

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.6217 of 2015

(Anandrao Jagannathrao Gaydhane

vs.

The State of Maharashtra, through Secretary, State Excise and others)

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

*Shri Anand Jaiswal, Sr. Adv. with Mrs. Radhika Bajaj, Adv. for the Petitioner.
Shri Anil Kilor, Advocate for Respondent No.5.*

CORAM : A.S. CHANDURKAR, J.

DATE : DECEMBER 5, 2015.

By the present writ petition, the petitioner takes exception to the order dated 09/11/2015 passed by the Commissioner, State Excise, Maharashtra. By the said order, the permission granted earlier to the petitioner for shifting the CL-III Licence on 06/04/2011 came to be cancelled.

At the outset, Shri Anil Kilor, the learned Counsel for respondent No.5 raised a preliminary objection to the maintainability of the writ petition on the ground that a statutory remedy under Section 135 of the Maharashtra Prohibition Act, 1949 was available to the petitioner for challenging the impugned order. It was submitted that under the said provision, an order passed by the Commissioner was appealable before the State Government and, therefore, without availing said remedy, the petitioner has directly approached this Court seeking exercise of extraordinary jurisdiction.

In response to said preliminary objection, Shri Anand Jaiswal, the learned Senior Counsel for the petitioner submitted that there were various reasons for the petitioner to approach this Court in its extraordinary jurisdiction. He submitted that there was no power whatsoever with the Commissioner to have passed the impugned order cancelling the earlier order dated 06/04/2011. He referred to the provisions of Section 54(e) of the said Act to urge that a licence could be cancelled or suspended only if it was obtained through wilful misrepresentation or fraud. It was then submitted that even on earlier occasions, the petitioner was permitted to invoke extraordinary jurisdiction and the earlier writ petitions were entertained on merits. Further, the petitioner was singled out for adverse action by respondent No.5, when in other cases, respondent No.5 himself had permitted other licence holders to carry on their business. According to him, breach of provisions of Article-14 of the Constitution of India were writ large on the actions of the Authorities and, therefore, the petitioner could not be relegated to invoke the statutory remedy.

Reply has also been filed on behalf of respondent Nos.3 and 4, in which a similar objection to the availability of an alternate remedy has been raised.

The order impugned has the effect of cancelling the earlier permission granted to the petitioner on 06/04/2011. It is, therefore, an order passed by the Commissioner in exercise of powers conferred under the said Act. The provisions of Section 137(2) of the said Act provide for remedy of appeal against an order passed by the Commissioner. It is thus obvious that a statutory remedy of appeal is available to the petitioner for challenging the order dated 09/11/2015.

The question is regarding invoking extraordinary jurisdiction, when a statutory remedy is available to the petitioner. In **Executive Engineer, southern Electricity Supply Company of Orissa limited (SOUTHCO) and another vs. Sri Seetaram Rice Mill – (2012) 2 SCC 108**, the Supreme Court in paragraph 18 has observed thus :

“81. Should the courts determine on merits of the case or should they preferably answer the preliminary issue or jurisdictional issue arising in the facts of the case and remit the matter for consideration on merits by the competent authority? Again, it is somewhat difficult to state with absolute clarity any principle governing such exercise of jurisdiction. It always will depend upon the facts of a given case. We are of the considered view that interest of administration of justice shall be better subserved if the cases of the present kind are heard by the courts only where they involve primary questions of jurisdiction or the matters which go to the very root of

jurisdiction and where the authorities have acted beyond the provisions of the Act. However, it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.”

It is, therefore, clear that it will have to be seen whether any exceptional case has been made out by the petitioner for not invoking the statutory remedy.

The impugned order has been passed after hearing the petitioner. It is not the case that same has been passed in utter breach of the principles of natural justice. The violation of Article-14 of the Constitution of India as urged is based on the alleged permission granted to other licencees, which aspect requires factual adjudication. Considering the fact that the order impugned has been passed on the basis of report submitted by the Collector, dated 08/10/2015 and is also based on various factual aspects, in my view, this is not a fit case in which the petitioner can be permitted to bypass the statutory remedy and invoke extraordinary jurisdiction of this Court. Moreover, the statutory period of limitation is also yet to expire. Though the respective Counsel for the parties made various submissions on the merits of the adjudication, in the view that has been taken, it is not necessary to adjudicate on the same.

Thus, by holding that it is open for the petitioner to avail the statutory remedy of appeal under Section 137(2) of the

said Act, I am not inclined to entertain the writ petition. The writ petition is, therefore, disposed of by observing that it is open for the petitioner to invoke the statutory remedy. The points raised in the writ petition are kept open.

JUDGE

**sandesh*