

(1991) 09 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 11054 to 11056, 15318 and 15911 of 1986

T. Thimappa

APPELLANT

Vs

Excise Commissioner

RESPONDENT

Date of Decision : 04-09-1991

Acts Referred:

Easements Act, 1882 — Section 60

Karnataka Excise Licences (General Conditions) Rules, 1967 — Rule 17, 17A

Citation : (1991) ILR (Kar) 3710 : (1992) 1 KarLJ 360

Hon'ble Judges : Mohan, C.J.; Hanumanthappa, J

Bench : Division Bench

Advocate : A. Jagannatha Shetty, for the Appellant; P.P. Muthanna, General, for the Respondent

Final Decision : Dismissed

Judgement

Mohan, C.J.—All these three cases can be dealt with under a common order.

2. We will deal with the facts in Writ Petition No. 15911 of 1986:-

The question that arises for consideration is whether there could be a transfer of licence under Rule 17 of the Karnataka Excise Licence (General Condition) Rules, 1967 (hereinafter referred to as the Rules), mid way, not on account of the death of the original licensee but by volition.

3. On 2-5-1984 a Circular came to be issued by the Excise Commissioner concerning transfer of licences. Para-2 of the said Circular reads:-

"2. Transfer of license:- Transfer of licence, like the transfer of property is an important aspect of fundamental right to property cannot be dispensed with. However, if a transfer of licence is proposed in the midst of the licensing year a nominal fee of Rs. 500/- per transfer of licence is to be charged as it involves certain amount of work to the department."

The petitioner got his CL.2 licence transferred in the name of Srimannarayana by

paying Rs. 500/- in accordance with the above Circular. However, the said Circular came to be withdrawn by another Circular dated 24-10-1984 as per Annexure-C which reads as follows:-

"CIRCULAR

On re-examining the instruction contained in this office circular bearing No. EXE. 48/82-83 dated 2-5-1984 with regard to transfer of licences it is found that the persons holding licences who are intended to transfer are enjoying a premium with its all undesirable consequences. Hence, the instructions contained in this office circular No. EXE.SO.48/82-83 dated 2-5-1984 with regard to transfer of licences are hereby withdrawn. In future Deputy Commissioners are hereby requested not to effect transfer of licences issued under Karnataka Excise Act, 1965.

Sd/- for Excise Commissioner."

Ultimately the position was corrected by the Excise Commissioner in his letter, Annexure-D, in the following manner: -

"No. EXE.SO.28/78-79 Office of the Excise Commissioner in Karnataka, Bangalore, Dated 15-4-1986 To

All the Deputy Commissioners (Excise), All Districts

Sir,

Sub: Transfer of licence issued under Karnataka, Excise (Sale or IML) Rule, 1968.

According to Rule 17A of the Karnataka Excise Licence (General Condition) Rule, 1967, only in the event of death of a licensee during the currency of the licence the Deputy Commissioner may on an application by the legal heirs of the deceased with the previous sanction of the Excise Commissioner, transfer the licence in their favour. Therefore Rule do not permit transfer of licence to any other individual during the currency of the licence. In circular No. EXE.SO.48/82-83 dated 2-5-1984. "The Excise Commissioner, issued instructions to consider applications for transfer of licensee on payment of an application fee of Rs. 500/-. However as these instructions were contrary to rules the same were withdrawn in Circular No. EXE.SO.48/82-83 dated 22-10-1984.

Meanwhile the Deputy Commissioner have transferred the licence to persons after collecting an application fee of Rs. 500/-in each case. Accountant General, has observed that the transfer is not permissible in rules, these have to be treated as fresh licenses and full licence fee has to be collected.

Hence you are requested to issue notice to licensees (Transferee) in respect of transfer of licence if there is short recovery of licence fee in view of the observation of the accountant general and to intimate the credit particulars to this Office.

Sd/- for Excise Commissioner."

Thereafter on 14/18-8-1986 a notice was issued to the petitioner as per Annexure-B, which reads as follows:-

"NOTICE

Sub: Transfer of Licence issued under Karnataka (Sale of I.M.L) Rules, 1968-Reg.

Ref: 1. Letter No. RA.III/A/85-86/415 dated 16-12-1985 of the Assistant Audit Officer, A.G.S. Office, Bangalore.

2. Letter No. EXE.SO.28/78-79 dated 3-7-1986 of the Excise Commissioner, Bangalore.

The Audit Party during the course of their Audit of this Office for the year 1982-85 have observed that the transfer of C.L.2 licence of Sri T. Thimmappa of Stall No. 1, Ward No. I, Cosmopolitan Club, Bellary, to his son Sriman Narayana, during the year 1984-85 is not correct and have directed to collect C.L.2 licence fee of Rs. 12,500/-.

The Excise Commissioner, Bangalore, vide reference No. 2 cited above has also directed to recover the said amount and to send the credit particulars.

In the above circumstances you are hereby directed to credit the C.L.2 licence fee of Rs. 12,500/- immediately and send the credit particulars to this office for taking further action.

Sd/- Superintendent of Excise, Bellary District."

It is this notice which is challenged in this Writ Petition.

4. The argument of the learned Counsel for the petitioner proceeds that where under the Rules a licence is issued for each year and the period for which the licence was issued or renewal sought for had come to an end, a demand on the basis that it is a new licence is incorrect in law,

Under the Rules there cannot be two licenses for one and the same shop.

The Circular dated 2-5-1984 would amount to equitable estoppel. Therefore the petitioner is entitled to succeed.

5. In refuting this submission, the learned Advocate General would submit that first and foremost it is incorrect to proceed on the basis that it is a licence. The law is well settled that no person can carry on trade in liquor without licence because it is obnoxious as laid down in Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, Where therefore the right is farmed out in order to regulate the same licenses are issued it cannot tantamount to a licence in the ordinary sense of the term.

Even otherwise, a licence is purely personal. It cannot be transferred at all. That is why Rule 17A of the Rules clearly lays down that only in the event of the death of a licensee the Deputy Commissioner may on an application by the L.Rs. of the

deceased with the previous sanction of the Excise Commissioner can transfer licence is favour of the L.Rs. If contrary to these Rules the Excise Commissioner had issued instructions on 2-5-1984 such an instructions ran counter to law. If that be so, it was unenforceable. The question of equitable estoppel does not arise. Further those instructions have come to be withdrawn on 24-10-1984.

Merely because the period of licence has come to an end that does not mean that it is open to the petitioner to say that the demand made is illegal. If really the transfer itself was bad in law, the carrying on of liquor trade will equally be bad in law and the petitioner would have been exposed himself to peril of prosecution. He cannot take advantage of sympathetic consideration and contend that he is not liable to pay anything more than Rs. 500/-.

6. On a careful consideration of the above, we are clearly of the view that the submissions of the learned Advocate General merit acceptance. Our reasons are as under:-

1. As was laid down in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, no person has fundamental right to trade in liquor, it is a privilege of the State which is farmed out in favour of the individual. In such an event no person can claim any right as such. However there are Statutory Rules which govern this obnoxious trade since they purport to regulate the trade. The object of the Rules is only that. Under Rule 17A it is stated thus:-

"17A. Transfer in the event of death:-

In the event of death of the licensee or the lessee during the currency of the licence or lease, the Deputy Commissioner may on an application by the legal heirs of the deceased with the previous sanction of the Excise Commissioner, transfer the licence or the lease as the case may be, in their favour."

The learned Counsel for the petitioner frankly concedes that barring these Rules, there are no other Rules which speak of transfer. It is also conceded that there is no scope for transfer by volition from one party to another. The entire case is based on the Circular dated 2-5-1984. We are clearly of the view that as rightly pointed in the order dated 15-4-1986 this Circular is contrary to law. In such a case it pauses our comprehension as to how the petitioner could base his case on equitable estoppel. Only when the authority has power to do something and if he makes a promise and if the petitioner acts on such promise the question of equitable estoppel would arise. Where contrary to the statutory provisions and where there is no scope for transfer by volition the transfer is sought to be effected by merely payment of Rs. 500/- based on the Circular, such a transfer is ab initio void. Even under the Easement Act by application of Section 52 of the said Act it clearly follows that a licence is purely personal and it cannot be transferred (except of course a case falling u/s 60 of the Easement Act). That is not the case here. Therefore, we reject the argument based on the principle of equitable estoppel. If this position is arrived at, the demand for Rs. 12,500/- treating this as la fresh licence is perfectly valid. The petitioner cannot raise any

objection to this. If his argument is logically pushed, it will mean that carrying on the trade after the transfer would be illegal and he would expose himself to the peril of prosecution. That is not the attitude of the Department. On the contrary, if a benefit is sought to be conferred by issuing a fresh licence, we are unable to see as to what valid objection could be raised. The Writ Petition is dismissed as devoid of merits. Counsel's fee Rs. 500/-.

7. In view of our Judgment in Writ Petition No. 15911/1986, Writ Petition Nos. 11054 to 11056 of 1986 and 15318 of 1986 are also dismissed.

The fact that the petitioner had carried on the trade for the remaining period of licence, however short it may be, will have to be regarded as a new licence. It is not open to him to say that the original licensee had paid the licence fee of Rs. 13,000/- and therefore he should not be mulked at to get another licence. This principle is deducible once it is understood the State is only farming out these privileges of selling liquor.