SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Vilas Vs. State of Maharashtra and Another

Vilas Vs. State of Maharashtra and Another

SooperKanoon Citation : sooperkanoon.com/1175039

Court : Mumbai Nagpur

Decided On : Aug-11-2014

Judge : B.R. Gavai &Amp; S.B. Shukre

Appeal No. : Writ Petition No. 2758 of 2014

Appellant : Vilas

Respondent : State of Maharashtra and Another

Judgement :

P.C.

1. On 11/7/2014, we had issued notice in the matter and directed respondent No.2-the Collector, Buldhana to remain present in this Court and show cause as to why he has not given effect to the order passed by the appellate authority.

2. While issuing of notice what is urged before us is that under a rule of hierarchy, when a superior officer passes the order, the subordinate officer is bound to comply with the same. Relying on the same basic principle, without going into the entire brief, we thought that it was necessary to secure the presence of the Collector to show cause as to why he has not complied with the order passed by the appellate authority.

3. When the matter is listed before us, perusal of the affidavit in reply shows that the facts of the case are somewhat otherwise and not as simple as were

presented before us when an order was passed on 11/7/2014.

4. Today, with the assistance of the learned Government Pleader, learned Assistant Government Pleader and the learned Advocate for the petitioner, we have had the advantage of going through the entire material on record. The perusal of case file would reveal that the Inspector of Excise, Khamgaon had submitted a report to the Superintendent, State Excise, Buldhana with regard to the application of the petitioner for grant of licence on 04/3/2011. It appears that the said Inspector, on the basis of the measurements of the dining hall, the kitchen, the permit room and the store room, has recommended the proposal of the petitioner for grant of FL-III licence.

5. In the said report, the Inspector of State Excise has observed that the petitioner is having Plot Nos.18, 19 and 30 in Survey No.329 Part No.24 at Shegaon near Navoday Vidyalaya. The report shows that the main entrance of Navoday Vidyalaya is situated at 110 meters from the main door of hotel Adarsh Resort. The report further states that the said premises are not within the distance of 75 meters from S. T. Stand, Bus depot or railway station.

6. However, it appears that the Superintendent of Police, Buldhana, in his report dated 08/6/2011 has opposed the grant of licence on the ground that the said Hotel Adarsh Resort belonging to the petitioner is located on Shegaon - Khamgaon road and it is just adjacent to Jawahar Navoday Vidyalaya. Similarly, the Superintendent of Police, Buldhana had also pointed out that there is Sant Gajanan Maharaj temple and Anand Sagar-tourist spot at Shegaon which are visited by the pilgrims from across the State as well as out of the State in huge numbers. The Superintendent of Police reiterated all these facts in his another report dated 10/10/2012 stating therein that Shegaon town is known as "Pandhari" (Pandharpur) of Vidarbha and number of devotees visit the temple of Shree Gajanan and also Anand Sagar, a tourist spot.

7. It is stated in the affidavit-in-reply of respondent No.2-the Collector, Buldhana dated 29/7/2014 that the application of the petitioner was placed before the Committee constituted as per Rule 44(A) of the Bombay Foreign Liquor Rules, 1953 on 19/12/2012 by his predecessor for consideration of the application for

licence. In the said meeting, the Committee decided that since the proposed permit room of the petitioner's Hotel is adjacent to the premises of Jawahar Navodaya Vidyalaya, the opinion of the Jawahar Navodaya vidyalaya in respect of grant of permit room/licence FL-III should be called for. The copy of minutes of the said meeting dated 19/12/2012 is placed on record

8. Accordingly, the opinion of Principal of Jawahar Navodaya Vidyalaya was called on 01/01/2013, who in turn, vide letter dated 04/01/2013 stated that a special Committee was formed to discuss the issue and the parents of the Vidyalaya strongly opposed the giving permission to the petitioner for sale of liquor and beer since the petitioner's hotel Adarsha Resort is located very close to the School. The opposition was further on the ground that Navodaya Vidyalaya is a residential school where boys and girls of Buldana district apart from studying also reside there and the Committee and the parents were of the view that taking into consideration the safety of the students and particularly the girls and the families residing in the campus of Vidyalaya, such permission should not be granted.

9. Again, the said application was placed in the meeting of the Committee under the Chairmanship of the Collector, Buldhana on 10/6/2013. The Committee went through the various reports of the Excise and Police departments and mainly the opposition taken by the Principal of Jawahar Navodaya Vidyalaya, which is, in fact, a Model Residential School for boys and girls for Buldhana district and run under the aegis of the Ministry of Human Resource Development, Department of Education, Government of India of which the District Collector/District Magistrate is Chairman of the Managing Committee. The Committee also noticed that the said Resort is located on Shegaon-Khamgaon Highway. It was further noticed that the distance, which was measured by the Excise Department as shown in the sketchmap, from the school to the place of proposed Bar was measured in a circuitous fashion. It was, however, noted that the factor of vicinity was so obvious which led the Committee to decide against the grant of licence to the petitioner and accordingly the Committee rejected the application. The copy of the minutes of the Committee dated 10/6/2013 is also placed on record.

10. It appears that thereafter the petitioner has preferred an appeal as provided under Section 137 of the Bombay Prohibition Act before the Commissioner, State Excise. However, it appears that without awaiting the decision in the statutory appeal, the petitioner straightway filed revision application before the Hon'ble Minister of Prohibition and Excise under Section 138 of the Bombay Prohibition Act. The Hon'ble Minister, instead of directing the appellate Authority to decide the appeal before the learned Commissioner in accordance with law, has directly considered the revision application of the petitioner and passed an order setting aside the order passed by the Collector dated 26/6/2013 and directed the licence to be issued to the petitioner on the petitioner giving an undertaking that he shall not conduct himself in a manner which will be detrimental to maintenance of the law and order and further that on account of licence the traffic on the Highway and the interest of the citizens should not be prejudiced.

11. When we issued a notice in the present petition, all these facts were not available before us. Though, it is presumed that the petitioner was very well aware of the adverse report given in his case by the District Superintendent of Police. Not only that, but under the Right to Information Act, the citizens are very well entitled to obtain the minutes of the meeting wherein the licence was rejected by the Committee unanimously. However, for the reasons best known to the petitioner, the petitioner has not placed all these materials on record. Rather, the petitioner saw to it that a point is raised on the ground that when a superior authority directs a particular thing to be done in a particular manner, the subordinate authority has no other option but to follow the same. No doubt, in normal circumstances this would have been an accepted practice. However, in the present case, the facts are not so simple. The Hon'ble Minister, for the reasons best known to him, entertained the revision application filed by the petitioner for an expeditious decision of the appeal before the statutory appellate Authority and then did not wait for the outcome of the decision of the appellate authority, but exercised suo motu powers and set aside the order passed by the Collector, Buldhana.

12. It is a settled law that a procedural act prescribed by the law has to be followed in a way as is prescribed under the Statute. Unless the Commissioner, State Excise had decided the appeal of the petitioner, the Hon'ble Minister could not

have entertained the revision application of the petitioner and allowed it. We find that the procedure adopted by the Hon'ble Minister amounts to giving of go-bye to all the canons of the law.

13. If the procedure so adopted by the Hon'ble Minister is to be accepted then it is to be said by drawing an analogy that if a decree is passed by the learned Civil Judge, Junior Division or the suit is dismissed and aggrieved party files an appeal before the learned District Judge, a party could be permitted to file another proceedings before the High Court directly without awaiting the outcome of the proceedings before the appellate Authority.

14. At the cost of repetition, it gives us a grave pain to observe that such a thing would be not permissible in law at least in the democracy wherein we are living with a privilege of the principle of rule of law. We, therefore, find that the Hon'ble Minister has exercised jurisdiction not vested in him and has acted in a totally illegal manner. We, therefore, have no other option in a petition filed by the present petitioner but to set aside the order passed by the Hon'ble Minister. While sitting in an extraordinary jurisdiction under Article 226 of the Constitution of India, such illegality could not be permitted to be committed by any of the authorities howsoever high it may be.

15. We are aware that the present proceedings are initiated at the instance of the petitioner. However, we find that the present case is a fit case where we exercise our extraordinary jurisdiction and set aside the illegalities that have been committed by the Hon'ble Minister. The glaring facts as are appearing in the present matter leave us with no other option than setting aside the illegal order so that the confidence of a common man in the legal system and this court is restored.

16. The order passed by the Hon'ble Minister, Excise and Prohibition dated 18/10/2013 is quashed and set aside.

17. The Commissioner of State Excise, before whom the appeal filed by the petitioner is pending, is directed to decide the appeal, in accordance with law within a period of eight weeks from today.

18. The petitioner shall remain present before the Commissioner, State Excise on 20/8/2014.

19. Since the petitioner as well as the Collector, Buldhana are aware of the notice given by this Court and the date fixed by this Court, the petitioner and the representative of the Collector, Buldhana along with necessary file shall remain present before the Commissioner of State Excise on 20/8/2014.

20. We make it clear that the Commissioner shall give hearing to the petitioner and the representative of the Collector on the very same day and decide the appeal within a period prescribed by us as aforesaid.

21. We make it clear that the appellate Authority shall neither be influenced by any of the observations made by us in the present order or the orders passed by the Hon'ble Minister in the socalled revision.

22. In the event, the Commissioner decides an appeal against the petitioner, we make it clear further that the petitioner will be at liberty to file revision before the State Government. It is however made clear that in the event the petitioner files the revision before the State Government, the same would not be heard or decided by the Hon'ble Minister, but it would be posted for hearing and would be decided by the Secretary, Home and Excise.

23. Before concluding the matter, we find that in the present case the Collector, Buldhana has been unnecessarily summoned since the facts were not presented before us in a proper manner. We, therefore, offer our apology to the Collector, Buldhana, who has been unnecessarily inconvenienced on account of pleadings, which are not complete.

24. We may, at this stage, note that our Admission Board of every day is not less than 130 to 150 matters. Everyday the files reached to our residence at around 9.00 p.m. Even if we devote four hours for homework, it is not possible for us to give more than two minutes per brief.

25. We quite appreciate that on account of this, if we have committed any human error in not noticing the facts as they should have been noticed, the Collector, who

has been unnecessarily prejudiced by our orders, would appreciate our difficulties. We make it clear that we had no intention of either insulting the Collector or putting him to any inconvenience in any manner.

26. In order to avoid these things hereinafter, we direct that the Registry shall not accept any petitions, which are filed before this Court unless they are accompanied by equal number of copies for the parties representing the State in the petition and one more additional copy for the office of the Government Pleader. The Registry would not accept the petition unless there is an acknowledgment of requisite number of copies for the State or Union of India. The Registry shall not accept the petitions without requisite number of copies for being supplied to the Government Pleader.

27. The learned Government Pleader has expressed another difficulty that if the petition is filed in the month of February, they are only having copy with the stamp number. However, if that petition is circulated in the month of August, it is difficult for them to find out the copies only on the basis of the stamp number.

28. It is, therefore, directed that no circulation note would be accepted after a period of fifteen days from the date of the petition unless the copy of circulation note is served in advance upon the Government Pleader and due acknowledgment is taken thereon.

29. On account of not giving all the correct facts by the petitioner and not handing over the copy of the petition to the Government Pleader in advance, we find that the afore stated instance had occurred. The Collector, Buldhana has to travel around a distance of 800 Kms. to and fro apart from the inconvenience that has been caused to him. We do not want that the expenses unnecessarily are saddled upon the public exchequer. We, therefore, direct the petitioner to deposit the costs of Rs.20,000/- (rupees twenty thousand only) in the Treasury of Buldhana district, which prima facie, in our view would be sufficient to meet with his travelling expenses. The amount so directed be deposited within a period of two weeks from today.

The Writ petition stands disposed of with the above directions.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com