H. Ibrahim and ors. Vs. the State and ors.

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Court : Karnataka

Decided On : Mar-29-1996

Reported in : ILR1996KAR3324

Judge : G.C. Bharuka, J.

Acts : Karnataka Municipal Corporations Act, 1976 - Sections 3; Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1988 - Rules 8 and 11

Appeal No. : WPs. 6195 to 6198, 6374 to 6382 and 6423 to 6443/96 and CPs. 146 to 159/96

Appellant : H. Ibrahim and ors.

Respondent : The State and ors.

Advocate for Def. : L.S. Harsha Kumar, HCGP

Advocate for Pet/Ap. : G.K. Bhat, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

G.C. Bharuka, J.

1. Petitioners are the dealers in Indian made Foreign Liquor engaged in the business of either retail vending or running a Bar and Restaurant having licences in Form CL-2 or CL-9 as prescribed under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 (hereinafter in short, 'the Rules'). Their licensed premises are located in Shimoga and Bhadravathi. Admittedly, till upto 17th July 1992, Shimoga and Bhadravathi were City and Town Municipal Council areas respectively. By Notification No. HUD/101/ MNE/92 dated 17th July 1992 (Annexure-C) issued under Section 3(1) of the Karnataka Municipal Corporations Act, 1976 (in short, 'the Corporation Act'), the State Government declared the said areas to be a city and established a Corporation for the same, by the name 'Corporation of the City of Shimoga and Bhadravathi'. Subsequently the Governor pursuant to the power conferred on him under Section 3 read with Section 9 of the Karnataka Municipalities Act, 1964 (in short, 'the Municipalities Act') has by Notifications dated 5.10.1995 in Nos. HUD 361/MLR.95 and HUD/361/95 specified Bhadravathi and Shimoga townships as separate 'Smaller Urban Areas' by further specifying such areas to be as 'Bhadravathi Town Municipal Area' and 'Shimoga City Municipal Area'.

2. Petitioners have approached this Court for declaring the Notification dated 17.7.1992 (Annexure-E) declaring their areas to be 'Corporation', as illegal and unenforceable. The consequential prayer is that the respondent Excise Authorities should be restrained from collecting licence fee from them treating the area to be a Corporation during the period Annexure-C was in force.

3. Sri G.K. Bhat, Learned Counsel appearing for the petitioners has challenged the legality of the Notification Annexure-C on the grounds that (i) before issuance of the said notification no objections were invited from the residents of the area, and, (ii) one Corporation could not have been established both for Shimoga and Bhadravathi Municipal areas.

4. Section 3 of the Corporation Act, as it stood at the material time reads as under:

'3 ESTABLISHMENT OF CORPORATION, ETC:-

(1) The Government may, by notification, declare any local area with a population of not less than two lakhs as at the last preceding census and where such area is already having a local authority, if the annual income of such local authority is not less than one crore of rupees, to be a city and establish for the said city a corporation:

Provided that:-

(i) the name of the city shall, where two or more local areas from the city, be as determined by the Government and

(ii) no such notification shall be issued except after consulting the local authority, if any, concerned.

(2) The Corporation shall be a body corporate by the name 'the Corporation of the City of ...' and shall have perpetual succession and common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract and may, by the said name, sue and be sued.'

5. A bare reading of the said provisions makes it clear that before exercising the powers under the aforesaid section declaring a local area to be a City and for establishing a Corporation for the same no objections were required to be invited from the residents of the area. The consultation was to be held only with the local authorities concerned. In the present case no averment has been made on behalf of the petitioners that before issuance of the impugned notification the consultations were not so held with the local authorities administering the City and Town of Shimoga and Bhadravathi. Therefore this objection is not sustainable. So far as the second objection is concerned, the section itself spells out that the local area governing one or more local authorities can be comprised into a City and a Corporation can be established for such an enlarged local area. In the present case, the local area for which the Corporation in question has been established is an area comprised of the erstwhile local areas governed by the Municipal Councils of Shimoga and Bhadravathi.

6. The above being the legal position, the petitioners cannot escape their liability to pay licence fee in terms of Rule 8 of the Karnataka Excise (Sale of Indian & Foreign Liquors) Rules, 1968 ('the Rules' for short). But before parting, it needs to be clarified that since under Rule 11 the licence fee for an Excise Year commencing from 1st of July has to be paid in advance along with the application, therefore the rate of licence fee will be governed by the fact as to whether on 1st of July of the concerned Excise Year the area concerned was a Municipal area or the Corporation area. If on such date the area was a Municipal area, the licence fee can be collected only by treating it to be Municipal area. In that view of the matter, in relation to these petitioners the difference of licence fee can be calculated by taking into account the rate of licence fee which was applicable to Corporation area only for the Excise Years 1993-94, 1994-95 and 1995-96. Since in the present case, as stated by the petitioners, no demand has so far been raised in this regard by the Excise Authorities, it will be open for the concerned Authorities to raise such demands only by issuing appropriate notices demanding the license fee in accordance with law.

Subject to the said observations and directions, Writ Petitions are dismissed being devoid of merit.