

(2015) 07 KAR CK 0310
In the Karnataka High Court
Case No : Writ Appeal No. 1604 of 2015

Rockline Bar and Restaurant	Vs	APPELLANT
The State of Karnataka and Others		RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Citation : (2015) ILR (Kar) 4437 : (2015) 3 KCCR 2853

Hon'ble Judges : Vineet Saran, J;Aravind Kumar, J

Bench : Division Bench

Advocate : Sandesh J. Chouta, for the Appellant; T.K. Vedamurthy, High Court Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J—The appellant is operating a "Bar and Restaurant" for which it has been granted a license under the Karnataka Excise Act, read with Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968. Being aggrieved by the demand notice dated 07.03.2015 issued by the respondent No. 3, Deputy Commissioner, Bengaluru City, Bengaluru requiring the appellant to deposit penalty amounting to Rs. 15,30,200/- under Rule 14 of the Rules of 1968, the appellant filed a Writ Petition No. 19605/2015 (Excise) whereby the petitioner-appellant challenged the power of the Deputy Commissioner, Respondent No. 3 in raising the said demand, as according to the appellant power under Rule 14 lies with the Deputy Commissioner-Excise and not Deputy Commissioner-Revenue. The challenge to the said notice was also on the ground that the same had been passed in violation of principles of natural justice as no show-cause notice prior to the issuance of the said demand was ever given to the petitioner.

2. After hearing the parties, the learned Single Judge, after accepting the contention of the appellant that the demand notice has been issued in violation of principles of natural justice, directed that the demand notice to be treated as a show-cause notice for which a reply may be given within 15 days and a fresh decision be taken by respondent No. 3 but a condition was imposed that the

appellant-petitioner shall deposit 50% of the penalty amount demanded with the respondent No. 3. Being aggrieved by the said order, this appeal has been filed.

3. We have heard Sri. Sandesh J. Chouta, learned Counsel for the appellant as well as Sri. T.K. Vedamurthy, learned HCGP appearing for the respondents and have perused the records. By consent of learned Counsel appearing for the parties, this appeal has been heard and is being disposed of at this stage.

4. A perusal of the second proviso of Rule 14 of the Rules of 1968 would go to show that it is obligatory that the licensing authority shall give reasonable opportunity of hearing before levying of penalty or cancellation of license under the said Rules. Once the learned Single Judge had come to a definite finding that no such opportunity was given, the demand notice ought to have been quashed and consequently there was no question of petitioner-appellant being directed to deposit 50% of the amount. As such, we are of the opinion that the direction to the petitioner-appellant to deposit 50% of the amount demanded by notice dated 07.03.2015 cannot be justified in law and is liable to be quashed. Further, though an objection was raised by the petitioner-appellant, the learned Single Judge has not decided as to whether the respondent No. 3 Deputy Commissioner, who according to the petitioner-appellant is the Deputy Commissioner - Revenue and not the Deputy Commissioner-Excise, would have jurisdiction to issue demand notice. As such, without expressing any opinion on this question, we leave the question open to be decided by the authority before whom the petitioner may submit its reply.

Accordingly, this appeal stands allowed to the extent that the direction given by the learned Single Judge vide judgment dated 05.05.2015 requiring the petitioner-appellant to deposit 50% of the penalty amount demanded, stands quashed.

Petitioner-appellant shall submit its reply before the respondent No. 3 treating the demand notice dated 07.03.2015 as a show-cause notice. Such reply may be given within 15 days from the date of receipt of certified copy of this order. In such reply, petitioner-appellant may also raise objection with regard to the jurisdiction of the respondent No. 3 in issuing the demand notice, which shall be first decided by respondent No. 3. On receipt of said reply, the respondent No. 3 shall pass a reasoned and speaking order after affording a reasonable opportunity of hearing to the petitioner-appellant, in accordance with law and as expeditiously as possible.

I.A. 1/2015, which is an application filed for staying the order of the learned Single Judge also stands disposed of.