

Narayana Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Sep-29-1999

Reported in : 2000(5)KarLJ30

Judge : R.V. Raveendran, J.

Acts : [Karnataka Excise Act, 1965](#) - Sections 71; Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 - Rules 7 and 8

Appeal No. : Writ Petition No. 32669 of 1999

Appellant : Narayana

Respondent : State of Karnataka and Others

Advocate for Def. : Sri K.M. Shivayogiswamy, Government Pleader

Advocate for Pet/Ap. : Sri T.S. Surya Prakash, Adv.

Judgement :

ORDER

R.V. Raveendran, J.

1. Petitioner claims that he held a CL-2 licence between 1987 and 1989. Thereafter the licence was not renewed. The petitioner claims to have made an application for a fresh licence on 7-8-1998 for the excise year 1998-99. That was

not granted. Feeling aggrieved, petitioner claims to have filed W.P. No. 6079 of 1999 seeking a direction to the respondents therein to issue a challan to enable the petitioner to pay licence fee for the year 1998-99 without insisting upon payment of licence fee for the excise years 1989-90 to 1997-98. The said petition was disposed of by order dated 16-4-1999 directing the Department to pass appropriate orders. Subsequently, the petitioner made an application for the excise year 1999-2000. The grievance of the petitioner is that the respondents are insisting upon payment of the licence fee for the excise years 1989-90 to 1997-98 as a condition precedent for considering the application for grant of licence for the year 1999-2000. Feeling aggrieved, petitioner has filed this petition seeking a direction to respondents 2 and 3 to consider and grant CL-2 licence for the year 1999-2000 [1-7-1999 to 30-6-2000]. He has also sought a declaration that the oral demand by third respondent for payment of licence fee for the years 1989-90 to 1997-98 is violative of Rule 8 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968. Petitioner has also sought a direction to respondents to pay damages of Rs. 2.00 lakhs for the financial loss caused to him.

2. The learned Government Pleader appearing for the respondents stated that no demand has been made either orally or otherwise for payment of licence fee for the years 1989-90 to 1997-98 or for any other period.

3. This Court has held in the case of *State of Karnataka v Patrick D'Souza*, that having regard to the scheme of the Karnataka Excise Act and the Rules thereunder there is no question of renewal of licence and, therefore, when an application for licence is considered for a particular year, the Department cannot recover licence fee for the earlier years. In view of it, respondents 2 and 3 will have to consider the petitioner's application for grant of licence for the year 1999-2000 without demanding any amount as licence fee for the previous years when petitioner did not seek licence.

4. The learned Counsel for the petitioner states that petitioner does not press the claim for damages. Hence, the said prayer is rejected.

5. Petition is, therefore, disposed of directing respondents 2 and 3 to consider in accordance with law and dispose of the petitioner's application for grant of a CL-2

licence for the year 1999-2000 without insisting or requiring payment of licence fee for the earlier periods, within fifteen days from the date of receipt of this order.

6. Sri K.M. Shivayogiswamy, learned Government Pleader, is permitted to file his Memo of Appearance within six weeks.

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