
(1997) 09 AP CK 0139

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 16955 and 16957 of 1994

Shaik Khader Basha and Another

APPELLANT

Vs

Dy. Commissioner of Excise, Warangal Range and Others

RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 46A, 46F, 47, 63

Citation : (1997) 5 ALT 801 : (1997) 3 APLJ 197

Hon'ble Judges : Y. Bhaskar Rao, J;V. Rajagopala Reddy, J

Bench : Division Bench

Advocate : C. Damodar Reddy, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Y. Bhaskar Rao, J.—These two writ petitions involve a common question of law. Hence, they are disposed of by this common judgment. In these two writ petitions, the orders passed by the Deputy Commissioner of Excise, Warangal Range, Warangal, are questioned. For the purpose of convenience, we are referring the facts of Writ Petition No. 16955 of 1994.

2. The brief facts are that on 17-7-1994, the Excise Sub-Inspector, Range Tirumalaipalem of Khammam District intercepted a lorry bearing No. AEK 8053 and seized 100 Bulk litres of I.D. Liquor in ten plastic cans. The case property was seized and four persons including the driver were arrested under the cover of panchanama and they were sent to judicial remand. C.R. No. 72 /1993-94 was registered. The Driving Licence and "C" book of the vehicle were also seized. As per the "C" book, the vehicle stands in the name of Sri Shaik Khader Basha i.e., the petitioner in Writ Petition No. 16955 of 1994. The statements of the arrested persons were also recorded.

3. A notice was issued to the petitioner informing that the lorry in question was seized by the Excise Sub-Inspector and to give explanation as to why the lorry

should not be confiscated for having indulged in the transportation of I.D. Liquor. On 26-7-1994, the Advocate of the petitioner appeared before the Deputy Commissioner and submitted a petition in which it is stated that the petitioner is the owner of the lorry. He engaged the lorry for transportation of coal from Ramakrishnapuram of Adilabad District to Jayantipuram, Madras Cement Factory-via-Tirumalaipalem of Khammam District as per the permission accorded by the Divisional Engineer, C.S.P-I R.K.P., the Singareni Collieries Limited, vide transport permit No. 3134/dt. 16-7-1994. The coal was to be unloaded at Jayantipuram, Madras Cement Factory. The R.C. Book and other documents show that the royalty has been remitted by the concerned Cement factory to the authorities of the Singareni Collieries Limited and that the said documents were also seized by the Excise Sub-Inspector. From the said documents it is clear that the lorry was engaged for the purpose of transport of coal. The petitioner did not hire the lorry for the purpose of transportation of alleged I.D. Liquor and that he has never authorised his driver to allow anybody for boarding the lorry with I.D. Liquor. The petitioner denied that the lorry was involved in the transportation of I.D. Liquor with his knowledge. The lorry is kept in the open space from the date of seizure and it is being spoiled and it is likely to cause extensive damage and the same will put him to heavy loss and therefore, the lorry may be released.

4. After considering the above explanation and all the documents, and relying on the judgments of the Supreme Court, the first respondent held that the petitioner is believed to have no knowledge that the offence was being or likely to be committed and therefore, directed release of the lorry by an order dated 26-7-1994. Again on 26-8-1994, the first respondent passed another order reviewing his earlier order and directed confiscation of the lorry. This order has been questioned in the writ petition.

5. The learned Counsel for the petitioners contended that respondent No. 1 has not given cogent and convincing reasons for reviewing the earlier orders and that he has no power of review, and no notice was given to the petitioners before reviewing the earlier orders. It is also contended that no new facts were brought to the notice of the first respondent to review the orders.

6. The learned Government Pleader for Prohibition and Excise contended that the first order was passed by mistake of fact directing the release of the lorries. After realising the mistakes, the second order was passed, and there is no error of law and the same is within the jurisdiction. Hence, the writ petition is liable to be dismissed.

7. In view of the above contentions, the important question of law that arises for consideration is whether the Deputy Commissioner of Excise who is exercising the quasi-judicial power is entitled to review his own order?

8. Section 46-A of the Andhra Pradesh Excise Act, 1968 (for short "the Act") contemplates issuance of a show-cause notice to the person whose property is seized. Section 46-F of the Act provides that the confiscated property shall vest

in the Government, Section 47 of the Act provides for compounding the offence. Even under the old Act, Section 63 provides for an appeal. Either in the old Act or in the new Act there is no provision authorising the Deputy Commissioner or the confiscating officer to review his own order. By reading the provisions of the Act, it is not manifest that the power of review is inherent in the authority. It is settled principle of law that quasi-judicial authority has to exercise the power in accordance with the statute which confers the power on him. Where the power is exercised which is beyond the purview of the statute, the exercise of such power is without jurisdiction.

9. We are fortified with our view by a judgment of the Supreme Court in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, , in which it was held follows:

"It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order."

10. Thus, the Supreme Court held that the power of review is not inherent. It has to be provided by Statute. The Supreme Court in *Kuntesh v. Management, H.K. Mahavidyalaya, Sitaptir*, AIR 1978 SC 2186 considered the case where the Vice-Chancellor reviewed his order and dismissed the Principal of the College. The important question under consideration before the Supreme Court was whether the Vice-Chancellor had power of review? The Supreme Court held as follows:

"It is now well established that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the Principal, acts as a quasi-judicial authority. It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing her order dated January 24, 1987 by her order dated March 7, 1987. The said order of the Vice-Chancellor dated March 7, 1987 was a nullity".

11. In view of the principle laid down by the Supreme Court it is clear that the quasi-judicial authority cannot exercise power of review unless it is conferred by Statute or it is inferred by reading the provisions of enactment. In the present case, we have scrutinised the relevant provisions of the Act. There is no section or rule providing review either to the Deputy Commissioner or to the confiscating authority to review its own order. It is also not possible to come to the conclusion that the power is implicit in the authority to review its own order. The contention

that the earlier order was passed by mistake of fact and there was power of review is not tenable. Even if the earlier order was passed by mistake of fact or law, such orders cannot be reviewed. The only remedy that is available is to file an appeal before the concerned authority. Therefore, the impugned orders are without jurisdiction and accordingly, the same are quashed.

12. The writ petitions are allowed. No order as to costs.