

(2000) 03 KAR CK 0024

In the Karnataka High Court

Case No : Writ Appeal No. 8162 of 1999 connected with Writ Appeal No. 1570 of 2000

Savin Kumar Shetty

APPELLANT

Vs

Vittal Anchan and Others

RESPONDENT

Date of Decision : 21-03-2000

Acts Referred:

Citation : (2000) ILR (Kar) 2150 : (2000) 4 KarLJ 395 : (2000) 3 KCCR 1696

Hon'ble Judges : V.G. Sabhahit, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Dr. Abhishek Singhvi, for Sri C.V. Nagesh and Sri K. Suman, for the Appellant; M/s. Hegde Associates and Sri N.K. Ramesh, Additional Government Advocate, for the Respondent

Judgement

Ashok Bhan, J.—This judgment shall dispose of Writ Appeal No. 8162 of 1999 (arising from an interim order passed in W.P. No. 43547 of 1999, dated 7-12-1999) and W.A. No. 1570 of 2000 (arising from the interim order passed in W.P. No. 3242 of 2000, dated 17-2-2000), as the genesis of facts in these two appeals is the same and intertwined with each other at more than one place.

2. Undisputed facts necessary for the disposal of these two appeals are:--

At an auction held on 1-5-1999 for the retail vend of arrack in Mangalore Taluk in respect of 272 shops, the bid of the appellant herein in a sum of Rs. 1,25,10,000/- per month, was accepted for the excise year 1-7-1999 to 30-6-2000. As per the terms of the auction under Excise Rules, appellant should have furnished Bank Guarantee in a sum of Rs. 3,87,81,000/-. Since the appellant could not mobilise the said amount he sought for extension of time to furnish the Bank Guarantee till 1-10-1999. He was permitted by the jurisdictional authority to vend arrack on paying "daily kist" till his application for extension of time was decided. His request for extension of time till 1-10-1999 was not accepted and the Deputy Commissioner of Excise, Mangalore issued a notice dated 3-9-1999 for re-auctioning the vends. This notice came to be challenged

before the Excise Commissioner. According to the appellant the Excise Commissioner instead of deciding the appeal, wrote a letter to the State Government dated 14-10-1999 at Annexure-D and also determined the "Auction Rights" of the appellant. Earnest Money Deposited by the appellant was ordered to be forfeited. Re-auction was ordered.

3. The order at Annexure-D came to be challenged by the appellant before this Court in W.P. No. 38779 of 1999. The Court by its order dated 21-10-1999 granted an interim stay of Annexure-D to be operative till 29th of October, 1999 subject to the following conditions:

(a) Appellant's furnishing the Bank Guarantee as required on or before 27-10-1999.

(b) Appellant's paying the kist amount upto date on or before 27-10-1999.

The matter was ordered to be posted for preliminary hearing on 29th of October, 1999 on the adjourned date the Court ordered:

"Interim stay granted on 21-10-1999 is extended till 5-11-1999. The time for furnishing Bank Guarantee is also extended till 5-11-1999. I.A. No. 2 for extension of time is disposed of accordingly".

Appellant did not furnish the Bank Guarantee even on the extended time.

4. Meanwhile, as the appellant had not furnished Bank Guarantee even after the grant of sufficient indulgence, another event intervened namely the respondent proposed to re-auction the "vend of arrack" on 22nd November, 1999.

5. Appellant thereafter filed I.A. Nos. 3 and 4 in the said writ petition. By I.A. No. 3 he sought for further extension of time for furnishing Bank Guarantee and by I.A. No. 4 he wanted to amend the writ petition by challenging the proposed re-auction. On consideration of these I.As. a detailed interim order was passed on 19th of November, 1999. During the course of arguments in those I.As., Counsel for the appellant stated that the appellant was willing to pay Rs. 2 crores on or before 10-30 a.m. on 22-11-1999 as against the Bank Guarantee for Rs. 3,87,81,000/-. On this submission the learned Judge in the said writ petition passed the order:

"The learned Counsel for the petitioner stated that the petitioner is willing to pay Rs. 2.00 crores (Rupees Two crores) on or before 10-30 a.m. on 22-11-1999 as against the Bank Guarantee for Rs. 3.8781 crores, to show his bona fides. He stated that if the petitioner is not able to pay the said amount, he will have no objection to the auction sale being proceeded with on 22-11-1999 at 11.00 a.m. as notified under the notification dated 10-11-1999.

The learned Government Pleader objects to any interim stay on the ground that petitioner had failed to comply with the earlier interim order and therefore the State is entitled to proceed with the re-auction.

Having regard to the facts and circumstances and the ground on which the order dated 14-10-1999 was passed and the offer to pay Rupees Two Crores, interests of justice would be served if the proposed auction is stayed for a term of two weeks, subject to payment of Rupees Two Crores on or before 10-30 a.m. on 22-11-1999 by the petitioner. Ordered accordingly. It is made clear that the auction may be proceeded with, if Rupees Two Crores is not paid by 10.30 a.m. on 22-11-1999".

6. Appellant did not utilise this further opportunity granted to him. The re-auction was held. Appellant filed a memo seeking to withdraw his petition. It was stated in the memo:

"The petitioner seeks to withdraw the above writ petition without prejudice to his available legal rights as per law and craves leave to pursue remedies open to him under law. The memo may be recorded and the writ petition may be dismissed as withdrawn".

7. On this memo Single Judge dismissed the writ petition on 1st of December, 1999 in terms of the memo filed.

8. Appellant challenged the notification at Annexure-J, dated 10-11-1999 issued by the Excise Commissioner proposing to re-auction the vends of arrack by filing the appeal before Karnataka Appellate Tribunal on 24-11-1999 (hereinafter referred to as "the Tribunal"). Appellant obtained an interim order of stay of the notification at Annexure-J. This interim order of the Tribunal came to be challenged by Sri Vittal Anchan (Licensee after the re-auction) by filing Writ Petition No. 43547 of 1999. Single Judge who heard the writ petition by his order dated 7-12-1999 granted an interim order of stay of the orders passed by the Tribunal staying the order of the Excise Commissioner proposing to re-auction.

9. This order came to be challenged by the appellant by riling Writ Appeal No. 8162 of 1999. The Division Bench by its order dated 9-12-1999 granted to the appellant three weeks" time to furnish the Bank Guarantee for the entire sum. However, appellant tendered a sum of Rs. 1,00,00,000/- as Bank Guarantee. Stay order was ex parte. Government did not accept the order dated 9-12-1999 and made an application for vacating the ex parte stay granted on 9-12-1999. The stay application came up for consideration after notice on 17-12-1999 and since the appellant had not complied with the directions of the Court the stay was vacated with the following observations:

"In view of the above circumstances of the case, we do not see any ground to continue the stay further. It is not the case of the petitioner that he has furnished, the Bank Guarantee for the entire sum".

10. Writ Appeal No. 8162 of 1999 came up for hearing before the Division Bench on 25th of January, 2000. During the course of discussions it was pointed out that till the order dated 14-10-1999 cancelling the licence of the appellant is set aside, the appellant in any case cannot be permitted to run the vends. The case

was adjourned at the request of the Counsel for the appellant to seek instructions.

11. Appellant thereafter filed W.P. No. 3242 of 2000 challenging the order dated the 14-10-1999 inter alia on ground that order dated 14-10-1999 passed by the Government was without jurisdiction inasmuch as the authority which passed the order was not invested with the jurisdiction to pass such an order. Another ground taken was that the order was bad in law as it had been passed without notice and affording a hearing to the appellant in violation of the principles of natural justice. A prayer for interim stay of the order dated 14-10-1999 was also made. Single Judge declined to grant the interim stay by its order dated 17th of February, 2000. This order has been challenged in W.A. No. 1570 of 2000.

W.A. No. 1570 of 2000

12. After hearing the Counsel for the parties at length, we are of the opinion, prima facie case for grant of stay of the order dated 14-10-1999, is not made out. Appellant was admittedly a defaulter as he had failed to furnish the Bank Guarantee. He was granted several opportunities to furnish the Bank Guarantee. But in spite of that he failed to furnish the Bank Guarantee. Single Judge in W.P. No. 38779 of 1999 had granted two opportunities to the appellant to furnish the Bank Guarantee which he failed to avail. Because the appellant had failed to furnish the Bank Guarantee, his licence was cancelled and the State Government in order to safeguard its revenue interests decided to re-auction the vend. At this stage again indulgence was shown to the appellant and the order of the re-auction was ordered to be stayed for a period of two weeks provided the appellant furnishes (as per his own undertaking) Rs. 2 crores at or before 10-30 a.m. on the date fixed for re-auction i.e., on 22nd November, 1999. It was made clear that if he fails to pay Rs. 2.00 crores before 10-30 a.m. on the date fixed for the re-auction, then, the re-auction may be proceeded with. As he failed to honour his commitment, re-auction was held. In our view a prima facie case for grant of stay of the order dated 14-10-1999 would virtually amount to asking the Government to revive the appellant's contract. Because of the intervention of the event of re-auction and vesting of the right to vend the arrack in R-5, it would not be in the interest of justice to stay the order dated 14-10-1999 at the interim stage of writ proceedings. This would virtually amount to the granting of main relief prayed for in the writ petition. Balance of convenience lies in continuing with the status quo till the writ petitions are finally disposed of by the Single Judge. There is a question mark regarding the maintainability of the writ petition as well because of the dismissal of the earlier Writ Petition No. 38779 of 1999 filed by the appellant challenging the order dated 14-10-1999. Single Judge has not gone into this question and we also decline to go into this question as we have held that as per three norms which govern the grant of interim injunction i.e., prima facie case, balance of convenience and irreparable loss and injury, the appellant is not entitled to the interim stay at this stage.

13. For the reasons stated we agree with the view expressed by the Single Judge

that prima facie case for grant of stay of the order, is not made out.

W.A. No. 8162 of 1999

14. Once the order dated 14-10-1999 remains in operation in order to save the revenue of the Government the liquor vends were required to be re-auctioned. Tribunal had granted stay of Annexure-J passed by the Excise Commissioner ordering re-auction. Single Judge being conscious of the fact that till the order dated 14-10-1999 was quashed or stayed, the Government was within its right to re-auction the vends, stayed the operation of the order of the Tribunal staying re-auction. In our view, the order passed by the Single Judge staying the operation of the order passed by the Tribunal is reasonable and justified in the given facts and circumstances of the case. Balance of convenience lies in staying the operation of the order of the Tribunal. No ground to interfere with the interim order passed by the Single Judge is made out.

15. Another reason which impels us not to interfere with the interim orders passed by the Single Judge is that reportedly the Writ Petition Nos. 43547 of 1999 and 3242 of 2000 are stated to be listed for final disposal on 13-3-2000. Any interim order passed in a suit/writ petition comes to an end with the disposal of the suit/writ petition unless the interim order merges in the final order. Any view expressed by us on the merits of the dispute which have been argued before us at length can prejudice the rights of the either of the parties before the Single Judge. We refrain from making any observation on the merits, lest it may prejudice any of the parties while arguing the main writ petitions before the Single Judge.

16. By way of abundant caution we may add that anything said in this judgment be not taken as an expression of opinion on the merits of the dispute. Learned Single Judge shall proceed to decide the writ petitions without influencing himself by any of the observations which may have been made in these appeals for the purpose of disposal of the appeals. Dismissed. No costs.