(2005) 05 AHC CK 0095

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1641 of 2004

Smt. Indira Devi Yadav APPELLANT

Vs

The State of U.P. and Others RESPONDENT

Date of Decision : 04-05-2005

Acts Referred:

Uttar Pradesh Excise (Settlement of Licences Country for Retail Sale of Country Liquor) Rules, 2002 — Rule 14, 20, 21

Citation : (2005) 3 AWC 2879

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Neeraj Sharma, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—By way of present writ petition, petitioner has Challenged the appellate order dated 01.03.2004, annexure-4 and order dated 08.10.2004 annexure passed by the respondent No. 1 and the citation dated 24.02.2003.

2. Brief facts of the case are that under the new Excise Rules namely U.P. Excise (Settlement of Licenses for retail sale of country liquor) Rules 2002 (hereinafter referred to as "Rules, 2002) Settlement of country liquor shops of the district Allahabad for the Excise year 2002-03 took place under the supervision of the respondents No. 3 and 4. Under Rule, 2002 country liquor shop at Nawabganj district Allahabad was settled by lottery in favour of the petitioner in which Mahesh Chandra Pandey was also one of the co-licencee. The shop was allotted on the application of the petitioner and intimation in this regard was given on 26 03.2002 In pursuance of the aforesaid intimation petitioner deposited basic licence fee at Rs. 78,000/-, security money at Rs. 63,960/-. The minimum guaranteed quota of the shop was 650 bulk litres per month, i.e. 7,800 bulk liters per month. The value of which had been fixed towards licenced fee or Rs. 6,39,600/-.

3. Petitioner could not lift the minimum guaranteed quota fixed for a month and accordingly its licence had been canceled on 19.02.2003 and recovery citation was issued on 24.02.2003 demanding a sum of Rs. 258,628/-. It appear that the petitioner has challenged the said recovery citation in Writ Petition No. 14117 of 2003, which was disposed of with the direction to the respondent No. 3 to decide the representation of the petitioner by a speaking order. Collector Allahabad vide his order dated 09.05.2003 rejected the representation of petition and upheld the recovery citation.

4. Petitioner filed appeal before the Excise Commissioner. Two main contentions have been raised in the appeal namely, 1) that the adjustment of the security should be allowed, 2) licence fee up to 19.02.2003 (date of cancellation of licence) should be demanded and not for the subsequent period. Excise Commissioner vide order dated 09.05.2003 allowed the appeal in part. Excise Commissioner has directed the adjustment of security amount of Rs. 63.960/- but has upheld the demand of licence fee for the entire year. Being aggrieved by order of the Excise Commissioner petitioner filed revision before Government which was dismissed by the impugned order dated 08.01.2004.

5. Heard learned counsel for the parties.

6. Learned counsel for the petitioner submitted that once the licence was cancelled on 19.02.2003 agreement between the petitioner and the respondents ceased to exist. He submitted that if the petitioner was not in a position to lift minimum guaranteed quota, it was open to the respondents to allow the petitioner to run the shop for the entire period upto 31.03.2003 and raise the demand for the entire licence fee or to cancel the licence and to proceed to resettle the shop. He submitted that once licence has been cancelled on 19.02.,2003, respondent cannot take the licence fee for the balance period. Learned Standing Counsel submitted that the agreement was for the entire year and therefore, petitioner was liable to pay the licence fee for the entire year even for the period after cancellation of the licence.

7. Having heard learned counsel for the parties, I find force in the argument of learned counsel for the petitioner. None of the Rules contemplates that in case of the cancellation of the licence, licence is liable for licence fee for the entire year. Rule 14 contemplates payment of monthly instalment of licence fee by last day of the month and credit balance of licence fee form precious month if any, shall be adjusted against the monthly instalment of the licence fee. It further says that in case, if there is an short fall in licence fee after due adjustment of the duty involved in the quantity of country liquor lifted by the licence and the credit balance of the licence fee from previous month according to the adjusted amount or by depositing cash or combination of both. In case the licence fails to replenish the deficit in security amount by the 10th day of the next month his licence shall stand cancelled. This shows that each month is unit for raising the demand of the licence fee Rule 21 contemplates the cancellation of the licence, if licencee fails to deposit the monthly instalment, the licence fee or replenish the

deficit in security amount within prescribed period. Rule 20 contemplates that in case a licence is suspended, cancelled or surrendered in accordance with the provisions of these rules or if the shop remains unsettled for any reasons the licensing authority may make interim settlement of the shop on payment of daily basic licence fee, on such rates as notified by the Excise Commissioner with prior sanction of the Government, and proportionate licence fee. The above provision clearly shows that the licence fee could be demanded only for the period during which the licencee is entitled to run the shop and allowed to lift the country liquor It is true that the contract was for the entire year i.e. upto 31.05.2003 but was open to the licensing authority to allowed the licence to run the shop upto the entire period and claim the licence fee for the entire year. But if the licensing authority cancelled the licence during the excise year on 19.02.2004 the contract comes to an end and the licensing authority can not raise the raise the demand of the licence fee for the period after the cancellation of the licence. By the cancellation of the licence the right of the petitioner to lift and to sell country liquor has been curtailed After the cancellation of the licence, it was open to the licensing authority to resettle the shop under Rule 20 in the interest of the revenue. In the case of Government of Maharashtra and Others Vs. Deokar''s Distillery, Apex Court held as follows:

"It is trite that the rights, and obligations of the parties will come to an end with the cessation of the contract unless there existing a contract contrary thereto. In other words, in a case where the liability of a contracting party would extend beyond the contract period, an express stipulation in that behalf must be made in the contract itself"

That once the licence is cancelled the contract come to an end. There is nothing under the Rule, which provides that even after cancellation of the licence, the contract will continue and the licencee would be liable for the licence fee for the entire period. In the entire period, In this view of the matter I am of the view that the petitioner is not liable for licence fee for the period after 19.02.2003

8. I have also perused the two orders passed by revisional authority in the case No. 15 (Revision) 2004, Rajendra Singh Chauhan, Etah v. Upper Excise Commissioner and Ors. and in Revision No. 3 (2004), Chaudhary Mahtab Singh v. Excise Commissioner and Ors. in which revisional authority has categorically held that the licencee would not be liable for licence fee for the period after the cancellation of the licence, There appears to be no reason for taking a different view in the case of petitioner. In the circumstances, order of the revisonal authority is liable to be set aside.

9. In the result, writ petition is allowed. Order of the revisional authority aside and is held that the petitioner is liable for licence fee only upto the period 19.02.2003 and not thereafter.

