IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3882 OF 2019

Rajendrakumar A.Agarwal .. Petitioner
vs
The State of Maharashtra & ors .. Respondents

…

Mrs.Veena Thadani with Mr.Vishal Thadani for Petitioner
Mr.A.B.Kadam Asst.Govt.Pleader for Respondent nos.1 to 5.
Mr.D.B.Savant I.b Mr.Santosh Patil for Respondent no.6

CORAM : NITIN W.SAMBRE, J.
DATE: 15 JULY 2019

P.C.

1. The case of the Petitioner is, in 1985, CL-II licence was allotted to partnership firm of which, respondent no.6 was one of the partner. In 2015, the said licence was not renewed. Taking dis-advantage of the said situation, it is claimed that respondent no.6 applied for a fresh licence in its favour thereby, misrepresenting and practicing fraud on the partnership firm so also, the State Government and started operation of the same at the place of Petitioner.

2. The Petitioner in the aforesaid background, raised an

objection before the Commissioner, State Excise on the issue of forged documents, which was rejected by the State Excise Commissioner, vide order impugned dated 27.3.2017. Same was subject matter of challenge before the State Government in exercise of powers under section 137 of the Maharashtra Prohibition Act,1949. The State Government also dismissed the Appeal preferred by the Petitioner, thereby confirming the order of the State Prohibition Commissioner, as such this Petition.

3. The submissions are that, the report submitted by the Joint Commissioner (in-charge Administration) of the State Excise thereby objecting/pointing out certain serious deficiencies on part of the respondent no.6 while processing his request for allotment of CL-II licence were not looked into. According to the learned counsel for the Petitioner in view of the report the order impugned ought not to have been passed, rather an inquiry should have been ordered in the matter of issuance of CL-II licence in favour of respondent no.6.

4. The learned counsel for respondent no.6 would specifically urge that the report of the In-charge Joint Commissioner is subsequent to an order of dismissal of the objections raised by the Petitioner, by the

State Excise Commissioner and that being so, the Commissioner has no occasion to consider the report submitted by the Joint Commissioner. He would also try to justify the order of the State Government on the ground that the State Government while dealing with the issue raised before it, in an Appeal, is required to confine itself to the extent of the pleadings and findings recorded before the Commissioner, State Excise. As such, according to him, the Petition is liable to be dismissed.

5. The learned Assistant Government Pleader appearing for respondent nos. 1 to 5 would support the orders impugned, on the same line as that of respondent no.6. He sought dismissal of the Petition.

6. Considered the rival submissions. Perused the report submitted by the Joint Commissioner, State Excise (Administration) dated 21st May 2018.

7. Learned counsel for the respondent no.6 so also the learned Assistant Government Pleader are right in pointing out that the aforesaid report was not available to the Commissioner while dealing with the objections raised by the Petitioner, which has resulted into passing of the

impugned order. However, this Court cannot be oblivious to the fact that the report of the Joint Commissioner was very much available before the State Government, however, the State Government has chosen to ignore the same decided the Appeal preferred by the Petitioner by dismissing the same.

8. The fact remains that the report dated 21st May 2018 of the Joint Commissioner, State Excise was not at all referred to by the State Government in its order impugned.

9. In the aforesaid background, particularly having regard to the fact, that in the inquiry conducted by the Joint Commissioner, State Excise, certain serious deficiencies were noticed on the part of respondent no.6 in complying with the requirements for issuance of CL-II licence.. In my opinion, in view of above both the orders impugned, the one passed by the Commissioner, State Excise on 27th March 2017, confirmed in Appeal by the State Government on 30th July 2018 are unsustainable and as such, are quashed and set aside.

10. The Commissioner, State Excise is directed to decide the

Complaint preferred by the Petitioner afresh, having regard to the report dated 21st May 2018, submitted by the Joint Commissioner, State Excise.

11. Petition stands partly allowed in above terms.

12. Needless to say the Commissioner, State Excise shall decide the claim of the Petitioner expeditiously.

(NITIN W.SAMBRE,J)