(2005) 07 AHC CK 0225

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 788 of 2005

Tufani Prasad and Others — APPELLANT

Vs

The State of U.P. and Others — RESPONDENT

Date of Decision : 26-07-2005

Acts Referred:

Uttar Pradesh Excise (Settlement of Licences Country for Retail Sale of Country Liquor) Rules, 2002 — Rule 14(6)

Citation : (2005) 4 AWC 3859

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Neeraj Sharma, for the Appellant; Mukesh Prasad and S.C., for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—By means of the present writ petition, the petitioners the challenged the order dated 31.3.2005 passed by the Collector, Azamgarh, revisional order dated 11.4.05 passed by the State of U.P. through its Principal Secretary, Excise Department and the order dated 26.4.2005 passed by the Additional Excise Commissioner (licensing).

2. The petitioners, eight in number, were granted licenses to vend the country liquor in respect of the shops namely Husainabad-Nizambad, Gola-Chowk, Saraihazi, Khatri-Tola, Ajamatpur Kodar, Hafizpur Crossing, Saraimeer and Ramapur respectively for the excise year 2002-03. The licenses of these eight shops were renewed for the excise year 2003-04 and 2004-05 in view of the policy framed by the State Government. The State of U.P. framed Excise Rules namely the U.P. Excise (Settlement of License for Retail Sale of Country Liquor) Rules, 2002. It has been stated in para 8 of the writ petition that the renewal fees for the renewal of license for the Excise Year 2005-06 has been deposited in time i.e. 17th of March, 2005 which was the last date fixed for submitting the renewal application.

3. The Licensing Authority/District Magistrate, Azamgarh passed an order dated 31st of March, 05 cancelling the renewal of the license for the Excise Year 2005-06 in View of the policy laid down by the Excise Commissioner by his instructions dated 10th of March, 2005. The ground for refusing to renew the license for the year 2005-06 is that the licensees have not lifted the minimum guarantee quota for the month of March 2005 in the Excise Year 2004-05. The Licensing Authority/District Magistrate while passing the order dated 31st of March, 2005 refusing to renew the licenses has given the direction that the balance amount towards price of unlifted minimum guarantee quota may be adjusted from the advance security amount of the licensees and these shops may be run on daily basis to safeguard the interest of Revenue.

4. This order was challenged by the petitioners by way of eight appeals before the Additional Excise Commissioner (Licensing and Industrial Development). The Additional Excise Commissioner by order dated 6th of April, 05 allowed these appeals and set aside the order dated 31st of March, 2005 cancelling the renewal of the license with the observation that if the licensees deposit the requisite license fee and basic fee, their licenses would be renewed for the year 2005-06. Further in respect of shops of Rampur and Gola Mehnagar Chowk, there remains a sum of Rs. 29,150/- and Rs. 1,15,263/- even after adjusting the advance security amount. The Additional Excise Commissioner directed that the Licensing Authority shall reconsider its decision in as much as no notice before refusal of renewal of license was given to these licensees as required under Rule 14(6) of the U.P. Excise (Settlement of License for Retail of the Country Liquor) Rules, 2002.

5. During the pendency of the appeal before the Additional Excise Commissioner it appears that an advertisement inviting application was issued by the department in respect of these shops and 7th of April, 2005 was the date fixed for the settlement proceeding. The respondent Nos. 5 to 12 and other persons expressed their desire to take the shops in the ensuing settlement proceeding which was fixed for 7th of April, 2005 but settlement proceeding could not take place as in the mean time the order of the Additional Commissioner (Excise), restoring the license in respect of six shops and reconsideration of refusal to renew the license in respect of two shops by the Licensing Authority, came into existence on 6.4.2005.

6. The respondent Nos. 5 to 12 (hereinafter referred to as private contesting respondents) could not move ahead for the settlement of these shops in their favour. They challenged the order passed by the Assistant Commissioner (Excise) by way of filing eight revisions before the State Government, on 11th of April, 2005. The State Government on the same day without setting aside the order of the Additional Excise Commissioner remanded the matter on the short ground that no notice of hearing was given to S/S Ranjeet Yadav, Udarej Yadav, Avtar Yadav. Kaval Dhari Yadav, Vinod Jaiswal, Nand Lal Jaiswal, Sushil Kumar Srivastava and Abhishek Jaiswal. A copy of the order of the State Government

has been annexed as Annexure - 5 to the writ petition. The State Government has passed the order on the basis that after refusal of the renewal of the license in favour of the petitioners the shops were settled in favour of these persons, who were appellants before the State Government and remanded the matter to the Additional Excise Commissioner to rehear and decide the matter afresh after affording an opportunity of hearing to the private contesting respondents.

7. The Additional Excise Commissioner in pursuance of the remand order passed by the State Government, without deciding the controversy has restored back the matter to the Licensing Authority by the order dated 26.5.2004. A copy of the said order has been filed as Annexure- 9 to the writ petition.

8. Challenging the aforesaid orders the present writ petition has been filed with the following prayer:-

1. issue a writ, order or direction in the nature of Certiorari quashing the impugned orders dated 31.3.2005 passed by respondent no.3, revisional order dated 11.4.2005 and review order dated 26.4.2005 passed by respondent no. 1 & 2 respectively (Annexure No. 3,5 & 9 to the writ petition).

2. issue a writ, order or direction in the nature of mandamus directing the respondent no. 1 to 4 to renew the respective country liquor shops of the petitioners for the excise year 2005-06 and permit the petitioners to run their shops forthwith.

3. issue, any other suitable writ, order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

4. award costs of the petition in favour of the petitioner.

9. Two sets of counter affidavits have been filed; one by the State Government and the another by the contesting private respondents. Suffice it to say that by means of these counter affidavits, the respondents have sought to support the order on the basis of certain facts which do not even form part of any of the impugned orders.

10. Heard the counsel for the parties. The learned counsel for the petitioners submitted that the State Government passed impugned order dated 11th of April, 2005, behind the back of the petitioners without affording any opportunity to them. In the revisions the contesting private respondents did not even implead the petitioners in the array of the parties and the revisions were decided on the same day, they were present without issuing any notice to the petitioners or calling a report from the department. The State Government has passed the impugned order in utter violation of the principles of natural justice. Therefore, the order of the State Government dated 11th of April, 2005 and the subsequent order of the Additional Excise Commissioner dated 26th of April, 2005 are liable to be quashed. In contra, the learned standing counsel submitted that since the State Government has remanded the matter back to the Additional Excise Commissioner, this Court should not interfere with the order of the State

Government, notwithstanding the fact that no opportunity of hearing was afforded to the petitioners. Shri Mukesh Prasad, the learned counsel for the private contesting respondents, submitted that the petition is liable to be dismissed on the ground that by a subsequent application dated 19th of March, 2005, the renewal application filed on 17th of March, 2005 stands withdrawn.

11. The learned counsel for the petitioners strenuously contended that the order of the State Government is void and is liable to be quashed in as much as the State Government allowed the appeals filed by the contesting respondents even without affording an opportunity of hearing to the petitioners. The State Government by the order dated 11th of April, 2005 has set aside the order dated 6th of April, 2005 which was passed in favour of the petitioners by the Additional Excise Commissioner. In para 23 of the writ petition a specific averment has been made that none of the petitioners were impleaded in the revisions filed before the State Government challenging the appellate order dated 6.4.2005. This averment has been replied in paragraphs 20 and 21 of the counter affidavit filed by the private contesting respondents and in para 16 of the counter affidavit filed by the State Government. A bare perusal of the counter affidavits of the State Government as well as of the private contesting respondents would show that there is no denial of the contents of para 23 of the writ petition. It is crystal clear that the petitioners were neither impleaded as respondents in the revision filed by the contesting respondents before the State Government nor any opportunity of hearing was afforded to the petitioners by the State Government. Strangely enough, the revisions itself were filed before the State Government on 11th of April, 2005. The State Government on the same day remanded the matter to the Assistant Excise Commissioner and impliedly set aside the order which was in favour of the petitioners. The State Government, to say the least, has passed the order in utter violation of principles of natural justice, for the reasons best known to it. Since the order dated 11th of April, 2005 has been passed in utter violation of principles of natural justice, the order of the State Government cannot be sustained. Shri Mukesh Prasad, advocate, who has appeared on behalf of the private contesting respondents was also a counsel before the State Government. Even Shri Mukesh Prasad, advocate, could not whisper that opportunity of any kind was afforded to the petitioners by the State Government.

12. By the impugned order the State Government has not decided the dispute on merits. Even without setting aside the order of the Additional Excise Commissioner the State Government allowed the revisions with the direction to the Additional Excise Commissioner to pass a fresh order after hearing the private contesting respondents. A bare perusal of the order of the State Government would show that the basis of the order is that the contesting respondents impressed upon the State Government that the licenses in their favour have been granted. The relevant sentence from the order of the State Government is reproduced :-

"...Apeelarthigan Ke Paksha Mein Dukan Ki Navinikaran Kiye Jane Ke Adesh Parit

Kiye Gaye Hain."

13. The actual state of affairs is otherwise. The standing counsel and Shri Mukesh Prasad, Advocate, both stated at the bar that till date no such order granting license has been passed in favour of the contesting private respondents.

14. The above observation has been crept in the order of the State Government for the obvious reason as the proceeding before it was exparte and the true and correct facts were not placed before it. The contesting respondents, as a matter of fact are guilty of misrepresenting the facts and obtaining an order by deceitful manner from the State Government, purposely not impleading the petitioners and by concealing the true and correct facts.

15. A dispute has been sought to be raised by the contesting respondents that the petitioners have failed to apply for the renewal of the license by the prescribed date i.e. 17th of March, 2005. This allegation has been seriously disputed by the petitioners in the rejoinder affidavit. The State Government in para 3 (ii) of the counter affidavit has stated that renewal application in the name of petitioners were received on 17th of March, 2005 by the office of the respondents with requisite bank draft. The contesting private respondents alongwith their counter affidavits have annexed a copy of joint application of the petitioners dated 19th March, 2005 alongwith the affidavits bated 19th March, 2005 wherein it has been stated that the District Excise Officer/Excise Inspector in an illegal manner after getting one per cent of the basic license fee deposited is trying to make persons of criminal background and belonging |?| to Mafia group as partners with the petitioners and therefore the license should be renewed in favour of the petitioners only. These facts have been noted by me as they were highlighted by Shri Mukesh Prasad, advocate for the private contesting respondents. He contended that the petitioners have subsequently withdrawn their applications for renewal, have no right to challenge the impugned order dated 31.3.2005. This is the sole plea raised by the contesting private respondents. Be that as it may since these facts are not the basis for passing of the order dated 31st of March, 05 by the Licensing Authority, in my view they cannot be taken into consideration in the writ petition in view of the judgment of the Supreme Court given in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

16. There is another aspect of the case. The excise policy of settlement of liquor shops for the excise year 2005-2006 is contained in the letter of - Excise Commissioner, dated 10.3.2005, annexure 2 to the writ petition. A fixed time schedule has been prescribed therein for the settlement of such shops. When the existing licensees do not apply for renewal by 17.3.2005 an advertisement would be published in the newspaper on 18.3.2005 inviting applications by 22.3.2005. 23.3.2005 was the date fixed for drawing public lottery. In this back ground I find that the department has not taken any cognizance of the subsequent application dated 19.3.2005, which is according to the respondents a sort of drawal application dated 17.3.2005. No order or action was taken by the department on

the application dated 19.3.2005 and it has not been acted upon. At least there is no merit in either of the counter affidavits to this effect. Had it been so, the department would have proceeded for the settlement of shops by public lottery after advertising it in the newspaper, immediately after 19.3.2005.

17. The only order which adversely affects the petitioners is 31.3.2005, wherein the lone ground to refuse renewal is lifting of entire M.G.Q. for the month of March, 2005.

18. In appeal before the Additional Excise Commissioner, the was in between the petitioners,"(who were appellants) and the department. The private contesting respondents do not come in the picture at all, and as such they were neither necessary party or proper parties. The direction to the Additional Excise Commissioner to hear the contesting private respondents also, therefore, cannot be sustained. The upshot of the discussion is that impugned order of the State Government, being nullity, cannot be allowed to stand. Therefore, the sole contention of the learned standing counsel that the Court should not interfere with the remand order of State Government, is liable to be rejected. The learned standing counsel did not raise any other plea during the course of the argument.

19. In view of the above discussion it is not necessary for me to examine the merits of the order dated 6.4.2005 passed by the Assistant Excise Commissioner as it is proposed that the matter may be relegated first to the State Government to hear and decide the revisions filed by the contesting private respondents in accordance with law. On merit there is yet no adjudication by the State Government.

20. But before parting with this case it is to place on record the interim order passed by this Court on 5th of May, 2005. The same is reproduced below:-

"A preliminary objection has been raised by Sri Mukesh Prosad, learned counsel for the private respondents regarding alternative remedy against the impugned order. Looking to the facts and circumstances of the case it is neither desirable nor in the interest of justice to direct the petitioners to avail alternative remedy. The facts are not in dispute and the impugned order prima facie appears to have been passed in utter violation of the principle of law. The appeal filed by the petitioners was allowed by the Additional Excise Commissioner Strangely enough the contesting respondents 5 to 12 challenged the aforesaid order before the State Government and the State Government straightway allowed the revision filed by them with a direction to the Assistant Excise Commissioner to rehear and decide the appeal. It may be stated here that without issuing any notice to the petitioners, the State Government straightway passed the remand order. This action of the State Government can not be sustained even for a second. Admittedly, the appeal was decided by the Additional Excise Commissioner in favour of the present petitioners. The least which was expected by the State Government that before setting aside the appellate order or before passing any order adversely affecting the petitioners an opportunity of hearing should have been afforded to the petitioners. Admittedly, the petitioners are the licensees of country liquor shops under the Excise Act 2002-03 and 2003-04. It appears that the department has raised some dispute with regard to non lifting of MGQ for the month of March, 2005. The Additional Excise Commissioner in its order has held that except two shops the advance security furnished by the petitioner is sufficient to protect the interest of the department. In respect of two shops at Ramapur and Goa Mehnagar Chowk after adjusting security amount there would be deficiency of Rs. 29,150/- and Rs. 1,15,263.00. Neeraj Sharma, learned counsel for the petitioner agreed to deposit the aforesaid amount within the period of one week.

It is not in dispute that the license has not yet been Settled in favour of the contesting respondents for the excise year 2005-2006 i.e. in favour of respondent no. 5 to 12. These persons have submitted their offer for obtaining the licence of country made liquor shops in question. Prima fade these persons have no locus standi to participate in the present proceeding which is in between the petitioners and the department.

In view of the above, it is expedient in the interest of justice to pass an interim order to protect the interest of the petitioners, who have already deposited the requisite amount for the excise year 2005-06. The petitioners are hereby permitted to run the disputed shops without there being any hindrance by the respondents. I have been informed that the shops are being run on daily basis. The respondents are directed to renew the licences of the petitioners'' shops and to permit them to run the shops smoothly till further orders, provided the petitioners deposit the aforesaid two amounts i.e. Rs. 29,510 and Rs. 1,15,263.00 within the period of one week from today.

Learned Standing Counsel prays for and is granted ten days time to file counter affidavit and the counter affidavit on behalf of the private respondents may also be filed within the aforesaid. One week thereafter is granted for filing rejoinder affidavit. List the stay application after expiry of the aforesaid period.

21. Against the above order the contesting private respondents filed Special Leave to Appeal (Civil) No. 11255 of 2005 in the Supreme Court. The Supreme Court while dismissing the SLP has made the following observations:-

"The impugned order is an interim order. We are not inclined to interfere therewith at this stage. The operative part of the impugned order dated 5.5.2005 shows that the matter was to come up for re-hearing before the High Court after expiry of about three weeks.

In our opinion, the petitioners have an opportunity of being heard fully and at length before the High Court. Although there is an observation made by the High Court that the petitioners herein have no locus standi to participate in the present proceedings, but with that observation we do not agree. If the petitioners are successful bidders in the public auction for the year 2005-2006 and have also been impleaded as respondents in the petition, they cannot be denied hearing by the High Court.

Though the SLP is dismissed, but we allow the petitioners an opportunity of seeking hearing at the earliest by making a mention before the Bench seized of the hearing or before Hon''ble the Chief Justice of the High Court. We expect that the matter shall be taken up for hearing within two weeks of the mention being made and therein the petitioners shall be allowed hearing by the High Court."

22. In compliance with the aforesaid direction of the Supreme Court, the private contesting respondents, (who were petitioners before the Supreme Court) were heard through Shri Mukesh Prasad, Advocate, at length, in spite of objection raised by the learned counsel for the petitioner that the Supreme Court passed the order permitting the private contesting respondents to participate in the proceedings on the ground " If the petitioners are successful bidders in the public auction for the year 2005-2006 and have also been impleaded as respondents in the petition."

23. It was submitted that the private contesting respondents are not successful bidders and as such they should not be permitted to be heard in the writ petition. Rejecting the said [contention, the private contesting respondents were heard. It is for the petitioners to seek appropriate directions in this 1, if any, from the Apex Court. The only contention of the contesting private respondents is that if the licenses are not renewed in favour of the petitioners then there is likelihood that the licenses may be settled in their favour.

24. I have been informed that in pursuance of the interim order passed by this Court the petitioners have deposited the two amounts of Rs. 29,510/- and Rs. 1,15,263/- and are currently carrying on the business of country liquor in the shops in question.

25. Plea of discrimination raised in para No. 37 of the writ petition is to be noted. It has been pointed that there are several country liquor shops in district Azamgarh which have not lifted the entire M.G.Q of the year 2004-2005. Despite of this fact the Collector, Azamgarh and District Excise Officer have renewed the licenses of these shops. The same yardstick should have been taken in the case of the petitioners also. There is no denial of above fact by the respondents, in their counter affidavits. This point is to be examined by the State Government.

26. In the result the writ petition succeeds and is allowed. The order of the State Government dated 11th of April, 2005 (Annexure 5 to the writ petition) is quashed. Consequently the subsequent order of the Additional Excise Commissioner dated 26.4.2005 is also quashed.

27. The State Government is directed to hear and decide the revisions filed by the contesting private respondents on merits after giving opportunity of hearing to the present petitioners. The private contesting respondents are directed to implead the present petitioners in the revisions filed before the State Government.

28. The writ petition is allowed with a cost of Rs. 20,000/-(Rupees twenty thousands only). The State Government and the private contesting respondents each shall pay a sum of rupees ten thousand to petitioners, as the contesting private respondents obtained the order from the State Government on incorrect facts and the State Government passed the impugned order in utter violation of principles of natural justice.

