

(1982) 03 MAD CK 0006
In the Madras High Court

V. Kuppusamy

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-03-1982

Acts Referred:

Citation : (1982) 2 MLJ 278

Hon'ble Judges : S. Nainar Sundaram, J

Bench : Division Bench

Judgement

S. Nainar Sundaram, J.—The petitioner is a licensee for running a retail liquor shop in Kumbakonam town. The petitioner challenges the

order of the second respondent in R.O.C.P. Spl. 8330-A/82, dated 5th February, 1982, in the present writ petition. That order was passed by the

second respondent u/s 23(4) of the Tamil Nadu Prohibition Act (X of 1937), hereinafter referred to as the Act. The order of the second

respondent has set forth the irregularities found at the time of the inspection of the shop of the petitioner on 27th January, 1982, by the Assistant

Commissioner (Excise), Thanjavur; and opining that a prima facie case for violation of the provisions of the Act and certain Rules, 1981, and

condition No. 4 of the licence, the second respondent suspended the licence of the petitioner. It has been clearly stated that suspension is pending

enquiry and disposal of the charges, against the petitioner.

2. Mr. G. Gopinath, learned Counsel for the petitioner, would attack Sub-section (4) of Section 23 of the Act under which the impugned order has

been passed by stating that the said provision is violative of Article 14 of the Constitution of India. He has not urged any other point before me. In

substantiation of his submission, the learned Counsel has drawn my attention to

the entirety of Section 23 of the Act and would submit that u/s

23(3) the power of suspension could be exercised only after giving an opportunity to the holder of the licence to state his objections within a

reasonable time, not ordinarily exceeding fourteen days, and after considering such representations. In contrast, learned Counsel would state,

Section 23(4) while empowering the authority concerned to suspend the licence, denies an opportunity to the holder of the licence to state his

objections.

3. To appreciate and consider the submissions of the learned Counsel for the petitioner, it becomes necessary to extract Section 23 of the Act as a

whole. That section reads as follows:

23(1). The State Government or the Collector or the prescribed authority as the case may be, may cancel or suspend any such licence or permit-

(a) if any fee payable by the holder thereof be not duly paid; or

(b) in the event of any breach by the holder of such licence or permit or by his servants or by any one acting with his express or implied permission

on his behalf, of any of the terms or conditions of such licence or permit; or

(c) if the holder thereof is convicted of any offence against this Act, or of any cognisable and non-bailable offence; or

(d) if the conditions of such licence or permit provide for its cancellation or suspension at will; or

(e) if the purpose for which the licence or permit is granted ceases to exist.

(2) The State Government may cancel or suspend any such licence or permit issued by the Collector or the prescribed authority for any of the

aforesaid reasons.

(3) Before any licence or permit is cancelled or suspended under Sub-section (1) or Sub-section (2) the holder of the licence or permit shall be

given an opportunity to state his objections within a reasonable time, not ordinarily exceeding fourteen days, and any representation made by him in

this behalf shall be duly taken into consideration before final orders are passed.

(4) Notwithstanding anything contained in Sub-section (3), in so far as it relates, to suspension of any such licence or permit, where a prima facie

case has been made out, the State Government or the Collector or the prescribed authority, as the case may be, may, at any time and for reasons

to be recorded in writing suspend any such licence or permit and in such a case, it shall not be necessary to given an opportunity to the holder of the licence or permit to State his objections.

4. It is true that u/s 23(4), which came to be introduced by the Tamil Nadu Prohibition (Second Amendment) Act LI of 1981, the authority

concerned is empowered to suspend the licence without affording an opportunity to the holder of the licence to state his objections. If Section

23(4) is taken to be substantive provision, in addition to Section 23(3), as empowering the concerned authority to suspend the licence, the

argument of the learned Counsel for the petitioner may merit consideration. But a reading of Section 23(4) does not convey to the mind of this

Court that the power under that provision is intended to be exercised as a substantive one apart from the power u/s 23(3). The very language used

in Section 23(4) indicates that the power u/s 23(4) is intended to be exercised pending an. enquiry u/s 23(3). It is true, no express words are used

to that effect, but Section 23(4) contemplates the exercise of power where a prima facie case has been made out. That prima facie case could

have relevance only to the contingencies contemplated u/s 23(1). If a prima facie case has been made out within any of the Clauses (a) to (c) u/s

23(1); the power u/s 23(4) may have to be invoked. The learned Advocate-General, representing the respondents wants to subscribe support only

to this view and construction of the said provisions. The power u/s 23(4) could be invoked only where a prima facie case has been made out. The

order of suspension to be passed u/s 23(4) could not be a final order of suspension. The prima facie case has got to be further probed into after

affording an opportunity to the holder of the licence to state his objections and the ultimate order will necessarily have to be passed u/s 23(3). In

my view, the only construction that may be put on Section 23(4) is that it is meant for being exercised pending an enquiry u/s 23(3). The power u/s

23(4) cannot be taken to be a substantive power to impose the substantive punishment of suspension without affording an opportunity to the holder

of the licence to state his objections. One other aspect that should not be omitted to be taken note of in this context is, while Section 23(3)

contemplates cancellation of the licence also after considering the objections of the holder of the licence, there is no power of cancellation u/s

23(4). This makes a vast and important distinction in the areas of operation between the two provisions, Section 23(4) could be availed of only for

the purpose of passing an order of suspension and on a proper construction of the said provision, that power is available only pending an enquiry

where a prima facie case has been made out. Equality before law means that among equals or among persons facing same and similar

contingencies, law should be equal and should be equally administered, and that the like should be treated alike. It does not mean that things which

are placed differently shall be treated as though they were the same. But Section 23(4);, is not, and could not be construed as, a substantive

provision for punishment, in addition to Section 23(3), so that it can be stated that one provision contemplates imposition of a punishment after

giving an opportunity to the person concerned, and the other provision also contemplates imposition of a punishment, but denying an opportunity

to the person facing same or similar contingencies. Section 23(4) is meant to serve a different purpose, namely, suspension pending an enquiry. In

this connection, I feel obliged to refer to a recent pronouncement of the Supreme Court in Sukhwinder Pal Bipan Kumar and Others Vs. State of

Punjab and Others, wherein the Supreme Court dealt with the second proviso to Clause 11(1) of the Punjab Foodgrains Dealers Licensing and

Price Control Order, 1978. The said proviso read as follows:

Provided further that the licensing authority may suspend a licence without giving a reasonable opportunity to the licensee of stating his case for a

period not exceeding ninety days during the pendency or in contemplation of the proceedings for cancellation of his licence.

The Supreme Court held that the proviso is not violative of Article 14 of the Constitution of India and the following observations of the Supreme

Court are elucidative and the reasoning found therein provides an answer to the contention raised herein.

The dealers are free to carry on their trade or business in foodgrains, subject to their complying with the terms and conditions of their licence and

the provisions of the Order. But, if they commit a breach, they must face the consequence that their licence may be cancelled or suspended under

Sub-clause (1) of Clause 11 of the Order. They must face the further consequence of suspension of their licence during the pendency or in

contemplation of the proceedings for cancellation of the licence, if the breach is of such a nature that it must result in the cancellation of a licence.

As already stated, the power of suspension is a necessary adjunct of the power to grant a licence. In view of the acute shortage of food-stuffs in

the country, the Government is bound to take all effective steps to implement the provisions of the Essential Commodities Act (1955) and the

various Orders issued u/s 3, thereof, from time to time. The conferral of the power of suspension of the licence of a foodgrains-dealer under the

second proviso to Sub-clause (1) of Clause 11 of the Order during the pendency or in contemplation of the proceedings for cancellation of his

licence, is an important step taken by the Government to subserve the object of the legislation and is in public interest.

5. Coming to the facts of the present case, the impugned order states without ambiguity that the suspension is only pending enquiry and disposal of

the charges against the petitioner. Admittedly, this has been followed up by issuing the show cause notice on 13th February, 1982. Earned Counsel

for the petitioner admits the receipt of the show-cause notice by the petitioner on 24th February, 1982. This leaves no room for ambiguity that the

impugned order has come to be passed pending an enquiry into the charges in exercise of the power u/s 23(4), which power, as rightly conceded

by the learned Advocate-General, is available only to the authorities concerned for the purpose of suspending the licence pending enquiry. Viewed

in this light, there is no possibility to spell out any discrimination, which would come within the mischief of Article 14 of the Constitution of India. In

this view, this writ petition deserves dismissal and accordingly, the same is dismissed. There will be no order as to costs.