(2012) 06 KAR CK 0104

In the Karnataka High Court

Case No : Writ Petition No. 15258 of 2012 (Excise)

S.C. Srinivasa APPELLANT

Vs

The Commissioner of Excise in Karnataka and Others RESPONDENT

Date of Decision : 20-06-2012

Acts Referred:

Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 — Rule 3(9)(a), 3(9)(b)
Karnataka Excise Act, 1965 — Section 61(2), 61(3)
Karnataka Excise Licences (General Conditions) Rules, 1967 — Rule 5

Citation : (2013) 2 KarLJ 189

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Mohan Bhat, for the Appellant; H. Venkatesh Dodderi, Additional Government Advocate and Sri D.L. Jagadeesh, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—In this writ petition, petitioner is aggrieved by the order dated 14-2-2012 passed by the Deputy Commissioner of Excise, Bangalore Urban District, Bangalore, ordering that permission granted to him on 5-5-2011 to shift CL-9 licence to vend liquor from the premises bearing Khatha No. 102, Assessment Nos. 14 and 10/2, property No. 221, Prasanna Layout, Mahadeshwara nagar, Bangalore, as has been cancelled on account of violation of Rule 3(9)(a) and 3(9)(b) of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 (for short, ''the Rules''). The order dated 14-2-2012 was challenged by the petitioner before the Commissioner of Excise, by filing an appeal u/s 61(2) of the Karnataka Excise Act, 1965 (for short, ''the Act''). The Appellate Authority dismissed the appeal vide order dated 23-2-2012. The second appeal presented before the Karnataka Appellate Tribunal u/s 61(3) of the Act, is also dismissed by the Tribunal. Hence, aggrieved by the orders passed by the original as well as the appellate authorities, the present writ petition is filed.

2. Facts in brief necessary for the disposal of this writ petition, are that the petitioner is having a licence given in Form CL-9 to vend liquor. Earlier, he was running the business in the premises bearing No. 16, 100 feet Ring Road, 3rd Main Road, Muneshwara Farm, Pantharapalya, Bangalore. The said premises, it is urged, was demolished for widening the road. Hence, an application was made by the petitioner seeking permission to shift his business to the present place at No. 102, Assessment Nos. 14 and 10/2, Property No. 221, Prasanna Layout, Mahadeshwara Nagara, Bangalore.

3. The Deputy Commissioner of Excise, had passed an order permitting the petitioner to shift to the present place imposing a condition that in case any objections were to be raised, the order permitting shifting was liable to be recalled. Accordingly, petitioner moved to the present premises. Respondent 3 herein who is a local Corporator insisted that the petitioner should occupy some other premises. Objections were also raised by the members of the public. A report of the Deputy Superintendent of Police was obtained. Based on the same, Annexure-J -- order came to be passed holding that the petitioner has to shift the shop to another suitable building, in view of the public nuisance likely to be caused and in the interest of public peace.

4. Alleging various grounds, petitioner preferred an appeal against this order before the Commissioner of Excise. The Commissioner of Excise passed the impugned order at Annexure-K.

5. On perusal of the order, it is clear that the contentions urged by the learned Counsel appearing for both the parties have been referred, but when it came to consideration of the contentions, the Commissioner has totally ignored the basic requirement of passing a reasoned order and has proceeded to dismiss the appeal by observing that he did not find any technical or procedural lacuna in the order passed by the original authority. Reference is made by the Commissioner to the earlier order of remand passed by him and the fact that after remand, the Deputy Commissioner of Excise had issued notice to all the persons, visited the spot and thereafter recorded his findings. Except stating this, nothing is said regarding the contentions urged by the petitioner. It is relevant to notice here that the petitioner has taken up several legal contentions including the contention that the authorities below have acted at the instance of respondent 3 who had an axe to grind against the petitioner.

6. It was incumbent upon the Commissioner to examine the contentions in the light of the records available and record his findings. Being the First Appellate Authority, the Commissioner ought to have discharged his duties of passing a speaking order re-appreciating the materials on record. When this order of the Appellate Authority was challenged before the Tribunal, the Tribunal has dismissed the appeal holding that as per Rule 5 of the Karnataka Excise Licences (General Conditions) Rules, 1967, in a residential locality, no licence to vend liquor can be granted.

7. According to the Tribunal, if literal interpretation is given to Rule 5 of the Rules, then it would follow that whether or not the residential locality was inhabited by the members of Scheduled Caste and Scheduled Tribe, if it was a residential locality then the prohibition contained under Rule 5 operates, hence the order passed by the Excise Commissioner was just and legal.

8. This finding recorded in paragraphs 8 and 9 of the order passed by the Tribunal is against the tenor of the Rule and the judgment of the Division Bench of this Court in the case of Sri Karthikeyan B. v. The Principal Secretary to Government and Others, in W.P. Nos. 39539 to 39542 of 2010 disposed of on 18-4-2011. In the said case, the Division Bench of this Court had an occasion to interpret Rule 5 of the Karnataka Excise Licences (General Conditions) Rules, 1967. In paragraph 4 of the said judgment, the Division Bench has observed as under:

For the reasons stated herein above, we are satisfied, that the restriction contemplated in Rule 5 of the Karnataka Excise Licences (General Conditions) Rules, 1967, insofar as the residential localities are concerned, extends to only such localities wherein the inhabitants are predominantly members of the Scheduled Castes or Scheduled Tribes Communities, and further the restriction is for location of any such shop within the said locality. Since it is the admitted case at the hands of the petitioners themselves, that the wine shop in question is located beyond the residential locality where Scheduled Castes are the predominate inhabitants, we are of the view, that Rule 5 of the Karnataka Excise Licences (General Conditions) Rules, 1967, relied upon by the learned Counsel for the petitioners is clearly inapplicable to the case on hand.

9. It is thus clear that the Tribunal has misdirected itself in interpreting Rule 5 of the Karnataka Excise Licences (General Conditions) Rules, 1967, in as much as, the restriction contemplated in Rule 5 is that insofar as residential localities are concerned, if such localities are predominantly inhabited by members of Scheduled Caste and Scheduled Tribe, then no licence for liquor shop shall be granted. The Rule cannot be interpreted as to lay down a total embargo for complete prohibition for granting such licence in any residential area.

10. At this stage, it is sought to be submitted by the learned Counsel for the respondents including the learned Additional Government Advocate that as per the proviso to Rule 3(9)(b) of the Rules, no licence under the sub-rule shall be granted in any predominant residential area and therefore the order passed by the Deputy Commissioner of Excise is in accordance with the said sub-rule. Neither the Appellate Authority nor the Appellate Tribunal has examined the matter in this perspective. Whether the proviso to Rule 3(9)(b) of the Rules is applicable to the facts of the case is a matter to be examined by the Competent Authority.

11. As already pointed out above, the Excise Commissioner has failed to examine any of the contentions urged by the petitioner. The Tribunal has wrongly

interpreted the scope of Rule 5 of the Karnataka Excise Licences (General Conditions) Rules, 1967. It has also not considered the effect of the proviso to Rule 3(9)(b) of the Rules.

12. In view of the above, this writ petition deserves to be and is allowed. Both the orders passed by the Excise Commissioner and the Tribunal are set aside. The matter is remanded to the Excise Commissioner for fresh consideration. Having regard to the nature of the dispute, I find it just and appropriate to direct the Commissioner to dispose of the appeal expeditiously, at any rate within an outer limit of three months from the date of receipt of a copy of this order. If for any reason, the appeal is not disposed of before the end of this month, it is needless to observe that the petitioner will be entitled for renewal of licence, which will be subject to the result of the order to be passed by the Excise Commissioner. Until the disposal of the appeal, the order under challenge Annexure-J shall stand stayed.