

Suman Singh (Smt.) Vs. State of Raj. and ors.

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Court : Rajasthan

Decided On : Feb-18-2008

Reported in : RLW2008(2)Raj1423

Judge : Gopal Krishan Vyas, J.

Appellant : Suman Singh (Smt.)

Respondent : State of Raj. and ors.

Disposition : Petition allowed

Judgement :

Gopal Krishan Vyas, J.

1. Since all these writ petitions involve common question of law and fact and arise out of the order dated 21.4.2007 of Excise Commissioner, Udaipur, passed separately in each case, they are being disposed of by this common order.

2. In this bunch of writ petitions, the petitioners are challenging the impugned order dated 21.4.2007 (Annex.7) and further seeking direction to the respondents to release the vehicles in favour of the petitioners by setting aside the penalty amount. It is also prayed that High Court may appoint an independent agency to inquire into the entire episode so that truth may come on the floor. The petitioners have also prayed for special cost of litigation and compensation.

3. The facts of all these cases are almost similar, therefore, facts mentioned in S.B.Civil Writ Petition No. 3100/2007, Smt. Suman Singh v. State of Rajasthan and Ors. are taken into consideration for adjudication of these writ petitions.

4. The facts narrated in the writ petition are that the petitioner is owner of truck No. HR38-H-2500 and is doing the business of transportation of Indian Made Foreign Liquor (hereinafter referred to as 'IMFL') of Gwalior Distillers Limited, Gwalior on rent basis.

On 28.2.2007 the said truck was carrying IMFL along with 12 other trucks for transportation from Gwalior to Delhi under the import license issued by District Excise Officer (IMFL, Union Territory of Delhi) after making payment of required excise duty for the said route and when the said truck reached near Police Station, Saifu District Dholpur then they were checked by the SHO Shri Manohar Lal Meena and on being asked, the driver of the truck produced all relevant documents for his perusal and inspection.

5. According to the petitioner, the license issued by the competent authority in which route was prescribed from Gwalior - Dholpur - Alwar - New Delhi along with permit, transit pass, bill and builtly were produced but ignoring all the above documents, the Police Authority registered FIR No.38/2007 dated 1.3.2007. Excise Inspector was also called, who also registered a case against the driver and seized the truck and material.

6. After seizure an application was moved through power of attorney of Managing Director of Gwalior Distillers Limited, Rairu, Gwalior before the learned Addl. Chief Judicial Magistrate, Dholpur for release of IMFL.

7. The power of attorney holder of supplier produced the import & export license, permit and relevant bills of liquor and the learned ACJM while recording the finding of fact that liquor was transported under a valid license & permit released the liquor.

8. Thereafter, an application was filed by the petitioner through his power of attorney before the Excise Commissioner, Udaipur for releasing the truck, but in

turn the Excise Commissioner after hearing both the parties passed the confiscation order of the said vehicle and also imposed penalty of Rs. 1,70,000/-. The said order was passed on 21.4.2007 and petitioner was directed to deposit the penalty amount within fifteen days. The same order was made for remaining vehicles and different amount of penalty was imposed.

9. The petitioner aggrieved by the order dated 21.4.2007 has preferred this writ petition. Learned Counsel for the petitioner vehemently argued that the order passed by the Excise Commissioner, Udaipur is per se illegal so also against the law and it smacks of arbitrariness at the hands of State, instrumentalities. It is submitted by the learned Counsel for the petitioner that the aforesaid liquor (IMFL) was being transported under a valid license, permit, bill and bilty on a prescribed route and the supplier also paid the required excise duty to the Excise Department, as such, there was no breach of any provision of the Excise Act, more specifically, there was no breach of Section 54 of the Act as the driver of the vehicle had produced all the relevant papers viz. import license, permit, bill, bilty, transit pass, but it seems that intention of the checking authority including the Excise Inspector was bad and, therefore, they illegally seized the vehicle and flatly refused to accept the valid documents and registered a false and frivolous case against the driver of the vehicle. Hence, action of the police authorities as well as Excise Department is illegal as they have put their hands in same gloves and just to fulfill their illegal demand, 09 FIRs were got registered by the Excise Department including petitioner's case.

10. As per counsel for the petitioner, learned Excise Commissioner in a most mechanical and arbitrary manner passed the order while accepting that the documents produced by the petitioner are not in dispute. The only ground for passing the confiscation order against the petitioner is that; at the time of checking, the required permit and transit pass were not produced by the driver, which is totally wrong because all the documents were produced before the checking authority but it did not accept the same so also refused to take them on record. According to the petitioner all the proceedings were taken in illegal manner and at the time of checking, though valid documents were produced but the Excise Commissioner only on the ground that required documents were not produced at

the time of checking passed the order of confiscation. In the above circumstances, it is vehemently argued by the learned Counsel for the petitioner that Police Department as well as Excise Commissioner, Udaipur has acted in illegal manner and passed the impugned order dated 21.4.2007 while observing a false fact that at the time of checking, relevant documents were not produced which is in contravention of Rule 44 of the Rajasthan Excise Rules.

11. With regard to the preliminary objection raised on behalf of the respondents about alternative remedy under Section 9A of the Rajasthan Excise Act, whereunder, a revision is maintainable before the Rajasthan Tax Board, it is submitted by the learned Counsel for the petitioner that the said remedy cannot be availed by the petitioner unless she deposits 75% of the demand created, therefore, that remedy cannot be treated to be efficacious and proper remedy and the peculiar facts and circumstances of the case reveal that respondents themselves are not disputing the documents under which the liquor was carried by the petitioner and in the impugned order also it is nowhere observed that commodity was transported under any illegal document. In these circumstances, the writ petition is maintainable because the order passed by the Excise Commissioner, Udaipur is per se illegal and passed on wrong premise and facts. It is also submitted that while issuing notice, learned Single Judge of this Court of this Court vide order dated 28.5.2007 passed an order, whereby, it has been ordered that; 'if the petitioner furnishes bank guarantee before the Excise Commissioner for the amount mentioned in Annex. 7, the vehicle in question shall be released to the petitioner.' Meaning thereby, prima facie, at the time of issuing notice, the fact of alternative remedy was brought to the notice of the Court by the petitioner, as mentioned in para 8 of the grounds, therefore, in the facts and circumstances of the case, respondents are not disputing that the petitioner was possessing valid license/ permit and other relevant documents for carrying IMFL, as such, this writ petition may be accepted and the impugned order be set aside.

12. Learned Counsel for the petitioner has invited my attention towards some judgments of the Hon'ble Apex Court in which it has been held that existence of alternative remedy is no bar, if the order is without jurisdiction and apparently found to be unconstitutional. He has placed reliance on;

- (i) AIR 1959 SC 725 (Full Bench),
- (ii) 1998 (8) Supreme Today, 176 (para 13 & 14),
- (iii) 1995 RRD, 330 &
- (iv) 2005 AIR SCW 3727 (para 20).

13. While citing the above judgments, it has been vehemently argued that availability of alternative remedy does not bar the jurisdiction under Article 226 of the Constitution. However, it is submitted that the Court can relegate the aggrieved person to alternative remedy if it is satisfied that such person has an adequate and suitable remedy elsewhere. The Court in extra ordinary circumstance may exercise the power, if it comes to the conclusion that there has been breach of principle of natural justice.

14. On the other hand, learned Counsel for the Excise Department vehemently argued that when remedy of revision against the order impugned is expressly provided under the Act under Section 9A, then the Court should not interfere in this writ petition. Learned Counsel further submitted that the restriction of accompanying the satisfactory proof of payment of 75% of the demand created by the order appealed against is just and proper because the Legislature is within its domain put such condition to restrict the illegality by any licensee so also to restrict illegal trafficking of liquor in the State and such remedy cannot be termed as inefficacious or unsuitable remedy. Learned Counsel for the respondents invited my attention to the recent Division Bench decision rendered in D.B. Civil Writ Petition No. 4581/2006 in case of M/s Choksi Heraeus Pvt. Ltd. v. State of Rajasthan and Ors. in which similar type of restriction was imposed for entertaining the appeal under Section 65(1) of the Rajasthan Stamp Act for challenging the order passed by the Collector (Stamps) under the provisions of Rajasthan Stamp Act, 1998, in which the Division Bench of this Court, in bunch of cases, upheld the validity of provision of proviso to Section 65(1) of the Stamp Act, 1998, whereby, similar type of proviso was added, which reads as under:

Provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment of fifty percent of there recoverable amount.

15. Therefore, first of all, according to the respondents when alternative remedy by way of filing revision under Section 9A of the Rajasthan Excise Act is available to the petitioner, this writ petition is not maintainable and deserves to be dismissed on this count alone.

16. Learned Counsel for the respondents has invited my attention towards many other, judgments including the judgment given by the co-ordinate bench in S.B. Civil Writ Petition No. 6132/2006 dated 3.10.2007, whereby, the learned Single Judge of this Court dismissed the writ petition while observing that, '... In the present set of facts, I do not consider it appropriate to entertain this writ petition for writ as the petitioner is having an efficacious alternative remedy under Sub-section 2 of Section 9(A) of the Act of 1951 by way of filing an appeal before the Division Bench of Board of Revenue, Rajasthan, Ajmer...' Learned Counsel for the respondents, without prejudiced to the above submissions, argued that in this case several disputed questions of facts are also involved which cannot be decided without recording evidence. So also releasing the liquor by the learned Judicial Magistrate does not create any right in favour of the petitioner to challenge the order of confiscation of vehicle under the Rajasthan Excise Act. According to the respondent counsel, the finding of fact was recorded by the Excise Commissioner that at the time of seizure of vehicle no permit or transit pass was produced for carrying the IMFL. Not only this, the driver was apprehended to have unauthorized liquor and when truck was inspected by the police authorities, no permit or pass was produced except the bilty and bill which are not sufficient documents to show authorized transportation of IMFL. Thus, such finding of fact cannot be permitted to be assailed before this Court under Article 226 of the Constitution. It is further argued that under the Rules, it was the duty of the truck owner or the driver to produce the permit and transit pass at the time of checking and this is only to check the illegal transportation of liquor. Thus, having failed to produce the relevant documents, the order of confiscation and penalty was rightly passed so as to enable the owner to take the vehicle in lieu of amount as mentioned in the impugned order.

17. Learned Counsel for the respondent has invited attention of this Court towards Rule 44 of the Rules, 1956, which reads as under:

Transport of any intoxicating drug from any State in India through Rajasthan to another State in India shall be unlawful unless authorized by the Chief Excise Authority of the State from which it is being exported by a pass which has been granted on the condition that consignment is not broken in transit, is carried by specified route to a specified destination and subject to such examination as Gazetted Excise Officer of Rajasthan may require.

18. According to the counsel for the respondent, petitioner has no such permit or transit pass at the time of checking as stipulated under Rule 44 of the Rules, 1956, therefore, the liquor which was being transported is prima facie found to be illegal and vehicle was accordingly, involved in carrying illegal liquor, therefore, it was rightly seized and confiscated under Section 69 of the Act.

19. Learned Counsel for the respondent argued that though it is not in dispute in this case that petitioner was holding permit and license so also bilty and bill but at the time of inspection only copies of bill and bilty were produced and transit pass & Permit were not produced, therefore, the Excise Commissioner rightly arrived at a conclusion that there was violation of Rule 44 of the Rules. Hence, this writ petition be dismissed, firstly on the ground of availability of alternative remedy and secondly the order does not warrant interference because there was complete violation of Rule 44 of the Rules of 1956.

20. Upon perusal of entire record and hearing both the parties, first of all it is required to be seen whether the remedy available under Section 9A of the Act is efficacious and suitable remedy or can be defined as alternative remedy only. In the facts and circumstances of the case, there cannot be any dispute with regard to the principle laid down by the Apex Court that if alternative, efficacious remedy is available then normally the Court should not issue writ under Article 226 of the Constitution, so also there is no dispute with regard to availability of alternative remedy. But at the time of dismissing any writ for want of alternative remedy at least facts of the case are required to be seen. A bare glance of the facts of this case reveals that the order dated 21.4.2007 was passed only on the ground that at

the time of inspection/checking only two documents i.e. copies of bill and bilty were produced but transit pass and permit were not produced by the petitioner;. The allegation of the petitioner is that those documents were also produced but same were not taken into consideration for the reason best known to the checking squad and cases were registered illegally by police as well as by Excise Department. In the order impugned also it is nowhere observed by the Excise Commissioner that petitioner is not possessing the transit pass or permit but order has been passed on the premise that legal permit and transit pass were supposed to be in possession and was to be produced at the time of inspection when liquor was transported and if these documents were not produced at the time of checking then obviously it is in contravention of Rule 44 of the Rules. There is also an admitted position of the case that the vehicle in question along with liquor was seized at Dholpur and upon perusal of the permit, it is clear that Dholpur is in the prescribed route by the District Excise Officer (IMFL, New Delhi) which is placed on record as Annex. 3. Meaning thereby, the said vehicle with liquor was seized at a place which is specifically provided in the route of import permit issued by the competent authority. Now the question arises that if all these valid documents were there, then how the checking agency can be expected to ignore those documents while checking that too at a place which is one of the places prescribed in the route.

21. In these circumstances, it is obvious that the liquor was not transported by the petitioner under any illegal document and only reason for passing the order of confiscation of vehicle and imposing penalty is that permit and transit pass for transporting liquor were not produced at the time of inspection. Therefore, in my opinion, the facts and circumstances of the present case clearly speaks that it is a case where petitioner should not be asked to avail alternative remedy as provided under the Act by way of filing revision under Section 9A. In reaching the above conclusion, I am fortified by the decision of Hon'ble Apex Court in *State of H.P. and Ors. v. Gujarat Ambuja Cement Ltd. and Anr.* 2005 AIR SCW 3727.

22. Upon perusal of the facts it is apparently clear that provisions of Rule 44 of the Rules, 1956 have also been complied with because admittedly it is not in dispute that petitioner is having import permit of IMFL issued by the District Excise Officer,

New Delhi and argument to the effect that the said permit was not produced at the time of checking cannot be accepted because the vehicle was seized at Dholpur, which is prescribed in the permit itself. When the liquor was transported under a valid license and permit then obviously it can be presumed that the owner/driver will certainly produce all the documents at the time of checking, and in the present case the Excise Commissioner himself has passed the order only on the ground that though petitioner is possessing all valid documents but transit pass, permit and license were not produced at the time of checking. In my opinion, the learned Excise Commissioner passed the order in a mechanical manner and without observing the facts as submitted by the petitioner before him. All the documents have been produced before this Court including bill of Gwalior Distillers Limited, import permit of IMFL/Beer issued by the District Excise Officer, so also the permit for exporting foreign liquor and admittedly these documents were issued on 28.2.2007 and on 1.3.2007 the truck in question along with liquor was seized. Thus, the valid documents were in existence at the time of seizure and it cannot be presumed that out of all the documents only two documents i.e. transit pass and permit were not produced at the time of checking.

23. In these circumstances, I deem it just and proper to entertain these writ petitions and considering the fact that documents were issued by the competent authority and petitioners were carrying the liquor under those valid documents on a route which is prescribed in the permit itself, the reasons recorded in the seizure memo cannot be believed as no person of ordinary prudence would hide any valid document so as to invite problem of seizure and confiscation.

24. In these circumstances, all the writ petitions are allowed. The order impugned dated 21.4.2007, in each case, is set aside. The vehicles in question have already been released in favour of the petitioners in pursuance of the order passed by this Court upon furnishing the bank guarantee, therefore, now the order of furnishing bank guarantee is also of no substance.