**(2018) 02 KAR CK 0011**

**In the Karnataka High Court**

**Case No :** 36958 of 2017(EXCISE)

Sunil APPELLANT

Vs

The State of Karnataka RESPONDENT

**Date of Decision :** 05-02-2018

**Acts Referred:**

**Citation :** (2018) 02 KAR CK 0011

**Hon'ble Judges :** Vineet Kothari

**Bench :** Single Bench

**Advocate :** G.K. Bhat, Niloufer Akbar

**Final Decision :** Disposed off

## Judgement

1. The prayer made in the present writ petition is as under :

a) Issue a writ of certiorari or any other appropriate writ, direction or order, quashing the letter dated 22-6-2012 in No.

ECE/01/Belgaum/MSIL/2009 issued by the 2nd respondent to the 1st respondent as per Annexure-A.

b) Issue a writ of mandamus or any other writ, order of direction, directing the 5th respondent not to shift the location of the License in Form CL

11 C from its present location in Kanakanawadi village to Chincholi village in Raibagh Taluk, Belgaum District.

c) Issue any other appropriate order or direction deem fit to be granted including direction for costs, in the interest of justice and equity.

2. The matter is covered by the decision of this Court in W.P.Nos. 40079-40080/2017 decided on 1st September, 2017, with regard to issuance

of licence to Government Company - MSIL. The Court after hearing the Counsels held the following in the said judgment.

 

7. A bare perusal of the said provision indicates that the said provision with a nonobstante clause has an overriding effect and will operate

notwithstanding Rule 12 of the said Rules, 1968. Even though, no such order under Rule 12 fixing the limit, as the number of licences passed by the

Commissioner of Excise is placed on the record of the Court fixing any limit of the excise licence for the said H.D.Pura village but that also is of no

consequence. Even if such an order was to be there, because 11C licence given to the Government Undertaking MSIL would have the preference

and would operate notwithstanding such limit of Rule 12 of the 1968 Rules.

8. The said Government Company MSIL appears to have been granted additional 900 licences in the recent past and to procure business,

naturally, all such 900 licences have to be allotted suitable places to carry on their business. The State Government has carved out a special

provision under Rule 11C for the said Government Company overriding the usual provisions of prescribing limit of excise licences envisaged under

Rule 12 of the said Rules. There is no challenge laid to this provision of Rule 11C before this Court. It is already said to have been upheld by this

Court in B.Martin & Others vs. State of Karnataka & Others [2011(3) Kar.L.J.16]. The relevant portion of the said judgment is quoted below for

ready reference:-

6. In view of the above legal position and also, since it is settled in various other cases that sale of liquor is neither a fundamental right nor a

question of arbitrariness which can be questioned, and also when the State intends to promote business through organized sectors namely, the

companies owned by the State, the granting of licences to the MSIL cannot be held to be arbitrary and the rule enabling grant of some more

licences in the interest of public health or general order and thereby, grant of some more CL-2 licences through MSIL, cannot be held to be bad.

9. It is stated that one of the purpose of regulation is to raise revenue to the State by granting licences to the State owned companies and while

exercising monopoly or privilege, the State felt it proper to give more number of licences to the State owned company to regulate business in

liquor. Although a policy was brought in during 2003 to restrict issuance of CL-2 and CL-9 licences, however, it shall not bar the issuance of

licences in favour of the State owned companies and the business carried on by the State is to earn revenue for the State as limited revenue would

be generated in case of private CL-2 or CL-9 licence holders since the margin profit is fixed. For the purpose of generating revenue, when the

State has taken a decision to give more number of Cl-2 licences to the State owned companies, that cannot be said either discriminatory or

arbitrary and no quota could be fixed for issuance of licences to the Government owned companies by the Commissioner of Excise and it applies

only to private individuals.

9. In view of the aforesaid, this Court is of the clear opinion that the present impugned order passed by the Respondent- Commissioner of Excise

cannot be successfully assailed by the petitioners and therefore, the present writ petitions are devoid of merit and are liable to be dismissed and the

same are accordingly dismissed. No costs.

Therefore, the present writ petition is also disposed of in the same terms. No costs.