Deepak Gupta Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-24-2004

Reported in : 2005(1)AWC893

Judge : R.K. Agrawal and ;Prakash Krishna, JJ.

Acts : Constitution of India - Articles 226 and 227; Uttar Pradesh Excise Act - Sections 11 and 11(1); Bombay Cinemas Regulation Act, 1953; Bombay Cinema Rules, 1954 - Rule 4

Appeal No. : C.M.W.P. No. 1630 of 2004

Appellant : Deepak Gupta

Respondent : State of U.P. and ors.

Advocate for Def. : Manish Khare, ;Mukesh Prasad and ;P.N. Khare, Advs., ;K.M. Sahi, S.C., ;M.R. Jaiswal S.C. and ;C.S.C.

Advocate for Pet/Ap. : V.C. Mishra and ;Vivek Mishra, Advs.

Judgement :

R.K. Agrawal, J.

1. By means of the present writ petition filed under Article 226/227 of the Constitution of India, the petitioner Deepak Gupta, seeks the following reliefs :

'(a) issue a writ order or direction in the nature of certiorari to recall for the record and quash the impugned orders dated 18.8.2004, 18.9.2004, passed by the respondent No. 4 and 19.10.2004 & 3.11.2004 passed by the respondent No. 3 (contained in Annexures-7, 11, 19 and 21 respectively to the writ petition).

(b) issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere with the business of country-made liquor carried on by the petitioner in his sub-shop 66 C, Jora, Nawabganj, Kanpur Nagar in any manner whatsoever till the date of expiry of the licence on 31.3.2005 and/or if renewed subsequent thereto.

(c) issue any other writ, order or direction which this Hon'ble Court may deem fit and proper.

(d) award costs to the petitioner.'

2. Vide order dated 18th August, 2004, the District Excise Officer, Kanpur Nagar had directed the petitioner to shift his shop opened at 66-C, Jora, Nawabganj, Kanpur Nagar to a far off place from the Azad Nagar shop otherwise the sub-shop would be sealed. Vide order dated 18th September, 2004 the District Excise Officer, Kanpur Nagar had rejected the petitioner's representation and had reiterated the directions given in the earlier order dated 18th August, 2004. Vide order dated 19th October, 2004 the Additional Excise Commissioner had vacated the interim order dated 22nd September, 2004 and vide order dated 3rd November. 2004 the Deputy Additional Excise Commissioner had directed the District Magistrate/Licensing Officer, Kanpur Nagar to give an opportunity of hearing to the petitioner and Puneet Mutreja - respondent No. 5 and to ensure that the Jora, Nawabganj shop is in accordance with the terms and conditions contained in the order dated 9th July, 2004.

3. Briefly stated the facts giving rise to the present writ petition are as follows :

According to the petitioner he is licensee of retail vend of country made liquor for Nawabganj area. Vide order dated 9th, July, 2004 he was permitted to open a sub-shop at 66C, Jora, Nawabganj. On some objection being raised by Puneet Mutreja respondent No. 5,' who is the licensee of country-made liquor shop for Azad Nagar area the District Excise Officer, Kanpur Nagar- respondent No. 3 passed an Order dated 18th August, 2004 directing him to remove the shop and open the sub-shop at a far off area from Azad Nagar. Feeling aggrieved by the said order the petitioner filed an objection on 21st August, 2004. It is alleged that when the respondent No, 3 did not pay any heed to the objection filed by him, he approached this Court by filing Writ Petition No. 1165 of 2004 which was disposed of vide judgment and Order dated 25th August, 2004 with the direction to the respondent No. 3 to decide the objection/representation within a week. Pursuant to the direction given by this Court, the respondent No. 3 vide order dated 18th September, 2004 had rejected the objection/representation and reiterated the earlier Order. Against the order dated 18th September, 2004 the petitioner preferred an appeal under Section 11 (1) of the U.P. Excise Act (hereinafter referred to as 'the Act'). The petitioner also filed an application for grant of interim relief. The Additional Excise Commissioner, before whom the appeal and the stay application came up for consideration, vide order dated 22nd September, 2004, stayed the operation of the order dated 18th September, 2004 while fixing the appeal for hearing on. 29th October, 2004. Puneet Mutreja -respondent No. 5 filed an application on 27th September, 2004 seeking his impleadment as also for vacating the interim order dated 22nd September, 2004. It is alleged by the petitioner that the Additional Excise Commissioner had fixed 5th October, 2004 for hearing in the applications. On 5th October, 2004, the petitioner submitted an application for seeking time for preparing and filing objection on which 14th October, 2004 was fixed. The petitioner filed his objection on 14th October, 2004 whereupon 16th October, 2004 was fixed as the date. On 16th October, 2004 it is alleged that the Additional Excise Commissioner fixed 29th October, 2004 for final disposal of the stay application along with the appeal. According to the petitioner no orders were passed on the application for impleadment on 28th September, 2004 and only the date was fixed but it appears that the Additional Excise Commissioner had allowed the impleadment application subsequently though by addition of the words in the order dated 28th September, 2004 itself. Another illegality in the exercise of power as pointed out by the petitioner is that when on 16th October, 2004, the Additional Excise Commissioner had fixed 29th October, 2004 there was no occasion to fix 18th October, 2004 on the stay vacation application. On the basis of these two illegalities it is alleged by the petitioner that the Additional Excise Commissioner had acted mala fidely and contrary to law. The petitioner further alleges that he had not received any notice in regard to the alleged subsequent preponing the date for disposal of the application as 18th October, 2004 and, therefore . could not appear and make his submission on the application for vacating the interim Order. The interim order has been vacated vide Order dated 19th October, 2004, which is illegal and liable to be set aside having been passed in gross violation of the principles of equity, fair play and natural justice. Subsequently, after hearing the parties, the Additional Excise Commissioner vide order dated 3rd November, 2004 had allowed the appeal and had directed the District Magistrate/Licensing Officer. Kanpur Nagar to decide the question of opening of sub-shop and its location in terms of the order dated 9th July, 2004.

4. We have heard Sri V.C, Misra, learned senior counsel assisted by Sri Vivek Misra, learned counsel on behalf of the petitioner and Sri M.R. Jalswal, learned standing counsel for respondent Nos. 1 to 4 and Sri Mukesh Prasad, learned counsel for respondent No. 5.

5. Learned counsel for the petitioner submitted that the Additional Excise Commissioner had acted illegally and arbitrarily and had thrown all norms to the wind while allowing the application for Impleadment and vacating the interim order as on 28th September, 2004 no such order allowing the impleadment application was passed and only 5th October, 2004 had been fixed for its disposal. He, therefore, submitted that when on 16th October, 2004 the Additional Excise Commissioner had fixed 29th October, 2004 as the date for hearing there was no occasion to prepone the date for deciding the application for grant of Interim relief for 18th October, 2004 and these two orders appear to have been made with some ulterior motive and oblique purpose. He next submitted that the order dated 19th October, 2004 vacating the interim order has been passed in gross violation of principles of equity, fair play and natural justice as the petitioner was not aware about the date being 18th October, 2004 in this matter. He, thus, submitted that there has been miscarriage of justice and this Court should exercise its

supervisory power under Article 226/227 of the Constitution of India and entire proceedings taken by the Additional Excise Commissioner be set aside.

6. On merits the learned counsel for the petitioner submitted that the respondent No. 5 has no locus standi to question about opening of the sub-shop as he is rival businessman. In support of his aforesaid plea he has relied upon the following decisions :

(1) Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmad and Ors. AIR 1976 SC 578 ;

(2) Manoj Kumar Tiwari v. State of U.P. and Ors., 2004 (3) AWC 2325.

7. He further submitted that the respondent No. 5 having been granted licence for country-made liquor shop in respect of Azad Nagar Area whereas he has opened his shop in Nawabganj area which is contrary to the terms of licence and, therefore, his shop which is situated at Nawabganj is liable to be cancelled. According to him the petitioner had opened the sub-shop within the area of his operation and the direction given by the authorities to shift the sub-shop is wholly illegal.

8. The learned standing counsel submitted that the petitioner has not opened the sub-shop in terms of the order dated 9th July, 2004 and, therefore, it became necessary for the authorities to direct him to shift the sub-shop and open it at a place in conformity of the said order. Learned counsel appearing for respondent No. 5 submitted that against the order dated 19th October, 2004 and 3rd November, 2004, the petitioner has an efficacious alternative remedy by way of filing a revision before the State Government under Section 11 of the Act and, therefore, this Court should not entertain the writ petition. He further submitted that as terms of the order dated 9th July, 2004 granting permission to the petitioner to open a new sub-shop has not been adhered to by the petitioner and the sub-shop has been opened by the petitioner near the shop of the respondent No. 5, the respondent No. 5 was well within his jurisdiction to challenge and raise objection of the opening of the sub-shop. In support of his plea he has relied upon a Division Bench decision of this Court in the case of Civil Misc. Writ Petition No. 1156 of

2004, Ram Kripal v. State of U. P. and Ors., decided on 5th October, 2004.

9. Having heard the learned counsel for the parties we find that on 16th November, 2004 when the present writ petition was taken up allegations regarding manipulation and preponement of dates were made against the Additional Excise Commissioner whereupon this Court directed the learned standing counsel to produce the relevant records. Pursuant to the said direction records have been produced before us. On perusal of the record we find that in the order dated 16th October, 2004 the Additional Excise Commissioner had fixed 29th October, 2004 as the date for final hearing in the appeal. However, subsequently, the Additional Excise Commissioner directed the file to be placed on 18th October, 2004. We are unable to understand the logic and reasoning which necessitated for fixing 18th October, 2004 when he had already fixed 29th October, 2004 for hearing the appeal on merits. This action itself is a cause of suspicion that the Additional Excise Commissioner was not acting impartially In the matter. However, as the Additional Excise Commissioner had decided the appeal on merits vide Order dated 3rd November, 2004 we are not going deeper in this question and leaving the same as it is. As records have been produced before us and parties are representing we are not Inclined to direct the petitioner to avail the alternative remedy of revision before the State Government. We are deciding the matter in exercise of Jurisdiction under Article 226/227 of the Constitution of India.

10. It is not in dispute that the petitioner has applied for permission to open a sub-shop in its area of operation which permission had been granted to him vide Order dated 9th April, 2004. The respondent No. 5 has been granted licence for retail vend to country-made liquor shop at Azad Nagar Area. He has not applied for opening of a sub-shop in his area of operation, to., Azad Nagar. Thus he is to be treated as a rival businessman. The question as to whether the respondent No. 5 has opened his shop of Azad Nagar area In Nawabganj area is not required to be gone into in the present proceedings relating to opening of the sub-shop of the petitioner.

11. In the case of Jasbhai. Motibhai Desai (supra) the Apex Court has held that the Bombay Cinemas Regulation Act, 1953 and the Bombay Cinema Rules, 1954

do not confer any substantive Justiciable right on a rival in cinema trade, apart from the option, in common with the rest of the public, to lodge an objection in response to the notice under Rule 4. Thus, the proprietor of Cinema theatre holding a licence for exhibiting Cinematograph films have no legal right Under the statutory provisions or Under the general law which can be said to have been subjected to or threatened with Injury as a result of the grant of No Objection Certificate to the rival trader.

12. In the case of Manoj Kumar Tiwari (supra) this Court has held that rival businessman has no locus standi to file a writ petition under Article 226 of the Constitution even if grant of licence to his rival is illegal.

13. In the case of Ram Kripal (supra) this Court has distinguished the aforesaid decision on the ground that it is not a case of claim by a business rival or a competitor but in that case the arbitrary action of the Excise Commissioner has been under challenge on the ground that guidelines or the decision taken in the meeting held on 29th June, 2004, has not been adhered to which granted preference to the licensee having higher minimum guaranteed quota. In that case, Ram Kripal the petitioner had also applied for opening of sub-shop which application was kept pending and the application of the licensee of the neighbouring area was entertained and granted permission.

14. In the present case we find that the Additional Excise Commissioner had directed the District Magistrate/Licensing Officer to determine the site of the sub-shop in terms of the order dated 9th July. 2004, after giving opportunity of hearing to the petitioner and the respondent No. 5. As the respondent No. 5 is the trade rival, the question to give opportunity of hearing to him does not arise. However, the sub-shop can be opened only in terms of the order dated 9th July, 2004 and, therefore, the direction given by the Additional Excise Commissioner cannot be said to be illegal or unjustified.

15. In view of the foregoing discussions, we are of the considered opinion that the Order dated 3rd November, 2004 passed by the Additional Excise Commissioner does not call for any interference except that opportunity of hearing is not required to be given to the respondent No. 5. The District Magistrate shall take necessary

decision within two weeks from the date a certified copy of this order is produced before him.

16. In the result the writ petition succeeds and is allowed in part. However, there shall be no order as to costs.