**Banwari Lal Vs. State and Ors**

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**SooperKanoon Citation** : sooperkanoon.com/65662

**Court** : Rajasthan Jodhpur

**Decided On :** Sep-10-2015

**Appellant** : Banwari Lal

**Respondent** : State and Ors

**Judgement** :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER
: S.B.CIVIL WRIT PETITION NO.6496/2015 Banwari Lal versus State of Raj.

& ORS.Date of Order :: 10th September, 2015 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.Pritam Solanki ) Mr.V.K.Aggarwal ) Dr.

Dhankanwar Rajpurohit ).for the petitioner.

Dr.

Sachin Acharya, for the respondents.

---- BY THE COURT: This writ petition under Article 226 of the Constitution of India has been filed by the petitioner aggrieved against order dated 19.06.2015 (Annexure-14) passed by District Excise Officer, Hanumangarh ('DEO').whereby, the approval dated 22.02.2014 and licence dated 23.03.2014 for the year 2015-16 granted in favour of the petitioner has been cancelled at the risk and cost of the petitioner, the entire security amount and advance exclusive privilege amount after adjusting the same towards deficit for the month of June, 2015 has been forfeited and it has further been ordered that in case of deficit on account of re-auction of the shop, the same would be recovered from the collateral security given by the petitioner and would be recoverable under the provisions of Land Revenue Act, 1956.

The Commissioner (Excise).Udaipur ('Commissioner') issued notice inviting applications for grant of liquor licence for the year 2013- 2 14; the petitioner applied for grant of licence for Ward No.26, Municipal Board, Hanumangarh and was granted licence for operating a shop at the applied place by order dated 22.02.2014; it is claimed that a Naukarnana was entered into between the petitioner and one Rajiv Kumar, which was duly attested by DEO; the shop was operated during the year; before closing of year, as per policy, the petitioner applied for renewal of licence for the year 2015-16 and by approval dated 14.02.2015, the petitioner's licence was ordered to be renewed for the year 2015-16; the petitioner deposited the required amount and was issued licence for the year 2015-16.

It is then indicated that the Excise Inspector on 06.05.2015 issued a notice to the petitioner calling upon him to submit explanation regarding the complaint filed against him with regard to giving the shop on sub-contract to Rajiv Kumar son of Shishpal during the period 2014-15.

The petitioner replied to the said notice on 10.05.2014 denying the allegations and stated that neither he gave the shop on contract nor sublet the same to said Rajiv Kumar; a copy of the complaint was also demanded and it was prayed that the notice be dropped.

On 05.06.2015 a notice was issued by the DEO for change of location of the shop at Ward No.26 on account of public protest and petitioner was granted three days' time to submit the change of site and was threatened that on failure the licence would be cancelled; the petitioner submitted a new location and the same was approved after charging the location change fee.

Whereafter, a notice notice dated 10.06.2015 was issued to the petitioner to submit explanation as to why his licence for the year 3 2015-16 may not be cancelled for violation of terms and conditions No.3.1, 3.2, 8.2, 8.5 of the licence and Rule 72B of the Rajasthan Excise Rules, 1956 ('the Rules') during the licence period 2014-15 and the petitioner was directed to respond by 15.06.2015; an explanation was submitted by the petitioner; whereafter, vide impugned order dated 19.06.2015, the DEO cancelled the licence granted to the petitioner.

It is submitted by learned counsel for the petitioner that the order impugned passed by respondent No.2 is ex facie illegal, unjust and arbitrary; the petitioner never sublet or transferred the shop in question to Rajiv Kumar so as to violate the provisions of the Rule 72B of the Rules and Section 34 of the Rajasthan Excise Act, 1950 ('the Act') and, consequently, there was no breach of any of the conditions of the licence so as to require cancellation; it is alleged that the action was taken by the respondents on account of extraneous considerations, inasmuch as, fiRs.the notice was issued for change of location, expecting the petitioner to fail in changing the location, however, as soon as the petitioner applied for a new location as per the directions, the notice seeking to cancel the licence was issued, which clearly indicates the extraneous considerations; it is further submitted that once the licence was renewed for the year 2015-16, the same could not be cancelled for alleged violation of the terms and conditions of the licence for the period pertaining to the year 2014-15 as there has been no complaint for the period 2015-16 and even during the period 2014-15 there was absolutely no complaint and, therefore, the order impugned deserves to be quashed and set aside.

For invoking the jurisdiction of this Court by passing the alternative remedy, reliance was placed on judgments in Whirlpool 4 Corporation v.

Registrar of Trade Marks, Mumbai & ORS.: (1998) 8 SCC1 Samart Bottlers PVT.Ltd.v.State of Raj.

& ORS.: 1988 (2) RLW577 M/S.R.N.Products, Jodhpur v.

State of Rajasthan & ORS.: 1989 (2) RLR741and Narendra Kumar v.

State of Rajasthan & ORS.: S.B.Civil Writ Petition No.4575/2010 decided on 27.08.2010.

Replying to the submissions made by learned counsel for the petitioner, learned counsel for the respondents vehemently submitted that the writ petition filed by the petitioner should not be entertained on account of availability of alternative remedy under Section 9A of the Act; it was submitted that a bare look at Annexure-8, which was filed by the petitioner before the Excise Inspector, clearly reveals that petitioner admitted the violation of terms and conditions of the ilcence and, therefore, the consequences would naturally follow; it was submitted that the grant of licence for the year 2015-16 was simply an extension of licence for the year 2014-15 and, therefore, the petitioner cannot be heard to say that for admitted violation of terms of licence during the period 2014-15, his licence could not be cancelled for the year 2015-16; with reference to the document i.e.Annexure-R/4 licence, it was submitted that the endorsement of renewal was made on the licence for the period 2014-15 itself and the terms and conditions, which were indicated in the guidelines and conditions for the year 2015-16 merely pertained to grant of a new licence and the extension was given automatically; with reference to the approval dated 14.02.2015 (Annexure-R/6).it was pointed out that it was stipulated and agreed by the petitioner under Clause-(9) that the terms and conditions would be same as in the previous licence and, therefore, the petitioner cannot get away; with reference to the further 5 document Annexure-R/7, it was pointed out that the petitioner has agreed for the same rights and liabilities as pertaining to the year 2014-15 and, therefore, the grant of licence for the year 2015-16 was clearly inter related and the same cannot be segregated and, therefore, once the petitioner is held guilty of having violated the terms of the licence for the year 2014-15, he cannot continue with the licence in the year 2015-16; it was emphasized that the petitioner cannot be permitted to take advantage of his own wrong, inasmuch as, the petitioner despite subletting the shop during the period 2014-15 succeeding in suppressing the violation of terms of the licence and now once the violation was established during the period 2015-16, the petitioner cannot be heard to question the cancellation of the licence.

Learned counsel further emphasized that in view of the fact that at the time of renewal the only requirement was that the petitioner must be holding a licence for the year 2014-15 and based on such licence the renewal was granted and, therefore, the fact of violation of licence condition during the previous years assumes significance and cannot be said to be unrelated so as to ignore the same during the subsequent renewal/extended period and, therefore, the order passed by the DEO is justified; it was prayed that the writ petition be dismissed with heavy costs.

Reliance was placed on Chatterjee Petrochem Co.& Anr.v.Haldia Petrochemicals LTD.& ORS.: AIR 2014 SC (Supp) 699, V.C.K.Bus Service Ltd.v.The Regional Transport Authority, Coimbatore : AIR 1957 SC489and Ramkishore v.

State of Maharashtra : 2010 (3) BCR200 Savita Dev v.

Nageswar Majumdar & Anr.

: (1995) 6 SCC274 Gujarat Bottling Co.LTD.& ORS.: (1995) 5 SCC545 S.P.Chengal 6 Varaya Naidu v.

Jagannath & ORS.: (1994) 1 SCC1and A.V.Papayya Sastry & Ors.v.Govt.

of A.P.& ORS.: (2007) 4 SCC221 I have considered the submissions made by learned counsel for the parties and have perused the material placed on record.

At the outset it may be noticed that there is a serious dispute between the parties as to whether during the period 2014-15, the petitioner allegedly sublet the shop in question to Rajiv Kumar; various submissions were made by counsel for the petitioner disputing the allegations and the fact that proper opportunity to defend the allegation was not granted to the petitioner; however, it was also submitted that without prejudice to the submissions even if the alleged violation is accepted, the licence for the year 2015-16 could not have been cancelled.

In this regard, the submission made by the petitioner before the Excise Inspector Annexure-8 relied on by the respondents assumes significance, wherein, the petitioner, inter alia, gave the following response:- 2014 $$ & / & / 31.03.2015 & /

& / & & / & & / & $ $ / & $ / & / & & 12-03-2014 & H I " A bare look at the response given by the petitioner clearly indicates that the petitioner has admitted that he had given the shop to Rajiv Kumar for running the same, as petitioner was busy with his 7 own work; the petitioner also admitted that he had received half capital for the shop through Rajiv Kumar, which was paid back by him on 31.03.2015; for looking after the shop, Rajiv Kumar was to be paid salary/wages, which was connected with the sale of liquor and the entire amount of TDS to be received by the petitioner was to be paid to Rajiv Kumar and has been paid and Naukarnana dated 12.03.2014 in this regard was already executed.

Though a claim is made that there was no subletting, however, the admission made by the petitioner clearly indicates violation of the conditions of the licence, whereby, under Condition 3.1 without prior approval a transfer of licence is barred.

The further submission made by counsel for the petitioner therefore assumes significance in the facts and circumstances of the case as to whether for violation of terms in the previous year, wherein no proceedings were initiated in the previous year, on detection of such a violation in a subsequent year, the licence granted/renewed for a subsequent year could be cancelled.

Relevant provisions, which may have implication regarding grant of licence and its cancellation are Section 34 of the Act, which deals with power to cancel and suspend licences and Rule 74 of the Rules, which deals with persons debarred from holding licences, which read as under:- 34.

Power to cancel and suspend licences - (1) Subject to such restrictions as the [State Government].may prescribe, the authority granting any licence, permit or pass under this Act may cancel or suspend it - (a) if it is transferred or subject by the holder thereof without the permission of the said authority; or (b) if any duty or fee payable by the holder thereof be not duly paid; or (c) in the event of any breach by the holder of such 8 licence, permit or pass or by his servant or by anyone acting on his behalf with his express or implied permission, of any of the terms or conditions of such licence, permit or pass; or (d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue or of any cognizable and non-cognizable offence or any offence punishable under the [Dangerous Drugs Act, 1930 [Central Act 11 of 1930].or any law relating to merchandise marks or of any offence punishable under sections 482 to 489 (both inclusive) of the Indian Penal Code, (XXX) or (e) where a licence, permit or pass has been granted on the application of the grantee of an exclusive privilege under this Act, on the requisition in writing of such grantee; or (f) if the conditions of the licence, permit or pass provide for such cancellation or suspension at will.

(2) When a licence, permit, or pass held by any person is cancelled under sub-section (1).the authority aforesaid may cancel any other licence, permit or pass granted to such person under this Act or any other law for the time being in force relating to excise, revenue or under [The Opium Act, 1878 (Central Act 1 of 1878)].(3) The holder of a licence, permit or pass shall not be entitled to any compensation for the cancellation or suspension thereof under this section nor to a refund of any fee paid or deposit made in respect thereof.

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74.

Persons debarred from holding licences - Without the previous written sanction of the Excise Commissioner;- (i) No person holding or having an interest in a licence for the manufacture sale or supply of foreign liquor in a district may hold or possess any interest in a licence for the retail sale of country Liquor in the same district.

(ii) No person holding an interest in a licence for the retail sale of opium [denatured spirit,].or intoxication drugs in a district may hold or possess any interest in a ilcence for the whole sale or retail manufacture or sale of foreign or country liquor in the same district.

(iii) No person shall hold or have an interest in two or more shops for the retail sale of the same excisable articles in the same village, or in the same city or town, and (iv) No person holding or having an interest in a ilcence for the manufacture of country liquor or supply thereof from a distillery or retail vendor shall hold or have an interest in a licence for the retail sale of country liquor in the area in which the distillery is established in any area supplied from such distillery.

(v) No person whose tender or bid at an auction for grant of licence under the Act or these Rules has been accepted but who fails to deposit within the time allowed.

The security amount required to be deposited according to the conditions of tender or auction [deleted].shall be entitled to hold any licence under the Act or these rules for a period of three years from the 9 last date allowed for deposit of such security]..

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A bare look at the above provisions would reveal that provisions of Rule 74 essentially debar persons having interest in other liquor related business and power to cancel and suspend licence pertains to a transfer of licence, non-payment of duty, breach of licence and conviction of the holder of licence under certain provisions indicated therein.

A plain reading of provisions of Section 34 clearly reveals that the same pertains to a violation committed during the currency of the licence; none of the provisions in the Act or the Rules deal with the situation and provide consequences if a licencee is held guilty of committing violation of a licence in the past or pertaining to the period of a expired licence.

In the opinion of this Court, once a person is held guilty of any offence/violation committed during the period of expired licence, which makes him ineligible to hold the licence, the natural consequence would be that the licence for the current period would automatically stand cancelled and/or the same would be liable to be cancelled, the licencee having been rendered ineligible.

However, in a case where a licencee is held guilty of violation of terms of the licence during the expired period and such violation does not render him ineligible for holding licence and there is no saving either in the provisions of the Act, Rules, licence or the notice issued for renewal of licence, possibly the licence for the renewed period cannot be cancelled for violation of terms of licence in the previous/expired licence period.

Admittedly, as noticed hereinbefore, none of the statutory or contractual provisions provides for the same.

Further, the position of 'renewal' of licence is required to be 10 distinguished from the position of an 'extension' of licence.

Hon'ble Supreme Court in Gajraj Singh & Ors.v.State Transport Appellate Tribunal & ORS.: (1997) 1 SCC650held as under:- 35.

This may be angulated from yet another legal perspecdtive, namely, consequences that would flow from the meaning of the word 'renewal' of a permit under Section 81 of the Act.

Black's Law Dictionary, Sixth Edn., defines the word 'renewal' at p.

1296 thus: The act of renewing or reviving.

A revival or rehabilitation of an expiring subject; that which is made anew or re-established.

The substitution of a new right or obligation for another of the same nature.

A change of something old to something new.

To grant or obtain extension of;.

36.

In P.

Ramnatha Aiyar's The Law Lexicon.

(Reprint Edn.

1987).the word 'renewal' is defined at p.

1107 to mean a change of something old for something new.The renewal of a 'licence' means a new licence granted by way of renewal.The renewal of negotiable bill or note is regarded simply as a prolongation of the original contract.

The office of a 'renewal', as it is termed, of a life policy, is to prevent discontinuance or forfeiture.

37.

In Provash Chandra Dalui v.

Biswanath Banerjee (1989 Supp (1) SCC487 in para 14, this Court drew the distinction between the meaning of the words extension and renewal.

It was held that: ....a distinction between 'extension' and 'renewal' is chiefly that in the case of renewal, a new lease is required while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act.

In other words, the word 'extension' when used in its proper and usual sense in connection with a lease, means prolongation of the lease.

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38.

It is settled law that grant of renewal is a fresh grant though it breathes life into the operation of the previous lease or licence granted as per existing appropriate provisions of the Act, rules or orders or acts intra vires or as per the law in operation as on the date of renewal.....

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(emphasis supplied) The principle laid down by Hon'ble Supreme Court clearly brings out that renewal of a licence means a new licence granted by way of renewal and a distinction has been drawn between extension and renewal, whereby, for renewal a new licence is required while for extension the same licence continues in force during the additional period and that grant of licence is a fresh grant though it breathes life 11 into the operation of the previous lease or licence granted as per existing appropriate provisions of the Act.

In view of the above proposition of law, the licence though renewed for the year 2015-16 is clearly a fresh and an independent licence from the year 2014-15 and, therefore, the provisions of Section 34 of the Act would have no application to the circumstances of the present case.

From the above, it is apparent that where a licence is granted to a licencee by way of renewal it cannot be treated as a old licence extended for a fresh period and a renewal of a licence cannot be treated as having been granted to a holder of a previous licence and, therefore, apparently for breach of one of the conditions of the previous/expired licence, the cancellation cannot be enforced against the licence, which is in force.

It would be appropriate to notice that neither in the communication dated 14.02.2015 (Annexure-R/6) nor in the application made by the petitioner (Annexure-R/7).there has been any reference and/or stipulation regarding consequences for violation of licence conditions for the previous year/expired licence; the Condition No.9 in Annexure-R/6 and the stipulation in the application made by the petitioner in Annexure-R/7 relied on by the respondents reads as under:- "9.

$ $ ,K , 2015-16 /K $L " "7.

& 2014-15 $ N 2015-16 L & $ N / " A bare look at the above two stipulations would indicate that the 12 petitioner agreed to comply with the same conditions as indicated in the licence pertaining to the year 2014-15 and any other conditions, which were to be added by the department for the year 2015-16 and in the approval Annexure-R/6, a stipulation has been made regarding renewal of the licence for the year 2015-16 and stipulation of conditions as contained in the previous licence.

The above stipulations/terms merely amount to incorporation by reference of conditions of licence for the year 2015-16 by referring to conditions of licence for the year 2014-15 and it cannot be said that the licence granted for the year 2014-15 was 'extended' on the same terms and conditions as even otherwise the amount of exclusive privilege has been increased and, therefore, the licence for the period 2015-16 is clearly a 'renewed' licence.

From the above, it is ex facie clear that so long as there is no violation of the conditions of the renewed licence by the petitioner, cancellation of the existing licence for violation of conditions of previous licence will not be on a valid ground as contemplated under the provisions of the Act and the Rules; if only there is a transfer or assignment after a renewal, then only it can be said that there is a violation of the conditions of renewed licence, which can give rise to a valid ground for cancellation of the same; any ground even if assuming it to exist for cancellation of licence for the year 2014-15 cannot be a valid ground for cancellation of existing renewed licence.

The above aspect as noticed hereinbefore is also fortified from the fact that neither in the terms of renewal, which was granted prior to expiry of licence for the year 2014-15 nor in the application made by the petitioner for renewal, there exists any condition regarding the 13 consequence of any violation of licence conditions in the previous year.

It may also be significant to notice that the provisions of the Act and the Rules essentially do not provide for renewal of licence and contemplate grant of a new licence every time a licence is issued and the excise policy for 2015-16 provided for grant of renewal, however, apparently, it did not provide for any stipulation regarding any violation in the previous year and, therefore, in absence of any statutory provision regarding cancellation of licence for any previous violation and/or any stipulation in the excise policy, the action of the respondents in the circumstances of the case cannot be sustained.

So far as the plea raised by learned counsel for the respondents regarding availability of alternative remedy is concerned, the Division Bench in M/S.R.N.Products (supra) following Samrat Bottlers (supra).both matters arising under the Act, held as under:- 12.

Moreover when the petitioner has come with a clear-cut case that the Excise Commissioner has acted in an arbitrary and capricious manner in refusing to renew his licence, the fact that the petitioner did not avail of the remedy of appeal, should not come in his way.

This view has been expressed in Samrath Bottlers P.

Ltd.v.State of Rajasthan & ORS.(1988 (2) RLR577 and we are entirely in agreement with the view that existence of an alternative remedy is not an absolute bar to exercise of the powers under Art.

226 and despite the fact that an alternative remedy exists this Court can in a proper case, whether the alternative remedy has been availed or not, if satisfied that the State or its officers have acted arbitrarily or have acted in a discriminatory manner, is competent to invoke its powers under Art.

226 of the Constitution of India.

We, therefore, do not agree with the learned counsel for the respondents that the writ petition should be dismissed on the ground of this preliminary objection.

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In view of the above, the objection raised by the respondents cannot be sustained.

The judgment cited by learned counsel for the respondents in the case of Savita Dev (supra) and Gujarat Bottling Co.LTD.(supra) 14 essentially do not deal with the issues, which arise for consideration in the present case.

So far as the judgment in the case of Chatterjee Petrochem Co.(supra) is concerned, the issue pertained to reading of arbitration clause contained in previous agreement in the subsequent agreement.

As already noticed and held hereinbefore, the conditions of icence for the year 2014-15 though have been incorporated by reference in the licence for the period

2015-16, it cannot be said that the same by itself would lead to arm the respondents to cancel the current licence based on violation of terms of a expired licence.

Another submission made by counsel for the respondents that petitioner cannot be permitted to take advantage of his own wrong has apparently no application to the present circumstance and, consequently, the judgment in the case of S.P.Chengal Varaya Naidu (supra) and A.V.Papayya Sastry (supra) would have no application to the facts of the present case as the same pertained to the fact that the parties had allegedly committed fault regarding a live issue and besides the fact that apparently on account of respondents' own conduct, the alleged violation was not detected by the respondents during the currency of the licence, the said aspect cannot be used for sustaining a otherwise unsustainable action on part of the respondents as already noticed hereinbefore that neither the provisions of the Act and the Rules nor the stipulation for the renewal of licence provides for such an eventuality.

In view of the above discussion, the cancellation of petitioner's licence for liquor shop pertaining to Ward No.26 Municipal Board, Hanumangarh (Annexure-R/4) by order dated 19.06.2015 (Annexure- 15

14) by District Excise Officer, Hanumangarh cannot be sustained.

Consequently, the writ petition is allowed.

The order dated 19.06.2015 (Annexure-14) passed by the District Excise Officer, Hanumangarh is quashed and set aside with all consequential reliefs.

No order as to costs.

(ARUN BHANSALI).J.

A.K.Chouhan/- 147