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

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Court : Allahabad

Decided On : Sep-04-2003

Reported in : 2003(4)AWC3187

Judge : M. Katju and ;K.N. Ojha, JJ.

Acts : Constitution of India - Articles 19(1) and 226; Uttar Pradesh Excise Act, 1910 - Sections 24 and 41; Uttar Pradesh Settlement of Licences for Retail Sale of Country Liquor Rules, 2002 - Rule 4

Appeal No. : C.M.W.P. No. 822 OF 2003

Appellant : Krishna Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Arun Tandon, Adv.

Disposition : Petition dismissed

Judgement :

M. Katju, J.

1. This writ petition has been filed for a writ of mandamus declaring Rule 4 of the U.P. Settlement of Licences for Retail Sale of Country Liquor Rules, 2002 as also

Clause 2A of the policy decision of the Excise year 2003-2004, dated 5.3.2003 as issued by the U.P. Excise Commissioner, U.P. at Allahabad as null and void being ultra vires of the powers of the Excise Commissioner and contrary to the statutory rules framed by the State under Section 40 (2) (e) and (f) of the U.P. Excise Act. The petitioner has also prayed for a writ of certiorari to quash the impugned order of the U.P. Excise Commissioner dated 3.7.2003 granting permission for opening of a new shop in the locality of Kiratpur, Bijnor in the excise year 2003-2004 as also the advertisement published by the District Magistrate, Bijnor dated 6.7.2003 Annexure-5 to the writ petition.

2. Heard learned counsel for the parties.

3. In exercise of powers under Section 41 of the U.P. Excise Act the U.P. Excise Commissioner framed Rules known as the U.P. Settlement of Licences for Retail Sale of Country Liquor Rules, 2002 copy of which is Annexure-1 to the writ petition.

4. It is alleged in paragraph 4 of the writ petition that in accordance with the provisions of the rules the District Magistrate Bijnor determined the number and location of excise shops of district Bijnor which was fixed at 147 in number and the locality was specified. The minimum guarantee quota in respect of the said shop was also provided for. It is alleged in paragraph 7 of the writ petition that under the rules the number of the shops to be settled alongwith the localities and minimum guarantee quota is to be determined by the Collector of the district prior to the commencement of the excise year. The District Magistrate has to notify the number of the excise shops, the locality and the minimum guarantee quota before inviting applications for great of licences.

5. The petitioner applied for a licence and after a draw of lotteries was selected and licence was granted to him in respect of locality of Kiratpur. It is alleged that the minimum guarantee quota was fixed as 60,000 bulk litres. It is alleged in paragraph 10 of the writ petition that the District Magistrate, Bijnor granted licences to only shop in Kiratpur locality considering the number of residents of the locality and the expected consumption of country liquor. It is alleged in paragraphs 11 and 12 of the petition that the petitioner operated his licence for excise year

2002-2003 and deposited all the excise dues but there was a short fall in the sale to the tune of 12,200 litres. In paragraph 13 of the writ petition it is alleged that for the excise year 2003-2004 the State Government came out with the policy to renew the licences of the existing licence holders provided they apply for the same with the condition that the existing licensee will be permitted to sell the outstanding quota for the year 2002-2003 in the months of April and May, 2003 vide Annexure-2 to the writ petition. The petitioner applied for renewal of his licence at Kiratpur. It is alleged in paragraph 15 of the writ petition that under Section 24 read with Section 25 (B) the petitioner has been conferred exclusive privilege for sale of country liquor in Kiratpur for the excise year 2003-2004.

6. It is alleged in paragraphs 16, 17 and 18 of the writ petition that one Rameshwar Dayal was selected for grant of licence in respect of locality of Kohili Farm, Bijnor but he manipulated with the local excise authorities and succeeded in obtaining an order whereby he was permitted to shift to the locality of Kiratpur and the said shop was renamed as shop Kiratpur number 2. Aggrieved the petitioner filed Writ Petition No. 702 of 2003 in this Court which was disposed off by order dated 23.5.2003 permitting the petitioner to make representation before the Excise Commissioner vide Annexure-3 to the writ petition. It is stated in paragraph 21 of the writ petition that the Excise Commissioner after hearing the District Magistrate as well as Rameshwar Dayal passed an order holding that the shifting of the shop from Kohili Farm to Kiratpur was illegal and unjustified vide Annexure-4 to the writ petition. Against the order of the Excise Commissioner dated 23.6.2003 Rameshwar Dayal filed representation under Section 11 of the U.P. Excise Act before the State Government which is pending but no stay order has been passed.

7. In paragraph 23 of the writ petition it is alleged that now the District Magistrate, Bijnor has published an advertisement dated 6.7.2003 inviting applications for one shop of country liquor to be opened in Kiratpur locality and the minimum guarantee quota has been fixed at 18,000 bulk litres vide Annexure-5 to the writ petition. In that order it has been stated that the new shop has been granted under orders of the U.P. Excise Commissioner dated 3.7.2003 in pursuance of power under Rule 5 of the 2002 Rules and the policy decision as notified in the letter of the U.P. Excise Commissioner dated 5.5.2003.

8. It is alleged in paragraphs 28, 29 and 30 of the writ petition that the number and location of excise shops in Uttar Pradesh are regulated by the Uttar Pradesh Number and Location of Excise Shops Rules, 1968 framed under Section 40 (2) (e) and (f) of the U.P. Excise Act. A true copy of the Rules is Annexure-6 to the writ petition. It is alleged in paragraph 32 of the petition that the Excise Commissioner has not been conferred the power under Section 41 to frame Rules regarding the number of shops to be opened in the district. The power is only with the State Government under Section 40 (2) (e) and (f). Hence it is alleged that the Rules framed by the Excise Commissioner conferring power upon himself to sanction new shops to be opened is without jurisdiction and in violation of Section 40 of the Act.

9. The respondents have filed a counter-affidavit and we have perused the same. In paragraph 3 of the same it is stated that a bare perusal of the letter of the Excise Commissioner dated 5.3.2003 shows that it has been issued in pursuance of the policy decision of the State Government dated 28.2.2003. A true copy of the Government Order of the State Government dated 28.2.2003 is Annexure-C.A.-2 to the counter-affidavit. The letter of the U.P. Excise Commissioner dated 5.3.2003 and clause 2A thereof are well within the authorization given by the State Government to the U.P. Excise Commissioner vide paragraph 8 of the Government Order dated 28.2.2003 by which the Excise Commissioner has been authorized to create new shops to the extent of 10% of the existing sanctioned shops of the district, and in case more than 10% shops are proposed to be created the Excise Commissioner will take the consent of the State Government. Thus, the Excise Commissioner has merely communicated the decision of the State Government to all concerned. The decision to create new shops contemplated by Clause 2A of the letter dated 5.3.2003 was issued in pursuance of the Government Order dated 28.2.2003. It is alleged that the policy decision as stated in the aforesaid Government Order is not violative of Article 14 of the Constitution. It is alleged that there is a presumption that the Government knows the interest of the people and acts constitutionally.

10. In paragraph 3 (d) (iii) of the counter-affidavit, it has been stated that the Joint Commissioner, U.P. Excise, Meerut Zone, did a survey and vide his report dated

9.6.2003, the Joint Commissioner has referred to the details of his investigation and has reported that the petitioner is selling about 60% more country liquor than his quota. He has stated that the demand of the country in Kiratpur is about 1,00,000 bulk litres. A survey was also conducted by the Assistant Excise Commissioner (Enforcement) on 9.6.2003 and excess country liquor was found in the petitioner's stock which the petitioner could not explain, and he admitted his guilt and requested for compounding. It is also stated that in pursuance of the advertisement dated 6.7.2003 shops were settled in favour of Khem Singh and Yatindra Mohan Jain and the said licensees have been granted the licences at shops more than 1 km. away from the shop of the petitioner. The respondents have also raised a preliminary objection that the petitioner being a rival businessman cannot challenge grant of licences to others. In paragraph 5 of the counter-affidavit, it is stated that the number of shops in a district is decided by the Government and not by the District Magistrate. Only the location of the shop is decided by the District Magistrate with the approval of the Excise Commissioner. In paragraph 11 of the same it is stated that the petitioner has been found to be concealing the correct figures and selling liquor more than his quota, which is evident from the report of the Joint Excise Commissioner and his survey dated 9.6.2003 in which excess liquor was found and petitioner got his offence compounded. The petitioner was manipulating the records and his sale was much higher than the minimum guaranteed quantity.

11. It is stated that as per Section 24B of the U.P. Excise Act and several decisions of the Supreme Court the petitioner has no fundamental right to trade in intoxicants and the State Government has exclusive right or privilege to trade in the same. The State Government can part with those exclusive privileges and it has done so in favour of the petitioner as well as Khem Singh and others. Hence, petitioner has no focus standi to challenge the grant of licence in pursuance of advertisement dated 6.7.2003. Moreover the petitioner himself is a licensee of retail sale of country liquor having obtained licence under the Government Order dated 28.2.2003 and the letter of the Excise Commissioner dated 5.3.2003. As such the petitioner cannot challenge the rules or the policy under which he himself has taken the licence.

12. In paragraph 26 of the counter-affidavit, it is stated that a bare perusal of Rules 2A, 3 and 5 of the U.P. Number and Location of Excise Shops Rules, 1968 clearly shows that the location and sites of the shops are to be determined by the Collector. The State Government has taken a policy decision dated 28.2.2003 permitting the creation of new shops to the extent of 10% of the existing shops. However, for district Bijnor only one country liquor shop was permitted to be newly created by the Excise Commissioner vide order dated 3.7.2003, Annexure-C.A.-10 to the counter-affidavit. Detailed reason for the creation of the new shop is given in paragraph 3 of the counter-affidavit. It is stated that there is no statutory bar for opening or creating new shops and in fact the U.P. Number of Location of Excise Shops Rules, 1968 permits creation of new shops. In paragraph 35 of the same it is stated that the shops granted to Khem Singh and Yatindra Mohan Jain are located in different locations although within the Kiratpur, Nagar Palika Parishad. The petitioner cannot claim that he should be only the licensee in the whole of the Nagar Palika, Kiratpur. The whole attempt of the petitioner is to create monopoly for himself at the cost of loss to the Government and demand of country liquor.

13. On the facts of the case, we find no merit in this petition. It is evident that a policy decision has been taken as per Government Order dated 28.2.2003, Annexure-C.A.-2 to the counter-affidavit. It is settled law that this Court does not ordinarily interfere with policy decisions as held by a Division Bench of this Court in D. B. Kauser v. Union of India, 2003 (2) UPLBEC 1404. In that decision, a large number of Supreme Court decisions have been referred to and hence, we are not referring to them again here. Moreover, as held by this Court in Raju v. State of U.P. and Ors. Writ Petition No. 491 (Tax) 2003), decided on 1.4.2003, that the rival businessmen cannot file a writ petition even if the grant of licence to the rival is illegal as held by the Supreme Court in Rice and Flour Mills v. State of U.P., AIR 1971 SC 46 ; Mithilesh Garg v. Union of India, AIR 1993 SC 443 ; North Plastic Casting Ltd. v. Hindustan Photo Film Co., JT 1997 (3) SC 1001, etc. A true copy of the judgment in Raju's case (supra) is Annexure-C.A.-6 to the counter-affidavit.

14. We are of the clear opinion that Rule 4 of the 2002 Rules and Clause 2A of the letter of the U.P. Excise Commissioner dated 5.3.2003 are clearly valid. Section 41 of the U.P. Excise Act gives power to the Excise Commissioner to frame rules for

regulating the manufacture, supply, storage or sale of any intoxicant. This is a very wide power, and the impugned rules are well within the ambit of Section 41 read with Section 24. The reason for opening the new shop in Kiratpur has been given in detail in paragraph 3 of the counter-affidavit and it is not necessary to refer to the same again. The decisions of the Supreme Court, which have held that no person has a fundamental right to trade in liquor, are referred to in paragraph 3 of the counter-affidavit and hence we are not referring to them again. The State Government took a policy decision dated 28.2.2003, and as already observed above this Court does not ordinarily interfere with policy decisions as held by several decisions referred to which has been made above as also in paragraph 3 (b) (ii) of the counter-affidavit.

15. There is no force in this petition and it is dismissed.