
Dinesh Kumar Shivhare Vs State of M.P. and Others

W.P. No. 1975/2013

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: April 3, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Section 115#Constitution of India, 1950 " Article 226, 227#Madhya Pradesh Excise Act, 1915 " Section 31(1)(k), 62#Madhya Pradesh Land Revenue Code, 1959 " Section 50

Citation: (2014) 4 MPJR 236

Hon'ble Judges: S.C. Sharma, J

Bench: Single Bench

Advocate: Meena Chapekar, Advocates for the Appellant; C.S. Ujjainiya, Advocates for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.C. Sharma, J.

The present petition has been filed under article 227 of the Constitution of India. The petitioner before this court has filed

this present petition being aggrieved by the order passed by the Board of Revenue dated 22-10-2012 in a revision preferred u/s. 50 of the M.P.

Land Revenue Code, 1959, against the order of the Collector dated 20-10-2005.

2. The fact of the case reveal that the petitioner was granted a licence under the Madhya Pradesh Excise Act, 1915 for sale of Indian made liquor

from various shops for a period with effect from 01-11-2001 to 31-03-2002 by offering a bid of Rs. 8,27,000/-. The petitioner has thereafter left

of the possession of the shop as stated in the writ petition on 15-11-2001 and the State Government was left with no other choice and accepted to

run the shop by deputing their own staff.

3. The petitioner"s contention is that the respondent No. 1, Collector District, Rajgarh vide order dated 10-12-2001 has informed the petitioner

that as he has not deposited the weekly installment as per the terms and conditions of the licence for a period with effect from 01-11-2001 to 05-

12-2001 and directed the Excise Officer to recover a sum of Rs. 7,00,832/- after adjusting 12.5% of the advance deposited by the petitioner. The

petitioner has further stated that thereafter a Revenue Recovery Certificate (R.R.C.) was issued for recovery of the aforesaid amount by the

Additional Tehsildar (Excise), District Rajgarh and the petitioner thereafter submitted an application before the District Excise Officer on 23-08-

2002 and the same was dismissed on 07-09-2002. The petitioner thereafter preferred a Revision before the Board of Revenue and the Board of

Revenue has remanded the matter back to the respondent No. 1 to calculate the amount afresh and to recover the balance from the petitioner in

respect of the loss caused to the State Exchequer. The Board of Revenue has passed the order dated 15-12-2003. Thereafter, after adjusting the

amount received by the State by operating the shop a fresh Revenue Recovery Certificate was issued to the tune of Rs. 6,97,563.50 and the

petitioner approached the Board of Revenue and the Board of Revenue has upheld the R.R.C. and the Revision Petition was dismissed vide order

dated 20-12-2005. The petitioner being aggrieved by the order passed by the Board of Revenue came up before this court and this court by

passing an order in Writ Petition No. 6284/2006 has remanded the matter back to the Board of Revenue and has directed to pass an order after

taking into account the period for which the petitioner has carried out the sale of alcohol. The petitioner's grievance is that the Board of Revenue

has again in a mechanical manner by an order dated 22-10-2012 dismissed the petitioner's revision petition and therefore as the ground raised by

the petitioner has not been looked into, the petition deserves to be allowed and the order passed by the Board of Revenue deserves to be set

aside.

4. On the other hand, reply has been filed in the matter and the stand of the respondents is that the petitioner being the successful bidder was

granted a licence under the provisions of the Indian Excise Act, 1915 and as per the general terms and conditions of the licence framed u/s. 62 of

the M.P. Excise Act, 1915, the petitioner has signed the agreement and he was required to deposit licence fee from time to time. The petitioner did

not deposit the licence fee from the period with effect from 01-11-2001 to 05-12-2001 and thereafter notices were issued to the petitioner. He

was granted opportunity of personal hearing, as per sub-section (1) of Section 31(A)1 of the Act. However, he has not deposited the amount in

question. The respondents have further stated that thereafter the Collector in exercise of powers conferred u/s. 31(1)(k) of the M.P. Excise Act,

1915 has cancelled the licence granted in favour of the petitioner and the Excise Department was directed to take over the charge of liquor shop in

question and to run the same through Government Agencies. The Collector has also directed to adjust the pre-deposit amount of 12.5% against

the dues of the Excise department and after adjusting, the remaining amount of Rs. 700832/- was to be recovered from the petitioner and,

therefore R.R.C. has been issued. Respondents have further stated that they have later on issued a fresh recovery certificate after adjusting the

amount and as the State Exchequer has suffered a loss they are entitled to recover the amount, as per the terms and conditions of the licence and

agreement executed between the parties. Not only this, the petitioner was granted an opportunity of personal hearing in the matter.

5. Heard learned counsel for the parties and perused the record.

6. In the present case, the recovery relates to the year 2001-2002. The petitioner who is a liquor contractor is aggrieved by the R.R.C. issued by

the Excise Department arising out of a contract executed between the parties for a period with effect from 01-11-2001 to 31-03-2002. The

petitioner has admitted in the Writ Petition that he has left the possession of the shop and has abandoned the work of sale of alcohol with effect

from 15-11-2001 and he suffered huge loss from the shop in question, meaning thereby, the petitioner has certainly violated the terms and

conditions of the agreement executed between the parties and the State Government in order to protect the revenue of the State has ensured

functioning of the shop by deputing their own staff and in order to make the loss good the amount is being recovered from the petitioner, as per the

terms and conditions of the agreement.

7. On perusing paragraph-5 of the order passed by the Board of Revenue, it is very clear that the State has deducted the entire income received

by the State Government while running the shop from the total losses incurred by the State Government and therefore as the State Government has

already deducted the income arising out of the shop while running the shop by their own staff, the question of setting aside the R.R.C. and the

order passed by the Board of Revenue, in the peculiar facts and circumstance of the case does not arise.

8. This court has carefully gone through the grounds raised by the petitioner and also gone through the statutory provisions governing the field. The

petitioner was granted an opportunity of hearing by the respondent State while calculating the dues. Initially even opportunity of personal hearing

was also granted to the petitioner and after the remand by this court in Writ Petition No. 6284/2006, the respondents have deducted the amount of

the income which was derived by the State Government by running the shop by their own employees. The statutory provisions governing the field

relating to general conditions of licence framed in exercise of powers conferred u/s. 62 of the M.P. Excise Act, 1915 under the head Recovery of

Annual Auction Amount, Chapter-II-B Adjustment of Excise Duty and/or permit fee against Licence fee to be paid by EL. 1AA Licensee, reads

as under:-

(1) The licence fee shall be payable in equal monthly installments by EL. 1AA Licensee. If the licence fee is not exactly divisible in equal monthly

installments, the remainder shall be adjusted in the first installment.

(2) The monthly installment of the licence fee shall be deposited in full by challan in the Treasury or in the Sub-Treasury of the tahsil by the end of

each month in the prescribed budgetary head after adjusting the amount or duty and/or bottle fee of foreign liquor paid at the prevailing rates

against the quantity of foreign liquor drawn by the licensee from the bonded foreign liquor licence:

Provided that the amount of duty and/or bottle fee paid in excess of monthly installment of the licence fee in a month shall not be adjustable against

the installment of the next month but this excess amount shall be adjustable against the total licence fee of the licence.

(3) If the monthly installment of the licence fee is not paid by the end of the month in full as specified in sub-rule (2) the duty and/or bottle fee paid

by the licensee on foreign liquor in the succeeding month shall be adjusted against the arrears of the monthly installment of the previous month and

shall continue to be so adjusted against the arrears till the arrears are realised in full:

Provided that if the arrears of monthly installment of licence fee for the month are not paid or realised by the 5th day of the succeeding month, the

licence shall be liable for cancellation for the default. Any loss of revenue to the Government consequent upon such cancellation shall be

recoverable from the licensee as arrear of land revenue.

9. The aforesaid general condition of licence empowers the authorities to recover the arrears of monthly installments of licence fee and also to

recover the same as arrears of land revenue.

10. In the present case the respondent State is recovering the arrears of monthly installment fee as arrears of land revenue and therefore in light of

the order passed earlier by this court and the order passed by the Board of Revenue, this court is of the considered opinion that no case for

interference is made out under article 227 of the Constitution of India. The apex court in the case of Shalini Shyam Shetty and Another Vs.

Rajendra Shankar Patil, held as under:-

49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227

of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court

under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is

substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been

discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the

orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal

subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise

of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In

this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the

principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence

can interfere in order only to keep the tribunals and Courts subordinate to it, "within the bounds of their authority".

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to

exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a

patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic

principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than

the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure

of the Constitution by the Constitution Bench of this Court in the case of *L. Chandra Kumar Vs. Union of India* and others, and therefore

abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure

Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be

remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article

is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery

of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to

ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public

confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed

for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of

individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline

pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and

vitality.

The order passed by the Board of Revenue does not suffer from any patent illegality nor from any jurisdictional error. The scope of writ petition

under article 227 of the Constitution of India has been well described by the apex court in the aforesaid case and, therefore, in absence of any

patent illegality and in absence of any jurisdictional error, this court does not find any reason to interfere with the order passed by the Board of

Revenue. Resultantly, the admission is accordingly declined.

No order as to costs.

c.c. as per rules.