(1973) 03 MP CK 0001

In the Madhya Pradesh High Court

Case No : M.A. No. 24 of 1973

State of Madhya Pradesh APPELLANT

Vs

Gangacharan RESPONDENT

Date of Decision : 14-03-1973

Acts Referred:

Constitution of India, 1950 — Article 299
Madhya Pradesh Excise Act, 1915 — Section 68

Citation : (1976) ILR (MP) 355 : (1974) JLJ 446 : (1974) MPLJ 533

Hon'ble Judges : Shiv Dayal Shrivastava, J

Bench : Single Bench

Advocate : J.P. Bajpai, for the Appellant; S.K. Seth, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Dayal, J.

This appeal arises from an order passed by the trial Court rejecting the plaint on the ground that it is barred by time prescribed by section 68 of the Madhya Pradesh Excise Act (hereinafter called the Act). On appeal, the learned Additional District Judge reversed that finding and held that the suit was outside the purview of section 68 of the Excise Act. He, therefore, ordered remand to the trial Court for proceeding further with the trial on merits. The learned Additional District Judge came to the conclusion that the suit is based on a contract between the parties and it is not in respect of any act done in pursuance of the Act.

Briefly stated, the plaintiff''s suit is that the State Government through its representatives and employees acting for and on behalf of it held public auction sale for liquor shops in Mandla district in the month of January, 1967, for the year 1967-68, which was to commence from April 1, 1967 and to end on March 31, 1968. At the time of, and before the auction of the excise contract the auction authorities as well as the excise authorities representing and acting on behalf of the Government had given out, represented and assured to intending bidders including the plaintiff that the purchaser would be supplied liquor from respective ware-houses in any quantity that would be desired by them and that no limit for maximum supply was prescribed. They assured that the State would supply liquor upto any quantity that the contractor might require. Relying on and induced by their representations and assurances the plaintiff purchased the right to sell liquor in the above auction. In the terms and conditions of the auction under which the shops were auctioned, the defendant through its representatives and employees was to supply country liquor at prices mentioned in the licence, as and when required by the plaintiff, for the said shop. In the above terms and conditions the defendant promised and undertook to give regular and adequate supply of liquor to the plaintiff so that he might fulfil the demands of his customers and earn reasonable profits from them. On this promise and undertaking the plaintiff purchased the above right to sell liquor.

It is further averred in the plaint that the defendant made regular supply for some period but after that, supplies became irregular, insufficient and unsatisfactory during the remaining period. The case of the plaintiff, therefore, as laid in paragragh 7 of the plaint is that the defendant committed breach of the promise and undertaking referred to above and that the defendant had further pursuaded the contractor to continue the contract by announcing certain immediate relief of interim nature. The extracts of the circular are reproduced in that paragraph. The plaintiff has, therefore, claimed compensation for breach of the contract.

It is urged by the learned Deputy Advocate General that section 68 applies where an act is done in pursuance of the Excise Act and emphasizes that the expression "in pursuance of" is of wider import than the words "under the Act". On that basis he distinguished the following cases which were relied on by the learned Additional District Judge : AIR 1930 179 (Nagpur) District Council, Wardha, through Dr. H. M. Hassan v. Anna Daulatrao Kunbi 1941 N L J 371 : A I R 1941 Nag. 273, Bansidhar Kallulal (Firm) v. M. C. Jubbulpore 1945 N L J S N 205 and Bhaiyalal Pannalal v. Municipal Committee, Murwara 1958 M P L J 251. It is urged that the Excise Act not only contemplates issuance of licence but prohibits sale of liquor by any person except one who holds a licence from the Government The contention, therefore, is that since the Act empowers licence to be granted and the licence was in fact issued to the plaintiff, his suit is in respect of something done in pursuance of the Act. That being so, as the suit was not instituted within six months from the date of non-supply of liquor, the suit is barred by time.

Section 68 of the M. P. Excise Act runs thus:

No suit shall lie against the Government or against any Excise. Police or Land Revenue Officer in respect of anything done, or alleged to have been done, in pursuance of this Act, unless the suit is instituted within six months from the date of the act complained of.

From the above narration it is abundantly clear that the suit is based on a contract. It is wholly irrelevant for the purpose of this appeal that the avernment in the plaint may not constitute an enforceable contract or that it may be bad for non-compliance with the provisions of Article 299 of the Constitution or for any other reason, or otherwise the plaintiff may not be entitled to any relief on the basis of the undertaking or assurance averred in the plaint. What is to be seen for the applicability of section 68 of the Excise Act is whether the plaintiff''s suit, as it has been actually laid by him, is in respect of anything done or alleged to have been done in pursuance of the Excise Act.

In Nanhibai Tarachand Jaiswal v. Excise Commissioner, State of M.P. 1963 M P L J 526, it has held inter alia that on the acceptance of a bid, a contract for the demise of the Government''s interest is brought into existence followed by the grant of a licence to the person whose bid is accepted.

I am clearly of the view that the suit is based on an alleged contract and not on anything done in pursuance of the Act. In order that an act may be called to be done in pursuance of an Act, it must be the direct result of some duty cast upon the State; but if it is the direct result of a contract although the State is empowered to enter into it, then the act is not within the section. This view is fortified apart from the decisions relied by the learned Judge of the first appellate Court by a Full Bench decision of Bombay High Court in Municipal Borough of Ahmedabad Vs. Jayantilal Chhotalal Patel, .

It was urged for the State that an act includes omission but that has been now firmly established by the pronouncements of the Supreme Court that every omision is not illegal omission within the meaning of the General Clauses Act, as Mr. Justice Hegde said :

The omission in question must have a positive content in it. In other words, the non-discharge of that duty must amount to an illegality.

Per Amalgamated Electricity Co. (Belgaum) Ltd. Vs. Municipal Committee, Ajmer, and Public Prosecutor, Madras Vs. R. Raju and Another, etc., . I, therefore, agree with the learned Additional District Judge in the conclusion reached by him and reject the first contention.

It was then contended that the order rejecting the plaint can be supported on another ground, namely, that it does not disclose any cause of action. It is clear law that absence of cause of action is different from the plaint not disclosing cause of action. Distinction must be drawn between a case where plaint itself does not disclose any cause of action and another in which after considering the entire material on record the Court comes to the conclusion that there was no cause of action. The plaint cannot be rejected in the latter case. This view was also taken in Jagannath Prasad and Others Vs. Smt. Chandrawati and Another, Judged by this test I find that the plaint discloses a cause of action. Whether the plaintiff''s suit is maintainable or not is one thing. Whether his suit will be decreed or not will be yet another thing. But according to the plaint averments there was an agreement and breach of it. The second contention must also be rejected.

The appeal is dismissed. In the circumstances of the case I direct that the parties shall bear their own costs in this Court.

