

(2015) 05 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No. 19605 of 2015 (Excise)

Rockline Bar and Restaurant

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Karnataka Excise Act, 1965 — Section 61

Citation : (2015) 4 KarLJ 135

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Ismail N. Musba for Sandesh J. Chouta, for the Appellant; Pramodini Kishan, High Court Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.

1. The petitioner is before this Court in the circumstance that he was a CL-9 licensee in respect of the premises at Shivanand Complex, Kumarapark East, Bangalore, within the limits of 4th respondent. That the petitioner was operating a Bar and Restaurant from the year 2005. He had shifted the business premises and since 2014, has been operating at the new address shown in the cause title to the petition namely, MKK Road, Rajajingar, 1st Stage, Subramanya Nagar, Bangalore-1. A demand order was said to have been passed by the 3rd respondent seeking payment of fine for short lifting of liquor for the period 2005-2010, which is almost 10 years prior to the issuance of the demand order.

2. It is the case of the petitioner that by virtue of the amended Rule 14 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 and since the State Government has put a full stop to the flow of any kind of unauthorized liquor in the State, enforcement of the Rule has become redundant. The 3rd respondent notwithstanding the same has issued the demand order dated 7-3-2015 stating that the petitioner had short lifted the liquor to the extent of

10438 litres and that a fine amount at the rate of Rs. 100 per litre in a total sum of Rs. 15,30,200/- was to be paid.

3. The learned Counsel for the petitioner submits that the demand order is in violation of Rule 14(2) of the Rules since it was not preceded by any enquiry as required under the Rules and without seeking any explanation or giving an opportunity to the petitioner. On this primary ground, the petitioner is before this Court.

4. The learned Government Pleader was directed to take notice on behalf of the respondents. She is quick to point out that the petitioner has an alternative and efficacious remedy by way of an appeal, in respect of the impugned demand even if it is sought to be contended that the impugned order was passed without any jurisdiction or without compliance of the requirement of an enquiry being held, as the petitioner could prefer an appeal under Section 61 of the Karnataka Excise Act, 1965.

5. The learned Counsel for the petitioner would however, submit that the impugned order is without jurisdiction which would enable the petitioner to invoke the writ jurisdiction of this Court.

6. However, the learned Government Pleader would point out that there is no such want of jurisdiction as the impugned order clearly indicates that the order was passed by the Deputy Commissioner of Bangalore.

7. In view of the circumstance that there is no indication of an enquiry having been conducted and the fact that the demand is made in respect of the period 2005-2010, it would necessarily require the petitioner to be granted an opportunity of hearing, without which the demand having been made takes the petitioner by surprise and certainly results in the principles of natural justice being violated. However, in the interest of the Revenue and in order to balance equities, it would be appropriate, if the petitioner is directed to deposit, without prejudice, 50% of the demand now made subject to the result of further proceedings. The order impugned shall be treated as a show-cause notice, to which the petitioner may submit his reply within 15 days from today and the Competent Authority should afford an opportunity of hearing and hold an enquiry if necessary in accordance with law and thereafter pass appropriate orders. Subject to such deposit as directed above being made within 15 days from today, the petition stands allowed in terms as above. The learned Government Pleader is permitted to file her memo of appearance within two weeks.