
(2008) 11 KAR CK 0025
In the Karnataka High Court
Case No : Writ Petition No. 12785 of 2008

Shashi Distilleries Pvt. Ltd.

APPELLANT

Vs

The Excise Commissioner in Karnataka and Another

RESPONDENT

Date of Decision : 10-11-2008

Acts Referred:

Citation : (2009) ILR (Kar) 42 : (2009) 5 KarLJ 626

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : G.K. Bhat, for the Appellant; Asha Kumbargerimutt, HCGP for R4 and S.V. Subramanyam, for R-2, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—According to the petitioner, it has obtained an authorization from M/s Mohan Meakins Ltd. which is a century old liquor manufacturing company with a trade mark and logo "Old Monk XXX Rum" of M/s Mohan Meakins Ltd. The brand of Old Monk in 180 ml., 375ml. and 750 ml. is very popular among the consumers of liquor. As per Excise Act and Rules, Excise Commissioner has to approve the label for affixing on the bottles every year. The petitioner has obtained approval of the label from the Commissioner of Excise for the year 2008-09 and has been affixed on the bottles and that it has been carrying on the sale of liquor with the label "Old Monk very old vatted Special XXX Rum".

2. According to the petitioner, R-2 is also a distiller manufacturing Indian Made Foreign Liquor and also manufacturing the Rum under the name and style of "Rambo Gold XXX Rum". It is the case of the petitioner that all applications were filed by the R-2 on 23.6.2008 for approval of its label under the name and style of "Very Old and Matured Rambo Gold XXX Rum" filed and the same has been got approved by R-1 as per Annexure-E on 8.8.2008 behind the back of the petitioner. Therefore, being aggrieved by the approval of label of R-2 in regard to "Rambo Gold XXX Rum", present petition is filed on the ground that Annexure-E

is passed by the Commissioner of Excise without notifying the application filed by R-2 for approval of label and inviting objections from all the distilleries and also on the ground that the label got approved by R-1 in respect of "Rambo Gold XXX Rum" is similar and deceptive to that of the label of the petitioner. Contending that if an opportunity had been given to the petitioner it could have filed its objections and the Commissioner would not have approved as per the label of R-2 as per Annexure-E and that R-1 would have directed R-2 to change its label so that an ordinary man shall not mislead by looking into the label of R-2 as if it is the product of the petitioner.

3. R-2 has filed its counter. Govt. Advocate has also secured records.

4. Heard the counsel for the parties.

5. The main contention of the petitioner is that the application of R-2 for approval of label was not notified by R-1 bringing to the notice of all the distilleries in Karnataka to have their say in the matter before giving approval. According to him, R-1 used to send copies of the applications filed by a distillers for approval of the labels inviting objections from all the distillers so that copy-rights of any distilleries shall not be taken away by such applicants. According to him, R-1 has not sent any copy of the application filed by R-2 for approval of its label "Rambo Gold XXX Rum" inviting objections if any by the petitioner. Therefore, he requests the court to set aside the order and direct R-1 to give an opportunity for the petitioner to file its objections and thereafter to consider the application of R-2 in accordance with law.

6. Govt. Advocate by producing the records submits that in terms of the circular, Commissioner of Excise has to notify all the distilleries inviting their objections if any for approval of any applications filed by another distillers for approval of the label. Accordingly, notice was despatched to all the distilleries by ordinary post. Therefore, she contends that the Commissioner of Excise has followed the procedure prescribed for considering the application filed by R-2 for approval of the label in question. Therefore, she requests the court to dismiss the petition.

7. Counsel for R-2 supporting the arguments advanced by the Govt Advocate, requests the court to dismiss the petition. In addition to that, he contends that the label approved by R-1 in respect of R-2 product "Rambo Gold XXX Rum" is not similar or deceptive to that of the label of the petitioner and the consumers of liquor can very well easily identify the Old Monk Rum of the petitioner and distinguish the same with that of the product of R-2. Therefore, he contends that no illegality has been caused by R-1 in approving the label of R-2 and requests the court to dismiss the petition.

8. It is not in dispute that whenever an application is filed by a distillor for approval of label R-1 has to notify all the distilleries in Karnataka. Govt. Advocate also fairly submits that R-1 has notified all the distilleries by despatching by ordinary post. When the petitioner is disputing the receipt of such notice, this Court has to examine whether posting of notice by R-1 by ordinary post would be

sufficient to hold that there is valid receipt of such notice by the petitioner or by any other distillor. There may be an entry in the register maintained by R-1 for having despatched the letter, but there cannot be any proof to show that actually such letter was posted and delivered either to the petitioner or to any other distillers. When a label has to be approved by the Commissioner, he has to ensure that such label would affect the business of other distilleries or not, the very purpose of intimating the distillers to file their objections is to hear the aggrieved persons and to avoid further complications in the matter and to avoid infringement of trade mark or passing of action on any one of the parties. In such circumstances, Commissioner is expected to notify all the distilleries under Registered Post so that there would be record with R-1 that such intimation was actually sent by him and received by the distillers. Even if notice of intimation sent under registered post is not served to any particular distillor, if the address find on the cover of the despatched notice is found to be correct, it has to be presumed that notice is actually despatched and deemed to have been served on such distillers. In the absence of notifying the distillers under registered post, it would be difficult for any court to believe that Commissioner's office has despatched the notice by ordinary post and it is actually served on the petitioner. There may be every possibility of meddling with the service of notice either by the postal authorities or on account of many other reasons which need not be explained by this Court. Therefore, in the circumstances, this Court is of the opinion that in the interest of justice, order of Commissioner as per Annexure-E has to be quashed.

9. In the result, this petition is allowed directing R-1 to send notices by registered post to all the distilleries and after hearing the grievance of any aggrieved person shall pass an appropriate-order. This exercise shall be done by R-1 in future wherever an application is received for approval of a label at the instance of any of the distillor. Annexure-E is hereby quashed.

10. Matter is remanded to R-1 to give an opportunity for the petitioner to file its objections and thereafter to pass an order in accordance with law after hearing the petitioner or any other objector and also R-2.