

Krishnappa Vs. Excise Commissioner

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Court : Karnataka

Decided On : Jan-11-1985

Reported in : ILR1986KAR186

Judge : K.A. Swami, J.

Acts : Karnataka Excise Act; Karnataka Excise (Sale of Indian and Foreign Liquor) Rules

Appeal No. : W.P. No. 15961 of 1984

Appellant : Krishnappa

Respondent : Excise Commissioner

Disposition : Petition allowed

Judgement :

ORDER

K.A. Swami, J.

1. In this petition under Articles 226 & 227 of the Constitution, the petitioner, who is a resident of K.R. Sagar has sought for quashing the C.L. 2 licence granted to the 4th respondent to vend liquor in the premises No. 310 of K.R. Sagar, granted by the second- respondent by his order dated 30th July 1984 in No. EXE. MDY. IML. 104 of 83-84 produced as Annexure-D. It is a public interest litigation.

2. The case of the petitioner is that the premises in respect of which C. L. 2 Licence is granted to respondent No. 4 by the second-respondent is situated within 200 metres from the Temple, Harijan Colony and the School. Therefore it is liable to be quashed as the same is opposed to the provisions contained in Standing Circular No. 108 issued by the Excise Commissioner for the purpose of implementation of the provisions of the Karnataka Excise Act (hereinafter referred to as the Act) and specially for the purpose of issuing licences under the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules (hereinafter referred to as the Rules.)

3. On the earlier occasion the similar licence granted to the 4th respondent was challenged by the petitioner as an espouser of the public cause in W. P. No. 5209 of 1984, Krishnappa -v.- Excise Commissioner and the same was allowed on 29th June, 1984 and the following directions were issued :

'The second Respondent shall notify the petitioner individually and also publish the notice at a prominent place in the locality of the date and time of his visit to the proposed premises and the surrounding areas for the purpose of enquiring into the matter and to submit a report to the 1st-Respondent in connection with the renewal of C.L. 2 licence sought for by the 4th Respondent. It is also open to the petitioner and the members of the public to file objections, if any and to participate in the enquiry to be held by the 2nd-Respondent. In the meanwhile, to avoid inconvenience being caused to the 4th-Respondent, the 1st-Respondent is directed to permit the 4th Respondent to run the shop in question till 16th August 1984 on his complying with the requirements of law. Well before 16-8-1984, the 2nd Respondent shall complete the enquiry and submit the report to the first-respondent to enable him to decide on or before 16-8-1984 the application filed by the 4th Respondent for renewal of C.L 2 licence.'

4. Pursuant to the aforesaid directions, the 2nd respondent has, according to his case, held an enquiry and granted the licence in question. Whereas according to the case of the petitioner no notice was issued to him and no notice was also published as required by the aforesaid order of this Court and the licence has been granted to the 4th respondent not only in violation of the directions issued by

this Court in W.P. 5209/1984, Krishnappa -v.- Excise Commissioner but also in violation of Standing Circular No, 108. Sri Udayashankar, Learned High Court Government Pleader, submits that though the notice was not issued to the petitioner but he was nevertheless present during the enquiry, therefore no prejudice is caused to the petitioner. Regarding the publication of the notice, it is submitted that no such notice is published. It is submitted by Sri Vasudeva Reddy, Learned Counsel for the 4th respondent, that the petitioner is fighting the cause for and on behalf of another licence holder at K. R. Sagar whose liquor shop is situated within a distance of about 1 furlong from the premises in question and as such it is not bona fide ; that when there are arrack and toddy shops situated within a distance of 171' from the premises in question and as such the said shops are also within a radius of 200 meters from the Temple ; therefore, there is no illegality whatsoever committed by the 2nd respondent in granting the licence to the 4th respondent. It is also submitted that C. L 2 licence enables the 4th respondent to vend Indian and Foreign liquor in bottles and nobody is allowed to drink in the shop, therefore, there is no scope for the public to gather, as such there is scope for occurrence of any breach of peace or disturbance. It is also further submitted that Standing Circular No. 108 contains mere instructions, therefore, even if the C. L, 2 licence is granted in violation of the said instructions contained in the aforesaid Standing Circular, the same cannot be held to be invalid.

5. In view of the aforesaid contentions, the following points arise for consideration :--

(1) Whether Standing Circular No. 108 is a mere administrative instruction and a violation of it docs not result in the violation of law ?

(2) Whether the C.L. 2 licence granted to the 4th Respondent requires to be quashed ?

POINT NO. (1) :

6. It is not possible to accept the contention of Sri Vasudeva Reddy, Learned Counsel for the 4th respondent that Standing Circular No. 108 is a mere

administrative instruction, therefore the violation of it neither calls for interference nor does it affect the validity of the licence. Standing Circular No. 108 has been issued by the Excise Commissioner who is the authority, who is charged with the duty to enforce the provisions of the Act as well as the Rules framed thereunder. Further, the Standing Circular has been issued only for the purpose of issuing licences under the Rules. It is intended to protect the public interest and morality in addition to providing certain norms for granting licence under the Rules. That being so, it is not possible to hold that such a Standing Circular is a mere administrative instruction and the violation of it does not result in an illegality. A similar question arose in *Kariappa -v.- Deputy Commissioner & Ors.*, ILR 1985 KAR 22. There were certain guidelines issued for the purpose of acquisition of land under the provisions of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972. On a reference made to a Division Bench it has been held that such guidelines have the force of law, as the same are issued for the benefit of the public and are binding on the authorities who are charged with the duty to acquire the lands under the Act. It is also further held that the guidelines are intended to minimise the arbitrary use of power of the authorities in dealing with the rights of the parties. Further such guidelines being neither contrary nor inconsistent with the provisions of the rules framed thereunder, the same are in aid of or supplementary to the provisions thereof. Therefore it is further held that if the Deputy Commissioner without considering the contentions raised by the petitioner without due regard to the guidelines issued by the Government has made acquisition and the order under Sub-section (3) of Section 3 of the Karnataka Acquisition of Land for Grant of House Sites Act, 1972, it may then be argued that the discretion of the Deputy Commissioner is either capricious or extraneous. Therefore, in the instant case also the instructions contained in the Standing Circular No, 108 are intended for the benefit of the public only and also they are intended to minimise the arbitrary exercise of powers by the granting authority. If there are no such instructions it is possible that the granting authority may go on granting the licences indiscriminately which may lead to several problems. Further, it is also not possible to hold that the instructions contained in the Standing Circular are in any way inconsistent with the provisions of the Act or the Rules. Therefore it is necessary for the granting authority to follow the instructions contained in the

Standing Circular No. 108 while considering the application for grant of licence under the Rules. Hence, the first point is answered against the fourth respondent.

POINT No. (2) :

7. Pursuant to the directions issued by this Court in W.P.No. 5209 of 1984, Krishnappa v. Excise Commissioner it is not in dispute that the notice of the enquiry has not been published in the public places. Of course failure to issue notice to the petitioner is again a violation of one of the directions issued by this Court, but it is not of much consequence in the instant case because the petitioner was present at the time of enquiry, and participated in it. What is of importance is that the Deputy Commissioner-2nd respondent - himself has found that there is a Temple situated within a distance of 145 meters from the shop in question. According to the Deputy Commissioner, the said Temple is not a Muzrai institution, but a private Temple and it is kept every Tuesday and Friday open to the public- It is also further found by the 2nd-respondent that arrack and toddy shops are at a distance of 171' from the Temple. Thus, even as per the findings recorded by the Deputy Commissioner the place of worship is within a distance of 200 meters and so also an arrack shop and a toddy shop are within a distance of 200 meters. Clauses 3, 4 and 5 of the Standing Circular No. 108 are as follows :

'3) The applicant should furnish the site plan indicating the location of all the structures and open ground within a radius of 200 meters from the proposed premises. This should be verified by spot inspection by the Superintendent of Excise himself.

4) No. C. L. 2 licence should be recommended within a radius of 200 meters of an existing arrack shop since it will have an adverse effect on the consumption of arrack resulting in loss of revenue to the contractor.

5) Proper inquiries with regard to location should be indicated in the proposals that there are no objectionable places, like National Highways, State Highways, Harijan and Labour Colonies, Educational and Religious institutions, Places of Worship, Railway Stations, Railway Yards etc., near the proposed premises. If there are any objections received either directly or forwarded by the Excise Commissioner they

should be enquired into detail, If necessary, the Deputy Commissioner (Excise) himself may personally inspect the proposed premises and send his report.'

The effects of all these instructions are considered by me in the previous Writ Petition No. 5209/1984, Krishnappa v. Excise Commissioner wherein I have held as follows :

'Sri S. Udayashankar, Learned Government Pleader, submits that the temple in question is no doubt situated within 200 meters but it is a private temple and there is no prohibition as such in the instructions referred to above to grant C.L. 2 licence in respect of the premises situated within 200 meters from the temple and Harijan colony. In addition to this, it is further submitted that there is no objection from the public on this score and the person who claims to be the owner of the temple has also given his consent. A reading of paras, 3, 4 and 5 of the Standing Circular No. 108, dated 14th June, 1982 produced as Annexure-A would go to suggest that the places like National Highways, educational and religious institutions, places of worship, railway stations, railway yards, which are termed in para-5 of the Circular as objectionable places-should not be near the proposed premises. If there is any such objectionable place near the proposed premises, it becomes a matter for consideration whether the C. L. 2 licence should be granted in respect of the proposed premises. The question as to whether the proposed premises is near to the aforesaid objectionable places, is a matter for consideration in each case. Having regard to the facts and circumstances of each case, even if the proposed premises is situated more than 200 meters away from any one of the aforesaid objectionable places, it may be possible to hold that the proposed premises is not suitable. It will be more so when the proposed premises is situated within the 200 meters from any one of the aforesaid objectionable places. Naming of the objectionable places appears to be illustrative and not exhaustive. Respondents 1 and 2 will have to bear in mind this aspect of the matter while considering the application for grant of renewal of C.L. 2 licence; because such a restriction is in the public interest morality and is necessary for ensuring calm and quiet and peaceful atmosphere in the locality.'

Therefore, a reading of Clauses 3 to 5 would make it clear that if the objectionable places are within a distance of 200 meters the granting authority is required to reject the application. If such places are beyond 200 meters still it will be a matter for the authority to consider whether having regard to the facts and the circumstances of the case, the licence can be granted to vend Indian and Foreign liquor in such a premises. Under these circumstances, even according to the findings recorded by the second - respondent he could not have granted the C.L. 2 licence to the 4th respondent to vend the Indian and Foreign liquor in the premises in question.

8. The contention of Sri Vasudeva Reddy, Learned Counsel for the 4th respondent is that the petitioner is only a name lender because he is set up by another person by name K. V. Nagaraju who is having his C. L. 2 licence shop within about a furlong from the shop in question therefore, no relief could be granted in a Petition like this. Except asserting, there is no record produced to show that the petitioner is fighting the cause for the benefit of and at the instance of the aforesaid K. V. Nagaraju. Unless there is evidence to show that the petitioner is fighting the cause for K.V. Nagaraju and it is not a public interest litigation, it is not possible to hold on a mere plea that the petitioner is a name lender and he lacks bona fides. Lastly it is contended by Sri Vasudeva Reddy, Learned Counsel for the 4th respondent that the 4th respondent had no avocation and he was working with another arrack vendor who left the business and thereafter he had no other avocation therefore he has taken up this business. It may be so, but on that ground it is not possible to allow the C.L. 2 licence shop to be conducted in a place situated within 200 meters distance from the place of Worship. Therefore, I am of the view that the C.L. 2 licence granted to the 4th respondent is liable to be quashed. But at the same time it is also necessary to see that the 4th respondent is not put to inconvenience. Therefore, it is also necessary to grant time to him to enable him to seek C.L. 2 licence in respect of another premises situated far away from the objectionable places.

9. Thus Points 1 and 2 are answered, in favour of petitioner and against the 4th respondent.

10. For the reasons stated above, the Writ Petition is allowed. The C.L. 2 licence granted to the 4th respondent, Annexure-D is quashed.

11. However, this order will not be operative for a period of six weeks to enable the 4th respondent to seek C.L. 2 licence in respect of another premises situated faraway from the objectionable places.

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