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23.11.2023
Court No. 35
I.T (p.a)

WPA 8761 of 2019

Prafulla Kumar Chowdhury
Vs.
State of West Bengal & Ors.

Mr. Uday Sankar Chattopadhyay,
Ms. Rajashree Tah,
Ms. Trisha Rakshit,
Ms. Aishwarya Datta.
... for the Petitioner.

Mr. Anirban Ray,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal.
... for the State.

In this writ petition the petitioner has challenged the legality and propriety of the order of Additional Chief Secretary, Finance Department, and government of West Bengal, i.e, respondent no. 3, dated 30th January, 2019.

Let the factual background of the case be discussed in brief at this juncture.

The petitioner happened to be a license holder of country liquor shop. The petitioner claims that he has so far run the business smoothly and flawlessly and in due compliance with all the statutory formalities and obligations he, as license holder was required to follow in running such a business. It is stated that on 5th February, 2014, an FIR was lodged against the petitioner and his other family members being Bhatar Police Station case no. 37 of 2014, under Sections 498A, 302, 34 of the IPC. Pursuant to the same the petitioner was detaining in custody from 28th March, 2014 to 23rd April, 2014.

During the period of his detention in connection with the said police case, an order was passed on 26th March, 2014, by the Additional District Magistrate (G) & Collector of Excise, Burdwan (East Excise), Burdwan, i.e, respondent no. 5 here, to suspend the excise license granted in favour of the petitioner earlier. However, before such an order of suspension of excise license dated 26th March, 2014 has been passed, the petitioner claims to have submitted an application for renewal of his excise license on 24th February, 2014. Be that as it may, pursuant to the said order dated 26th March, 2014, of suspension of excise license, the petitioner was debarred by operation of law to pursue his said business, any further. Being aggrieved, the petitioner moved this Court for the first time in the year 2014 by filing WP 24884 (w) of 2014. The said writ petition was dismissed by the Court as withdrawn.

Thereafter, according to the petitioner, he has exhausted the statutory remedies available to him, by filing an appeal and a revision thereafter, however only to be unsuccessful to secure any remedy for his grievance. Fact remains that a further order dated 9th June, 2014, was also passed by the said respondent no. 5 (Additional District Magistrate (G) & Collector of Excise, Burdwan (East Excise), Burdwan) to direct lapse of excise license earlier granted to the present petitioner in terms of the provisions of notification no. 800-EX dated 29.07.2003, Rule 14, sub-rule (1).

The impugned order dated 30th January, 2019, is passed in the statutory revision case filed by the present petitioner before the respective authority. The authority has taken note of the orders passed against the present petitioner as well as the respective statutory and regulatory provisions under which the business of the petitioner was governed and has finally come to the decision that the excise license of the petitioner was lapsed with effect from 1st April, 2014, by operation of law as the petitioner has failed to comply with the necessary formalities for renewal of license within the prescribed period of time. The revisional authority thus has not found any impropriety either in the order of the respondent no.5 dated 26th March, 2014 and 9th June, 2014 or regarding the order of the appellate authority dated 12th April, 2018 and has ultimately dismissed the revision application.

The petitioner has come up to challenge the said order in this revision. Mr. Chattopadhyay, appearing for the petitioner has made two fold submissions. Firstly, according to Mr. Chattopadhyay the order of suspension of license earlier granted to the petitioner is illegal being violative of the specific statutory provision. For this Mr. Chattopadhyay has strongly relied on the provisions under Section 42 (1) (d) of the Bengal Excise Act, 1909. Let the provision be quoted herein below:-

> ***"42. Power to cancel or suspend license, permit or pass**.—(1) Subject to such restrictions as the State Government may prescribe, by rule made section 85, sub 20 section (2), clause (i) the authority who granted any license, permit or pass under this Act may cancel or suspend it—*
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> *(a)************
>
> *(b)************
>
> *(c)************
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> *(d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence or of any offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985, or under the Trade and Merchandise Marks Act, 1958 (43 of 1958) or under any of the sections 479 to 489 of the Indian Penal Code (45 of 1860), or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955) ; or"*

According to Mr. Chattopadhyay since his client has only being arrayed as a accused person in a criminal case as mentioned above in which the trial is yet to commence, therefore, the authority could not have suspended his license in view of the said provision of law where the mandate of the statute is specific enough to provide for suspension of license for a license holder only in case when he has been convicted in trial for a cognizable and non-bailable offence. Mr. Chattopadhyay says that the revisional authority having not considered the said statutory provision while upholding the appellate authority's order, as well as the order of the suspending authority, has erred in law and the said order of the revisional authority is required to be set aside.

Mr. Chattopadhyay, has further submitted, though accepting the fact that the renewal application for excise license by his client dated 24th February, 2014, would bare no signature of his client, says that at that point of time the petitioner was absconding and it was practically not possible for him to subscribe his signature on the application for revision. He has described the situation to be beyond control of the petitioner. By referring to the relevant challan he says that otherwise the renewal application is in form as the prescribed fees for renewal of excise license has been duly submitted on behalf of the petitioner with the respondent authorities. Mr. Chattopadhyay seeks that an order be passed directing the respondent authorities to ignore and or regularize the irregularity if any in making the application of renewal of license and grant the petitioner's license of excise for the future period of time. Obviously for such a direction to be passed the order of the authorities dated 9th June, 2014, has to be set aside and Mr. Chattopadhyay has urged on this score too.

Petitioner's contentions and prayers have been however, strongly objected to on behalf of the respondent authority. Mr. Chakraborty appearing for the respondent authorities have put forth at the outset that after withdrawing the earlier writ petition no. W.P 24884 (w) of 2014, without any liberty to file the same again, the petitioner has seized to have any right to espouse his grievance as regards the order dated 26.03.2014 for suspension of excise license for the second time, as the same was in challenge in the said writ petition. Secondly, it has been submitted with reference to Rule (b) in notification no. 13041-EX dated 28.03.1937, that the act done by the authority by suspending petitioner's license in view of the pendency of the proceeding before the criminal Court is well within the purview of the said notification. He has vehemently objected to the submission made on behalf of the petitioner that the order of suspension of license dated 26th March, 2014 would be an illegal order.

Thereafter Mr. Chakraborty has submitted by referring to Rule 14 (1) of notification no. 800-EX dated 29.07.2003 that the necessary requirement and procedural compliances for renewal of an excise license has been duly prescribed therein. He urges that unless the provisions has laid down therein are complied with, which has happened in petitioner's case, the authority would be at liberty not to renew the license and the license would therefore be lapsed by operation of law. Thus according to Mr. Chakraborty the entire exercise done by the respondent authority in issuing orders dated 26th March, 2014 as well as 9th June, 2014 is fairly within the purview of the statutory provision and there would be no illegality or arbitrariness for the respondent authorities to pass the said orders. Accordingly, he says, the appellate authority in its order dated 12th April, 2018, as well as the revisional authority in the impugned order dated 30th January, 2019, have rightly and properly rejected petitioner's prayer and he further says that the said decision of the respondent authorities in revision, as impugned in this writ petition, needs no interference by this Court.

The petitioner has preferred to file this case, to seek an equitable relief under Article 226 of the Constitution of India and for this is required to come with a case of lawlessness and arbitrariness of the respondent authorities touching the rights of him, thereby prejudicing his such rights and interests. In this case the petitioner has alleged regarding illegality of the orders passed by the respondent authorities in suspending his excise license and also declaring his license as lapsed. The revisional authority's order dated 30th January, 2019, has been challenged on the ground that such apparent and gross illegality by the respondent authority has been overlooked.

The law is amply unambiguous and categorical in this regard.

Section 86 of the Bengal Excise Act, 1909, confers power upon the State Government for making rules. Various provisions have been made there under, as to when the State Government can by making rules, control and regulate excise within the state. Pursuant to the said provision the notifications no. 13061-EX dated 28.06.1937 and no. 800-EX dated 29.07.2003 were promulgated. Therefore unless the virus of the said rules are challenged, there is no scope to defy the lawful and due existence of the said rules and application of those in an appropriate case.

The petitioner has alleged to have faced dual prejudicial orders, i.e, dated 26th March, 2014 and 9th June, 2014. The first is for suspending petitioner's license in view of pendency of a criminal case against him, which is duly covered under the notification dated 28.06.1937. The petitioner's other grievance is regarding authority's direction for his license to be lapsed which appear also to be duly covered under the notification dated 29.03.2003. So far the fact that the petitioner's renewal application is not in form, is an admitted fact in this case.

So far as the said notifications are concerned, these are found to be applicable, in petitioner's case. The respondent authority has ample discretion in a proper case to espouse the relevant provisions there under, freely and fairly till the time their such action is not tainted with a flair of unreasonableness and arbitrariness.

Therefore, so far as the legality and reasonableness of the respondents' action as well as the propriety of the order of revisional authority upholding the correctness of the authority's earlier orders is concerned, this Court finds not cogent ground to doubt the same and interfere with the impugned order as prayed for. On the contrary, the impugned order dated 30th January, 2019, appears to have been passed in due consideration of the facts and circumstances and legal provisions applicable. Hence, in the considered opinion of the Court the same would required, no interference by the Court.

On the discussion made above this writ petition would not succeed.

Writ petition no. WPA 8761 OF 2019 is dismissed without any directions as to the costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of requisite formalities.

(Rai Chattopadhyay, J.)