
(2009) 04 AHC CK 0552
In the Allahabad High Court

Salek Chand and others

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0552

Hon'ble Judges : Devi Prasad Singh, J and V.D.Chaturvedi, J

Final Decision : Allowed

Judgement

V.D.Chaturvedi, J.—Heard Shri Ram Raj learned counsel for the petitioner and Shri J.N.Mathur learned Additional Advocate General assisted by Shri H.P. Mathur learned Additional Chief Standing counsel.

2. Admit.

Let notice be issued to private opposite parties, who have been arrayed in connected petitions also returnable at an early date. Impleadment may be done during the course of day. Liberty is given to the petitioner to serve notice on private opposite parties outside the court also. Office shall provide notices.

3. While assailing the impugned Rule namely U.P. Demarcation & Regulation of Special Zones for Exclusive Privilege of Excise Shops Rules, 2009, learned counsel for the petitioner submits that the rule in question followed by Circular dated 12.2.2009 deprived the petitioners right of renewal of licence which was available through the U.P.Excise (Settlement of Licences for Retail Sale of Country Liquor) Rules, 2002, in short hereinafter referred as 2002 Rules. In this context the petitioners' counsel has relied upon the Supreme Court judgement reported in 2002(7) SCC 104, Secretary to Government, T.N. and another Vs. K. Vinayagamurthy. It has been submitted that while framing policy the State Government had created special zone i.e. called as Meerut Special Zone including Bareilly Division and provided that the licence for whole sale and retail shops for liquor be granted to the State Corporations and Apex Level Cooperative Societies. He further submits that while framing the policy vide circular dated

11.2.2009 and the rules framed thereafter, the State Government while exercising power under Section 4 of the Excise Act, in short hereinafter referred as Act, has extended exclusive privilege with regard to grant of licence for whole sale or retail shops to the State Corporation. The submission is that under the garb of corporation the contracts have been given to private persons for extraneous reasons. According to petitioner's counsel Apex Level Cooperative Society has been invited applications to form Joint Venture along with the private bodies to manage the retail sale of country liquor and foreign liquor. It has also been submitted that the 2009 rule has been framed contrary to statutory provisions contained in U.P. Excise Act.

4. Rule 3 of the 2009 Rules for convenience is reproduced as under:

"Demarcation of Special Zone

The Excise Commissioner, with prior approval of the State Government, may notify the demarcation of special zones which have been determined to be authorised to exercise the rights and powers given in sections 21,24,24A, 24B, 28,30 and 31 of the Act, by including various zones/charges/districts/preventive sectors/circles of the State in view of public health and safety, public interest and public order.

Explanation: for the purpose of this rule zones/charges/districts/preventive sectors/circles will have the same meaning as mentioned in para 83 and 117 of the Excise Manual Volume I"

5. It has also been submitted that the impugned policy decision has not been taken for augmentation of revenues but it has been made to extend undue benefit to the higherups and mafias who are working in the field of liquor. However, this allegation is denied by learned Additional Advocate General. The further submission of the learned counsel for the petitioner is that keeping this in view, the impugned provision is contrary to the provisions contained in Sections 24A, 24B, 25 of the Act as well as statutory rules. According to him, even if assuming that the government has taken a policy decision to involve Apex Level Cooperative Society in sale and purchase of country liquor, the same cannot be done contrary to the earlier existing rules as well as statutory provision contained in the Excise Act. It has been submitted that involvement of private bodies through agreement shall amount to subletting and not permissible under the statute. Private respondent shall be benefited without criminal liability.

6. On the other hand, Shri J.N.Mathur learned Additional Advocate General submits that the provision has been made to check the smuggling of liquor in Meerut Zone which joins New Delhi, Haryana and Uttaranchal. He also submits that in view of the provisions contained in Section 36A of the Act, no unfettered right accrues to the petitioners to claim renewal of the shops in question; rather an argument has been advanced that there is an absolute bar for renewal of licence. The further submission is that the impugned provision has been made just to check the smuggling of the countrymade liquor from the adjoining states

and the state government has acted fairly and within its jurisdiction to increase its excise revenue. He further submits that under the Rules framed in pursuance to the power conferred by Section 40 of the Act, namely Uttar Pradesh Demarcation and Regulation of Special Zone for Exclusive Privilege of Excise Shops Rules, 2009, in short 2009 Rules, the government has power to allocate the shops to Apex Level Cooperative Societies or the Corporations in the manner different from remaining districts of the State.

7. We have considered the arguments advanced by the learned counsel for the parties at length and perused the record for the purpose of interim relief.

8. Under 2009 Rules, the government has been conferred power to allocate shops to the Apex Level Cooperative Societies of the corporation owned by the State Government in the manner different from other districts. Whether the creation of the special zone is arbitrary and discriminatory exercise of power or not is the subject matter which requires for hearing.

9. Apart from above, the power has been conferred only to the Apex Level Cooperative Societies or the State owned corporation of the state. Whether such corporation may enter into contract with the private parties as has been done by the impugned advertisement is an important question which also calls for adjudication. Chapter 10 of the Excise Act contains various provisions to punish the licensee for breach of contract or committing any offence under the Excise Act or rules framed thereunder while holding the contract.

10. Earlier, the U.P. Excise Licences (TendercumAuction) Rules, 1991 Rules, was framed by the Legislature to grant licence for exclusive privilege of selling of country made liquors etc. Under 1991 Rules, the provision was to award contract by adopting the procedure of tendercumauktion. Thereafter, another rules, namely U.P. Excise (Settlement of Licences for Retail Sale of Country Liquor) Rules, 2002, in short, 2002 Rules, was framed. Under 2002 Rules, a provision has been made for letting out excise liquor by lottery. A provision has also been made for renewal of licence and it is applicable throughout the State of U.P. except special zone created under 2009 rule.

11. The order dated 6.3.2009 passed by this Court in Writ Petition No. 2539 (MB) of 2009 and 2293 (MB) of 2009 and case was fixed for final hearing for 30.3.2009. However, one of the writ petition has been withdrawn. Later on one another Writ petition no. 2756 MB of 2009 has been filed in which the Division Bench of this Court had passed an interim order dated 31.3.2009 permitting the earlier licensee to continue on day to day basis.

12. Our attention has been invited towards Rule 3 of the 2009 rule (supra) which provides that the power which are to be exercised by the state authorities under section 21,24,24A, 24B,28,30 and 31 may be permitted to exercise by other in the demarcating special zone. Rule 3 indicates the Excise Commissioner, with prior approval of the State Government, may notify the demarcation of special zones which have been determined to be authorised to exercise the rights and

powers given in Section 21, 24, 24A, 24B, 28, 30 and 31 of the Act. It is settled proposition of law that statutory power conferred on the authorities under particular act can not be delegated to others unless the act itself contain such provision. In the present provision referred in Rule 3 empowers the state authorities/excise commissioner delegate statutory powers. Such power prima facie cannot be transferred to anyone under the garb of authorisation. Accordingly, we stay the further operation and implementation of the Rule 3 of the 2009 Rule (supra) till next date of listing with direction to State to proceed ignoring rule 3 of 2009 rules.

13. As prayed by Shri J.N.Mathur learned Additional Advocate General, one week time is allowed to file counter affidavit, further one week for rejoinder affidavit. List immediately thereafter for peremptorily hearing before appropriate Bench. In case, on the next date of listing. final hearing is not took place, this Court/ appropriate Bench may consider the petitioner's prayer for grant of further relief including the stay of complete Rule and consequential action including the contract entered into with the private respondents..