

(1972) 08 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : C.W.P. No"s. 67 and 68 of 1972

Swaran Singh and Another	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 07-08-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Excise Act, 1914 — Section 34, 35, 43
Punjab Liquor Licence Rules, 1956 — Rule 10, 12

Citation : (1972) 1 ILR HP 238

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : Chhabil Dass, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—The Petitioners, in this and the connected writ petition, challenged the validity of the orders made by the Deputy Excise and Taxation Commissioner, Simla refusing to renew their liquor licenses, and pray for relief under Article 226 of the Constitution.

2. The Petitioners are brothers carrying on the business of liquor vendors in the name and style of M/s Gulati Brothers. They were granted two licenses, one in Form L-17 for the vend of denatured spirit and the other in Form L-19 for the vend of rectified spirit. Both licenses related to the Simla Zone, which includes the Districts of Mahasu, Kinnaur and Sirmur. The licenses under which they were carrying on their business were granted for the year 1971-72 and were due to expire on March 31, 1972, but before that date the Petitioners deposited the prescribed fee of Rs. 500 for renewal of each license on March 20, 1972 in the Government treasury and on March 22, 1972 made a formal application accompanied by the relevant challan for renewal of the licenses for the year 1972-73. According to the Petitioners, no express order renewing the licenses

was required, and inasmuch as the license fee had been deposited and the partners and the premises continued the same, it must be deemed that the licenses had been renewed. It is pointed out that no order was passed upto March 31, 1972, refusing renewal. The licenses were not determined by surrender, cancellation or other causes. The Petitioners say that they were allowed to continue their business and to retain and sell the stocks with them even after April 1, 1972. In fact, in the case of denatured spirit, on April 3, 1972 they were allowed to draw 4,750 bulk litres of that spirit for the year 1972-73 and to sell the stock. The Petitioners further say that without any notice to show cause they were served with an order dated June 9, 1972 which referred to the applications made on March 22, 1972 for renewal and pointed out that as the partners of M/s Gulati Brothers were the sons of Shri Ajit Singh who held a license in Form L-14 for the retail vend of country spirit at Tutu in Simla district for the year 1972-73 and in view of the recent untoward happenings in Sirmur district, where a number of persons died of taking defective liquor, it is against the public policy to allow such licenses in the name of any person having association with the country liquor licenses, and having regard to the close relationship between the partners of Messrs Gulati Brothers and Shri Ajit Singh it would not be free from danger of being misused if this licence is allowed to be continued in their names any longer. Accordingly, renewal of the licenses for the years 1972-73 was refused, and the Petitioners were directed to surrender the unsold stock of spirit in their possession. The orders refusing renewal have been impugned by these writ petitions.

3. It is contended by learned Counsel for the Petitioners that the licenses must be taken in law to have been automatically renewed for the year 1972-73 and the impugned orders amount to cancellation of the licenses, and inasmuch as the cancellation was effected without notice to the Petitioners, the impugned orders are invalid. Reliance is placed upon Rules 10 and 12 of the Punjab Liquor License Rules, 1956. They provide:

Rule 10.--A license is said to be renewed when it is continued after the period of its expiry to the same licensees in respect of the same premises; and whenever a license has determined by reason of surrender, cancellation or order of non-renewal or other causes, or where it is proposed to issue a license in respect of premises or persons not previously licensed, a new license is required: provided -

(a) a new license is not required on account of the addition of or removal of a partner on the application of all the partners of the change of a representative of a company or society;

(b) a license continued to the legal representative of a deceased licensee for the remaining period of the licence shall not be deemed to be a new license;

(c) if the premises of a license are changed during the period of its currency, the authority competent to grant the license may direct that the license may be continued for the remaining period of the term on the existing fee;

(d) a license may be transferred by the authority competent to grant it for the remainder of its currency to a new licensee.

Rule 12.--No person to whom a license has been granted shall be entitled to claim any renewal thereof and no claim shall lie for damages or otherwise in consequence of any refusal to renew a license on the expiry of the period for which it remains in force.

Section 34 of the Punjab Excise Act, 1914 provides for the grant of a license on payment of such fees, subject to such restrictions and on such conditions, in such form and containing such particulars, and for such period as the Financial Commissioner may direct. Section 35 empowers the Collector to grant licenses for the sale of any intoxicant within his discretion, subject to rules made by the Financial Commissioner. Section 43 declares:

43. No claim in consequence of refusal to renew a license etc.-- No person to whom a license may have been granted shall be entitled to claim any renewal thereof and no claim shall lie for damage or otherwise in consequence of any refusal to renew a license on the expiry of the period for which it remains in force.

4. The Punjab Liquor License Rules, 1956 provide for the grant and renewal of a license. A license is granted to a licensee in respect of certain premises. The licensee may be an individual, a company, a registered society or a partnership firm. In the case of an unregistered partnership or a firm, all the individuals comprising the partnership of the firm must be mentioned in the license. There is provision for adding a person to or removing one from the license. As regards the renewal of a license, Rule 10 declares that it is said to be renewed when it is continued after the period of its expiry to the same licensee in respect of the same premises. What is indicated here is that renewal can be only in continuation of the period of expiry of an existing license and in favour of the same licensee and respecting the same premises. When these conditions are satisfied, a license is said to be renewed. For the Petitioners it is urged that because Rule 10 declares that a license is said to be renewed when it is continued after the period of its expiry to the same licensees in respect of the same premises, that amounts to a declaration of automatic renewal. I am referred to Webster's Third New International Dictionary where "said" has been defined in one sense as "assume". That is only one of the meanings set out by Webster and it is beyond dispute that if the context, as here, does not permit that dictionary meaning it should not be adopted. There is nothing in the context which permits the conclusion that Rule 10 provides for automatic renewal. On the contrary Section 43, which has been imported in almost identical language in Rule 12, specifically lays down that no person to whom a license has been granted shall be entitled to claim any renewal thereof. In other words, there is no right to the renewal of a license. Where there is no right of renewal, it is not possible to envisage an automatic renewal of a license. The renewal of a license is intended to be a conscious deliberate act. There must be an express order of renewal by a competent authority. It appears from the rules that a licensee must

indicate that he desires the renewal of his license. Rule 12 requires that all such licenses requiring any renewal must be placed by the Excise Inspector before the Collector by the 7th January each year, and that no order for renewal or non-renewal should be made after the 20th January for the following financial year. A specific order of renewal is contemplated. Accordingly, I am unable to accept the contention by learned Counsel for the Petitioners that the licenses must be considered to have been automatically renewed. The fact that the Petitioners continued for sometime to carry on the business even after March 31, 1972, and that they were allowed to draw a further stock of denatured spirit does not strengthen their case. In the circumstances, the first contention must fail.

5. The second contention is that there was no common business interest between the father and the sons and, therefore, the refusal of the renewal is arbitrary. In the impugned orders, reference has been made to the death of a number of persons in Sirmur district on account of the consumption of defective liquor, and to the circumstance that the father of the Petitioners is a holder of a license in Form L-14. The license in Form L-14 is a license for retail vend of country spirit for consumption on and off the premises. Apparently, the Deputy Excise and Taxation Commissioner, who made the impugned orders, has taken the view that the renewal of the licenses in Form L-17 and L-19 could be misused inasmuch as the denatured and rectified spirit obtained thereunder could be made available to the father. The refusal, as the impugned orders clearly recite, has been founded on public policy. Whether or not a liquor license should be granted or renewed lies in the discretion of the licensing authority. That a licensee has no right to the renewal of his license, as I have pointed out already, has been specifically laid down by the Act and the rules. There is nothing to suggest that the discretion in these cases has been exercised in breach of the statute or arbitrarily. The second contention must also be rejected.

No other contention has been raised before me.

The petitions fail and are dismissed with costs.