

Rajasthan Tax Board, Ajmer

Revision (Excise) No. 597/2018/Sikar

Shri Nand Kishore
S/o Shri Vinod Kumar,
Village Parasrampura,
Tehsil Nawalargh, District-Jhunjhunu. ...Petitioner

VERSUS

1. District Excise Officer,
Sikar
2. Excise Commissioner,
Rajasthan, Udaipur
3. Shri Bhawroo Kha S/o Lalu Khan,
Devipura Kothi,
Jaipur Road, SikarRespondents

D.B.

SHRI K.L. JAIN, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Ashutosh Bhatia, Advocate for Petitioner
Shri R.B. Mathur, Advocate for Respondent no. 1 & 2
Shri Mukesh Bhargava, A.R. for Respondent no. 3

Dated : 26/09/2018

JUDGMENT

1. This Revision has been filed by the petitioner under section 9A(4) of the Rajasthan Excise Act, 1950 (hereinafter called the "Act") against order of the Excise Commissioner, Rajasthan, Udaipur (hereinafter called the "Commissioner") dated 15.05.2018, who has rejected the Appeal filed by the petitioner against order of the District Excise Officer, Sikar (hereinafter called the "DEO") dated 10.05.2018, who cancelled the license as issued to the petitioner for running a

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liquor shop in Zone-1, Shop No. 5, Sikar Nagar Parishad, District Sikar. It is against this appellate order dated 15.05.2018 that the petitioner has filed this Revision Petition before the Rajasthan Tax Board.

2. Brief facts leading to the present Revision are that the petitioner was given licence to run a liquor shop in Zone-1, Shop No. 5, Sikar Nagar Parishad, District Sikar, for the financial year 2017-18, which was renewable for another one year as per terms of the licence and Excise Policy of the State for the year 2017-18 & 2018-19. Further, on deposit of the prescribed fee for the next year, the said licence was renewed for the year 2018-19. On 14.03.2018, one Shri Gajendra Kumar Sharma filed a complaint before the Excise authorities stating there in that the petitioner has sold out his license to one Shri Mahendra Singh S/o Shri Kan Singh R/o Tehsil Nawalgarh, District Jhunjhunu. On receipt of this complaint, the DEO issued a notice to the petitioner on 16.03.2018 asking to explain as to why the licence should not be cancelled. The petitioner submitted reply to the said notice on 24.03.2018 stating that one Shri Mahendra Singh was a 'Naukarnama' holder as per provisions of the Excise Act and he was removed from the service of the licensee and it was informed to the department also, so out of the mischief he arranged to make this fake complaint with the help of forged documents.
3. The DEO conducted an enquiry and issued another notice on 19.04.2018 to the petitioner stating therein that as per the enquiry conducted by the department, and on the basis of one photocopy of an agreement and some affidavits filed by the complainant, it has been found verified that the petitioner has sold out his license to another person, therefore, why not a necessary action as contemplated under the under the Excise



Act be initiated. The petitioner submitted a Reply to this notice on 04.05.2018 in which he refuted all the allegations of sale of the said Shop to another person and stated that the complainant with a purpose to blackmail him, has prepared forged documents and it was requested to drop the proceeding of the said notice. The DEO passed an order on 10.05.2018 and cancelled the license u/s 34 r.w. Rule 76, as issued for sale of IMFL/Beer to the petitioner for Shop No. 5, Zone-1, Sikar Nagar Parishad, District Sikar.

4. Aggrieved of the said order the petitioner preferred an Appeal before the Commissioner under section 9A of the Act, who vide his order dated 15.05.2018 rejected the same. The petitioner has come into the Revision against Commissioner's order dated 15.05.2018.
5. Learned counsel for the appellant submits that the order of the DEO is based on wrong facts and forged documents because the complaint was sent on behest of an employee of the petitioner holding a 'Naukarnama' as prescribed under the Excise Act, but owing to his undesirable activities, he was removed from the service and it is due to this reason and animosity that he manipulated to file a baseless complaint with the help of forged and fabricated documents with the help of Shri Gajendra Kumar Sharma, the complainant. It was also submitted that the complaint pertains to the year 2017-18 whereas the license has been cancelled for the year 2018-19, so it could not have been cancelled in light of the provisions of the Act as well as the judicial pronouncements of the Hon'ble Supreme Court and the Hon'ble Rajasthan High Court. He further says that not only the license of the petitioner was cancelled but the respondents proceeded in sheer haste to re-auction the liquor shop and allotted it to the respondent no. 3





in utter disregard to the procedure obviating the natural justice. He has referred the following judgments to espouse his case: -

- (i) Commissioner Excise &Anr. V/s Manoj Ali &Anr. (2006) 0 AIR(SCW) 5584 (SC)
- (ii) N.S. Shethna and other V/s Vinpubhai Harilal Panchal : AIR 1967 Supreme Court 1036
- (iii) Banwari Lal V/s State of Rajasthan, (2015) 4 DNJ 1517 (Raj)

6. Learned advocate for the appellant further stressed that in the above referred judgment of the Hon'ble Rajasthan High Court, it has clearly been held that the license cannot be cancelled for violations committed in the past and that cancellation of license in such circumstances was neither proper nor justified. He, therefore, requests to revoke the cancellation of licence and to set aside orders of the respondent no. 1 and 2.
7. Per contra, the learned advocate appearing for the respondent no. 1 and 2 vehemently opposed the arguments as advanced by the petitioner and submits that the department had received a complaint and based thereon the notice was issued to the petitioner along with copy of the said complaint. After giving due opportunity, the reply as submitted by the petitioner was considered and further enquiry was made to verify the facts of the complaint. On this enquiry, statements of the stamp vendor was recorded wherein he verified the purchase of the stamp in the name of petitioner, the signatures were verified from the notary public and statement of a witness to the said agreement were also taken and all the evidences proved without any doubt that the petitioner has in-fact sold out the shop to another person in violation of the Excise Act/Excise Policy, therefore, the licence of the petitioner was rightly cancelled with immediate effect on 10.05.2018.





8. He also submits that in the 'Excise Policy 2017-18', there is specific provision that though the period of the license would be one year i.e. 01.04.2017 to 31.03.2018 but the licence holder for the year 2017-18, can opt for renewal of the same for the year 2018-19 as well under the conditions as stipulated under the scheme. It has also been submitted that the procedure for renewal is automatic one wherein the licence holder deposits a certain amount in excess of the licence fee paid in the year 2017-18 and his license is automatically renewed. Regarding the re-auction of the shop, the learned advocate submits that to safeguard the revenue of the State, the respondents proceeded to auction the shop as per the established procedure wherein a committee under the chairmanship of District Collector opened the lottery and out of the 148 Applications received so far, it got opened in favour of the respondent no. 3. Therefore, whole action of the respondent no. 1 and 2 was well in accordance the law and looking into the facts and circumstances of the case, the orders of the DEO as well as the Commissioner are very well in conformity of the law/policy and deserves to be upheld.
9. The learned advocate for the revenue further submits that the judgments as cited by the learned advocate for the petitioner were clearly distinguishable in light of the facts that the Excise Policy of 2017-18 was not similar to the policy quoted/discussed in the referred judgment(s). He also controverted the argument of the petitioner that the licence for the year 2018-19 was a separate one and the same could not have been cancelled for violation of any condition in the previous year. He submits that the petitioner deposited the licence fee for the year 2018-19 in the month of February, 2018 itself so the license was, in-fact, in continuity of the



licence for the year 2017-18 and it is proved by petitioner's own document submitted towards 'earnest money' deposit which is fixed deposit receipt (FDR) issued by the Punjab National Bank issued on 31.03.2017 having a validity of two years i.e. upto 31.03.2019. In light of these arguments, he requests to reject the Revision Petition.

10. The learned counsel for respondent no. 3, who is an allottee of the liquor shop post cancellation of licence of the petitioner, submits that interest of the respondent no. 3 may be protected by the Revisional Court because he has been allotted the shop after following the due procedure, therefore, his license cannot be cancelled as prayed by the petitioner.
11. Heard the learned counsels for the petitioner, the Revenue and the respondent no. 3 as well, and perused the relevant record. This fact is not in dispute that the State Government has come with an Excise policy for the year 2017-18 & 2018-19, i.e. for two years' period, whereas in the earlier years the said policy was for one year only. It is worth mentioning that in the 'Excise policy 2017-18 & 2018- 19' there is a specific provision that the existing licensees for the year 2017-18 shall be given an option for renewal of their licences for the year 2018-19. The petitioner was originally granted a licence to run a liquor shop to sell IMFL/Beer for one year i.e. 2017-18, and as per the Excise policy the licensee was entitled for renewal for the year 2018-19 and in pursuance thereof the respondent no. 1 informed the petitioner to exercise the option by letter dated 02.02.2018 for renewed of licence for the year 2018-19 and the petitioner promptly opted for the same and deposited. the petitioner deposited the licence fee in the month of February, 2018 (Rs 3,40,000 on 07.02.2018; Rs 12,00,000 on 26.02.2018; Rs 5,00,000 on 27.02.2018). Not only this, the



petitioner has deposited the 'Earnest money', in the form of a fixed deposit receipt (FDR) issued by the Punjab National Bank and the said FDR has been issued and submitted before the Excise authorities for a period of two years ending 31.03.2019, meaning thereby that by virtue of the new Excise Policy the existing licencees were eligible for the licence for a period of two years, though initially it was to be issued for the year 2017-18, but the licensee had an option to get the licence renewed for 2018-19 as well. Though in the policy document the term 'renewal' (नवीनीकरण) has been used but in effect it is extension of the existing licence, therefore, it is held that the licence in question is a 'continuing one' and if any violation of the conditions is found, the same can be cancelled on violation of provisions of the Act/Rules/Excise Policy/Terms and conditions of the licence.

- 12.** Now coming to the issue as to whether the documents submitted by the complainant were in fact forged or fabricated to implicate the licensee for breach of conditions of the said licence. It is true that the complainant Shri Gajendra Kumar Sharma had submitted a complaint before the respondent no. 1 wherein it was stated that the shop in question was sold to one Shri Mahendra Singh for a consideration of Rs. 24,51,000/- for the year 2017-18. The respondent no. 1 has got conducted an enquiry by the Excise Inspector, Circle Sikar, who vide his enquiry report dated 05.04.2018 has informed that the agreement in question was duly notarized by the Notary Public, Sikar and that the stamp papers were sold to the petitioner by the stamp vendor for the purpose of executing an agreement. Further, it was also found that a payment of Rs. 12,00,000/- was made through the cheque no. 816764 of PNB Sikar from the account of M/s Maharaja Construction in favour

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of M/s Payal Manufacturers, Sikar which seems to be a firm related to the petitioner. The notarized agreement is having two witnesses and one of them Shri Mahendra Singh S/o Shri Ramchandra Singh has acknowledged his signature, however, the second witness was out of the country so his statement could not be recorded. Not only this, the petitioner himself has verified that the signature on the agreement are his own. But the petitioner's reply before the respondent no. 1 says that his signatures were taken fraudulently and that he has filed an FIR on 01.05.2018 i.e. after issuance of the notice by the respondent no. 1, for the alleged malfeasance. **Since the genuineness of the signatures of the petitioner has not been denied by him so it cannot be presumed that a person of sound mind and normal intelligence would sign a document on a stamp paper without seeing and knowing contents of the same, therefore, this contention of the petitioner is not accepted that the signatures were taken fraudulently or that the documents submitted by the complainant were forged or fabricated.**

13. The petitioner, when came to know about the impending action by the respondent no. 1, apparently with an intention to hush up the things, filed an FIR alleging that Shri Gajendra Kumar Sharma made a complaint before the Excise authorities with forged documents (agreement). However, the petitioner could not divulge further as to what fate the FIR met with - whether the police filed any charge sheet in the matter or the FR was filed. So, the silence of the petitioner on fate of the FIR also proves that no further action was taken by the police in this matter and the averment of the petitioner is found to be after- thought and a cover-up tactic, hence no palpable credence can be given to this argument.



14. So far as the judgments of the Hon'ble Supreme Court and the Hon'ble Rajasthan High Court as cited by the petitioner, are concerned, we have very respectfully gone through these judgments and find that facts of the case in **Commissioner Excise & Anr. V/s Manoj Ali & Anr. (2006) 0 AIR (SCW) 5584 : (2006) 9 JT 391 (SC)**, were different because that matter pertains to the business premises of a liquor vendor where the previous licensee used to run the liquor shop and on inspection by the Excise authorities, some liquor was found which, in-fact, belonged to the erstwhile licensee and that respondent licensee did not receive vacant possession of that part of the premises from where some unauthorized stock was recovered and consequently the licence was cancelled. In another case referred by the petitioner i.e. **N.S. Shethna and other V/s Vinpubhai Harilal Panchal : AIR 1967 Supreme Court 1036**, the matter relates to the Cinema licence where the Hon'ble Apex Court has held that renewal in that case was not merely in continuation of the licence previously issued but a fresh grant when considering the fact that rules for renewal were not there in prevalence. In the present case, the Excise Policy- 2017-18 specifically provides that the licensees for the year 2017-18 would be given an option for renewal for the next year on the conditions as prescribed. So, the facts of this referred case is also distinguishable from the present one.
15. In the third case referred by the petitioner i.e. **Banwari Lal V/s State of Rajasthan, (2015) 4 DNJ 1517 (Raj) :2016 (1) WLN 158 (Raj.)** (in short, the 'Banwari Lal's case'), the Hon'ble Rajasthan High Court has held that the licence for the renewed period can't be cancelled for violation of terms of the licence in the previous/ expired period when there is no saving either in the provisions of the Act, Rules, licence or the notice issued for



renewal of licence. But the Hon'ble High Court has further clarified that the position of 'renewal' of licence is required to be distinguished from the position of an 'extension' of licence. The Hon'ble High Court has referred a judgment of the Hon'ble Supreme Court in the matter of **Provash Chandra Dalui Vs. Biswanath Banerjee : (1989) Supp (1) SCC 487**, wherein a distinction has been drawn between the terms 'extension' and 'renewal' as under :-


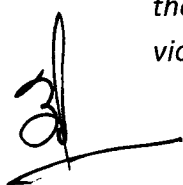
"....a distinction between 'extension' and 'renewal' is chiefly that in the case of renewal, a new lease is required while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act. In other words, the word 'extension' when used in its proper and usual sense in connection with a lease, means prolongation of the lease."

The Hon'ble Rajasthan High Court while analyzing the terms and conditions of licence for the years 2014-15 and 2015-16 has further held that: -

"26. A bare look at the above two stipulations would indicate that the petitioner agreed to comply with the same conditions as indicated in the licence pertaining to the year 2014-15 and any other conditions, which were to be added by the department for the year 2015-16 and in the approval Annexure-R/6, a stipulation has been made regarding renewal of the licence for the year 2015-16 and stipulation of conditions as contained in the previous licence.

27. The above stipulations/terms merely amount to incorporation by reference of conditions of licence for the year 2015-16 by referring to conditions of licence for the year 2014-15 and it cannot be said that the licence granted for the year 2014-15 was 'extended' on the same terms and conditions as even otherwise the amount of exclusive privilege has been increased and, therefore, the licence for the period 2015-16 is clearly a 'renewed' licence.

28. From the above, it is ex facie clear that so long as there is no violation of the conditions of the renewed licence by the petitioner, cancellation of the existing licence for violation of conditions of previous licence will not be on a



valid ground as contemplated under the provisions of the Act and the Rules; if only there is a transfer or assignment after a renewal, then only it can be said that there is a violation of the conditions of renewed licence, which can give rise to a valid ground for cancellation of the same; any ground even if assuming it to exist for cancellation of licence for the year 2014-15 cannot be a valid ground for cancellation of existing renewed licence.

16. In the policy document for 2014-15 apparently there is no reference or hint whatsoever, if the existing licensee would be given any preference for option to get the licence for the next year i.e. 2015-16. So the annual policies for the years 2014-15 and 2015-16 are clearly distinguishable from that of the bi-ennial policy for 2017-18 & 2018-19.
17. In light of the abovementioned findings of the Hon'ble Rajasthan High Court in Banwari Lal's case, we have to first peruse the Excise Policy documents from the year 2014-15 to 2018-19 and to arrive at any conclusion as to whether the petitioner's licence was in fact a renewed licence or was it in continuity of the previous year's licence as an 'extension'. It would be appropriate to compare the 'title of the policy' and 'periodicity' of the various excise policies to ascertain if the licence granted to the petitioner was, in effect, a 'renewal' or 'extension' of the licence granted in the previous year. Accordingly, these two items from the Excise Policies would be compared, namely; (i) Title of the Scheme, and (ii) Periodicity, which are as follows :-

Title of the Scheme and Periodicity

S.No.	Excise Policy for the Year	Title of the scheme/Periodicity
1.	2014-15	आबकारी एवं मद्य-संयम नीति वर्ष 2014-15 (1) अवधि :- आगामी आबकारी बन्दोबस्त की अवधि एक वर्ष (दिनांक 1.4.2014 से 31.03.2015 तक) होगी।
2.	2015-16	आबकारी एवं मद्य-संयम नीति वर्ष 2015-16 (1) अवधि :-

		आगामी आबकारी बन्दोबस्त की अवधि एक वर्ष (दिनांक 1.4.2015 से 31.03.2016 तक) होगी।
3.	2016-17	आबकारी एवं मद्य-संयम नीति वर्ष 2016-17 (1) अवधि :- आगामी आबकारी बन्दोबस्त की अवधि एक वर्ष (दिनांक 1.4.2016 से 31.03.2017 तक) होगी।
4.	2017-18 & 2018-19	आबकारी एवं मद्य-संयम नीति वर्ष 2017-18 एवं 2018-19 (1) अवधि :- आगामी आबकारी बन्दोबस्त की अवधि एक वर्ष 2017-18 (दिनांक 1.4.2017 से 31.03.2018) के लिये होगी। वर्ष 2017-18 के अनुज्ञाधारियों को स्वीकृत अनुज्ञा पत्रों का वर्ष 2018-19 (दिनांक 1.4.2018 से 31.03.2019) के लिये निर्धारित शर्तों के अन्तर्गत नवीनीकरण का विकल्प दिया जायेगा।

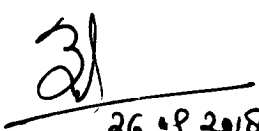
On bare parusal of the relevant clauses of the various Excise Policies we can see from the title or subject of the policy document it is abundantly clear that the Excise policies for the years 2014-15, 2015-16 and 2016-17 are for one year only whereas the policy before our consideration is for two years i.e. 2017-18 and 2018-19. In the policy of 2017-19 there is a specific mention that the licencees of the year 2017-18 would be given an option for renewble of the licence in 2018-19, but there is no such mention in the policy of 2014-15 if the the existing licence holders would be offered any renewal in 2015-16. So, in our considered view the licence granted to the petitioner for the year 2018-19 was infact an extension of the existing licence as granted in 2017-18. The clause relating to the policy periodicity of the Excise Policy 2017-19 clearly states that an option would be provided to the licensees of year 2017-18 to renew their licencess for the year 2018-19 as well. Though the term 'renewal' (नवीनीकरण) has been used but the intent of the language shows that the licensees of 2017-18 would be offered extension for 2018-19 and the respondent






no. 1 has offered this option to the petitioner, who has promptly exercised this option.

18. The material difference between facts in the above referred case and the instant case is that in 'Banwari Lal's case' the notice was issued to the petitioner on 06.05.2015 for violation of the of the terms of the agreement/ provisions of the Act or Rules, well after end of the year 2014-15 for which the licence was originally granted, but in the instant case the notice has been issued on 16.03.2018 well within the first year of licence (2017-18) when the violation came to notice of the Excise officials, and before this date the licence had already been extended for 2018-19 by virtue of exercising the option by the petitioner, therefore, a continuing licence has been cancelled by the respondent no. 1. Thus, the Commissioner has rightly rejected the appeal by upholding the order of the DEO (respondent no. 1), dated 10.05.2018.
19. We have given a conscious thought on the facts and circumstances of the case and the documentary evidences available on record. After considering the same, we arrive at a considered view that there is no infirmity in orders of the authorities below, therefore, the Revision Petition deserves to be disallowed. In the circumstances mentioned here-in-above, the rights of the respondent no. 3 are not affected in any way.
20. Accordingly, the impugned orders of the respondent no. 2 as well as that of the respondent no. 1 are upheld and the Revision Petition is disallowed.
21. Order pronounced.


26.09.2018
(Omkar Singh Ashiya)
Member


(K.L. Jain)
Member