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GORAKHNATH

v.

STATE OF UTTAR PRADESH AND ORS.

OCTOBER 11, 1996

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[B. P. JEEVAN REDDY AND S.C. SEN, JJ.]

U.P. Excise Act : Section 34—F/16 Licence—Grant/renewal, etc.—Hearing—Cancellation of licence without notice—Held : No Cancellation within the meaning of Section 34—Hence, No notice necessary.

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Prior to 1961, F/16 licence stood in the name of A, brother of K - the fifth respondent. In that year, the name of fifth respondent was also added. 'A' died in March, 1979. Accordingly, the licence for the excise year 1979-80 was renewed in the name of fifth respondent alone. On May 24, 1980, the licence in favour of fifth respondent was cancelled and a temporary licence was issued to one 'R'. Fifth respondent complained and took several proceedings in that behalf. Ultimately, he filed a writ petition in the High Court which was allowed and the licence 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, but on the report submitted by the office, the District Excise officer cancelled the licence in favour of the fifth respondent with the result that the licence in respect of the said shop was deemed to be vacant.

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A notification was issued on October 16, 1993 calling for applications for the grant of a regular licence in respect of the said area. Eleven persons including appellant applied. The licence was granted to appellant against which the fifth respondent again took proceedings before the excise authorities. On May 20, 1994, the District Magistrate accepted the fifth respondent's case and directed the renewal of the licence, for the year 1994-95, in his favour. The appellant preferred an appeal against the order which was dismissed by the Additional Excise Commissioner. A revision was also dismissed, whereupon appellant approached the High Court by way of a writ petition.

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The writ petition was dismissed by the High Court on the ground that once it was rightly held that the order of cancellation was competent

and erroneous, it must follow that there was no vacancy in the licence and hence, calling for applications for grant of licence and the consequential grant of licence was incompetent in law. However, the High Court rejected the appellant's plea that cancellation of his licence without hearing him was illegal being violative of principles of natural justice. It opined that the licence granted to the appellant has to be treated as an interim or temporary arrangement, subject to the claims of the fifth respondent.

In appeal to this court, the appellant assailed the order on the grounds that fifth respondent had no licence at all, hence there was no question of cancelling his licence; that since fifth respondent had not even applied for licence, there could be no question of renewal or grant of licence; that a permanent/regular licence can be cancelled only on any of the grounds specified in Section 34 of the U.P. Excise Act; and that as the licence was also not cancelled with notice, the order was violative of principles of natural justice.

Dismissing the Appeal, this Court

HELD : 1.1. The order dated July 3, 1993 expressly purports to cancel the licence of the fifth respondent. On that date, the fifth respondent was holding a temporary licence. It was that licence which was cancelled. The order of the District Magistrate clearly mentions that fifth respondent was having a temporary licence on that date. [594-F]

1.2. If the fifth respondent was holding a licence on July 3, 1993, there is no substance in the argument that he did not apply for renewal of the licence for 1993-94. [594-G]

1.3. The fifth respondent was agitating against the cancellation of his licence 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 licence was granted to the appellant. The said exercise was on the supposition that by virtue of the cancellation of the fifth respondent's licence, 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 licence 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 licence. Once the fifth respondent's licence is restored, the licence granted to the appellant comes

A to an end by operation of law. [594-H, 595-A-B]

1.4. It is not really a case of 'cancellation' within the meaning of Section 34 of the U.P. Excise Act. Hence no notice was also necessary to be given to the appellant. [595-C]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13103 of 1996.

From the Judgment and Order dated 15.9.95 of the Allahabad High Court in C.M.W.P. No. 707 of 1995.

C S.K. Dhaon, Mukesh Prasad and Prashant Kumar for the Appellant.

Ms. S. Janani and A.K. Goel for the Respondents.

The Judgment of the Court was delivered by

D B.P. JEEVAN REDDY, J. Leave granted.

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

E Prior to 1961, the licence 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 licence for the excise year 1979-80 was renewed in the name of fifth respondent alone. On May 24, 1980, the licence in favour of fifth respondent was cancelled and a temporary licence 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 licence in favour of the fifth respondent was renewed and continued to be renewed

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G till and including the excise year 1991- 92.

For the excise year 1992-93, the fifth respondent applied for the renewal in the usual course. Thereon, a query was raised by the District Excise Officer as to the circumstances in which licence was granted to the

H fifth respondent in 1984 and later. The fifth respondent furnished his ex-

planation 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 licence in the name of his wife, Shanti Devi. On the said application, a report was submitted by the office that while the fifth respondent had not applied for renewal of licence for the year 1993-94, *he is yet running the business on the basis of a temporary licence.* [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 licence in favour of the fifth respondent with the result that the licence 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 licence in respect of the said shop. Eleven persons including the appellant herein, Sri Gorakhnath applied. The licence 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 licence, 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 licence and found that the cancellation of fifth respondent's licence 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 1995 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 licence] dated July 3, 1993 is competent and erroneous, it must follow that there was no vacancy in the licence and hence, calling for applications for grant of licence and the consequential grant of licence in favour of the appellant is incompetent in law. The High Court rejected the appellant's plea that cancellation of his licence without hearing him is illegal being violative of the principles of natural justice. It opined that the licence 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

A licence, the appellant's licence is liable to come to an end. The High Court further observed that the cancellation of the appellant's licence was not on account of any fault of his but only because the licence 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 licence at all, hence there is no question of cancelling his licence. Once, it is held that there was no cancellation of fifth respondent's licence, the reasoning of the High Court that grant of licence 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 licence for the year 1993-94, hence there could be no question of renewal or grant of licence in his favour and (c) the licence granted to the appellant was a permanent/regular licence 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 licence 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 licence of the fifth respondent. As stated *supra*, on the date of cancellation the fifth respondent was holding a temporary licence. It was that licence that was cancelled. The order of the District Magistrate dated May 20, 1994 clearly mentions that fifth respondent was having a temporary licence on that date. Once this is 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 licence on July 3, 1993, there is no substance in the argument that he did not apply for renewal of the licence for 1993-94.

Coming to the third ground of Sri Dhaon, it would be seen that the fifth respondent was agitating against the cancellation of his licence [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 licence was granted to the appellant. The said exercise was on the supposition that by virtue of the cancellation of the fifth respondent's licence, 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 licence 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 licence. Once the fifth respondent's licence is restored, the licence 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.

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The appeal accordingly fails and is dismissed. No costs.

S.S.

Appeal dismissed.