acted arbitrarily or have acted in a discriminatory manner, is competent to invoke its powers under Article 226 of the Constitution of India. We, therefore, do not agree with the learned Counsel for the respondents that the writ petition should be dismissed on the ground of this preliminary objection.

13. The matter may be looked at yet from one more angle. The order of the

Excise Commissioner is based on the sole ground that since the petitioner filed to establish a bottling plant in accordance with term No. 13 of the licence granted to him, hence, it was not possible to renew his licence. It does not appear that the Commissioner, at all considered, the various grounds constituting the basis of the petitioner''s inability to establish the bottling plant within the period fixed by the licence. Mad the Excise Commissioner considered such grounds and would have passed a speaking order rejecting those grounds, then the petitioner could have very well approached the Divisional Commissioner by way of appeal and could have shown that the order of refusal was bad. But this was not done in this ease and, hence, the remedy of appeal would have been only illusory and meaningless.

14. The next submission of Shri Maheshwari was that the petitioner does not have a fundamental right to carry on trade or business in liquor. We have no quarrel with this proposition. In our opinion, this too would not be a ground for rejecting the present petition. A similar objection was raised in the case of Samrat Bottlers and was negatived. It was next contended that Section 37 of the Act did not confer a right to renew of a licence on the petitioner. This section reads as follows:

37. No renewal of licence of compensation on determination or renewal licence claimable: No person to whom licence has been granted under this act shall have any claim to the renewal of such licence, or to any claim for compensation on the determination or non-renewal thereof.

True that there is no inherent right to renewal of a licence in favour of the petitioner but, in this case, the petitioner has complained of a hostile and discriminatory treatment based on an unreasonable and arbitrary refusal. In our opinion, in such a case, this objection also does not disentitle the petitioner from coming to this Court. This aspect of the matter was also considered in Samrat Bottlers Pit. Ltd.''s case (supra) and this objection too was negatived. We are of the view that where the officers of the State act unreasonably or arbitrarily, this Court has always jurisdiction to intervend because executive authorities are expected to act in a fair and reasonable manner.

15. Learned Counsel for the respondents repeatedly urged before us that even if a licence would have been issued to the petitioner, the Excise Commissioner could have cancelled the same by virtue of clause 23 of notification Ex. 1 and as such, the case of the petitioner cannot stand on a better footing. Clause 23 of the relevant notification reads as under:

23. If the licencee infringes or abets the infringement of any of the conditions of his licence, the Excise Commissioner may renew cancel and determine the licence and forfeit to Government the whole or any part of the security deposited:

Provided that if the infringement if of a minor nature, the licence may be restored and the order forfeiting the security may be set aside on payment of a sum not exceeding Rs. 1000/-.

In our opinion, this clause is wholly inapplicable to the present case because the present case is not one of cancellation but of refusal to renew a licence and it is argument deserves to be stated only for sake of rejection.

16. Now, having cleared the deck of the preliminary objections/submissions, we may consider the case of the petitioner on merits. It is established before us that M/s Agro Alwar Mart, Alwar had been granted a similar licence on 23-5-1987. Likewise, M/s. Ajanta Chemicals, Alwar, had been granted a similar licence on 14-5-1987. M/s. Samrat Bottlers Pvt. Ltd. were granted a similar licence on 15-11-1987. The petitioner was granted his licence on 6-10-1987. Now, none of the adove parties could start a bottling plant by the time the period or the respective licence expired. M/s, Agra Alwar Mart, Alwar and M/s. Ajanta Chemicals, Alwar, moved for renewal of their licences and their licences were renewed even though till the expiry of their licences, both of them had not started bottling of liquor. M/s. Samrat Bottlers Pvt. Ltd also applied for renewal but in its case, the renewal was refused on the ground that it was not in a position to start bottling the liquor. Samrat Bottlers Pvt. Ltd., therefore, approached this Court by way of D.B. Civil Writ Petition No. 3427/88 complaining of hostile and arbitrary discrimination. The Bench agreed with the contention of the petitioner in that case that the State or the Excise Commissioner cannot be allowed to pick and choose between similarly situated persons. It was held that inspite of the fact that nobody had a right to trade in liquor and nobody had a right to renewal of a licence of an excisable article yet everybody had a right to be treated equally with others, who were similarly situated. In the present case, we find that the petitioner stood in the same position as the aforesaid other persons or concerns who had been granted a renewal. Learned Counsel for the respondents tried to distinguish the case of the petitioner on the ground that while at the time of renewal in favour of M/s. Agro Alwar Mart, Alwar and M/s. Ajanta Chemicals, Alwar, they were in a position to start bottling the liquor and hence, their licences had been renewed, but in the case of the petitioner, the petitioner was not in a position to start bottling of the liquor by the date the order Annex. R-I had been passed. In this connection, much emphasis was laid on the fact that the petitioner had not even acquired land prior to 14-7-1988 when Ex. 10 had been issued in favour of the petitioner. It is urged that when the petitioner did not have even and for setting up a bottling plant prior to 14-7-1988, there was no occasion for granting a renewal in his favour on 29-7-1988. Annex R-I does not show that that Excise Commissioner at all considered the question from this angle. This is a ground, which is being raised in reply to this writ petition for the first time. We doubt if this ground is available to the respondents at all. In Union of India v. Mario Cabral e sa : AIR1982SC691 , a question arose whether the Government could be permitted to shift the ground of refusal to grant accreditation to the respondent, It was held that legality of the Governmental action must be adjudged on the reasons stated in the impugned order, and it was impremissible for the Government to take a new ground Reliance in this connection was placed upon Commissioner of Police,

Bombay Vs. Gordhandas Bhanji, and following observations were quoted with approval:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do, public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

It was held that it was not permissible for the Government to offer a justification for refusal to grant accreditation to the respondent, on grounds other then those given in the impugned order. This veey view has been taken in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and it was observed as follows:

.... when a statutory functionary makes an order passed on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an ordered bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

We are, therefore, of the opinion, that it is not open to the respondent to relay upon any other ground of refusal other than what had been stated in Annex. RI. The sole ground given in this order was that since the licences had failed to establish a bottling plant within the prescribed period, renewal could not be made in his favour. At any rate, the petitioner had obtained the land prior to the passing of the order Annex. RI, which was passed on 19-7-1988 and, therefore, this ground that petitioner was not possessed of land for establishing a bottling plant was not available to the Excise Commissioner on the date, be passed the said order At the cost of repetition, we may mention that petitioner had obtained allotment of land for RIICO on 14-7-1988 vide Ex. 10.

17. Learned Counsel for the respondents urged that the petitioner had failed to submit a plan for approval to the Excise Commissioner as envisaged by clause 2 of the licence. In this connection, the petitioner has made a specific averment that the plan of the bonded ware-house had been filed along with the original application and it was no receipt of all the documents that the licence was granted in favour of the petitioner. This contention has not been controverted. More over, for the reasons already stated, it was not permissible for the respondents to raise this ground in their reply, when the Commissioner did not base his order Annex. RI on such a ground, More over there was a substantial compliance of this condition, when the plans had been submitted with the original application itself.

18. Learned Counsel for the respondents strenuously urged that the expression that the petitioner ''had failed to establish a bottling plant'' was comprehensive

enough to take within its sweep the twin grounds, namely, (i) the petitioner had failed to submit a plan for approval to the Excise Commissioner; and (ii) the petitioner bad not acquired land and had not established factory till 19-7-1988. In our opinion, such an approach is not permissible and the respondents cannot be permitted to raise new grounds, when they were not relied upon while passing order Annex. RL.

19. We may state that an authority vested with statutory powers is under a duty to act reasonably after taking into consideration all relevant material, having bearing on the decision to be made by it. It cannot act arbitrarily or capriciously, particularly when a citizen is likely to be affected adversely by its decision. The power to grant or refuse renewal of a licence is a very important power and has to be exercised by the Excise Commissioner in a reasonable manner. We do not find that the Excise Commissioner at all took into consideration the various representations and the correspondence made by the petitioner with the Excise Officials. The order does not show that he took into consideration the reasons advanced by the petitioner, which disabled him from establishing a bottling plant within the prescribed period. The power of refusing a licence is not an unbridled power and, therefore, must have been exercised upon consideration of all relevant and material factors.

20. In the present case, we find that the Excise Commissioner has acted unreasonably and in an arbitrary manner in refusing to renew the licence of the petitioner; it has also acted in a highly discriminatory manner when we compare the case of the petitioner with the cases of M/s. Agro Alwar Mart, Alwar and M/s. Ajanta Chemicals, Alwar.

21. In our opinion, the present case is squarely covered by the Bench decision of this case in Samrat Bottlers Pvt. Ltd. and the learned Counsel for the respondents has tried to distinguish that Bench decision without there being any good ground for such distinction.

22. In the facts and circumstances of the case, we are of the view that the writ petition must succeed. We accept the writ petition. We direct that the licence of the petitioner shall be renewed for the period ending with 31-3-1990, provided the petitioner starts bottling liquor within a period of one month from the date of the grant of renewal. We direct the Excise Commissioner/State Govt. to renew the licence of the petitioner for the period ending 31-3-1990, within ten days.

23. In the circumstances of the case, the parties are left to bear their own costs.

