

Court No. - 39

Case :- WRIT TAX No. - 816 of 2021

Petitioner :- Sandeep Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Chandra Shekher Singh,Ram Naresh Singh Gautam,Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Donadi Ramesh,J.

1. Heard Shri V.K. Singh, Senior Advocate, assisted by Shri A.P. Singh, learned counsel for the petitioner and Shri Nimai Das, learned Additional Chief Standing Counsel for the State-respondents.

2. Challenge has been raised to the order dated 24.7.2021 passed by respondent no.2-Collector/Licensing Authority, Fatehpur whereby the petitioner's license for the counter-liquor shop at Majhenpurwa has been cancelled under Section 34(2) of the United Provinces Excise Act, 1910 (hereinafter referred to as the Act).

3. Undisputedly, no specific allegation of violation was made against the petitioner with respect to running/operation of the license of liquor shop at Majhenpurwa. Earlier, the allegation had emerged under Section 34(1)(b) of the Act with respect to another license issued to the petitioner for the shop at Gehrukheda that led to cancellation of the petitioner's license for the said shop at Gehrukheda. At present, that matter is lying under consideration before this Court in *Writ Tax No. 818 of 2021*.

4. Solely for the reason of that action taken by the State-

respondents, other license of the petitioner for a liquor shop at Majhenpurwa was cancelled vide order dated 28.05.2019. It was carried in appeal and through that, it was brought to this Court by means of Writ Tax No. 278 of 2020 (*Sandeep Singh vs State of U.P. & 3 Ors.*).

5. While deciding that writ petition, interpretation was offered to Section 34(2) of the Act. It was observed as below:

"25. Thus, upon cancellation of one license of a licensee under Section 34(1) (a) or 34(1)(b) or 34(1)(c) of the Act, the licensing authority may in its discretion choose to cancel another/other license/s of that licensee, whether issued under the Act or under any other law relating to excise revenue or under the Opium Act, 1878.

26. Without attempting to define the grounds on which such a license may be cancelled under section 34(2) of the Act, a few statutory pointers may be discerned from the language of the Act itself. First, the jurisdiction to exercise that power arises after and not during or before the exercise of power under section 34(1) of the Act with respect to another license. Second, by virtue of its linkage to clause (a), (b) and (c) of section 34(1) of the Act, that power may come to be exercised only if another license of the same licensee has been cancelled (prior in time), either upon a default in payment of license fees etc. or breach of any of the terms and conditions of his license, permit or pass or upon his conviction for any of the specified offences. Third, exercise of the power under section 34(2) visits the licensee with a very harsh consequence since he would suffer the consequence of cancellation of his (other) license/s without allegation of any express violation with respect to the same. Fourth, contrasted with the power vested under section 35, the power has heavy civil consequence as it deprives the licensee of any right to compensation and it also involves forfeiture of fees, deposits etc. Fifth, the power to cancel the other license/s extends not only to any other license granted under this Act but to any other license issued under "any other law", "relating to excise revenue" or under the "Opium Act, 1878".

27. In that view, the submission advanced by the learned Standing Counsel that cancellation of the other license follows as an automatic consequence of the first cancellation proceeding also does not merit acceptance. The provisions of Section 34(2) of the Act are discretionary and not mandatory as suggested by the learned Standing Counsel. Also its application can never be an automatic consequence of cancellation of another excise license of a licensee. Being a power exercisable only in the interest of revenue against a licensee who has already suffered cancellation of one license u/s 34(1) of the Act; such a power would have to be exercised with extreme caution only in cases where upon facts proven in the earlier proceedings it appears to the licensing authority that continuance of another/other license/s of a licensee would be detrimental to the interest of revenue. It is this fact that would have

to be proven in such proceeding initiated under Section 34(2) of the Act.

28. Thus, the proceedings under section 34(2) may arise purely in the core interests of revenue, owing to the deliberate violation committed by the licensee, as may have been found/proven in an earlier proceeding of cancellation of any other license issued under the Act. Yet, no further and other violation may exist as a pre-condition to be satisfied or proven before action may be taken under section 34(2) of the Act to cancel any other license of that licensee. Therefore, the proceedings for cancellation of an earlier license must itself bring out existence of reason/s so grave and serious as may give rise to a satisfaction with the licensing authority, that all or any other license of that licensee be also cancelled in the interest of revenue. Illustratively, but not in any way exhaustively, those may be cases of large scale or organized evasion or avoidance of excise duty; breach of terms and conditions made by way of a regular business practice adopted by the licensee; disentitlement earned to hold any excise license, due to any of the specified convictions or operation of law or any other reason/ground that may spring from the facts already proven in the earlier proceeding, to cancel one or more licence of the same licensee, under section 34(1)(a) or (b) or (c) of the Act.

29. Before such discretionary power may be exercised, two requirements would have to be fulfilled. One, there must be shown to exist an order cancelling another license (issued under the Act) of the licensee, under Section 34(1)(a) or (b) or (c) of the Act. Two, a notice would have to be issued to the licensee requiring him to show cause why another/other license/s standing in his name may not be cancelled. The notice would state how/why in the proven facts of the other case/s, any other license is to be cancelled. No other allegation of a fresh violation is to be made or proved in those proceedings.

30. Coming to the facts of the present case, it would be wholly pre-mature to reach a conclusion that the ground specified in the showcause notice is wholly insufficient or is sufficient for the purposes of examining the correctness or otherwise of the cancellation of the Majhenpurwa licence. It is so because the basic facts giving rise to the cancellation of the Gehrukhedha licence, have yet not attained finality. By the order passed in Writ Tax No. 277 of 2020, decided on 19.01.2021, those proceedings have been remanded to the Appeal Authority to examine the same afresh and to record it's conclusions whether the petitioner was in possession of tampered QR Code and Caps. Till the Appeal Authority reaches a firm conclusion as to that, in the facts of the present case, the cancellation of Majhenpurwa licence may not be examined, simultaneously.

31. Thus, for the purpose of clarification, it is stated that in case the petitioner succeeds in establishing that his Gehrukhedha licence was not liable to be cancelled as he had not violated either section 34(1) (a) or (b) or (c) of the Act, the present proceedings to cancel the Majhenpurwa license would necessarily fall. However, if the Appeal Authority does reach a conclusion adverse to the petitioner (in that case), it would be for the Licensing Authority to then examine the existence or otherwise of an adequate reason or ground to exercise his extra-ordinary discretionary power to cancel the Majhenpurwa licence of the petitioner under Section 34(2) of the Act, keeping in mind the

observations made above."

6. Thereafter, the orders passed by the Licensing Authority and the Appeal Authority were set aside and the matter remitted to pass fresh order in light of the observations made above. That consequential order passed by the Licensing Authority has been impugned in the present petition. Only this much has been observed by way of reason that the petitioner's license for the shop at Gehrukheda stands cancelled. Without elaborating how that cancellation of license may impact the petitioner's continued license for the shop at Majhenpurwa, by way of automatic consequence, that license of the petitioner had been cancelled.

7. Having heard learned counsel for the parties and having perused the record, we find, the State authorities have failed to apply the law laid down by the learned single Judge decision of the Court noted above. On query made, it is undisputed, the said judgement had attained finality. Therefore, it was not open to the Licensing Authority to repeat the mistake and cancel the petitioner's liquor license for the shop at Majhenpurwa without offering any reason how the cancellation of the petitioner at Gehrukheda demanded cancellation of the other license as well.

8. On merits of the matter, the impugned order only recites that certain violations had been found committed by the petitioner, with respect to shop at Gehrukheda. Recovery of eight pouches with forged/no Q.R. code were found. Similar quantities of liquor bottles with tampered seal were recovered. Last, quantities of other goods namely - Alum (250 grams) and Urea (one kilogram) were recovered from the shop premises. Here, it may be noted, neither any sample test was obtained nor there is any allegation of spurious/adulterated liquor having been manufactured or sold by

the petitioner for the shop at Gehrukheda.

9. While suspicion may arise and may continue to exist in the minds of the Licensing Authority from the facts of an individual case, at the same time, suspicions and presumptions may never translate to findings, on their own. Unless cogent material and evidence exist, such suspicion may never result in penal or harsh consequences such as cancellation of another license.

10. Despite earlier opportunity granted to the State-respondents, no other or further fact has been alleged against the petitioner in terms of language of Section 34(2) of the Act as explained in the earlier decision rendered by the learned single Judge, inter parties. The present impugned order is a reiteration or repetition of the earlier stand taken by the State. Therefore, it has to be acknowledged that there exists no material with the Licensing Authority to pass any order cancelling any other license of the petitioner, except that for the Model Shop at Gehrukheda.

11. In view of the above, present petition stands **allowed**. The impugned order dated 24.07.2021 is quashed. Let the license of the petitioner for the shop at Majhenpurwa be revived/renewed in the current excise year. Any amount lying in deposit, may be adjusted against the license fee to be deposited for the current excise year.

Order Date :- 3.4.2024
Prakhar

(Donadi Ramesh, J.) (S.D. Singh, J.)