Ashish Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-23-2007

Reported in : 2007(78)AWC2451

Judge : R.K. Agrawal and ;Vikram Nath, JJ.

Appellant : Ashish Kumar

Respondent : State of U.P. and ors.

Disposition : Petition dismissed

Judgement :

R.K. Agrawal, J.

1. By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioner, Ashish Kumar, seeks the following reliefs:

(a) issue a writ, order or direction in the nature of certiorari quashing the impugned order of Collector/District Magistrate, Farrukhabad respondent No. 2 contained in notification dated 27.3.2006 published in daily newspaper Dainik Jagran dated 29.3.2006 (Annexure-5 to the writ petition).

(ai) issue a writ, order or direction in the nature of certiorari quashing the impugned order of the District Magistrate Farrukhabad respondent No. 2 dated 26.3.2006 (Annexure-S.A. 1 to the supplementary-affidavit), the impugned order of approval passed by the Excise Commissioner respondent No. 4 dated 27.3.2006 (Annexure-S.A. 2 to this supplementary-affidavit) and the allotment order of the District Magistrate, Farrukhabad respondent No. 2 dated 31.3.2006 (Annexure-S.A. 3 to the supplementary-affidavit) for shifting the country liquor shop Raipurkhas Block Kampil, Tehsil Kaimganj, district Farrukhabad to Rajendra Nagar, Block Mohammadabad, Tehsil Sadar, district Farrukhabad;

(b) issue a writ, order or direction in the nature of mandamus commanding the Collector respondent No. 2 to consider and decide petitioner's written representation dated 29.3.2006 (Annexure-6 to the writ petition) by a reasoned order after giving him opportunity of being heard expeditiously within the time which may be specified by this Hon'ble Court;

(c) issue a writ, order or direction in the nature of mandamus commanding the respondents not to allow to open country liquor shop Raipurkhas Pargana Kampil, Tehsil Kaimganj. District Farrukhabad at Rajendra Nagar Pargana Mohammadabad, Tehsil Sadar, Farrukhabad;

(d) issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Briefly stated, the facts giving rise to the present petition are as follow:

According to the petitioner, during the excise year 2005-06 he was granted licence in Form CL5-C for retail vend of country liquor at Punpalpur, Tehsil Sadar, Farrukhabad. The annual licence fee was Rs. 10,04,090 and the monthly minimum guaranteed quota was fixed at 1.059BL. The petitioner carried out the licence during the aforesaid excise year without any complaint and deposited the licence fee and all other dues in time. For the excise year 2006-07, renewal of the existing country liquor shop was to be made on an increase of 10% of the licence fee and the minimum guaranteed quota. The petitioner applied in March, 2006 for renewal of his licence for country liquor shop at Punpalpur after depositing the requisite amount of renewal fee. It is the case of the petitioner that in the excise year 2005-06 a country liquor shop, known as 'Raipurkhas', situate at Raipur, Pargana Kampil, Tehsil Kaimganj, district Farrukhabad, was at a distance of about 8 Kms.

from the petitioner's country liquor shop, Punpalpur. However, during the excise year 2006-07, when the licence for the existing shop was going to be renewed ; the District Excise Officer, under the pressure and connivance with the local leaders of the ruling party, got a notification issued on 22.3.2006, which was published in the daily newspaper Dainik Jagran on 24.3.2006 for opening the country liquor shop, Raipurkhas at Rajendra Nagar, which is hardly at a distance of a kilometer from the petitioner's shop. The licence fee for the aforesaid shop was fixed at Rs. 6 lacs. As the opening of a new shop/shifting of the shop to Rajendra Nagar was going to adversely affect the petitioner's business, he made a representation before the Collector, Farrukhabad praying for recall of the proposal for shifting the shop 'Ralpurkhas' to Rajendra Nagar or to refund the entire amount deposited by him towards renewal of his licence for his shop at Punpalpur for the excise year 2006-07. The Collector, Farrukhabad, recalled the notification dated 22.3.2006 vide notification dated 24.3.2006 published in the daily newspaper Dainik ' Jagran on 25.3.2006. Thereafter, another notification dated 27.3.2006 was published in the daily newspaper Dainik Jagran dated 29.3.2006 making proposal for opening the country liquor shop Ralpurkhas at Rajendra Nagar. On coming to know about the aforesaid advertisement, the petitioner personally approached the office of the Collector, Farrukhabad and submitted his representation dated 29.3.2006, a copy of which was also sent to the Excise Commissioner, U.P., Allahabad and the Secretary, Excise, Government of Uttar Pradesh. In this representation, the petitioner had made a request to either cancel or withdraw the notification dated 27.3.2006 or to refund the entire amount of renewal fee, security money, annual licence fee, etc. deposited by him for the excise year 2006-07 alongwlth interest and damages. No orders were passed by the Collector, Farrukhabad whereupon the petitioner approached this Court by filing the present petition. The opening/shifting of the shop at Ralpurkhas to Rajendra Nagar has been assailed by the petitioner on the ground that it is in contravention of Rule 4 of the U.P. Excise (Settlement of Licence for Retail Sale of Country Liquor) Rules, 2002 (hereinafter referred to as 'the 2002 Rules') as also the provisions of the U.P. Number and Location of Excise Shop Rules, 1968 (hereinafter referred to as 'the 1968 Rules'). No cogent reasons have been recorded in writing as required under Sub-rule (2) of Rule 5 of the 1968 Rules for permitting change in the site of the shop in question. Further, opening of a shop at Rajendra Nagar, Pargana Mohammadabad, Tehsil Sadar, district Farrukhabad, which is hardly at a distance of a kilometer from the petitioner' country liquor shop at Punpalpur, would make it difficult for the petitioner to lift the minimum guaranteed quota as the sales would be adversely affected and he would be ruined.

3. The approval granted by the Excise Commissioner on 27.3.2006 has also been assailed on the aforesaid ground.

4. In the counter-affidavit filed by Sri Ram Autar, District Excise Officer, Farrukhabad, on behalf of the State respondents, it has been stated that the country liquor shop, known as 'Ralpurkhas', falling under the Excise Circle 2, Kalmganj, Farrukhabad, could not be settled on the aforesaid place by renewal on 17.3.2006 or by lottery on 22.3.2006. There was huge demand and the absence of any country liquor shop in the village Rajendra Nagar prompted the authorities to take a decision to shift the 'Ralpurkhas' shop to village Rajendra Nagar and accordingly the advertisement dated 22.3.2006 was published. As the advertisement dated 22.3.2006 was published without taking permission of the Excise Commissioner, U.P., Allahabad, as required under Rule 2A of the 1968 Rules, the advertisement was withdrawn vide notification dated 24.3.2006. The Collector sought permission from the Excise Commissioner, U.P., Allahabad, vide letter dated 26.3.2006 for opening the country liquor retail shop at village Rajendra Nagar, which permission was accorded by the Excise Commissioner, U.P., Allahabad, vide order dated 27.3.2006. Consequent advertisement was published for settlement of the shop at Rajendra Nagar pursuant to which three persons had applied for licence and the offer of one Rakesh Kumar son of Bedram Singh, respondent No. 5, being the highest, was accepted and a provisional licence was issued after compliance of all necessary formalities. The shifting of the shop is, therefore. Justified and in accordance with law and the distance is about 5 kms. from the petitioner's shop. The two shops, i.e., one of the petitioner and the other at Rajendra Nagar are situate in different villages and the petitioner holds the licence merely for the area of village Punpalpur and has nothing to do with the grant of licence to another person for 2 different area.

5. In the supplementary counter-affidavit filed by Sri A.K. Srivastava, District Excise Officer, Kannauj, holding the additional charge of Farrukhabad, it has been stated that the petitioner has been granted the licence of exclusive privilege merely for the village Punpalpur and the same is outside the newly created country liquor shop at Rajendra Nagar. Village Rajendra Nagar is within the Gram Panchayat Bhut Nageria which is a different Gram Panchayat than that of the petitioner.

6. A counter-affidavit has been filed by the private respondent Rakesh Kumar in which it has been stated that he had already been issued the licence but could not carry out the licence on account of the pendency of the writ petition filed by the petitioner and the interim order dated 19.4.2006 operating therein. The grant of the licence as also the shifting of the shop has been justified. In other words, the stand taken by the State respondents have been reiterated.

7. In the rejoinder-affidavit filed by the petitioner, the averments made in the writ petition have been reiterated to be correct and it has further been stated under the policy/ guideline issued by the Excise Commissioner, the shop cannot be shifted during the period of renewal. The issue of licence in favour of the private respondent, according to the petitioner, is wholly illegal and contrary to the rules and would not confer any advantage/benefit to the said respondent.

8. We have heard Sri S.C. Verma, learned Counsel appearing for the petitioner, and Sri S.P. Kesarwanl, learned standing counsel, and Sri Ashok Malviya, learned Counsel appearing for the private respondent.

9. Sri S.C. Verma, learned Counsel, submitted that under Rule 4 of the 2002 Rules, the power to fix the number and location of retail shop is to be done in conformity with the general and specific instructions issued by the State Government or by the Excise Commissioner from time to time and should be in conformity with the provisions of the 1968 Rules. However, the State Government or the Excise Commissioner has been empowered to create new shop during an excise year on the demand of the licensing authority of the district. According to him, there was no direction issued by the State Government or the Excise Commissioner for opening or shifting the shop to Rajendra Nagar and, therefore,

the notification issued by the Collector, Farrukhabad as also the order of sanction granted by the Excise Commissioner is wholly illegal and without jurisdiction. He further submitted that the principle contained in Sub-rule (2) of Rule 5 of the 1968 Rules has also not been followed as. change in the site of any shop is not permitted during the currency of a settlement. The renewal of the existing licence is based on the currency of the settlement and, therefore, this provision would also apply where a shop is to be shifted. In support of his aforesaid plea, he has relied upon a Division Bench decision of this Court in the case of Ram Kripal v. State of U.P. 2005 (5)AWC 4681.

10. Sri S.P. Kesarwani, learned standing counsel, on the other hand, submitted that as the shop at 'Raipurkhas' could not be settled for the excise year 2006-07, a proposal for change of this site was mooted by the Collector who unilaterally, on 22.3.2006, had notified the change without obtaining the sanction of the Excise Commissioner, U.P., Allahabad. When this mistake came to the notice of the Collector, Farrukhabad, the order was recalled and after the Excise Commissioner had granted the sanction on 27.3.2006, the opening/shifting of the shop to Rajendra Nagar was notified and it has been settled in accordance with law. He submitted that the provisions of Rule 4 of the 2002 Rules have been strictly complied with as the Excise Commissioner had granted the approval to shift the shop of Raipurkhas to Rajendra Nagar. He further submitted that Sub-rule (2) of Rule 5 of the 1968 Rules applies during the currency of a settlement whereas, in the present case, change of the site of the shop has been done before the excise year 2006-07 had started and the licence has been settled/renewed in favour of the petitioner. Thus, there is no illegality in the order of the Collector, Farrukhabad, as also the Excise Commissioner, U.P., Allahabad regarding shifting of the shop from Raipurkhas to Rajendra Nagar.

11. Sri Ashok Malviya adopted the arguments of the learned standing counsel.

12. We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties.

13. We find that it is not in dispute the petitioner was an existing licensee for his shop at Punpalpur during the excise year 2005-06 and had applied for renewal

during the excise year 2006-07 within time. The country liquor shop 'Raipurkhas' which had no taker for the excise year 2006-07 would have gone unsettled causing huge loss of revenue to the State. The licensing authority who is the Collector of the district, after taking into consideration the entire situation, had come to the conclusion that the said shop was required to be relocated at a different place and accordingly shifted the site of the shop to Rajendra Nagar. Without observing the provision of Rule 4 of the 2002 Rules, he unilaterally notified the change on 22.3.2006 and invited application for settlement of the shop but on coming to know about the exact legal position, the notification dated 22.3.2006 was withdrawn. It was re-advertised after the Excise Commissioner had granted sanction/approval to the shifting of the site of the shop to Rajendra Nagar on 27.3.2006. Thus, the shifting of the shop from Raipurkhas to Rajendra Nagar fulfils all the requirements of Rule 4 of the 2002 Rules. Further, we find that Sub-rule (2) of Rule 5 of the 1968 Rules deals with a situation where change in site of any shop is required during the currency of the settlement. It prohibits any change except for very cogent reasons to be recorded in writing. It does not put any bar for change of site of a shop in the ensuing excise year. Moreover, Sub-rule (2) of Rule 5 does not put a blanket ban on shifting of the site of any shop even during the currency of the excise year. In exceptional case, for reasons to be recorded in writing, it can be done. In the present case, we find that the Collector, Farrukhabad and the Excise Commissioner, U.P., Allahabad had considered all the pros and cons of the shifting of the existing shop at Raipurkhas to Rajendra Nagar and the action meets the requirement of not only the 2002 Rules but also the 1968 Rules. We do not find any illegality in the orders passed by the Collector, Farrukhabad as also the Excise Commissioner, U.P., Allahabad. The reliance placed by the learned Counsel for the petitioner on the decision of this Court in the case of Ram Kripal (supra) is of no help to the petitioner. In the aforesaid case, this Court has held that it is well settled that even though the right to carry on trade in intoxicant including country liquor vests exclusively with the State, the privilege can be parted on consideration under well specified rules, guidelines or policy which has to be strictly adhered to and the State Government cannot arbitrarily pick or choose any body of its own choice. In the present case, we find that the State respondents have not acted arbitrarily nor had picked up any particular person of its choice for settling the shop of Raipurkhas.

14. The submission that the petitioner's business would be adversely affected if a new shop is opened at Rajendra Nagar, is devoid of merit. It cannot be a ground to quash the decision taken by the authorities, in accordance with the statutory provisions, for opening/shifting of shop.

15. As the respondent No. 5 could not operate the licence for retail vend of country liquor shop at Rajendra Nagar after the interim order dated 19.4.2006 was passed by this Court, the Excise Authorities shall adjust the balance amount of the licence fee deposited by him for the year 2006-07 after deducting the pro-rata licence fee and other charges while considering his application for renewal for the excise year 2007-08.

16. In view of the foregoing discussions, we do not find any merit in this petition which is dismissed with costs which we assess at Rs. 10.000.