

Court No. - 8

Case :- WRIT - C No. - 2304 of 2021

Petitioner :- Sumit Shukla

Respondent :- State Of U.P. Thru. Prin. Secy. Excise Lko. And Others

Counsel for Petitioner :- Rakesh Dwivedi, Abhishek Sharma, Neeraj Sharma

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia, J.

1. Heard Sri Neeraj Sharma, the counsel for the petitioner through Video Conferencing and the learned Standing Counsel.
2. The present petition has been filed by the petitioner alleging that the petitioner was granted the excise license for the excise year 2018-19 through e-lottery under the Rules known as Uttar Pradesh Excise Settlement of Licenses for Retail Sale and Country Liquor Rules 2002 (herein after referred to as Rules 2002). While grant of license, the petitioner had deposited the basic license fee for the aforesaid two shops for the excise year 2018-19 and 2019-20. Although the petitioner claims that he was running the shop in accordance with the law, on 25.03.2019 an FIR came to be lodged under section 60-A of the U.P. Excise Act read with section 419, 420, 467, 468, 471 IPC by the police officer mainly on the ground that some quantity of illicit liquor was recovered from a car. The said liquor was proposed to be linked to the petitioner.
3. It is a specific case of the petitioner that no illicit liquor or infraction was found from the shop run by the petitioner which he continued to run till 31.03.2019 as stated in para 7 of the Writ Petition. Subsequent thereto, the petitioner was served with a show cause notice after the license of the two shops were suspended. In the show cause notice issued on 09.04.2019, contained in Annexure no.3, it was specifically stated that

against the petitioner that in view of the recovery of the alleged illicit liquor from the car, which led to lodging of an FIR No.0166 of 2019 and a case crime no.028 of 2017, a report was received by the police on 04.04.2019 stating that on 25.03.2019, the illicit liquor was recovered from a car, which according to the police authorities was the illicit liquor linked with the license granted to the petitioner. It was stated that the license in the name of the petitioner for the year 2019-20 was liable to be cancelled in terms of 2002 Rules . The petitioner was asked to show cause as to why the security and the basic license fees for the year 2019-20 may not be confiscated. The petitioner denied the charges, however, an order came to be passed against the petitioner cancelling the license of the petitioner on 16.05.2019 and by the same order, he forfeited the basic license fee and the advance security deposits for the excise year 2019-20 for both the shops.

4. It is a common ground that after cancellation of the license, the shops in question were resettled in favour of some other licensee. Aggrieved against the order dated 16.05.2019, the petitioner preferred an appeal under section 11 (1) of the U.P. Excise Act. In the said appeal, it was specifically urged by the petitioner that the petitioner was never granted the license w.e.f. First April 2019 for the period 2019-20, as such, the forfeiting of the basic license fee and the security deposit for the excise year 2019-20 was bad in law. The appeal preferred by the petitioner came to be dismissed on 30.09.2019 and thereafter the petitioner preferred a revision under section 11(2) of the U.P. Excise Act. In the memo of revision, which is on record as Annexure no.8, a specific plea was taken that infraction alleged against the petitioner was of 25.03.2019 i.e. pertaining to excise year 2018-19, as such, no order could have been passed for the excise year 2019-20 for which the license was never granted to

the petitioner nor was the same renewed in favour of the petitioner. The revision came to be dismissed by means of the impugned order. In the impugned order on record, there is no consideration of these specific plea taken by the petitioner with regard to forfeiture of the security deposit and the basic license fee for the excise year 2019-20.

5. In the present writ petition, the petitioner confines his argument to the confiscation of the security deposit and the basic license fee for the excise year 2019-20. In paragraph 7 of the writ petition, it has been categorically stated that the petitioner ran the shop only till 31.03.2019 and did not run the shop for the excise year 2019-20, in the counter affidavit filed by the State, it has been admitted by the State that the illicit liquor, which was linked with the petitioner was recovered on 25.03.2019 and in paragraph 10 of the counter affidavit, it has been stated that in respect of seizure of the liquor on 25.03.2019, the Superintendent of Police had given a report on 04.04.2019 based upon which the proceedings were initiated and concluded against the petitioner.

6. In view of the pleadings exchanged, the sole question that arise for consideration is whether the basic license fee and the security deposit could be forfeited for the excise year 2019-2020, the year in which the license of the petitioner was neither renewed nor was granted to the petitioner.

7. In the present case, the grant of suspension and cancellation of license is governed by 2002 Rules and Rule 21 of the said Rules confers the power of the licensing authority to suspend or cancel the license subject to the conditions stipulated in Rule 21. Rule 21 is quoted herein below :

21. Suspension and cancellation of the licence and penalties-(1)
Licensing Authority may suspend or cancel the licence-

(a) If any bottle or container of country liquor is found in the licensed premises on which duty has not been paid and which does not carry security hologram duly approved by the Excise Commissioner as a proof of payment of duty;

(b) If any bottle or container of any other kind of liquor or intoxicating drug (for which licence is not granted) is found in the licensed premises;

(c) If any liquor or intoxicating drug is found in the possession of the licensee against the provisions of the Act or rules;

(d) If the affidavit submitted by the licensee at the time of application is found incorrect and assertions made therein are found to be false;

(e) If it is found that the licence has been obtained in a false name or the licensee is holding the licence on behalf of some other person;

(f) If the licensee fails to deposit monthly instalment of licence fee or replenish the deficit in security amount within prescribed period;

(g) If the licensee is convicted of an offence punishable under the Act or of any cognizable and non bailable offence, or any offence punishable under Narcotics Drugs and Psychotropic Substances Act, 1985 or of any offence punishable under section 482 to 489 of the Indian Penal Code.

(2) The Licensing Authority shall immediately suspend the licence and issue a show cause notice for cancellation of licence and forfeiture of security. The licensee shall submit his explanation within 7 days of the receipt of notice. There after the Licensing Authority shall pass suitable orders after giving due opportunity of hearing to the licensee.

(3) In case the licence is cancelled the basic licence fee, licence

fee deposited by him shall stand forfeited in favour of the Government and licensee shall not be entitled to claim any compensation or refund. Such licensee may also be blacklisted and debarred from holding any other excise licence.

8. It is relevant to note that the period of license is also referred to in Rule 5, which provides that the period of license shall be for an excise year or a part thereof subject to the same being extended or renewed. Rule 5 is quoted herein below :

5. Period of licence. *-The period of licence shall be for an excise year or part thereof for which the licence has been granted but the licence may be renewed or extended on the desire of the licensee for the next excise year on such terms and conditions as may be decided by the State Government.*

Thus, on the plain reading of the Rules, it is clear that the action proposed and provided for under Rule 21 can be taken only in respect of the period of license for which the same was granted i.e. for that particular excise year.

9. In the present case, as per the admitted facts, the infractions which led to passing of an order under Rule 21 happened on 25.03.2019 and it is nobody's case that the license of the petitioner was renewed for the excise year 2019-20 or did the petitioner run the shop in question on any day in the excise year 2019-2020. Thus, the confiscation of the basic license fee and the security deposit for the excise year 2019-20 was contrary to the rules and without there being any prescription for confiscation of the said amount. It is well settled that an expropriatory action can be taken strictly in accordance with law.

10. In the present case there being no authority vested with the respondents to confiscate any amount for the period, which is beyond the license period, as such, I have no hesitation in

holding that the confiscation of the basic license fee (deposited in part) and the renewal fees for the excise year 2019-20 was wholly unjustified.

11. In the present case, what transpires from the records is that for the excise year 2019-20, the petitioner had deposited renewal fees and the part of the basic license fee in terms of the deposits which are annexed from page 118 to 123, the security deposit of the petitioner for the excise year 2018-19 was to be used for the excise year 2019-20. In view of there being no fresh deposits of security for the year 2019-20, no directions for refund can be given in respect to security which was rightly confiscated, however, the basic license fee deposited by the petitioner and the renewal fees in terms of the receipts which are annexed from page 118 to 123 could not be confiscated.

12. For the reasonings as recorded above, the writ petition is ***allowed*** with directions to refund the renewal fee and part of basic license fee deposited by the petitioner in respect of the two shops in terms of the receipts on record from pages 118 to 123 of the paper book forthwith within a period of three months.

Order Date :- 18.10.2023

VNP/-