



2026:AHC:166874

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 1598 of 2022

Amit Singh

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Imran Ali, Murtuza Ali, Sanjeev Singh, Sheo Kinkar Singh, Suryaprakash Sharma
Counsel for Respondent(s)	: C.S.C.

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard learned counsel for the parties.

2. The present writ petition has been filed seeking quashing of the order dated 09.11.2022 passed by respondent no. 1 in Revision No. 45 of 2021, the order dated 05.08.2021 passed by respondent no. 2 in Appeal No. 31 of 2021, and the order dated 22.05.2021 passed by respondent no. 3.

3. Learned counsel for the petitioner submits that the petitioner was granted a licence to run a country liquor shop for the excise year 2020-21. The said licence was renewed from time to time in accordance with the applicable excise policy. On 24.03.2021, a false case, being Case Crime No. 169 of 2021, under Sections 60/62 of the U.P. Excise Act, 1910, read with Sections 419, 420, 467, 468 and 471 of the I.P.C., was registered at Police Station Saray Akil, District Kaushambi, against the petitioner's uncle, namely, Ajay @ Chhotaku. On the basis of the said FIR, a show cause notice was issued to the petitioner, which was duly replied to, denying the petitioner's involvement in the alleged incident as well as any violation of the applicable provisions and rules. However, by order dated 22.05.2021, the petitioner's licence was cancelled and the petitioner was also blacklisted, without affording him any opportunity of hearing. The said order was challenged by the petitioner by filing Appeal No.31 of 2021, titled Amit Singh v. Collector/Licensing Authority, Kaushambi and another, but the appeal was dismissed. Thereafter, the petitioner preferred a revision, which was also dismissed. Hence, the present writ petition.

4. He further submits that, by way of a supplementary affidavit, it has been brought on record that the allegations made against the petitioner's uncle were dropped by the learned Additional District Judge and the proceedings initiated against him were also dropped. Therefore, even assuming any violation on the part of the petitioner, the impugned orders cannot be sustained. In support of his submission, learned counsel for the petitioner has relied upon the judgment of this Court in **Shyam Sunder Shivhare v. State of U.P. and 3 Others**, passed in Writ Tax No. 1473 of 2023, decided on 06.11.2024, and prays that the present writ petition be allowed.

5. Per contra, learned Additional Chief Standing Counsel for the State supports the impugned orders.

6. After hearing the parties, the Court has perused the record.

7. Learned counsel for the petitioner has relied upon the judgment in the case of Shyam Sunder Shivhare (supra) and submitted that the issue involved in the present case is squarely covered by the said judgment. The said fact could not be disputed by the learned Additional Chief Standing Counsel appearing on behalf of the State. The relevant portion of the said judgment reads as under:—

"3. Learned counsel for the petitioner submits that this is a second round of litigation. He further submits that earlier Writ Tax No. 1008 of 2022 was filed in this Court, which was allowed and the matter was remanded to the authority concerned vide order dated 25.05.2023. He further submits that a survey was conducted and some material was found from the house of one Deepak Singh, who is alleged to be the brother of the authorized agent of the petitioner. He further submits that Deepak Singh is neither the employee nor the clerk of the petitioner, but the brother of the an ex-employee, who got fired on 10.09.2020. He further submits that as per Section 7 of the U.P. Excise Act, 1910, Deepak Singh cannot be connected with the petitioner as neither being a clerk nor servant and therefore, any material recovered from the house of the Deepak Singh cannot be linked with the petitioner. He next submits that in the first round of litigation, this fact was noted by the court in the impugned order while remanding, but the authorities in their wisdom without any cogent material has decided the issue against the petitioner.

4. He further submits that on the basis of survey dated 05.08.2021, where some liquor and material for manufacturing of the same, was found as well as hologram and QR (Quick Response) Code was also found. On the said basis, the petitioner's licence for two shops situated at Luktara and Tindwari, District- Banda were cancelled. He next submits that no material whatsoever with regard to other licence i.e. Tindwari was found and therefore, the licence of the said shops of the petitioner should not have been cancelled.

5. In support of his submission, he has placed reliance upon the judgments of this Court passed in the cases of Ramesh Chandra Rai Vs. State of U.P. Thru Prin. Secy. Deptt. of Excise and Ors. (Writ-C No.9330 of 2016), decided on 13.10.2022 and Sandeep Singh (Licencee of Country Liquor Shop Majhepurwa District- Fatehpur) Vs. State of U.P. Through Special Secretary (Excise) Government of U.P. At Lucknow and 3 others (Writ Tax No. 278 of 2020), decided on 21.01.2021.

6. Learned counsel for the petitioner further submits that the allegation against the petitioner is that the illicit country liquor and some material for manufacturing the same, was found from the house of one Deepak Singh, on the basis of which, the licence of petitioner's shops was cancelled, but the licence of country liquor as well as foreign liquor has been granted to the mother of the said persons. He further submits that the conduct of the respondents are only to harass the petitioner as well as to deprive him from his legitimate earning and therefore, the impugned orders are bad.

7. Per contra, learned Additional Chief Standing Counsel supports the impugned orders by submitting that Shipu Singh is the brother of Deepak Singh, from whose house, the manufacturing material of liquor was found and name of Shipu Singh is mentioned in the record of the petitioner's licence for Excise Year 2020-21 & 2021-22 and therefore, the material found from the house of Deepak Singh is connected with the petitioner as per the purview of Section 7 of the U.P. Excise Act, 1910 and therefore, the order has rightly been passed.

8. After hearing the parties, the Court has perused the record.

9. It is admitted that this is a second round of litigation and in the first round of litigation, the matter was remanded by the Court on the ground that the authorities have failed to connect Deepak Singh with the petitioner as he was neither clerk nor the servant, nor an authorized agent of the petitioner, as contemplated under Section 7 of U.P. Excise Act, 1910, but while passing the impugned order, this vital fact has not

been dealt in detail or supported by cogent material. Further, in the para nos. 37 & 38 of the instant writ petition, a specific averment has been made that if the petitioner has authorized Deepak Singh, who is brother of petitioner's salesman namely Shipu Singh, then the same authorization must be present in the records of respondents, but the said fact has not been denied in the counter affidavit, however, only a averment has been made in para no.19 that too without any supporting material.

10. The record shows that Deepak Singh and Shipu Singh were engaged in making illicit liquor and having material without authority of law, then the licence granted in favour of the mother of these two persons as mentioned in rejoinder affidavit at page nos. 10 & 11 could not have been granted for running and selling the country made liquor and foreign made liquor. The said fact has not been denied by the respondent authorities, this shows that the conduct of the respondents is with a view to harass the petitioner.

12. Further, the record shows that no material has been brought on record for cancelling licence of the petitioner for the shop situated at Tindwari, District- Banda.

13. This Court in the case of Sandeep Singh (supra) and has held that if no material has been found in the shop in question, the licence of the same cannot be cancelled. The relevant paragraphs of the said judgement is quoted as under:-

"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 it's 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."

14. Further, this Court in the cases of Ramesh Chandra Rai (supra) and Ajay Pratap Singh Vs. State of U.P.. Thru Secy. Excise Civil Sectt. Lucknow and Ors. has held that the material used against the petitioner must be recovered from the possession of the

licencee and if the material has been recovered from some other person, it cannot be connected for taking adverse inference against the petitioner. The relevant paragraphs of the judgement of Ramesh Chandra Rai (supra) is quoted as under:-

"17. In the present case, admittedly the recovery was not from the licensed premises and the liquor was recovered from the residential premises jointly owned by both the petitioners. In the seizure memo on record, there is no mention that the petitioners were in 'conscious possession' of the said liquor crates, the seizure memo on record does not even record the presence of the petitioners; it nowhere records that the petitioners were conscious of the said liquor. There are no independent witness to the seizure which started on 16.4.2015 but was signed on 17.4.2015.

18. I have already held that the liquor was not seized from the licensed premises which is admitted case of the parties. Further, there being no material to come to an opinion that the liquor allegedly seized from the residential premises of the petitioners was in their conscious possession, in terms of the Rules, the cancellation of the license and the consequent seizure was clearly de hors the Rules."

15. The relevant paragraphs of the judgement of Ajay Pratap Singh (supra) is quoted as under:-

"15. The action as taken against the petitioner under the orders impugned herein was clearly an 'expropriatory action' and the provision in the Rules are also 'expropriatory'. It is well settled that expropriatory powers conferred on State through statutes are required to be interpreted strictly and the orders passed have to pass the 'strict scrutiny test'. On a plain reading of the provisions of the Rules 18 and 21 in the 2001 and 2002 Rules respectively, it is clear that the steps for suspension and cancellation of the licence can be taken only in the event that (i) any liquor is found in the licensed premises or (ii) it is found in the possession of the licensee. The other conditions specified in Rule 21 and Rule 18 need not detain this Court as the same do not arise in the present case. The words "licensed premises" has not been defined under the Act and the Rules referred above, however while granting of licence, the premises for which the licence has been granted is clearly delineated and specified in the licence itself and thus for the purposes of interpreting the word "licensed premises", reference has to be drawn to the premises referred to in the licence. Any infraction or possession of liquor or intoxicating drugs other than authorized in the 'licensed premises' would certainly empower the authority concerned to take action under Rules 18 or Rule 21 of the aforesaid Rules as the case may be. Similarly the

possession of any liquor or intoxicating drugs other than the authorized in the possession of the licensee would also trigger the powers to be exercised under Rules 18 and 21 of the aforesaid Rules. In the absence of any allegation of any recovery from any place in the 'licensed premises' or in the 'possession of the licensee', the powers to suspend and cancel cannot be resorted to under the Act or the Rules referred above."

16. In view of the above facts as stated as well as law laid down in the aforesaid judgments, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.

17. Accordingly, the writ petition is allowed.

18. All natural consequences shall flow in favour of the petitioner with all consequential benefits."

8. In view of the above, the present petition is **allowed** on the same terms and conditions as contained in the judgment in Shyam Sunder Shivhare (supra).

(Piyush Agrawal,J.)

August 7, 2026

A.N. Mishra