(1957) 04 CAL CK 0027

In the Calcutta High Court

Case No : Civil Revn. Case No. 650 of 1954

Sri Kalidas Chakravarti APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 17-04-1957

Acts Referred:
Bengal Excise Act, 1909 — Section 30, 31, 32, 33, 34
Bengal Excise Rules, 1993 — Rule 3

Citation : AIR 1958 Cal 241

Hon'ble Judges : H.K. Bose, J

Bench : Single Bench

Advocate : A.C. Gupta, Nani C. Chakravarti, Chandra Narayan Laik, Monoranjan Bhattacharya and Tathagata Mukherjee, for the Appellant; S. Banerjee and Smriti Kr. Roy Chowdhury for Addl. Govt. Pleader (for Nos. 1 and 2) and Bankim Chandra Dutta and Shyampada Chowdhury, (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

H.K. Bose, J.—This is an application under Article 226 of the Constitution for an appropriate writ directing the respondents Nos. 1 and 2 to recall or rescind an order cancelling the petitioner''s licence granted under the provisions of the Bengal Excise Act and to restore the licence to the petitioner.

2. The petitioner had a liquor shop at Domar in the District of Rangpur now in Eastern Pakistan, since 16-12-1930. The said shop was looted in March, 1950 as a result of communal disturbances, and the petitioner thereafter abandoned the stock m the said shop and migrated to the Indian Union to settle here permanently. In pursuance of a notification issued by the Government for settlement of a new shop at Siliguri the petitioner on or about the 23rd December, 1952 filed an application for grant of a licence in respect of the foreign liquor shop at Siliguri in the district of Darjeeling. Such licences are known as "F. L. Off" licences and the sale was to be either by wholesale or by retail. On 31-1-1953 the Deputy Commissioner and the Additional Deputy

Commissioner, parjeeling, and the Superintendent of Excise granted interviews to 53 candidates including, the petitioner who had made applications for the said licence in respect of the Siliguri shop. On 2-2-1953, the Deputy Commissioner of Darjeeling passed an order to the effect that the licence of the shop should be issued to the petitioner. After the issue of this licence in favour of the petitioner the petitioner gave up another licence for an excise shop at Jalpaiguri, which was also simultaneously issued in favour of the petitioner. The respondent No. 3, Ajit Kumar Bhattacharyya, who was also an applicant for the said licence for the Siliguri shop, was selected as second in order, by the Deputy Commissioner of Darjeeling, for the reason that if by chance the petitioner could not open the said shop, the said Ajit Kumar Bhattacharyya would become entitled to obtain the same licence. On 27-2-1953, the Superintendent of Excise, wrote a letter to the petitioner, intimating that the shop had been settled with the petitioner and askea the petitioner to take necessary steps for opening the shop. Thereafter the petitioner took the lease of the land and the shop room, and deposited a sum of Rs. 1000/- by way of security, and after complying with the various other necessary formalities he started running the said liquor shop at Siliguri. On 23-3-1953 another applicant for the said liquor shop at Siliguri, D. Sorabji and Co., preferred an appeal before the Commissioner of Excise, West Bengal, against the said order of the Deputy Commissioner, dated 2-2-1953. On 18-4-1953 the respondent No. 3, Ajit Kumar Bhattacharyya, Presented a revision petition to the Hon''ble Minister of Excise challenging the said order of the Deputy Commissioner, dated 2-2-1953, instead of preferring an appeal to the Commissioner of Excise West Bengal as provided under the rules framed u/s 85 of the Bengal Excise Act. On 23-4-1953 the Hon''ble Minister admitted the said petition and directed that the said petition be heard by the Commissioner of Excise after treating the said revision petition as an appeal as contemplated by the rules framed under the Act, although the time for filing an appeal, which is 30 days under Rule 5 of the Rules framed under the Act had expired long before the presentation of the revision petition to the Hon''ble Minister of Excise. On 27-5-1953 the Commissioner of Excise heard both the appeals filed by D. Sorabji and Co. and by respondent No. 3 and after considering all aspects of the case he dismissed the said two appeals. On 4-6-1953 the respondent No. 3 filed another application for revision before the Hon''ble Minister of Excise against the said order of the Commissioner of Excise dismissing his appeal. This revision petition was ultimately heard by the Hon''ble Minister of Excise on 28-11-1953. By an order dated 5-12-1953 the Hon''ble Minister of Excise set aside the order of dismissal made by the Commissioner of Excise and directed that licence be granted in favour of respondent No. 3, Ajit Kumar Bhattacharyya. On 17-12-1953 the petitioner was informed about the decision of the Hon''ble Minister of Excise whereupon the petitioner applied for the certified copy of the said order and upon receipt of a certified copy the petitioner on 5-1-1954 presented an application for review of the said order before the Hon''ble Minister. On 28-1-1954 the petitioner received a reply from the Hon''ble Minister expressing his inability to reconsider the order. On 22-3-1954 the petitioner moved this

Court under Art 226 of the Constitution and obtained the present Rule.

3. On behalf of the opposite parties Nos. 1 and 2, one Sri A. B. Rudra, the Deputy Secretary to the Government of West Bengal in the department of Excise, has affirmed the affidavit-in-opposition. It is not necessary to deal with this counter-affidavit in any detail, inasmuch as the" questions which have been raised are purely questions of law.

4. The first point that has been argued by Dr. Gupta is that the power of revision conferred on the Provincial Government by Section 8(3) of the Bengal Excise Act, 1909 is controlled by and is subject to the provisions of Section 35 of the Act and any order of the Excise Commissioner modifying or annulling or confirming the grant of a licence under the Act by the Collector is final and conclusive and the orders made u/s 35 of the Act cannot be revised by the Government. As it is necessary for the Purpose of deciding the various questions that have been raised In this case to refer to the provisions of Section 8 and Section 35 of the Act the provisions of the said two sections may be set out hereunder:

"Section 8. (1) The Collector shall, in all proceedings under this Act, be subject to the control of the Excise Commissioner, and shall, in such matters as the (Provincial Government) may direct, be subject also to the control of the Commissioner of the Division.

(2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rule made u/s 85, Clause (c).

(3) The (Provincial Government) may revise any order passed by the Collector, the Excise Commissioner or the Commissioner of a Division (or by any officer exercising the powers of an appellate authority under any rule made u/s 85, Clause (c)).

Section 35. The Excise Commissioner shall consider the list, objections and opinions so sent to him, and may modify or annul any order passed or license granted by the Collector; and notwithstanding anything contained in Section 8, his , orders shall be final:"

It is not necessary to set out the rest of the section for the purpose of the disposal of this case.

5. In order to examine the force of the contention of Dr. Gupta it is necessary to understand the scheme of the Bengal Excise Act. Chapter I of the Act contains the definition of certain expressions used in the Act and defines the scope or extent of the applicability of the Act and it also exempts certain legislative enactments from the operation of the Act. The expressions ''retail sale'' and ''sale by wholesale'' are defined in Section 5 of the Act. Chapter II contains provisions for control, appeal and revision and for establishments, delegation and withdrawal of powers. Chapter III prescribes that the import, export and transport of intoxicants will be regulated by conditions or restrictions which the

Government may impose, and the chapter also provides that it is necessary to take out permits or passes in certain cases for the purpose of import export and transport. Chapter IV sets out the provisions for taking out license for manufacture of intoxicant (Section 13), for drawing of Tari from trees (Section 14), for depositing or keeping intoxicant in warehouse or other places of storage (Section 16), for sale of Intoxicant (Section 20) and this chapter also contains provisions for establishment of brewery and distillery Section 17, for possession of intoxicant Sections 18 and 19 or for grant of exclusive privilege Section 22 and for transfer of exclusive privilege Section 23 and also for maintenance of weights and measures in shops Section 24, for prohibition of employment of children and women in shops where liquor or spirit is consumed at the shop Section 25 and for emergency closure of shop Section 26 and, certain other matters. It may be noted in this connection that the licenses which are required to be taken out under the provisions of Chapter IV of the Act are granted practically in all cases by the Collector.

6. Chapter V deals with the power of imposing duty on import, export, transport and manufacture of intoxicants and the ways of levying duties on such goods and also with payment of consideration for the grant of exclusive privilege.

7. Chapter VI is the most material chapter for the purpose of this case and the heading of this chapter is ''Licenses, Permits and Passes''. Sections 30 to 44A form the subject of this chapter. Section 30 provides that before the period of existing licenses for retail sale of spirit expires the Collector will have to prepare a list in a form prescribed by the Excise Commissioner showing what licenses for retail sale of spirit are proposed to be granted for consumption of the spirit on the vendors'' premises in respect of the next period of settlement. It may be pointed out that these licenses for retail sale of spirit for the purpose of consumption on the vendors'' premises are known as "On Licenses". Section 31 requires the Collector to cause a notice to be affixed at the sites of the existing shops mentioned in the list prepared u/s 30 and also at new sites mentioned in the list in respect of which licenses are proposed to be granted. This section also enjoins that extracts of the list are to be sent to the Chairman of the Municipality, or the Executive Oliicer of the Corporation within whose area the shops will be situated. Section 32 deals with the tune at which and the manner in which tne list contemplated by Section 30 is to be prepared and published. Section 33 provides how tne objeections to the proposal are to be submitted to tne Collector by the objector and the section also invites the opinion ot the Chairman of the Municipality or of the Executive Officer of the Corporation on the proposal contained in the list. Tne next Section 34(1) requires the Collector to consider the objections and opinions received and to revise the list if necessary and to make a decision as to the places for which licenses for the retail sale of spirit shall be granted and then to grant licenses accordingly in the exercise of his discretion. It is thus clear that the section enables and empowers the Collector to grant licenses for retail sale of spirit according to the list of sites prepared and revised by him. Under Sub-section (2) of Section 34 the Collector is required to

submit the revised list and the objections and opinions received, as also his own opinion or decision, to the Commissioner of the Division, in case the shops are situated outside Calcutta, but in case of shops which are situated in Calcutta the Collector has to submit the list, the objections and the opinions and his own decision to the Commissioner of Excise. Sub-section (3) of Section 34 provides that the Commissioner of Division shall, in his turn, consider the list, the objections and opinions, which have been sent to him by the Collector and shall then forward them to the Excise Commissioner along with his own opinion and recommendations. Then u/s 35 the Excise Commissioner has got to consider the list, objections and opinions sent to him and he may modify or annul any order passed by the Collector or any license granted by the Collector and the orders made by the Excise Commissioner either modifying or annulling any order passed by the Collector or modifying or annulling any license granted by the Collector are made final and conclusive, by the words appearing in the concluding portion of that section. In other words, the concluding words imply that the provisions for appeal and revision contained in Section 8 are put out of action in case of orders which are made by the Commissioner of Excise in exercise of his powers granted u/s 35 of the Act. It appears to me that when the Excise Commissioner acts u/s 35 he is not exercising his normal appellate power as conferred u/s 3(2) read with Rule 3 made u/s 85 of the Act, which deals with appeals, but he is exercising a special power conferred by Section 35 of the Act. The licenses spoken of in Section 35 of the Act, in my view, have reference only to the licenses which the Collector may choose to grant u/s 34 of the Act. The group of Sections 30 to 35 is one connected scheme and, in my view, they should be read together. It is because these sections form one connected scheme that in sections 36 and 37 of the Act the reference to Sections 30 to 35 and 30 to 36 is made in groups, that is, in Section 36 the opening words are "the provisions of Sections 30 to 35 as to licenses for the retail sale of spirit shall apply etc............. other (intoxicant) specified in such order" and in Section 37 "sections 30 to 38" are referred to in groups, as being not applicable to certain cases as mentioned in that section. It appears to me that Section 35, therefore, cannot be construed as over-riding the general power of revision as is embodied in Section 8(3) of the Act and which is given in respect of orders passed under the Act by the Collector, the Excise Commissioner and the Commissioner of a Division or any other appellate authority. The scope of Section 35 is limited and it only excludes the operation of Section 8 in respect of orders passed or licenses granted under the provisions of Section 30 to 34 of the Act.

8. Mr. Justice Sinha in an unreported decision in Surendra Nath Bose v. State of West Bengal Civil Rule No. 1293 of 1953 D/- 22-2-1954 (Cal) (A) has expressed the same view as to the scope and implication of Section 35 of the Act as I have expressed here. It is further to be noted that the license for which the application was made by the petitioner and respondent No. 3 was an "Off License" but Section 30 of the Act deals with the license which is known as ''On License''.

9. The next point that has been argued by Dr. Gupta is that the order made by

the Minister of Excise directing settlement of the license in favour of respondent No. 3 is without jurisdiction, inasmuch as it is the Collector alone, who has the power to grant license under the Act and the rules, and the Hon''ble Minister of Excise has no such power of direct settlement. Reliance is placed upon a decision of the Supreme Court reported in The State of Assam Vs. Keeshab Prasad Singh and Another, in support of this argument. A perusal of this case makes it clear that that case is distinguishable from the facts of the present case. In that case a right of fishery was put up to auction according to the rules framed u/s 155 of the Assam Land and Revenue Regulation (Regulation I of 1886) by the Deputy Commissioner and the latter forwarded the particular license to the Government with a recommendation that the respondent No. 1, who was the highest bidder should be granted the settlement of the fishery. The Assam Government granted its sanction and settled the fishery in favour of respondent No. 1. The Deputy Commissioner communicated the sanction and the decision of the Government to respondent No. 1. Thereafter two more petitions were received by the Government asking for settlement of the same fishery in favour of these two petitioners. The Government recalled the earlier order and granted settlement of the fishery rights to these two applicants. In the circumstances it was held that the Government had no right to make direct settlement of the fishery by executive action. The whole matter of settlement of fishery was governed by statutory regulations and rules alter the passing of the Assam Land and Revenue Regulation. According to the regulations and rules the settlement was to be done by the Deputy Commissioner and the Government was only vested with the power of granting sanction to the settlement made by the Deputy Commissioner. So, it was held that the earlier settlement was valid and binding one and the cancellation of the earlier settlement and the act of re-settlement was invalid and illegal. It is to be noted that under the Bengal Excise Act Section 8(3) the Government has a very wide power of revision of orders made by the Collector, the Excise Commissioner and the Commissioner of the Division. In exercise of those powers of revision the Minister of Excise has revised the order of the Collector and the Commissioner, and has held upon review of the comparative merits and demerits of the petitioner and the respondent No. 3 that the respondent No. 3 is the suitable person to whom the license in respect of the liquor shop should he granted. Pursuant to this direction of the Hon''ble Minister the Collector has issued the license in the prescribed form in favour of respondent No. 3. I, therefore, fail to see how can the grant of tho license in favour of respondent No. 3 be considered as illegal or as an act done in excess of jurisdiction as conferred by the Bengal Excise Act and the rules made thereunder.

10. The last point that has been argued by Dr. Gupta is that the Hon''ble Minister of Excise had no jurisdiction to entertain the first revision petition, which was filed before him by the respondent No. 3, as the respondent No, 3 had not preferred an appeal to the Excise Commissioner from the order of the Collector in the first instance, within the period of limitation prescribed by rule 5 of the rules, made under the provisions of the Bengal Excise Act. Accordingly the order of the

Hon''ble Minister of Excise directing the petition to be treated as an appeal and to be disposed of on that footing by the Excise Commissioner, and all subsequent proceedings, were illegal and without jurisdiction. It is submitted by Dr. Gupta that the provisions of Section 8(3) should be construed as having been made subject to the provisions of Sub-section (2) of Section 8 and according to Dr. Gupta the remedy by way of revision cannot be resorted unless and until the remedy by way of appeal is availed of and exhausted, in cases where an appeal is allowed. Unless the remedy by way of appeal is, in the first instance, availed of, according to Dr. Gupta, the petition for revision does not lie. It may be pointed out, however, that Section 8(3) of the Act empowers the Government to revise any order whether original or appellate passed by the Collector, the Excise Commissioner or the Commissioner of a Division and also orders of appellate authority as provided by the rules framed u/s 85(c) of the Act. It is only the Provincial Government who is entrusted with this power of revision in respect of the orders of the different officers mentioned in that sub-section. No other authority has got any power of revision under the Act except perhaps the power conferred u/s 35 on the Excise Commissioner, if such power can be described as a power of revision. The Sub-section (2) of Section 8 previous that appeals will lie only in respect of such orders and to such authority as may be prescribed by rules made u/s 85(c) of the Act. There is no specific provision enacted in the body of the Act itself, as is there in the case of power of revision, specifying the orders in respect of which appeals may lie or the authorities to whom appeals may be preferred. These matters are left to the rule making authority who can frame rules in respect of such matters. Section 85(c) empowers the Government to make rules for (a) declaring in what cases or classes of cases, and to what authority appeal shall lie from orders whether original or appellate passed under the Act or under any rule nude thereunder, and (b) for prescribing the time and manner fur presenting and the procedure for dealing with such appeals. Pursuant to this rule-marking power rules 2, 3, 4 and 5 of the Excise rules have been framed. These rules make provisions for filing appeals from orders of officers subordinate to the Collector and from the orders of Collector or other officers to the Excise Commissioner and from the orders of the Excise Commissioner to the Board of Revenue. Rule 6 prescribes the period of one month as the period of limitation within which a memorandum of appeal has to be presented and rule 6 lays down a rule of procedure. There is no restriction or limitation imposed on the very wide power of revision which is conferred u/s 8(3) of the Act on the Government. If the intention of the framers of Section 8 of the Act had been to exclude the power of revision in cases where an appeal lies, express words to that effect would have found place in that section. The attention of the court has been drawn to Section 33(a) of the Indian Income Tax Act, Section 37 of the Bengal Agricultural Income Tax Act and similar provisions of other enactments for the purpose of showing that where the legislature has thought fit to impose any restriction or limitation on the power of revision granted under the provisions of a particular statute it has limited or restricted the power of revision by express provision to that effect. It may be noted in this connection that in construing

Sections 51 and 53 of the Bengal Public Demands Recovery Act this Court has in an unreported decision Hazi Siddique Vs. Certificate Officer, Burdwan and Others, expressed the view that the power of revision granted u/s 53 of the Act could not be availed of unless the remedy of appeal as provided in Section 51 of the said Act had been first availed of or exhausted. But it may be pointed out that there the provision for appeal and the provision for revision found places in the body of the Act itself and it was only in respect of certain orders that appeals had been provided and it was only to certain specified authorities to whom the appeals could be preferred. The power of revision which is embodied in Section 53 is conferred on the very same authority before whom appeals could be preferred except the Board of Revenue which does not figure as an appellate authority. In those circumstances as the revising authority and the appellate authority except the Board of Revenue were identical, under the provisions of the Bengal Public Demands Recovery Act, and the remedy of appeal and the remedy of revision were available in respect of the orders of similar nature, this Court in order to reconcile the two provisions, construed the section for revision as a residuary section which could be only availed of after the remedy of appeal provided by Section 51 had been exhausted. It may be noted that so far as the Bengal Excise Act is concerned the power of revision is conferred only on the Provincial Government and the ambit of its power embraces within its scope any order that may be made by the Collector, Excise Commissioner or the Commissioner of a Division or any appellate authority. In this view of the matter it appears to me that the power of revision is an over-riding power and it is open to a person aggrieved by any order either to appeal from the order by which he is aggrieved or to present a petition for revision straightway to the Provincial Government for the purpose of obtaining the relief which he asks for. It may be, that the Provincial Government in exercise of its discretion u/s 8(3) of the Act may refuse to entertain petition in revision in cases where it thinks that an appeal is the more suitable or more appropriate remedy available to the petitioner or it may refuse to entertain such petition for revision in other cases where it may decide that the petitioner should not be allowed to have direct access to the Provincial Government, without exhausting his remedy by way of appeal. In the case before me it was therefore, quite within the power of the Hon''ble Minister of Excise to entertain the first petition for revision which had been presented before him by the respondent No. 3 and it was quite open to him also to make the direction that he gave in exercise of his power of revision for treating the petition as a memorandum of appeal and disposing of the petition in exercise of the appellate power of the Exercise Commissioner. It is to be noted that an appeal was already pending before the Excise Commissioner in respect of the matter of this very license in respect of the liquor shop at Siliguri, and accordingly the Minister thought that it would be proper and convenient that the two matters should be disposed of by the same authority in order that there might not be conflicting decisions with regard to the same subject. Dr. Gupta has not suggested in course of his argument, although there is suggestion to this effect in the petition, that the order of the Hon''ble Minister was actuated by any improper motive. In the absence of any mala fides on the part of the Hon''ble Minister or the other authority concerned I do not see how this court can interfere with the order of the Excise Minister, which was made directing the grant of license in favour of respondent No. 3.

11. The various points which have been raised challenging the jurisdiction of the Hon''ble Minister to make the order complained of must fail.

12. In the result, this petition must be dismissed. The Rule is accordingly discharged.

13. I make no order as to costs.

