

(1984) 06 KAR CK 0019

In the Karnataka High Court

Case No : W.P. No. 2129 of 1984. 10th April 1984

Siddappa D.

APPELLANT

Vs

Deputy Commissioner (Excise) and Another

RESPONDENT

Date of Decision : 15-06-1984

Acts Referred:

Karnataka Excise Act, 1965 — Section 29

Citation : (1985) 2 KarLJ 264

Hon'ble Judges : K. A. Swami, J

Judgement

1. As the stage of preliminary hearing Sri Abdul Khader, learned Government Pleader was directed to take notice on behalf of the respondents. Accordingly learned Government Pleader has received the instructions and argued for the respondents. During the pendency of the Writ Petition the petitioner died. One Sri D.C. Srinivasa S/o D. Chennappa is brought on record, as a successor to the deceased in so far it relates to the subject matter of the writ petition is concerned. The petition is heard on merits.

2. In this petition under Article 226 of the Constitution the petitioner has sought for quashing the order dated 24-1-1984 bearing No. DTCR. 162/83-84 passed by the Deputy Commissioner (Excise) Chitradurga, produced as Annexure-F) suspending the C.L. 2 licence granted to the original petitioner. This impugned order is passed in the purported exercise of power under Section 29 of the Karnataka Excise Act, 1965 thatas the Act pending investigation of the case registered against the petitioner. On coming to know that the petitioner had violated the conditions of licence the shop of the petitioner was searched. Certain quantity of non-duty paid liquor was seized A show cause notice dated 25-12-1983 was issued to the petitioner as per Annexure-C listing the irregularities and calling upon him to show cause and explain the same. On receipt of the reply from the petitioner the impugned order suspending the licence pending investigation of the case is passed as per Annexure-F.

3. The contention of Sri Vasudevareddy, learned counsel for the petitioner is that

under Section 29 of the Act it is open to the authority to cancel or suspend the licence if any one of the grounds mentioned in that Section is established and that is possible only after holding an enquiry and recording a finding on the basis of the evidence that comes on record during the course of enquiry, that a certain irregularity falling under one of the clauses of Section 29 is established. Unless such a finding is recorded it is not permissible for the 1st Respondent to suspend the licence pending the enquiry. Learned counsel submits that if such a power is conceded to the authority it would amount to punishing the licensee without the proof of the alleged irregularity or illegality and such a thing is opposed to very notion of fairplay and justice. It is also further contended that if the legislature intended that the authority may exercise power of suspension pending enquiry a provision to that effect would have been found in Section 29 of the Act. The fact that no such provision is made, whereas the penalty of cancellation and suspension both are provided, would go to show that there is no power to suspend the licence pending investigation. On the contrary, it is contended by Sri Abdul Khadar, learned Government Pleader that the power of suspension pending enquiry is concomitant to the power of cancellation and suspension enjoyed by the authority under Section 29 of the Act, therefore it flows from the main power of cancellation and suspension as it is ancillary to such power. Hence, it is submitted that the 1st Respondent has the power to suspend the licence pending enquiry, that under the circumstances of the case he is justified in suspending the licence pending enquiry. Learned Government Pleader submits that a show cause notice was issued to him enumerating the irregularities as per Annexure-C, and on receipt of his explanation only, the order impugned in this writ petition is passed. Therefore it is submitted that there is no illegality whatsoever committed by the 1st Respondent in suspending the licence.

4. One more contention of Sri Reddy may also be referred to at this stage itself. It is contended that suspension pending enquiry has not been limited to any period and that being so without completing the enquiry the order may remain in force even beyond the period of licence, when nothing will be left for enquiry as the period for which the licence is granted, itself expires.

5. Having regard to the aforesaid contentions the points that arise for consideration are:

- 1) Whether the power to suspend licence pending enquiry is incidental to the power enjoyed by the Deputy Commissioner (Excise) under Sec. 29 of the Act ?
- 2) Whether the order of suspension passed pending enquiry and not limited to a particular period can be held to be reasonable ?

6. Section 29 of the Act reads as follows:

"29. Power to cancel or suspend licence etc.-

- 1) Subject to such restrictions as the State Government may prescribe, the authority granting any licence or permit under this Act may cancel or suspend it,-

a) if any duty or fee payable by the holder thereof is not duly paid; or b) in the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or c) if the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act; or d) if the holder thereof is convicted of any cognizable and non-bailable offence or of any offence under the Dangerous Drugs; Act, 1930, or under the Medical and Toilet Preparations (Excise Duties) Act, 1955, or under the Trade and Merchandise Marks Act, 1958, or under Section 481, 482, 483, 484, 485, 486, 487, 488 or 489 of the Indian Penal Code or of any offence punishable under Section 112 or 114 of the Customs Act, 1962; or e) if the conditions of the licence or permit provide for such cancellation or suspension at will.

2) Where a licence or permit held by any person is cancelled under clause (a), clause (b), clause (c) or clause (d) of sub-section (1), the authority aforesaid may cancel any other licence or permit granted to such person under this Act or under the Opium Act, 1878.

3) The holder shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof."

No doubt in the aforesaid section there is no special provision made regarding suspension of licence pending enquiry. The question is whether power to cancel the licence includes the power to suspend the licence pending enquiry. It is an accepted principle of interpretation of law that whenever a statute empowers an authority to do a certain thing it must be deemed to have empowered that authority to do all those things which are necessary for the purpose of effective exercise of that power.

In addition to this it is brought to my notice by learned Government Pleader Sri Abdul Khadar that under similar circumstances the Supreme Court has also held that the power of suspension is necessary concomitant to the power of grant and cancellation of licence. (M/s. Sukhwinder Pal Bipan Kumar v. State of Punjab-A.I.R. 1982 S.C. page 65). No doubt the Supreme Court was considering an ORDER issued under Section 3 of the Essential Commodities Act, which contained specific provision including the power to suspend a licence without giving reasonable opportunity to the licence of stating his case for a period not exceeding 90 days during the pendency of the proceeding for cancellation of the licence. The Supreme Court observed in that case:

"The power of suspension conferred by the second proviso to sub-clause (1) of Cl. 11 of the Order is by way of an interim measure, pending the holding of an inquiry as to whether there is any breach which must result in cancellation of the licence.

It is true that the suspension of licence is a drastic measure, if taken without affording to the dealer a reasonable opportunity of stating his case, but it is a

measure of social control in the interests of the community. The power of suspension is necessary concomitant of the power to grant a privilege or a licence."

Thus it follows that the power of suspension is necessary concomitant to the power to grant or cancel the licence. If that be so even though Section 29 does not specifically provide that pending enquiry licence can be suspended it necessarily follows that such a power is implied under Section 29 of the Act, because that is necessary for the purpose of effective implementation of in other words, for effectuating the legislative intentment of the statute. Learned Government Pleader has also placed reliance on a Division Bench decision of the High Court of Andhra Pradesh in Dr. K.M. Lakshmana Rao and others v. Govt. of Andhra Pradesh and another, reported in 1984 Labour and Industrial Cases 223. In the said decision also it has been held that the power of suspension is ancillary to and is incidental to enforce the power conferred under the Statute.

7. Sri Vasudeva Reddy, learned counsel for the petitioner has placed reliance on a decision of the Supreme Court reported in 1972 S.C. 554. I am of the view that the said decision is not on the point. Therefore it is not necessary to consider the same in detail. For the reasons stated above on the first point it is held that the power to suspend the licence pending enquiry is incidental to and a necessary concomitant of the power to grant as well as cancel.

8. POINT NO. 2. The order of suspension does not limit its operation to any period. There is every possibility, as contended by Sri Reddy, learned counsel for the petitioner that the suspension order may be continued pending enquiry until the expiry of the licence period. Therefore it is necessary that the order suspending the licence pending enquiry must be limited to a particular period. The licence issued under the Act is valid for one year. Of course the licence can be renewed. It is possible to renew if the licence is not suspended. Therefore it is also necessary that if the authority decides that it is necessary to suspend the licence pending enquiry it must limit the operation of such order to a reasonable period of 90 days and complete the enquiry within that period. Probably in the instant case if the interim order would not have passed by this Court, the respondent might have completed the enquiry within a period of 90 days. Under these circumstances the ends of justice would be met if the first respondent is directed to complete the enquiry within 60 days from the date of receipt of this order.

9. For the reasons stated above this writ petition is dismissed. The first respondent is directed to complete the enquiry within two months from the date of receipt of this order.

Sri Abdul Khadar, learned Government Pleader is permitted to file his memo of appearance on behalf of the respondents within six weeks.