

The Karnal Distillery Co. Ltd.

Vs

The State of Haryana and Others

Civil Appeal No. 1256 (N) of 1968

(S.M. Sikri, G.K. Mitter, P. Jagmohan Reddy JJ)

16.10.1969

JUDGMENT

MITTER, J. -

1. This is an appeal by special leave from an order, dated March 25, 1968 of the High Court of Punjab and Haryana at Chandigarh passed in Letters Patent Appeal No. 168 of 1968 whereby the High Court dismissed in limine the said appeal filed by the appellant against the order of March 18, 1968 of single Judge of the said court in Civil Writ No. 39 of 1968. The appellant, the petitioner before the High Court, prayed for quashing of two orders of the Excise and Taxation Commissioner, dated 18th December, 1967 and 28th December, 1967.

2. The facts giving rise to the Writ Petition are as follows. The appellant-company runs a distillery at Karnal and was engaged in the manufacture of liquor from molasses under a licence in Form D-2 granted under Section 21 of the Punjab Excise Act, 1914 by the Financial Commissioner of the State. The said licence was granted on certain conditions incorporated therein, the relevant ones being :-

1. The licensee shall observe the provisions of the Punjab Excise Act I of 1914 and of all rules thereunder,

5. He shall comply with all directions of the Financial Commissioner regarding the character or purity of the liquor to be manufactured, the stock of spirit or material to be maintained, and all other matters in which compliance is prescribed by rules made under the Punjab Excise Act I of 1914.

7. If the licensee infringes or causes or permits any person to infringe any of the conditions of this licence, the Financial Commissioner may forthwith revoke and determine the licence and forfeit to Government the whole or any part of any deposit made by the licensee under Rules 4(a) of the Distillery Rules

8. The licensee shall pay regularly and by the date all payments which may become due to Government and in default thereof the Financial Commissioner may forfeit to Government the whole or any part of any security furnished by him under Rule 6 of the rules

By a letter, dated April 11, 1962 the Excise and Taxation Commissioner of the State (hereinafter referred to as the 'Commissioner') directed the appellant to increase the covered storage capacity of molasses by about 15 per cent. The appellant represented that there was no space available in the distillery for the

purpose whereupon the Commissioner required the appellant to cover the existing storage tanks. The Commissioner gave a direction to the appellant that it should at least arrange to cover its uncovered molasses' tank of the capacity of 30,000 maunds by October 31, 1963. By a letter, dated February 4, 1963 the appellant was further informed that in case of their failure to comply with the above requirement the department would have no option but to proceed against them under condition 5 of the distillery licence. By letter, dated February 9, 1963 the appellant desired to have a discussion of the matter with the Commissioner. Thereafter more than one date was fixed by the Commissioner for the purpose but it appears that the dates fixed was for the April 19, 1963. The appellant wanted to change the date to April 21, 1963 which was not suitable to the Commissioner. Taking the view that the appellant wanted to side-track the issue the Commissioner made an order on June 5, 1963, the relevant portion of which reads as follows :-

"They (the appellant) are thus guilty of violation of condition No. 5 of Distillery Licence held by them in Form D-2. The management of the distillery have thus rendered their licence in Form D-2 granted in favour of the Karnal Distillery Co., Ltd., Karnal, liable to cancellation or suspension under Section 36(c) of the Punjab Excise Act (I of 1914). However, instead of cancellation of licence, I, in exercise of powers under Section 80(2) of the Act *ibid*, hereby impose a penalty of Rs. 500/- on the management of the said distillery. The amount of penalty should be deposited by the management in the Government Treasury, Karnal, within a fortnight of the receipt of this order failing which action for cancellation of distillery licence will be taken under Section 36(c) *ibid*."

The appellant filed a Writ Petition No. 315 of 1964 in the High Court for quashing of the said order *inter alia* on the ground that no sufficient opportunity was given to it to represent its case before the making of the said order and that the Commissioner had no power to direct the appellant to cover its uncovered storage tank. Both these contentions were turned down by a Division Bench of the High Court but the learned Judges upheld the appellant's contention that the Commissioner was not entitled to recover the amount of penalty as arrears of land revenue observing in this connection that :

"It would thus follow from the order that in case the amount of penalty was not deposited within the prescribed time, the only action, which would be taken by the authority concerned, was the cancellation of the distillery licence."

In the result although the Writ Petition was dismissed the High Court quashed the proceedings which were being taken by the excise authorities for recovery of the amount of penalty as arrears of land revenue. The order of the High Court was passed on 20th August, 1964. The Commissioner followed this by a notice, dated October 16, 1964. After referring to the earlier order of June 5, 1963 and the above order of the High Court the Commissioners stated :

"Since you have not paid the amount of penalty fixed within the period fixed your licence has to be cancelled in terms of the above cited order of the Excise and Taxation Commissioner.

In case you have anything to say regarding the above action you may submit your representation in writing within seven days of the receipt of this notice."

The appellant replied by letter, dated October 23, 1964 taking exception to the proposed action and complaining that the notice to cancel the appellant's licence for the trivial amount of Rs. 500/- was mala fide and made out of personal animosity of the Financial Commissioner. It was further stated that the appellant was arranging to file an appeal in the Supreme Court against the order of the High Court of Punjab, dated 20th August, 1964 and a request was made to the Commissioner to stay his hands pending disposal of the same. The appellant enclosed a cheque for Rs. 500/- with the reply without prejudice to its rights.

3. Nothing appears to have been done by the Commissioner for a long time thereafter. The cheque was not encashed but sent back to the appellant on July 13, 1965. Another cheque for the amount was sent to the Commissioner in December 1966 which too was not encashed. Apparently the Commissioner stayed his hands because of the pendency of the application for leave to appeal to this Court which was ultimately rejected. He gave a hearing to the appellant on June 6, 1957 whereafter the matter was adjourned from time to time. After hearing the parties finally on December 5, 1967, he passed an order cancelling the distillery licence turning down the contentions urged on behalf of the appellant. The appellant made another representation to the Commissioner on December 27, 1967, and this was rejected by an order, dated December 28, 1967. Both these orders show that the Commissioner took the view that the period of 15 days mentioned in the order of June 5, 1963 was a term of the term of the order an failure to comply strictly therewith entailed the penal consequences directly flowing therefrom. The Commissioner was also of the view that the department could not insist upon recovering the penalty and the only course open was to consider whether or not the licence required to be cancelled. As the appellant was found to have failed to carry out the directions given under the Excise Act and the rules, the only course open was to cancel the licence.

4. Mr. Sibbal learned Advocate for the appellant raised various contentions to show that the stand taken by the department was not justified and that the licence of the appellant could be cancelled in the manner it was sought to be done. In our view, it is not necessary to deal with all the contentions raised. Under Section 20(2) of the Punjab Excise Act, 1914 no distillery or brewery can be constructed or worked except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Financial Commissioner under Section 31. Under the latter section the Financial Commissioner, subject to such restrictions and conditions as the State Government may impose, may make rules regarding the granting of licence for distilleries, stills or breweries, the security to be deposited by the licensee of a distillery or brewery, etc. Section 36 provides that :

"Subject to such restriction as the State Government may prescribe, the authority granting any licence, permit or pass under this Act may cancel or suspend it

##(a) and (b) x x x x##

(c) in the event of any breach by the holder of such licence, permit or pass or by his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions of such licence, permit or pass;

##x x x x x.##

Section 80(1) gives the Collector the power to accept from any person reasonably suspected of having committed an offence punishable under Section 62, Section 65 or Section 68 of the Act a

sum of money by way of compensation for such offence. Sub-section (2) of the section lays down :

"The cancellation or suspension of any licence, permit or pass under Section 36(a), (b) or (c) of this Act may be foregone or revoked by and at the sole discretion of the authority having power to cancel or suspend it on payment by the holder of such licence, permit or pass of such penalty as such authority may fix."

5. The Commissioner promulgated rules known as The Punjab Distillery Rules, 1932 under Section 59 of the Act. Rule 5 thereof shows that the licence to run a distillery must be in Form D-2. Rule 37 lays down that :

"The licensee shall have always in stock gur, molasses or mahua store to be provided by him and approved by the Financial Commissioner, a quantity of gur, molasses or mahua sufficient for the preparation of wash for the full working of all his stills, calculated upon the data set forth"

Assuming that this rule permitted the Commissioner to give a direction for increasing the covered storage capacity of molasses or to cover its uncovered molasses tank any violation of that direction could be met with an order for cancellation or suspension of the licence under Section 36 of the Act. Having passed such an order of cancellation or suspension it would be open to the Commissioner or the authority concerned to impose a penalty for the infraction complained of and give the distillery a notice to the effect that the suspension or the cancellation would be revoked or foregone if the penalty was paid. The word revocation is only apposite when it is intended to repeal, annul or withdraw some order which has already become effective. To "forego" according to Shorter Oxford Dictionary means "to go past, to neglect, slight, to let go, give up etc." Foregoing, cancellation or suspension therefore would mean giving up or undoing the effect of cancellation. In our opinion Section 80(2) does not authorise the Commissioner to make a conditional order in the form in which he purported to do by this order of June 5, 1963. There was no cancellation of licence by that order. The Commissioner merely intimated the appellant that its licence had become liable to cancellation or suspension but instead of cancelling the licence he was imposing a penalty of Rs. 500/- to be paid within a fortnight failing which action for cancellation would be taken under Section 36(c). The Commissioner's show cause notice, dated October 16, 1964 proceeds on the basis that as the penalty had not been paid within the period fixed, the licence had to be cancelled in terms of the order of June 5, 1963. Section 36 of the Act does not permit the taking of such a course. The grounds for cancellation or suspension of that licence are specified in sub-clauses (a) to (g) of the Section and default in payment or penalty levied under the Act goes not find a place therein. The imposition of a penalty by way of threat of cancellation of licence was also not permissible under the Act.

6. No doubt in his orders of December 18, 1967 and December 28, 1967 the Commissioner had relied on the fact that the appellant had failed to comply with the direction to cover the uncovered molasses storage tank. But this default was not the subject-matter of the show cause notice. If the Commissioner had issued a notice to the effect that in spite of opportunity given to the appellant no attempt had been made to cover the storage tank and that the same called for a cancellation of the licence, there might be justification for the course taken. In our view the Commissioner was not entitled to cancel the licence because of the default in the payment of penalty.

7. The learned Attorney-General contended that under Section 80 of the Act it was not obligatory on the Commissioner first to pass an order of cancellation of licence for breach of any of its conditions and then revoke it on payment of a penalty. According to him the section permitted the making of

an order directing payment of fine in lieu of cancellation and making the cancellation effective in default of payment of fine. We do not think the section bears that interpretation.

8. In the result, we hold the orders of cancellation of the licence, dated December 18, 1967 and December 28, 1967 were not authorised by law. The appeal must therefore be allowed and the orders of December 1967 be quashed. But on the facts of this case, we make no order as to costs.

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