(1996) 02 KAR CK 0048

In the Karnataka High Court

Case No : Writ Petition Nos. 34280 and 34281 of 1992 (GM)

T. Sudhakar and Another — APPELLANT

Vs

State of Karnataka and Another — RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(G), 298
Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules, 1969 — Rule 4A(3)

Citation : (1997) 4 KarLJ 432

Hon'ble Judges : G. C. Bharuka, J

Judgement

1. In these writ petitions, the petitioners have challenged the constitutional validity of Rule 4-A of the Karnataka Excise (Lease of Right of Retail Vend of Liquor) Rules, 1969 (in short ''the rules'') as amended by Notification No. GSR 31, dated 7-2-1992 whereby Registration fee contemplated therein has been raised from Rs. 1,000/- to 25,000/-.

2. The rules prescribed for the mode and manner of sale of privilege and the right of retail vend of liquors for a given excise year being a period of 12 months commencing from 1st day of July. Under Rule 3, the said right of retail vend can be disposed of by tender or auction or in any other appropriate manner as the State Government may by order specify.

3. Subsequent to determination of mode of sale of privilege under Rule 3, under Rule 4, the Excise Commissioner is required to issue a notification containing the prescribed particulars calling for tenders and in case of auctions, time, date and place at which the auction will be held.

4. Rules 7 and 11 of the rules inter alia provide that unless a person has obtained a registration certificate as provided under Rule 4-A of the rules, he will be disqualified from submitting a tender or participating in the auction held for disposal of right of retail vend of liquor. Rule 4-A which provides for filing of application for registration as excise contractor and its grant, under its sub-rule

(3) mandates payment of prescribed fee for grant of such registration. Till the issuance of the impugned notification dated under 7-2-1992 referred to above, the fee prescribed was Rs. 1,000/- only. But, the same was raised to Rs. 25,000/- by the impugned notification. Subsequently, by another Notification No. GSR 43, dated 25-2-1993 it has again been reduced to Rs. 1,000/-. Therefore, the enhanced fee of Registration being Rs. 25,000/- remained only for one excise year namely 1992-93.

5. According to the petitioners, though the said registration fee of Rs. 25,000/- was too exhorbitant and illegal, still since they had intended to participate in the auction held for the year 1992-93 they were forced to deposit the same as is evident from challans vide Annexures ''C'' and ''D'' because of paucity of time. But immediately thereafter, they had challenged the said enhancement by filing the present writ petitions. Though it has not been stated in the writ petition, Mr. Jagannath Shetty appearing for the petitioners states that despite participation, the petitioners could not succeed in the bid and as per the provisions contained in the rule, the said amount has become non-refundable.

6. Mr. Shetty has assailed the impugned enhancement in registration fee on the ground that the said fee is not being charged as consideration for parting with the exclusive privilege of vending liquor, by the Government, rather the said fee has been prescribed for grant of registration to a person who intends to acquire the said right. According to him, fixation of such fee imposed must bear some rational correlationship with the acts which the Government is required to perform pursuant to charging of such fee and in the present case, there being complete absence of any reasonable basis for the said enhancement, the same has to be held as arbitrary and therefore unauthorised in view of Article 14 of the Constitution of India.

7. The respondents have filed their statement of objections wherein they have tried to justify the fee as a part of consideration for parting with the privilege of dealing in liquor. According to them, if the Registered Contractor ultimately succeeds in the auction, then the fee so charged will form a negligible percentage of the total turnover of his business. It has also been stated that, before granting of registration, the Government has to make detailed enquiries with regard to solvency and even otherwise the eligibility of the applicant for obtaining such a registration which will ultimately entitle him to participate in the auction provided under the rules. Beyond this, no other facts or figures to justify the enhancement by 25 times has been put-forth.

8. It cannot be disputed that, there is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory powers has power to prohibit absolutely every form of activity in relation to intoxicants-its manufacture, its storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right

or privilege to others, the State cannot escape the rigours of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting exclusive right or privilege of manufacturing or selling the liquor. It would therefore be wrong to hold that Article 14 can have no application in cases where the licence to manufacture or sell liquor is being granted by the State Government. The State cannot ride roughshod over the requirement of that Article (See Har Shankar and Others v Deputy Excise and Taxation Commissioner and Others, AIR 1975 SC 1121, State of Madhya Pradesh and Others v Nandlal Jaiswal and Others, AIR 1987 SC 251 and Doongaji and Company v State of Madhya Pradesh and Others, AIR 1991 SC 1947).

9. From the scheme envisaged under the rules, it is quite clear that the registration fee is not charged for parting with privilege or right of retail vend of liquor. Therefore, in relation to prescription of said fee, the State cannot claim any absolute authority. The registration fee has been provided for grant of registration to an intending participant in the tender or auction so as to make him eligible for acquiring such right. Therefore, the determination of said fee has to be shown as based on some reasonable criteria. The charge being essentially in the nature of fee as is understood in the constitutional sense, it must fulfil the test of quid pro quoi.e. the respondents ought to have brought on record the relevant facts and figures to broadly justify the charging of such an exhorbitent amount with the actual expense incurred in this regard. But they have utterly failed in doing so. Therefore, in my opinion their action of enhancing of fee from Rs. 1,000/- to Rs. 25,000/- seems to be highly arbitrary. This action is further substantiated by their own subsequent act whereunder from the very next year, the said fee has been reduced to Rs. 1,000 which amply demonstrates that the expenses involved in the process of grant of registration cannot be higher than Rs. 1,000/-.

10. In the above view of the matter, the enhancement of registration fee to Rs. 25,000/- by the impugned notification dated 7-2-1992 is held as invalid and accordingly quashed to that extent. If the petitioners, as claimed by them, had deposited Rs. 25,000/- as fee for registration out of that Rs. 24,000/- should be refunded to them in accordance with law within one month from the date of communication of this order.

The writ petitions are accordingly allowed.

