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Court : Rajasthan

Decided On : Aug-03-1989

Reported in : 1990WLN(UC)434

Judge : A.K. Mathur, J.

Appeal No. : S.B. Civil Writ Petition No. 2458 of 1989

Appellant : Vimal Kumar

Respondent : State of Rajasthan and ors.

Advocate for Def. : Mr. Maheshwari, Mr. Lodha

Judgement :

A.K. Mathur, J.

1. Petitioner by this writ petition has prayed that the order passed by the non-petitioner No. 3 Ex. 6 may be quashed and he has further prayed that clause 23 (ka) of the licence Ex. 3 may be quashed.

2. Brief facts giving rise to this writ petition are that the petitioner is a liquor contractor and he was granted liquor contract for country made liquor as well as for Indian made foreign liquor for Suratgarh and Raisinghnagar for the year 1987-88 and thereafter it was renewed for 1988-89. It is alleged that there was short fall in July 1988 for which certain actions initiated. As a result of that action it initiated

a spate of litigation before the Civil Court, before the High Court as well as before the Supreme Court. It is not necessary to dilate on the chequered history of that litigation. But so far as the present case is concerned, petitioner is aggrieved by the order passed by the District Excise Officer, Ganganagar Ex. 6 by which a sum of Rs. 16,10,400/- is sought to be recovered from the petitioner's security deposits while exercising the condition 23 (ka) of the licence Ex. 3

3. Mr. Maheshwari learned Counsel for the respondents has raised a preliminary objection that against this order of the District Excise Officer dated 21.1.89 a regular appeal Under Section 9A of the Rajasthan Excise Act is maintainable. Therefore, this Court should not interfere in the matter. Secondly learned Counsel submits that the petition is belated as the order was passed on 21.1.89 and writ petition has been filed on 19.7.89, therefore, it should not be entertained. He has also contended that some more Civil litigations pertaining to the recovery of short fall are pending. Mr. Lodha, learned Counsel for the respondents submits that the objection of the alternative remedy cannot be upheld for the reason that since the order in question has been passed after consulting the Excise Commissioner, therefore, it would not be worthwhile for approaching the Commissioner in appeal. In support of his contention learned Counsel has invited my attention to Ram and Shyam Co. v. State of Harayana : AIR 1985 SC1147 and Mount Corporation v. Director of I.& C. : AIR1965 Kant143 . Mr. Lodha learned Counsel submits that the condition 23 (ka) does not empower the District Excise Officer to issue a show cause notice and recover the amount of Rs. 16,10,400/- by way of forfeiture from the security deposits. The learned Counsel submits that once the licence has been cancelled then it is not open for the respondents to initiate second inquiry of forfeiture of the amount. Learned Counsel submits that the condition No. 23 (ka) is bad and it should be quashed.

4. So far as the condition No. 23 (ka) is concerned it cannot be quashed for the simple reason that the petitioner has availed this very licence for more than 1 1/2 years and it does not lie in his mouth to turn back and say that the condition No. 23 (ka) suffers from any infirmity on illegality. Mr. Maheshwari, learned Counsel for the respondent has invited my attention to Lakh Raj v. State of Rajasthan and Anr. 1987 (1) WLN 774. In that case some what similar question came up for

consideration and the learned Judge after considering various judgment of Supreme Court held as under:

Suffice it to say that the law is well settled that the licencees having voluntarily entered into the contract and having enjoyed the licence to their benefit, could not be permitted to avoid their contractual obligation and the preliminary objection raised by the Additional Advocate General so the maintainability of the writ petition in so far as it seeks to challenge the conditions of the licence, deserves to be accepted.

Therefore, this contention of the learned Counsel cannot be upheld.

5. Next learned Counsel submit that once the authorities having already exercised their option of cancelling the licence of the petitioner them it does not lie with them to initiate action for forfeiture of their security. The contention of Mr. Lodha also cannot be sustained. Clause 23 (ka) reads as under:

;fn ykbZlsUl/kkjh ;k mldk ukSdj] deZpkjh ;k dksbZ vU; O;fDr tks mldh vuqefr ls ;k mldh vksj ls dke djrk gks A bl ykbZlsUl dks fdlh 'krZ ;k jktLFkku vkcdkjh vf/kfu;e] 1950 ds fdlh Hkh micU/k dk ;k mu fu;eks dk tks bl vf/kfu;e ds vUrZxr cuk;s x;s gks ;k vkcdkjh vk;qDr ;k lEcfU/kr ftyk vkcdkjh vf/kdkjh ds fdlh fyf[kr vuqns'k dk mYya?ku djsxk rks ykbZlsUl nsus okys vf/kdkjh dks vf/kdkj gksxk fd og ykbZlsUl dks jn~n dj ns ;k ykbZlsUl/kkjh dh flD;ksfjVh jkf'k iwjh ;k mldk dksbZ Hkkx tCr dj ys ;k nksuks gh dk;Zokgh dj ys A

A bara perusal of this clause clearly shows that it is open for the respondents that they can cancel the licence or they can forgeit the security of the licensee and they can take both the actions. Simply because they have cancelled the licence, it does not mean that the respondent has forfeited their right to initiate the action for forgeiture of the security. Therefore, this contention of Mr. Lodha cannot be sustained.

6. Next learned Counsel has submitted that the action appears to have been taken with the consultation of the Excise Commissioner, therefore, no useful purpose would be served by approaching the Excise Authority by way of appeal. It cannot

be presumed that the authority while exercising as a quasi judicial function will be prejudiced from whatever action being taken as the head of Department. It is expected of the quashi judicial authority to discharge its functions objectively. If the petitioner is still dissatisfied with the order passed by the appellant authority Under Section 9A, there is another remedy by way of revision before the another authority. Now that revisional power has been conferred on the Commissioner of the Division. As such there is sufficient care as has already been taken to keep an objectivity. In Ram and Shayam Co.'s case : AIR 1985 SC1147 where the question was that a mining licence was granted at the instance of the Chief Minister and in that light it was observed that now approaching the Government will be of not useful purpose as the licence has been granted at the instance of the Chief Minister. That decision cannot be compared with that of the Excise Commissioner. He is not the Government. He is a quasi judicial authority and apparently it cannot be inferred that he will be prejudiced or biased and he will not apply his mind objectively more so his order is revisable by yet another authority. Therefore, contention of learned Counsel of bias and prejudice cannot be sustained.

7. Thus, in the result, I upheld the objection of Mr. Maheshwari, that the petitioner has alternative statuory remedy and he should avail that remedy first. Mr. Lodha submits that the impugned order Ex.6 has not been served upon him and he has obtained the copy from his co-licensee. Therefore period of filing an appeal stood expired. It is directed that if petitioner filed an appeal before the Excise Commissioner, then Excise Commissioner shall entertain his appeal it is filed within 30 days from today.

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