SUPREME COURT OF INDIA

Manish S.Pardasani (M/s Wine Kornder)

Vs.

Inspector State Excise, P-1, Division, Mumbai(Suburbs)

C.A.No.126-156 of 2019

(Abhay Manohar Sapre and Indu Malhotra,JJ.,)

07.01.2019

JUDGMENT

Abhav Manohar Sapre,J.,

SLP(C)No.27980-28010 of 2018

1. Leave granted.

2. These appeals are filed against the final judgment and order dated 05.10.2018 passed by the High Court of Judicature at Bombay in Writ Petition (Loding) Nos.3255, 3166, 3169, 3170, 3171, 3179, 3205, 3227-3233, 3235-3237, 3254, 3256-3258, 3263/2018, Writ Petition Nos.10649-10657/2018.

3. In order to appreciate the factual and legal controversy involved in these appeals which lie in a narrow compass, it is necessary to set out the relevant facts hereinbelow.

4. The appellants [Writ Petitioners (15)] claim to be the holders of licences issued by the Licensing Authority under the provisions of the Maharashtra Prohibition Act, 1949 (hereinafter referred to as "the M.P. Act") in their respective names. The appellants' claim that they are engaged in the business of selling liquor from their retail shops, which are situated in Mumbai suburb.

5. On 10.08.2018, an FIR (Criminal Case No.408 of 2018) was registered by the State Excise Department against the appellants inter alia for undertaking home delivery of liquor on telephonic orders being placed, and for commission of other offences punishable under Sections 23, 24, 65(a) (e), 73, 74, 81, 83 and 90 of the M.P. Act.

6. This led to the sealing of the appellants' liquor shops on 11.08.2018 by the State Excise officials.

7. The Collector (Excise) issued show cause notices on 27.8.2018 to the appellants setting out therein the breaches of the licence conditions and violation of certain provisions of the M.P. Act. The appellants were directed to show cause as to why their licences be not suspended/cancelled under Section 54 of the M.P. Act.

8. The appellants filed their respective replies to the show cause notices.

9. On 05.09.2018, the Collector (Excise) (licensing authority) after hearing the appellants, passed an interim order and directed de-sealing of the appellants' shops on conditions contained therein.

10. The Superintendent of State Excise, Mumbai felt aggrieved by the order dated 05.09.2018 of the Collector (Excise), and filed appeal before the Commissioner State Excise, Maharashtra State for Mumbai being Appeal No.212/2018 under the M.P. Act and questioned its legality and correctness.

11. The Commissioner State Excise in exercise of her appellate powers on 05.09.2018 stayed the operation of the interim order dated 05.09.2018 passed by the Collector (Excise).

12. The appeal is pending for final adjudication before the Commissioner State Excise.

13. On 10.09.2018, the Collector (Excise) passed the final order, whereby he directed the licencees to pay Rs.50,000/- as compounding fees for the breaches committed by the appellants.

14. Aggrieved by the order dated 10.09.2018, the Superintendent State Excise filed an appeal before the Commissioner State Excise being Appeal No. 221/2018 challenging the validity and correctness of the order dated 10.09.2018 passed by the Collector (Excise).

15. The Commissioner State Excise vide ex-parte order 17.09.2018 stayed the operation of the order dated 10.09.2018.

16. This appeal is also pending for its final disposal before the Commissioner State Excise.

17. In this background of facts, and at this stage of the proceedings, the appellants felt aggrieved by the order dated 17.09.2018, and filed Writ Petitions before the Bombay High Court.

18. In the two Writ Petitions, i.e., W.P. No.3255/2018 and W.P. No.10650/2018, the challenge was mainly to the sealing orders dated 11.08.2018, passed on oral directions of the 4th respondent to the 2nd respondents (see prayer clause (b) of W.P. No. 10650/2018 at page 169); and the second Order dated 17.09.2018 passed by the Commissioner State Excise. The other reliefs claimed in the Writ Petitions were essentially consequential to the main reliefs.

19. The appellants challenged the afore-mentioned orders on legal grounds, including violation of the statutory rules, which require a hearing being granted to the licence holders. The writ petitioners also contended that the conduct of the Commissioner State Excise gave rise to apprehensions of bias. In these circumstances, a prayer was made for the appeals to be heard by another officer of equal rank.

20. The respondents (State and the Excise Authorities) contested the Writ Petitions, and defended the proceedings initiated against the appellants, including the passing of interim ex-parte orders in the prevalent circumstances. The plea of bias was denied as being baseless and unwarranted.

21. By the impugned order, the High Court quashed the order dated 11.08.2018, which directed sealing of the liquor shops. The High Court also quashed the ex-parte interim order dated 17.09.2018 passed by the Commissioner. The Commissioner State Excise was directed to decide the appeals on merits in accordance with law.

22. The High Court, however, while disposing of the Writ Petitions has made serious observations and passed adverse remarks in the manner in which the Commissioner State Excise had dealt with the appellants' case, particularly the manner in which ex-parte interim orders were passed, and oral directions issued to the subordinate officers. The High Court went to the extent of issuing directions to the Commissioner State Excise to act properly, and in accordance with law in future, and refrain from acting with high handedness, and exercise restraint in the exercise of her judicial and administrative powers/authority.

23. The High Court further issued a direction in anticipation that if the Commissioner State Excise eventually passes adverse orders against the appellants with respect to the subject matter of the appeal, then such order should not be given effect to by the State Authorities for a period of four weeks from the date of its communication to the appellants.

24. The Writ Petitioners being aggrieved by the operative part of the impugned order which directed the same Commissioner to hear their appeals, have filed S.L.P. (C) Nos. 27980-28010/2018 before this Court. Their main grievance is that the High Court after having passed the adverse remarks and strictures against the Commissioner State Excise on her manner of functioning and passing ex-parte interim orders, should have directed transfer of the pending appeals (212/2018 and 221/2018) to another appellate authority or the Commissioner competent to hear such appeals rather than to allow the same Commissioner to decide the appeals. The appellants submitted that they have an apprehension that they would not get a fair trial if the same Commissioner State Excise hears the appeals.

25. The Commissioner State Excise was aggrieved by the observations and adverse remarks made in the impugned order against her personally, and has filed S.L.P. (C) No. 29169/2018 in this Court. The Commissioner State Excise has prayed for expungement of the adverse remarks and strictures passed by the High Court against her.

26. It was inter alia submitted that the ex-parte interim orders were required to be passed in the emergent situation, which had arisen by sale of liquor by home delivery on telephonic instructions, and purchase of liquor orders being placed through the Internet. This according to the State was found in flagrant violation of the statutory rules and the conditions of the licence which inter alia stipulated that the licencee shall carry on business of selling liquor only at the licensed premises.

27. It was further submitted that Rule 6 of the Bombay Prohibition (Appeal) Rules, 1953 only enjoins upon the appellate authority to grant a reasonable opportunity of hearing before the order is passed by the appellate authority in the appeal which according to Commissioner State Excise is yet to be passed for its disposal.

28. In this backdrop, it was submitted that the observations made by the High Court in the facts of this case were not called for and, therefore, they be expunged from the impugned order.

29. The aforesaid appeals were clubbed together for their disposal.

30. The questions which arise for consideration in these two appeals are:

31. First, whether the High Court was justified in not directing transfer of the two appeals from the Commissioner State Excise to some other Commissioner State Excise or any other competent appellate authority under the M.P. Act for their disposal on merits ?

32. Second, whether the High Court was justified on the facts arising in the case in making adverse remarks and passing strictures against the Commissioner State Excise ?

33. Third, whether the High Court was justified in issuing directions in anticipation, ordering stay of the operation of an adverse order against the Writ Petitioners, even prior to it being passed by the Commissioner State Excise in the pending appeals ?

34. We have heard learned Senior Counsel for all the parties.

35. Having heard the learned counsel for the parties and on perusal of the record of the case and written submissions, we are inclined to dismiss the appeals filed by the writ petitioners i.e. SLP Nos.27980- 28010/2018 and allow the appeal, i.e., SLP No.29169/2018 filed by Commissioner State Excise (Dr. Smt. Ashwini Joshi).

36. In our considered opinion, the High Court has rightly declined to transfer the pending appeals from the Commissioner State Excise to any other Commissioner State Excise or any other competent appellate authority under the Act.

37. The High Court, however, having found that the orders impugned in the writ petitions were not legally sustainable, it should have only assigned the legal reasoning in support of their conclusion and quashed the impugned orders. In our view, the reasoning assigned by

the Courts to strike down or uphold the action/order impugned in the lis must always be confined to legal grounds, and none else. There was, therefore, no need nor any occasion, much less necessity for the High Court to have travelled beyond their legal reasoning assigned and made adverse remarks, and pass strictures against the appellate authority i.e. the Commissioner State Excise and direct her to act and behave in a particular manner in discharge of her duties and dealing with the case.

38. The Commissioner State Excise being an appellate authority under the M.P. Act had exercised the appellate powers and had passed an ex-parte interim stay order. The exercise of such appellate power was required to be tested only in the light of relevant legal parameters and not beyond it.

39. Merely because the writ petitioners made allegations of personal bias to impugn the orders, apart from raising legal grounds, the High Court ought to have seen as to whether in the facts of this case, it was really necessary to examine the plea of "bias" for striking down the impugned orders, and, if so, whether there is adequate material to sustain such a plea.

40. The plea of bias, as is clear from the pleadings, was founded essentially on an inference, which the Writ Petitioners were trying to draw by pointing out the manner in which the Commissioner State Excise is alleged to have issued some oral directions to her subordinates and had passed two ex-parte interim stay orders in the appeals against the appellants in relation to the subject-matter.

41. A litigant in order to seek relief in a court of law is entitled to raise several grounds. These grounds are usually based on facts and law governing the subject, out of which, some are relevant and some are vexatious. It is for the Court to decide as to which ground is legally tenable, and it be made the basis to decide the lis between the parties one way or the other.

42. The grounds founded on law are always preferred for deciding the lis arising between the parties. Any discussion or/and the reasoning assigned in support of the conclusion other than the legal reasoning is otiose.

43. The plea of alleged "bias" against the appellate authority is a plea permissible in law to impugn the action/order. However, such a plea has to be founded on substantial material qua the officer concerned who acts in a quasi-judicial capacity.

44. Such a plea, if raised, must therefore be based on adequate substantial material against such an authority. If the lis can be decided on other legal grounds, such plea should not be entertained, much less upheld.

45. Every adverse order passed against a litigant is injurious to a losing party. However, that does not give him a right to attack the adverse order by attributing bias against authority/Court qua him. An adverse order, if it is found bad in law, is liable to be set-aside on legal grounds. However, when there is also an allegation of bias, it has to be supported by adequate substantial material.

46. Coming now to the facts of the case at hand, we find that the appellants (Writ Petitioners) in support of their plea of bias against the Commissioner State Excise had mainly placed reliance on three circumstances: -

47. First, the Commissioner State Excise dealt with the appellants' case by issuing oral orders to the subordinate authorities, which according to them was not permissible.

48. Second, the Commissioner passed two interim ex-parte stay orders against the appellants in the pending appeals, which it is alleged was indicative of her adversity and bias against the appellants.

49. Third, the High Court had made some adverse remarks in the past in some other writ petition against the Commissioner State Excise when she was in charge of a different post.

50. Insofar as the first circumstance relating to giving of alleged oral directions by the Commissioner State Excise to the subordinates is concerned, though it was vehemently pressed by the Writ Petitioners, the same does not warrant any interference.

51. It is not possible to record a finding on such factual issues on the basis of mere allegations made in the pleadings.

52. The writ court does not hold an inquiry on disputed facts. Such issues, in our opinion, could be decided properly and in accordance with law by a fact finding body where the parties would have got an opportunity to lead evidence and explain the reasons.

53. It is for these reasons, we are of the view that the High Court should have refrained from recording any finding, much less make adverse remarks against the Commissioner State Excise and her subordinates.

54. Be that as it may, since the two impugned interim orders passed by the Inspector Excise and the Commissioner State Excise were otherwise held legally unsustainable, and set-aside by the High Court on other grounds, there was no need to go into the question of "bias" and "oral instructions". It had, in our view, become academic.

55. So far as the second circumstance is concerned, in our view, it has also no substance. One cannot dispute that the Commissioner State Excise had exercised her appellate powers under the Act for passing an ex-parte interim order to stay the operation of the order of the Collector (Excise) impugned in the appeal.

56. An appellate authority/Court is empowered in law to grant or refuse ex-parte stay, or/and set aside or/and affirm the order impugned in the appeal. In such an eventuality, an aggrieved person, in the first instance, has a remedy to apply to the same appellate authority/Court for setting aside the ex-parte grant of interim stay passed against him, or approach to the higher judicial fora to challenge its legality. The appellate authority or higher forum is empowered

to either vacate the interim stay or continue or modify as the case may require. It depends upon the nature of reliefs claimed, injury pleaded, urgency shown, damage likely to suffer if the ex-parte interim stay is not granted etc. It would, therefore, vary from facts of each case.

57. We are, therefore, unable to find any material relied on by the appellants to infer the existence of bias against the Commissioner State Excise, except placing reliance on the manner in which she passed the ex-parte interim orders and oral instructions against the appellants.

58. In our view, the passing of an ex-parte order would not constitute a plea of bias attributable against the Commissioner State Excise qua the appellants. It is a trite law that merely because an order is adverse to a litigant, it would not by itself constitute a plea of bias against the authority/Court qua the aggrieved.

59. In the light of the foregoing discussion, we do not find any merit in the two circumstances relied upon by the appellants to sustain the plea of bias against the Commissioner State Excise qua them.

60. Insofar as the third circumstance relied on by the appellants is concerned, suffice it to say, it has absolutely no substance. First, merely because some observations were made by the High Court in the past in some other case against the Commissioner State Excise, when she was holding a different post, can hardly be a ground to sustain a plea of bias qua the appellants. Second, as rightly argued by the learned Senior Counsel appearing for the Commissioner State Excise, the case relied on was entirely a different case and is still pending in appeal before this Court.

61. In the light of the foregoing discussion, we are of the considered opinion that the appellants (writ petitioners) have failed to make out any case of bias against the Commissioner State Excise qua them. In this situation there is no justification in transferring of the pending appeals from the Board of the Commissioner State Excise to any other appellate authority.

62. In view of the foregoing discussion, we find no merit in the appeals filed by the Writ Petitioners. Their appeals thus fail and are hereby dismissed with cost of Rs.50,000/- payable to the State of Maharashtra.

63. This takes us to decide the appeal arising out of S.L.P.(C) 29169/2018 filed by Dr. Mrs. Ashwini Joshi, Commissioner State Excise, seeking expungement of the adverse remarks and strictures passed against her in the impugned order.

64. At the outset, we consider it apposite to take note of the law laid down by this Court on the issue which is the subject matter of this appeal.

65. The question as to what should be the role of the higher judiciary in making adverse remarks and passing strictures against the judicial/administrative authorities, whose

order/action is under challenge has been the subject matter of several decisions of this Court. This Court in these decisions has held that the higher judiciary must avoid as far as possible from making any disparaging harsh remarks and strictures against any judicial/administrative officer while examining their action/order impugned in the judicial proceedings.

66. It is apposite to refer to a passage from the decision of this Court in *Awani Kumar Upadhyay vs. High Court of Judicature of Allahabad & Ors*[1]., wherein this Court has laid down a rule of caution in following words:

> "11. It is made clear that we are not undermining the ultimate decision of the High Court on merits. However, we are constrained to observe that the higher courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. Our legal system acknowledges the fallibility of the Judges, hence it provides appeals and revisions. Inasmuch as the lower judicial officers mostly work under a charged atmosphere and are constantly under psychological pressure and they do not have the facilities which are available in the higher courts, we are of the view that the remarks/observations and strictures are to be avoided particularly if the officer has no occasion to put forth his reasonings. Further, if the passage complained of is wholly irrelevant and unjustifiable and its retention on the records will cause serious harm to the persons to whom it refers and its expunction will not affect the reasons for the judgment or order, request for expunging those remarks are to be allowed. We, once again, reiterate that harsh or disparaging remarks are not to be made against judicial officers and authorities whose conduct comes into consideration before the courts of law unless it is really for the decision of the case as an integral part thereof."

67. Keeping in view the aforementioned law laid down by this Court in the case of Awani Kumar Upadhyay (supra), and further in the light of our detailed discussion made above, which has resulted in dismissal of the appeals filed by the writ petitioners, we are inclined to expunge all the adverse and disparaging remarks made, and strictures passed by the High Court against Dr. Ashwini Joshi (appellant in Civil Appeal @ SLP (C) No. 29169/2018) in the impugned order.

68. In our view, these disparaging remarks/strictures coupled with the directions of how one should behave and pass orders was unnecessary in the facts of this case, and nor they were germane for deciding the lis between the parties. Such remarks/strictures, therefore, should not have been made. They are accordingly expunged and stand deleted from the impugned order.

69. In view of the foregoing discussion, the appeal filed by Dr. Mrs. Ashwini Joshi is allowed. The impugned order is modified accordingly as indicated above.

70. This takes us to examine one more question, which arises in this case, but was not argued by any of the parties in these proceedings.

71. We find that the High Court while disposing of the Writ Petitions also passed the following writ/directions in Para 20 which reads as under:

> "Since an apprehension is expressed and a serious one by the petitioners, we direct that in the event the fourth respondent passes any orders adverse to the petitioners, then such orders shall not take effect for a period of four weeks from the date they are communicated to the petitioners. Since we have set aside the fourth respondent's interim order and for the present not expressed any opinion on the contentions raised before us, interest of justice demands that the sealing of the premises by the authorities should be set aside. Therefore, the Superintendent or other functionary is directed to remove the seal, lock and key placed on the premises forthwith. This order will ensure to the benefit of such of the petitioners whose licenses are subsisting and are not cancelled. The other licences, which are no longer in operation on account of their termination, the holders thereof cannot avail the benefit of this order. However, we do not express any opinion on the remedies that are available to them and they can avail them as observed and held in the above paragraphs."
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> (Emphasis Supplied)

72. In our considered view, the High Court ought not to have issued directions of this nature. It was legally not permissible to do so. Indeed, the High Court by issuing such directions which are essentially passed in anticipation of the order being passed by an appellate authority, interfered with the judicial independence of an appellate authority in deciding the appeals in accordance with law.

73. It is the sole discretion of the appellate authority under the Act to decide the appeal based on the facts involved in the appeal, and legal provisions which eventually result in passing a judicial order. No higher court can pass such directions merely on anticipation of an order being passed by an appellate authority. It is only after the order is passed, that the aggrieved person has a legal right to take recourse to a legal remedy available in law against such order by approaching to a higher forum and pray for grant of appropriate relief against such order.

74. This stage in this case is yet to arrive. The High Court should not have, therefore, pre-empted the passing of any order of the appellate authority, while deciding the Writ Petition. It is a settled law that the Court can stay or quash only those orders, which are impugned in the lis before it. A fortiori the Court cannot stay or/and quash the orders in anticipation, before they are passed. We cannot, therefore, uphold such writ/directions issued by the High Court.

75. In view of the foregoing discussion, the writ/direction issued by the High Court in Para 20 quoted above is set aside.

76. Before parting, we hasten to observe that we have not made any observation on the merits of the controversy, which is the subject matter of two appeals (212/2018 and 221/2018) pending before the Commissioner, State Excise.

77. Indeed, we had made it clear to the learned senior advocates, who argued the case with fairness that we would confine our discussion and reasoning only to the issues urged in support of the two appeals and would not touched the merits of the case which are subject-matter of pending appeals.

78. The effect of the impugned order and this Court's order is that two pending appeals (212/2018 and 221/2018) will now be heard and decided by the Commissioner State Excise on merits, in accordance with law and without being influenced by any observations made by this Court and the High Court in the impugned order. The appeals will finally be adjudicated preferably within three months from the receipt of the order passed by this Court.

Judgment Referred.

[1]*(2013) 12 SCC 0392*