

PETITIONER:
GORAKHNATH

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH & ORS.

DATE OF JUDGMENT: 11/10/1996

BENCH:
B.P. JEEVAN REDDY, SUHAS C. SEN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P. JEEVAN REDDY, J.

Leave granted.

The dispute pertains to the grant of FL-16 license in respect of the area Kachchi Sarai, Dal Mandi, Sector-II, Varanasi. Only one license is sanctioned for the said area.

Prior to 1961, the license stood in the name of Mohd. Abdul Hamid, brother of Mohd. Khalil - fifth respondent herein. In that year, the name of fifth respondent was also added. Abdul Hamid died in March 1979. Accordingly, the license for the excise year 1979-80 was renewed in the name of fifth respondent alone. On May 24, 1980, the license in favour of fifth respondent was cancelled and a temporary license was issued to One R.S. Tiwari. Fifth respondent complained against the same and took several proceedings in that behalf. Ultimately, he filed a writ petition in the Allahabad High Court [Writ Petition (C) No. 15434 of 1981] which was allowed on August 29, 1986. Pursuant to the said order, the license in favour of the fifth respondent was renewed and continued to be renewed till and including the excise year 1991-92.

For the excise year 1992-93, the fifth respondent applied for renewal in the usual course. Thereon, a query was raised by the District Excise Officer as to the circumstances in which license was granted to the fifth respondent in 1984 and later. The fifth respondent furnished his explanation to the said query but no orders were passed in the matter. While so, Sri Surender Tripathi filed an application dated June 4, 1993 requesting for grant of a temporary FL-16 license in the name of his wife, Shanti Devi. On the said application, a report was submitted by the officer that while the fifth respondent had not applied for renewal of license for the year 1993-94, he is yet running the business on the basis of a temporary license. [This fact is taken from the order of the District Magistrate dated May 20, 1994]. On this report, the District Excise Officer, Varanasi, cancelled the license in favour of the fifth respondent with the result that the license in respect of the said shop was deemed to be vacant. A

notification was issued on October 16, 1993 calling for applications for the grant of a regular license in respect of the said shop. Eleven persons including the appellant therein, Sri Gorakhnath applied. The license was granted to Gorakhnath - against which the fifth respondent again took proceedings before the excise authorities. On May 20, 1994, the District Magistrate, Varanasi accepted the fifth respondent's case and directed the renewal of FL-16 license, for the year 1994-95, in his favour under an elaborate order. In this order, the District Magistrate set out the history relating to the grant and the subsequent litigation concerning the said license found that litigation concerning the said license and found that the cancellation of fifth respondent's license by the District Excise Officer by his order dated July 3, 1993 was incompetent in law and not warranted on facts. The appellant preferred an appeal against the order of the District Magistrate which was dismissed by the Additional Excise Commissioner. A revision filed before the Government was also dismissed, whereupon he approached the Allahabad High Court by way of a Writ Petition (C) No. 707 of 1995.

Writ Petition (C) No. 707 of 1985 has been dismissed by the High Court under the order impugned herein. The reasoning of the High Court is : once it is rightly held that the order of cancellation [of the fifth respondent's license] dated July 3, 1993 is competent and erroneous, it must follow that there was no vacancy in the license and hence, calling for applications for grant of license and the consequential grant of license in favour of the appellant is incompetent in law. The High Court rejected the appellant's plea that cancellation of his license without hearing him is illegal being violative of the principles of natural justice. It opined that the license granted to the appellant, even if described as permanent, has to be treated as an interim or temporary arrangement subject to the claims of the fifth respondent and that once the latter is held entitled to renewal of license, the appellant's license is liable to come to an end. The High Court further observed that the cancellation of appellant's license was not on account of any fault of his but only because the license of fifth respondent was restored to him. In view of the further fact that the appellant has availed the remedy of appeal and revision wherein he had full opportunity of putting forward his case, there are no grounds for exercising the discretionary and extra-ordinary power of the High Court under Article 226 of the Constitution in favour of the appellant, said the High Court.

Sri S.K. Dhaon, learned senior Advocate for the appellant, assailed the order of the High Court on the following grounds; (a) on July 3, 1993, fifth respondent had no license at all, hence there is no question of cancelling his license. Once, it is held that there was no cancellation of fifth respondent's license, the reasoning of the High Court that grant of license to the appellant - though described as permanent - must be deemed to be a temporary arrangement becomes unsustainable; (b) the fifth respondent had not even applied for renewal of license for the year 1993-94, hence there could be no question of renewal or grant of license in his favour and (c) the license granted to the appellant was a permanent/regular license which could be cancelled only on any of the grounds specified in Section 34 of the U.P. Excise Act and admittedly none of the said grounds were present in this case nor was the license cancelled with notice to the appellant. The order being violative of principles of natural justice is void.

It is not possible to agree with any of the above contentions. The order dated July 3, 1993 expressly purports to cancel the license of the fifth respondent. As stated supra, on that date, the fifth respondent was holding a temporary license. It was that license that was cancelled. The order of the District Magistrate dated May 20, 1994 clearly mentions that fifth respondent was having a temporary license on that date. Once this so, the first ground of attack fails being premised upon an incorrect factual assumption. The second ground also fails in view of that fact; if the fifth respondent was holding a license on July 3, 1993, there is no substance in the argument that he did not apply for renewal of the license for 1993-94.

Coming to the third ground of Sri Dhaon, it would be seen that the respondent was agitating against the cancellation of his license [by order dated July 3, 1993] throughout. It was during the pendency of the proceedings taken by him that a notification was issued calling for applications for a fresh grant and license was granted to the appellant. The said exercise was on the supposition that by virtue of the cancellation of the fifth respondent's license, a vacancy has arisen. Once the said supposition is not true - in the sense that the said cancellation was found to be illegal - the grant of license to the appellant must be deemed to be provisional and a temporary arrangement, as rightly held by the High Court, notwithstanding the fact that it may have been described as a permanent license. Once the fifth respondent's license is restored, the license granted to the appellant comes to an end by operation of law. It is not really a case of "cancellation" within the meaning of Section 34 of the U.P. Excise Act. No notice was also necessary to be given to the appellant.

The appeal accordingly fails and is dismissed. no costs.