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Court : Allahabad

Decided On : Feb-13-1959

Reported in : AIR1959All460

Judge : B. Mukerji and ;B.N. Nigam, JJ.

Acts : Uttar Pradesh High Courts (Amalgamation) Order, 1948; [Constitution of India](#) - Article 226; [Uttar Pradesh Excise Act, 1910](#) - Sections 11

Appeal No. : Writ Petn. No. 279 of 1958

Appellant : Baldeo Ram and anr.

Respondent : Deputy Commissioner, Gonda and anr.

Advocate for Def. : Junior Standing Counsel

Advocate for Pet/Ap. : Lekh Ram Verma, Adv.

Judgement :

B. Mukerji, J.

1. This is a petition under Article 226 of the Constitution praying among other the following reliefs:

'(a) The issue of a writ of certiorari or any other suitable order or direction quashing the orders of the opposite-party No. 2 (i.e., the Excise Commissioner, U.P.,

Allahabad) setting aside the resale of the auction of the two liquor shops in dispute in favour of the applicants, and quashing the order of opposite-party No. 1 (i.e., the Deputy Commissioner, Gonda, exercising powers under the Excise Act) fixing the date of resale thereof on the 2nd December, 1958. (b) The issue of a writ of mandamus ordering the stay of resale by auction of the two liquor shops.'

2. The facts that have given rise to this petition may be briefly stated in order to appreciate the question that fell for our determination. The excise authorities in Gonda held an auction for the purposes of granting a license to the highest bidder for the liquor shops, one in Mohalla Naushehra and the other in Mohalla Pure Ghose in the town of Gonda. Patandin was granted a licence for the shop in Mohalla Naushehra, while Sri Jagat Narain was granted licence for the shop in Mohalla Pure Ghose, as they happened to be the two highest bidders. The aforementioned persons failed to deposit the amount of the sale money, so that, the sale in their favour was set aside and a fresh sale was held at which the petitioners, before us, were the two highest bidders in respect of the two shops, one at Naushehra and the other at Pure Ghose. The previous bidders, namely, Patandin and Sri Jagat Narain, preferred appeals against the setting aside of the sale and the resale to the Excise Commissioner at Allahabad, and their appeals were allowed. On the 29th of November, 1958, the petitioners were informed that as a result of the appeals of Patandin and Sri Jagat Narain succeeding, their licenses had to be terminated and were terminated and that a fresh sale in consequence was to be held on the 2nd of December, 1958.

3. The petitioners challenged the validity of the action that was taken by the Excise Commissioner in allowing the appeals and setting aside the sale. They also challenged the order of the Deputy Commissioner directing a fresh sale to be held on December 2, 1958. One of the main contentions raised by the petitioners against the order of the Excise Commissioner was that they did not get an opportunity of being heard and that without hearing them an order which was prejudicial to them had been passed and, therefore, the order was liable to be quashed.

4. When this petition came up for hearing before a learned single Judge a preliminary objection was taken on behalf of the State to the effect that the Bench sitting at Lucknow had no jurisdiction to entertain, or pass orders on the petition. The learned single Judge, therefore, thought it desirable to have this case put up before a Bench of two Judges. The case has now been put up before us and counsel for the parties first argued the preliminary point, namely, whether the Lucknow Bench had jurisdiction to entertain, or pass orders on this petition.

5. The contention in regard to the maintainability of this petition at Lucknow was founded on the provisions of clause 14, first Proviso, of the United Provinces High Courts (Amalgamation) Order, 1948.

6. Clause 14 is in these words: 'The new High Court, and the judges and division courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint:

Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice, otherwise directs, such judges of the new High Court, not less than two in number, as the Chief Justice may, from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court.

7. The argument that was raised before us was that the case, in respect of which this petition has been filed, arose in Allahabad because the Excise Commissioner (respondent No. 2 to this petition) had his office permanently at Allahabad and further because he had made the order which was sought to be quashed at Allahabad. There is no gain-saying the fact that the second respondent has his place of business at Allahabad and further that the order which is sought to be quashed by a writ of certiorari was made at Allahabad. It is further not disputed that the order of respondent No. 2, which is sought to be quashed, is maintained on a record which is held by him at Allahabad. It was contended by Mr. Uma Shankar Srivastava that since a writ of certiorari operates on the record and since the record is at Allahabad, which according to his further contention was beyond

the territorial jurisdiction of the Lucknow Bench, this Bench could not make an order for quashing the order of respondent No. 2.

8. On behalf of the petitioners it was contended that the Proviso to Clause 14 of the United Provinces High Courts (Amalgamation) Order, 1948, did not restrict the jurisdiction of the Lucknow Bench in every aspect of it. What was restricted, it was submitted, was the power to hear or entertain cases. It was pointed out that a judge sitting at the Lucknow Bench was a judge of the new High Court and as such he had 'all the jurisdiction and power' that for the time being were vested in the High Court. Indeed, it was said that this was specifically so stated in the Proviso itself. Mr. Niamatullah, on behalf of the petitioners, contended that the Lucknow Bench was to exercise jurisdiction in respect of cases arising in a certain area which was indicated in the Proviso.

9. Whether the Lucknow Bench could exercise jurisdiction and make an order in respect of the present petition or not was, in our opinion, dependent upon the meaning of the words 'exercise in respect of cases arising in such areas in Oudh'. The word 'case' is not co-extensive in meaning with the words 'suit', 'appeal' or 'proceeding'. The word 'case' may have a wider connotation than either a 'suit,' an 'appeal' or a 'proceeding,' or it may have a narrower connotation than these three, for the connotation of the word 'case' would depend, in any particular cause on the particular circumstances of that cause and no general rule of definition can, in our opinion, be laid down by which one could test whether a particular matter was a 'case' or not. But on the scope and meaning of the word 'case' does not depend the answer to the problem facing us, for the word of real significance was the word 'arising', and on the true interpretation of this word depended, in our view, the key to the answer. The word 'arise', among other meanings, has the meaning 'to spring up; to spring forth from its source; to take its rise, originate'. The word 'arising' has no special or technical meaning attached to it in forensic language'. Therefore, it has to be interpreted in accordance with its common dictionary meaning and we have quoted the dictionary meaning as given in the Shorter Oxford English Dictionary, Vol. 1. If we accept that meaning, as we have to, then the phrase 'cases arising' must relate to the origin of a case, that is, these words must refer to the place or area of origin of the dispute.

10. The question which now calls for an answer is, where did the case out of which these proceedings originate or 'arise'. We know that Gonda was the place of origin of the case which culminated at Allahabad. So that, Gonda was the place of its origin and Allahabad its place of culmination. We do not think it could be legitimately argued that, bearing in mind the connotation of the word 'case', the matter which was being agitated arose at Allahabad; nothing arose at Allahabad; something came up to Allahabad for decision. As we have already said above, Allahabad was the place of culmination, the place of origin was Gonda.

11. The next matter which needs determination is, whether having in view the rule that a writ of certiorari operates on the record and since the record was at Allahabad the Lucknow Bench could issue a writ quashing the order borne on that record. The Lucknow Bench possesses all the plenary powers of the new High Court. The powers which are exercised by Judges sitting at Lucknow are those which are vested in the Judges of the Allahabad High Court: there is no restriction on those powers. What is, so to speak, restricted by the provisions of the Proviso of Clause 14 is the territory from where a cause has arisen in respect of which such powers could be exercised. If Judges sitting at Allahabad could issue a writ of certiorari to quash the order of the Excise Commissioner, then the same order could be passed by Judges of the Lucknow Bench provided the origin of the cause in respect of which the order was to be made arose or originated within an area from where cases could be filed at Lucknow.

12. Reverting now to the merits of this petition, the sale by which the petitioner obtained the right to run the two liquor shops was set aside, as we have noticed earlier, by the order of the Excise Commissioner dated the 15th of November, 1958. The order aforementioned of the Excise Commissioner was made by him on an appeal which Jagat Narain and Patan Din had filed before him. The main ground on which the Excise Commissioner appears to have set aside the sale was that a sale of two shops situate in two different localities, though of the same town, had been made by a sort of joint auction and yet the licence fee fetched by that auction had been more or less arbitrarily apportioned; the appellate order puts the matter in these words:

'It is not understood how the auction fee of each of the shops was determined separately when the (bid was one viz., Rs. 49294/-. The fixation of the auction fee for each of the shops appears to be arbitrary and since the shops had been held by two different individuals the arbitrary fixation thus operates against them and is also likely to create practical difficulties in the realisation of deficit money from each of the licensees though they happen to be the same under the re-auction.'

The petitioner before us says he was adversely affected by this order of the Excise Commissioner setting aside the aforementioned sale because he happened to have been the licensee under the resale which had been set aside by the Excise Commissioner. The petitioner further contended that as a person interested he should have had notice of the appeal which had been filed by the respondents to the Excise Commissioner. Learned counsel contended that there was a failure of natural justice in this case inasmuch as the requirements of notice which was one of the requirements of natural justice had not been complied with in this particular case. Under the Excise Act by Section 11 a right of appeal is given against all orders passed by the Collector under the Excise Act. These appeals are, of course, subject to Rules which are framed by the Local Government under the Act. Further, a right of revision was vested on the Local Government against any order made by the Collector or by the Excise Commissioner. Chapter II, Section XIII of the Excise Manual contains the rules regarding appeals and revisions. Under Rule 126 an appeal lies to the Excise Commissioner from

(a) an order of a Collector and

(b) from a decision of a Licensing Board except where it is laid down in the Excise Manual that such decision of a Licensing Board is non-appealable.

Under Rule 130, any person aggrieved by an order of the Excise Commissioner or of the Collector or a decision of a Licensing Board may petition to the State Government for revision of the same. The petition for revision is to be received by the State Government if presented through for Collector and the Excise Commissioner within six months from the date of the order or decision, provided that no petition for revision of the order of a Collector or a decision of a Licensing Board would, as a rule, be entertained by the State Government unless an appeal,

where one lay, has been made and disposed of by the Excise Commissioner.

13. In this particular case it is dear that there was an appeal to the Commissioner and the appeal had been disposed of by the Commissioner, so that the petitioner if he was aggrieved by the order of the Commissioner made on appeal, could have applied to the State Government for a revision of the order made by the Excise Commissioner in appeal. That means that the petitioner clearly had another remedy --an equally efficacious one--open to him.

14. In regard to the petitioner's contention that he had no notice of the appeal and that an order which prejudicially affected him had been made out without notice to him it has to be observed that no rules had been prescribed which made it obligatory for the Excise Commissioner to give any notice to a party interested in the subject-matter of the appeal, or that the Excise Commissioner was in any way bound to hear a party before he made an order on the appeal. In making; his order the Excise Commissioner acted only, at best, in a quasi-judicial manner. In certain spheres his action was purely administrative, but in certain other spheres however, the action that he took or the order that he made partook of the nature of a judicial order. In the instant case the order that the Excise Commissioner made was an order which was made to avoid what he calls practical difficulties. As was pointed out by their Lordships of the Supreme Court in *Nagendra Nath v. Commissioner Hills Division*, AIR 1958 SC 398 at page 409 that:

'The question whether or not any rules of natural justice had been contravened, should be decided not under any preconceived notions, but in the light of the statutory rules and provisions. In the instant case, no such rules have been brought to our notice, which could be said to have been contravened by the Appellate Authority. Simply because it viewed a case in a particular light which may not be acceptable to another independent tribunal, is no ground for interference either under Article 226 or Article 227 of the Constitution.'

In the case before us, as we have already pointed out, no rules have been brought to our notice which could be said to have been contravened by the Appellate Authority. As we have said, the basis of the order of the Appellate Authority was administrative convenience. We cannot, therefore, say that in this particular case

there has been a violation of any rule of natural justice in regard to notice.

15. Learned Counsel for the petitioner attacked the order of the Excise Commissioner on the ground that the order had been made by him on an appeal which had been filed before him beyond time. The affidavit accompanying the petition does not make any averment on which we could say that the statement of fact of learned Counsel was supported: this was further, not a ground taken in the grounds on which the petition was founded. Learned Counsel said that he did not have sufficient opportunity at the time when he filed this petition to set out all the grounds on which he could attack the order of the Excise Commissioner; that may have been so then, but since that time learned Counsel has had sufficient opportunity to have his petition amended and add such other or further grounds that appeared to him to support his ultimate objective; we do not, therefore, think that we can take this new ground into account at this stage when the other side has had no opportunity of meeting it. We accordingly have ruled this submission of the learned Counsel out of account.

16. On what we have stated above we reject the preliminary objection and hold that the petition is entertainable. On the merits we hold that the petition should be refused (1) on the ground that the petitioner had another equally efficacious remedy open to him and (2) because nothing has been shown on which we could say that there was any error apparent on the face of the record or that there was any failure of natural justice in this case. We accordingly dismiss this petition with costs.

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