

(2015) 06 KAR CK 0223
In the Karnataka High Court
Case No : Writ Appeal No. 4308 of 2013

State of Karnataka and Others

APPELLANT

Vs

C. Mohankumar Gowda

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Karnataka Excise Act, 1965 — Section 21(1)

Citation : (2015) 4 KarLJ 287

Hon'ble Judges : Mohan M. Shantana Goudar, J;Aravind Kumar, J

Bench : Division Bench

Advocate : S.V. Girikumar, for the Appellant; B.N. Shetty, Advocates for the Respondent

Judgement

Mohan M. Shantana Goudar, J.

1. The order dated 31.1.2013 passed in W.P. No. 6212/2012(Excise) is called in this intra-Court appeal.

2. The respondent herein was granted CL-2 licence for vending liquor in premises No. 315, Nala Road, Martalli Village, Kollegal Taluk, Chamarajanagar District prior to 1992. Because of the Law and Order problem created by the forest brigand Veerappan in and around certain area of Kollegal Taluk, a Notification came to be issued by the State Government on 23.5.1992, directing the closure of wine shops in 26 villages including Martalli Village wherein respondent was running his wine shop by securing CL-2 licence, in exercise of powers conferred under Section 21(1) of the Karnataka Excise Act, 1965. The Notification specifically stated that such closure would be until further orders. It is not in dispute that the said Notification was not withdrawn till at least 2009.

3. However, it is brought to the notice of the Court by both the sides that after the death of Veerappan, the State Government started renewing the old licences in 26 villages from 2008 onwards. Respondent also gave representations on 24.7.2008 and 29.1.2009 requesting the State Excise Department to renew his

licence and permit him to carry on his business. The Department after considering the representations, gave an endorsement as per Annexure-A, dated 21.1.2009 (produced along with writ petition) directing the respondent to pay 50% of the licence fee for the stopped period from 1992-93 to 1998-99 and thereafter 100% of the license fee for the purpose of renewal for the period from 1.7.1999 to 2008-09. Under protest, the respondent paid the said amount. However, the endorsement at Annexure-A, dated 21.1.2009 came to be questioned by the respondent in W.P. No. 6212/2012 (Excise) which came to be allowed by the impugned order dated 31.1.2013, consequent upon which, the endorsement at Annexure-A, dated 21.1.2009 came to be quashed and the amount deposited by the respondent herein is ordered to be refunded.

4. Learned Government Advocate taking us through the material on record submits that mandate of law found in Rule 5A(3) of the Karnataka Excise(Indian and Foreign Liquor Sales) Rules, 1968 ("Rules" for short) is that the respondent should pay 50% of the fee prescribed under Rule 8 of the Rules in respect of the entire period for which licence was not granted, for the purpose of maintaining continuity of the license. He relies upon the judgment of the Apex Court in the case of H.G. Umapathi v. State of Karnataka and Another in Special Leave to Appeal (Civil) No. 27655/2009, disposed of on 21.3.2013 to contend that the respondent will have to comply with the conditions laid down in the said Rule relating to payment of 50% of the licence fee in respect of the entire period for which the licence was not granted.

5. It is not in dispute that the respondent was CL-2 license holder. He was running the business from 1992 i.e., till the Notification, dated 23.5.1992 came to be issued by the State Government directing to close down all the wine/liquor shops in 26 villages enlisted in the said Notification. Since the respondent was running business at Marthalli Village he had to close down his business forcibly in view of the said Notification. No option was left to him for shifting his business to some other villages. Therefore, he had closed down his business by virtue of the Notification dated 25.3.1992. As aforementioned, the said Notification would be in operation until further orders. Admittedly, no further Government Notification is issued withdrawing earlier Notification dated 25.3.1992 permitting the respondent and others to run the wine shops. Hence, the respondent and similarly placed persons could not and did not carry on the liquor business from 1992 onwards in obedience to the Government Notification, dated 25.3.1992. Hence, it can safely be concluded that there were no laches on the part of the respondent. He had closed down his shop because of compulsion as mentioned supra. Therefore, there was no justification for the State to insist upon the respondent to deposit 50% of the fee for particular period and 100% for a remaining period for renewal of CL-2 licence. Had there been no bar for the licence holder to continue business even after 1992, then the State Government would have been justified in demanding the License Fee prescribed under Rule 8 r/w. Rule 5A(3) of the Rules. Since the respondent cannot be said to be at fault and as he had to close down his business because of the mandate issued by the

State Government, it was not open for the State to demand the license fee prescribed under Rule 8 r/w. Rule 5A(3) of the Rules at the time of renewing the licence.

In view of the same, the learned Single Judge is justified in quashing the order dated 21.1.2009 at Annexure-A, to the writ petition, and directing the respondent to pay only certain sums of money for getting the licence renewed.

Hence, no interference is called for. Accordingly, appeal fails and same stands dismissed.