
(2008) 04 AHC CK 0201

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 859 of 2008

Amit Kumar Varshney
and another

APPELLANT

Vs

State of U.P. Through
Secretary/Joint
Secretary Excise,
Lukhnow and others

RESPONDENT

Date of Decision: April 3, 2008

Acts Referred:

Uttar Pradesh Excise Act, 1910 " Section 11(2)

Citation: (2008) 04 AHC CK 0201

Hon'ble Judges: Vikram Nath, J

Final Decision: Allowed

Judgement

Vikram Nath, J.

Heard Sri Mukesh Prasad, learned Counsel for the petitioner Sri Hemendra Pratap Singh, learned Counsel who has put

in appearance on behalf of respondent Nos. 5 and 6 and Sri K.M. Sahai, learned Standing counsel representing respondent Nos. 1 to. 4. With the

consent of the parties this writ petition is being finally heard at the stage of admission.

2. This writ petition has been filed assailing the correctness of the order dated 7.3.2008 passed by the State Government exercising revisional

powers under section 11 (2) of the U.P. Excise Act, 1910 (hereinafter referred to as the Act). From a perusal of the order passed by the State

Government it appears that upon oral instructions issued by the authorities at the district level, the running of the subshops of the respondent Nos. 5

and 6 were stopped. It also appears that such oral instructions were issued on a complaint/representation made by the petitioner. According to the

petitioner the subshops which were being run by both the respondent Nos. 5 and 6 had no legal authority and were not existing subshops for the

main shop Iglas. Before the revisional authority respondent Nos. 5 and 6 had produced licence with regard to other subshops which were admitted

to have been issued by the licensing authority by the excise inspector present at the time of the hearing of the revision. It may also be noted here

that before the revisional authority the said excise inspector had stated that in the office of the District Excise Officer, Aligarh no papers were

available with regard to such subshops being allotted in favour of the respondent Nos. 5 and 6.

3. The State Government by the impugned order had directed that the subshops of the respondent Nos. 5 and 6 be allowed to continue and

further that the District Magistrate, Aligarh shall examine as to whether the shop allotted to the petitioner effected the exclusive privileges of the

respondent Nos. 5 and 6 and in case it does then the location of the said shop may be changed.

4. From a perusal of the order of the State Government it appears that the order was passed in a cryptic manner and without making any detailed

enquiry with regard to the allegations and counter allegations being made by the parties. Even the stand of the excise inspector present before the

State Government does not appear to be very sound. In fact it reflects some kind of contradictions. In the opinion of the Court the running of

subshops against the licence whether valid or invalid cannot be stopped by an oral order and it is only after enquiry and affording opportunity of

hearing and leading evidence to the parties concerned that such an order could be passed. Further, there are lots of confusion and controversy

which also require adjudication based upon the evidence being led by the parties and the same cannot be decided in writ jurisdiction.

5. In view of the above this writ petition succeeds and is allowed. The order dated 7.3.2008 passed by the State Government is set aside. It

would, however, be open to the District Magistrate, Aligarh to pass appropriate reasoned order after enquiry and after affording parties

opportunity to lead evidence and hearing in case objections are filed by any of the parties. It is made clear that running of the subshops of the

respondent Nos. 5 and 6 will not be interfered with till any adverse orders are passed in accordance with law. It is expected that the District

Magistrate will take an early decision in the matter and further it is expected that both the parties will cooperate in the proceedings.

6. Writ petition allowed as above.