

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on 13.03.2024

Pronouncement for Order on 22.03.2024

WPC No.1909 of 2008

1. State Of Chhattisgarh, Through Secretary, Department Of Excise, Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.
2. Collector, Excise, Bilaspur, Chhattisgarh

---- **Petitioners**

Versus

1. Gyanendra Upadhyay, S/o Shri Madhav Prasad Upadhyay, R/o Village Dhanoli, Via-Pendra, District Bilaspur, Chhattisgarh.
2. The Board of Revenue, Bilaspur Chhattisgarh.

---- **Respondents**

(Cause title is taken from CIS)

For petitioners/State	:	Shri Akhilesh Kumar, Govt. Advocate
For Respondent No.1	:	Shri Ghanshyam Patel, Advocate

Single Bench: Hon'ble Shri Justice Sanjay S. Agrawal

CAV Order

1. By way of this petition, the petitioners/State is questioning the legality and propriety of order dated 18.09.2007 (Annexure P-1) passed by the Board of Revenue, Bilaspur in Appeal Case No.A/02/E/91/2006, whereby the order dated 22.03.2006 passed by the Excise Commissioner, Chhattisgarh, Raipur in Appeal Case No.6/2002-2003 upholding the order/demand notice dated 03.07.2002 issued by the Collector (Excise), Bilaspur, has been reversed.
2. Briefly stated the facts of the case are that a country liquor shop situated at Chuchuchiya Para and Sirgitti, Bilaspur was provided to the respondent No.1-Gyanendra Upadhyay for the period

commencing with effect from 17.04.2002 up to 31.03.2002. The said license was granted under Rule-3 "b" of Chhattisgarh Excise Settlement of License for Retail Sale of Country/Foreign Liquor Rules, 2002, framed in exercise of the powers provided under Section 62 read with Section 18 of the Chhattisgarh Excise Act, 1915 (hereinafter referred to as "the Act, 1915"). According to the respondent No.1, an assurance was given to him by the Licensing Authority at the time of consideration of his said application that the adjoining shops would be provided to him and based upon the said promise, he moved an application for grant of license of adjoining shops, but, it was granted to someone else, which has created an unhealthy atmosphere over there and because of that, he moved an application on 01.05.2002 (Annexure R-1/1) to the Collector (Excise) while showing his intention to surrender his license for the alleged shops and, a reminder letter was thereafter written on 28.05.2002 (Annexure R-1/2) for surrendering his license with effect from 01.06.2002 and requested for refund of his security deposit and cost of the unsold stock. The said letters were duly acknowledged by the Excise Department. It is the contention of the respondent that despite issuance of the said letters, he did not get any response and instead a demand notice/order (Annexure P-7) was issued on 03.07.2002 by the Collector (Excise) Bilaspur, while demanding a sum of Rs.48,98,592/-, incurred towards the loss, owing to resettlement of alleged shops as the same were closed by the respondent with effect from 01.06.2002 and Revenue Recovery Certificate was thereafter issued on 11.08.2002.

3. Being aggrieved with the aforesaid order/demand notice, an appeal was preferred by the respondent No.1 before the Excise Commissioner, Raipur under Section 62(2)(c) of the Act, 1915, who in turn, vide its order dated 22.03.2006 (Annexure P-8) passed in Appeal Case No.06/2002-2003, has dismissed the same by holding that the application made by the respondent on 01.05.2002 does not fall within the purview of Section 33 of the Act, 1915 as he failed to mention therein his intention for closing of the alleged shops after the expiry of one month's notice nor has deposited the license fee for the remainder period, as required under the said provision.
4. The aforesaid order has been reversed by the Board of Revenue, Bilaspur vide its order impugned dated 18.09.2007 in appeal preferred by the respondent No.1 under Section 62(2)(d) of the Act, 1915 holding that the alleged demand notice/order dated 03.07.2002 has been issued in contravention with regard to the principles of natural justice, as no penalty as such could be imposed upon the said respondent without providing sufficient and reasonable opportunity of hearing and, accordingly, the order passed by the Excise Commissioner on 22.03.2006 upholding the alleged order/demand notice dated 03.07.2002 has been quashed. This is the order, which has been questioned by the State Government by way of preferring this petition.
5. Mr. Akhilesh Kumar, learned counsel appearing for the petitioners/State, while referring to the provisions prescribed under Section 33 of the Act, 1915, submits that since the alleged

application dated 01.05.2002 has been moved by the respondent No.1 without specifying his specific and clear terms of his intention to surrender the alleged shops nor was accompanied with the license fee for the remainder period, therefore, the demand notice issued by the Collector (Excise) on 03.07.2002 has rightly been upheld by the Excise Commissioner and the Court below, however, without meeting its reasoning, has committed an illegality in setting aside the same. In support, he placed his reliance upon the decision rendered by the Co-ordinate Bench of this Court in the matter of "**Satpal Singh vs. State of CG and others**", reported in **(2011) 4 MPJR 119**, which has been upheld by the Division Bench of this Court in the matter of "**Satpal Singh vs. State of CG and others**" passed in Writ Appeal No.459 of 2011 [along with connected Writ Appeal No.465 of 2011 "**Guru Bakshish Singh vs. State of CG and others**"] decided on 15.01.2015.

6. On the other hand, Mr. Ghanshyam Patel, learned counsel appearing for Respondent No.1, while placing his reliance upon the decision rendered by the Division Bench of the High Court of Madhya Pradesh in the matter of **S. AVTAR SINGH s/o SAWAN SINGH, JABALPUR vs. STATE OF MADHYA PRADESH and others**, reported in **1988 M.P.L.J. 328**, has supported the order impugned as passed by the Court below.
7. I have heard learned counsel appearing for the parties and perused the entire record carefully.
8. Admittedly, the alleged liquor shops at Chuchuhiiya Para and

Sirgitti were provided to the respondent No.1 for the period commencing with effect from 17.04.2002 up to 31.03.2003. An application dated 01.05.2002 was issued by the respondent as reflected from the endorsement made therein by the petitioners/State and a bare perusal of it, would show that owing to certain unavoidable circumstances, it was not possible for the respondent No.1 to run the alleged shops and, therefore, the said letter was written by him showing his intention to surrender the alleged license. The said letter was issued as per the provisions prescribed under Section 33 of the Act, 1915. It is to be seen further that the Assistant Commissioner (Excise) Bilaspur, vide its letter dated 31.05.2002 (Annexure P-6) has intimated the said respondent while referring to the provision prescribed under Section 33 of the Act, 1915 that as per the said provision, the respondent No.1, being a licensee, is required to issue a written notice for the period of one month in order to surrender the alleged license and has to deposit the license fee for the remainder period and thereby asked him while referring to his alleged reminder letter dated 28.05.2002 that as to whether, he wants to surrender his alleged license or not.

9. It appears that the acknowledgment of this letter has been denied by the respondent, but it hardly makes any difference in so far as the present case is concerned, as the Excise Commissioner, Bilaspur, vide its order dated 22.03.2006, while considering his letter issued on 01.05.2002, has dismissed his appeal while upholding the alleged order/demand notice dated 03.07.2002

(Annexure P-7). It is to be seen at this juncture, the provision prescribed under Section 33 of the Act, 1915 in order to examine the fact as to whether the licensee is required to furnish the license fee for the remainder period or not. The said provision, reads as under:-

33. Surrender of licences.--(1) Any holder of a licence granted under this Act to sell an intoxicant may surrender his licence on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender the same, and on payment of the fee payable for the licence for the remainder of the period for which it would have been current put for such surrender:

Provided that if the Excise Commissioner is satisfied that there is sufficient reason for surrendering a licence he may remit to the holder thereof the sum so payable on surrender or any portion thereof.

(2) Sub-section(1) shall not apply in the case of any licence granted under Section 18.

Explanation.--The words "holders of a licence", as used in this section include a person whose tender or bid for a licence has been accepted, although he may not actually have received the licence.

10. A bare perusal of sub-section (1) of the aforesaid provision would show that it enables the licensee to surrender his license on expiration of one month's written notice given by him to the Collector (Excise) regarding his intention to surrender the license and on payment of the fee payable for the license for the remainder of the period. It, thus, provides that after the requirement of giving one month's written notice, coupled with the surrender of license and payment of fee payable for the license for the remainder period, is fulfilled by the licensee, the license would stand surrendered. But, if the proviso to sub-section (1) of the aforesaid provision is seen, it would, however, show that a higher officer of the rank, like Excise Commissioner

has been given power to remit to the holder of the license, the sum payable on such surrender or any portion thereon, if he is satisfied that there is sufficient cause for surrendering the license.

11. A close scrutiny of the sub-section (1) of Section 33 of the Act, 1915 would, thus, show that it does not contemplate passing of any order by the Collector (Excise) and, in fact, any order would require to be passed only by the Excise Commissioner on his satisfaction of sufficient reasons for surrendering the license and, he may thereof remit to the holder the sum so payable on surrender or any portion thereof. It, thus, appears that the licensee could be required by the Collector (Excise) to pay the remainder of the license fee only after the order is passed by the Excise Commissioner and, not prior to that, as prescribed by virtue of the aforesaid provision and also in the light of the principles laid down by the Division Bench of the High Court of Madhya Pradesh in the matter of **S. AVTAR SINGH s/o SAWAN SINGH, JABALPUR (supra)**, as relied upon by Mr. Patel, learned counsel appearing for the respondent No.1, wherein, while interpreting the provision prescribed under Section 33 of the Act, 1915, it has been held at paragraphs 9 and 10, as under:-

“9. On the plain reading of Section 33(1) of the Act, therefore, what transpires is that if the notice given by the licensee makes out a case for remittance of the licence fee, as contemplated by the proviso to Section 33 (1) of the Act, the Collector has to forward the matter to the Excise Commissioner enabling him to exercise power conferred on him by the said proviso. In that event, the Excise Commissioner would have to

record a finding as to whether sufficient reason had been made out or not for remittance of the licence fee as contemplated by the proviso. It goes without saying that since the power to grant remittance has been conferred on the Excise Commissioner by the proviso on his satisfaction that there was sufficient reason for surrendering a licence, such power shall have to be exercised, to ensure fair-play, after giving the licensee an opportunity of showing that for surrendering the licence there was sufficient reason. It is only if after giving the licensee such an opportunity, the Excise Commissioner is satisfied that there was no sufficient reason for surrendering the licence that the Collector can require the remainder of the period for which it would have been current, but for such surrender as contemplated by the latter part of Section 33 (1) of the Act.

10. In the instant case, what the District Excise Officer has done by passing the order dated 22-11-1984 (Annexure XIV) is that he has simply informed the petitioner of the requirements of Section 33 (1) of the Act. A perusal of the notice dated 7-11-1984 which was given by the petitioner, a copy whereof has been attached as Annexure IV to the writ petition, indicates that the petitioner had given reasons to support the necessity of surrendering the licence. He had also made a prayer that the deposits made by him may be returned to him so that he may be in a position to spend the rest of the days of his life in peace and tranquility. From the tenor of the notice dated 7-11-1984, it is apparent that the petitioner not only was seeking redress for not being required to pay the remainder of the licence fee as contemplated by the latter part of Section 33 of the Act, but he was really seeking return of the amount already paid by him. Even though the notice is not very happily worded so as to contain a specific prayer for granting remittance as contemplated by the proviso to Section 33(1) of the Act, there seems to be no doubt that the petitioner was really seeking the benefit of the said proviso. The matter, therefore, ought to have been referred to the Excise Commissioner for consideration as to whether the petitioner was entitled to the remittance contemplated by the said proviso or not. It is only after the Excise Commissioner had passed an order refusing to grant remission after giving the petitioner an opportunity of hearing, that the petitioner could be required by the Collector to pay the remainder of the licence fee. Since in the instant case, recourse has not been taken to his procedure, we are of the opinion that a case has been made out that the Excise Commissioner may be required to pass necessary orders in the instant case as contemplated by the proviso to Section 33 (1) of the Act. To this extent, this writ petition deserves to be allowed.”

12. It, thus, appears that by virtue of sub-section (1) of Section 33 of the Act, 1915, the licensee could be required by the Collector to pay the remainder of the license fee only after passing of the order by the Commissioner (Excise) under the proviso to sub-section(1) of Section 33 of the Act, 1915. However, in the instant matter, the intention of the respondent No.1 as shown by his alleged letter dated 01.05.2002 was even not placed by the Collector (Excise) before his superior authority i.e. the Excise Commissioner, therefore, no action on his alleged letter was taken by the said authority and straightway demand notice/order was issued by the Collector (Excise) on 03.07.2002, which has been reversed by the Court below on finding that the same has been demanded even in absence of following the above-mentioned provisions and that too in utter violation of the principles of natural justice.
13. It is, however, to be seen at this juncture, the principles laid down by the learned Single Judge in the matter of "**Satpal Singh vs. State of C.G. and others**" decided on 26.07.2011, reported in **(2011) 4 MPJR 119**, which has been upheld by the Division Bench of this Court in the matter of "**Satpal Singh vs. State of C.G. and others**" passed in Writ Appeal No.459 of 2011 [along with connected Writ Appeal No.465 of 2011 "**Guru Bakshish Singh vs. State of CG and others**"]. In the said matter, while interpreting the provision prescribed under Section 33 of the Act, 1915, it has been observed by the learned Single Judge that there are two essential conditions, which are required to be

followed for issuance of a valid notice:-

“Firstly, one month’s notice in writing to be given to the Collector showing intention to surrender a license and,

Secondly, for payment of fee payable for the license for the remainder period, for which, it would have been current, but, for such surrender.”

14. It has, thus, been held by the learned Single Judge that the payment of the balance fee for the remainder period of the license, but for such surrender, has to be simultaneous and along with the notice of surrender and, the effect of the proviso to sub-section (1) of Section 33 of the Act, 1915 would not defer the payment of fee in respect of the remainder of the period of license, as it only provide for remission of fee in appropriate cases by the Excise Commissioner upon his satisfaction that there is sufficient reasons for surrendering the license and, consequently, it has been held that in the absence of there being any case of deposit of fee payable in respect “of remainder of the period of license either along with the notice in writing or on or before the expiry of period of one month’s notice”, there would not be any valid surrender of license as required under Section 33 of the Act, 1915.
15. It, thus, appears that a contrary view has been taken by the learned Single Judge and which has been upheld by the Division Bench of this Court in the matter of “**Satpal Singh vs. State of CG and others**” passed in Writ Appeal No.459 of 2011 [along with connected Writ Appeal No.465 of 2011 “**Guru Bakshish Singh vs. State of CG and others**”], but it appears that the view

as laid down earlier by the Division Bench of the erstwhile High Court of Madhya Pradesh in the said matter of **S. AVTAR SINGH s/o SAWAN SINGH, JABALPUR** (supra), which also has a binding effect to this Court, has unfortunately not been brought to the knowledge either to the learned Single Judge or to the Division Bench of this Court.

16. Be that as it may, under such an eventuality, being a Single Judge, it is difficult for me to follow any of the principles laid down by the Division Bench in the above-mentioned matters, unless and until the same is settled by the Larger Bench of this Court.
17. In view of the aforesaid background, in exercise of the powers provided under Rule 33 of the High Court of Chhattisgarh Rules, 2007, it is hereby recommended that all the papers of this proceedings be placed before Hon'ble the Chief Justice for consideration and for appropriate orders for constituting a Larger Bench for settling the following issue:-

“Whether, the petitioner being a licensee is required to make payment of the balance fee for the remainder period of the license, along with the notice of his intention to surrender the license as required under sub-section(1) of Section 33 of the Chhattisgarh Excise Act, 1915? or,

whether the petitioner could be required by the Collector to pay remainder of the license fee only after passing of the order by the Excise Commissioner refusing to grant remission as provided under proviso to sub-section (1) of Section 33 of the Act, 1915, after giving the petitioner an opportunity of hearing?”

SD/-

(Sanjay S. Agrawal)
Judge