Supreme Court of India
Sub-Divisional Officer And ... vs Shri Gopal Chandra Khound And Anr. on 23 March, 1971
Equivalent citations: AIR 1971 SC 1190, (1972) 4 SCC 263, 1971 III UJ 550 SC
Author: V Bhargava
Bench: I.D.Dua, V Bhargava
JUDGMENT V. Bhargava, J.

1. The respondent, Gopal Chandra Khound, is the holder of a licence of a country liquor shop issued by the appellant, Sub-Divisional Officer and Collector, Shivasagar. The Superintendent of Excise of the Sibsagar Sub-Division, in which the shop of the respondent is situated, inspected some liquor shops in the month of June, 1965 and discovered that some of the bottles in the shops were not properly sealed. The covers could be turned all round without detaching them from the bottles and without breaking the seal. There could also be seepage from the covers if the bottles were turned up side down. He felt that this left a scope for tampering as well as deterioration in strength of the liquor in storage beyond the permissible limits; and, consequently, a few days later, on 24th June, 1965, he issued a letter to the Officer-in-Charge, Warehouses, Jorhat and Nazira; which were issuing the sealed bottles, to take all possible steps to secure the marked closures properly and to ensure that no sealed bottle of liquor with loose closures were issued from the warehouses. A copy of this letter was endorsed as a circular to all the lessees of the liquor shops, including the respondent. In the endorsement to the lessees, the Superintendent of Excise added that the lessees should not take delivery of such liquor sealed bottles with loose closures and, in case, through heavy rush at the time of issue, some such bottles with loose closures happened to creep in to their consignments, they should be returned at once to the Officer-in-charge, Warehouse concerned for getting them properly secured.

2. Subsequently, on 31 July, 1965, he made a check of the shop of the respondent. He found two bottles on the sale rack with loose covers which appeared to him to be suspicious. He tested their strength and discovered that strength was far below the strength of issue from the Warehouse. The respondent was expected to store liquor of strength 30 U.P., while the strength of the liquor in these two bottles was 44.9 U.P. and 49 0 U.P. Therefore, he also checked the remaining 13 bottles which were on that sale rack He found that the strength of 5 of them was 30 U.P., while the remaining 8 had liquor of strength 48.4 or 48.8 U.P. He marked these bottles, took them in his possession, and recorded a report of his inspection. Thereafter, he sent a report to the appellant informing him of this inspection and stating his opinion that the respondent had deliberately diluted and weakened the 30 U.P. liquor in the bottles on the sale rack after having tampered with the seals. He recommended that the respondent should be asked to show cause why his licence should not be cancelled and security forfeited. In pursuance thereof, the appellant issued a notice to the respondent to show cause on 16th August, 1965. The respondent in his explanation denied having diluted or weakened the liquor in the bottles on the sale rack. He explained that the seals were of such a nature that there could be no dilution unless the covers were completely removed, so that, according to him, the charge of dilution was out of question and was absolutely impossible. He suggested in his explanation that, very likely, the deterioration must have taken place in the warehouse before the bottles were issued to him. The explanation contained further details showing cause against the notice issued to him. The appellant asked for comments on this explanation from

the Superintendent of Excise. The Superintendent of Excise recorded his comments on 6th September, 1965. On a consideration of these documents the appellant cancelled the licence of the respondent. The respondent filed an appeal before the Board of Revenue. The Board dismissed the appeal by the order dated 17th January, 1966. Thereupon, the respondent filed a petition under Article 226 of the Constitution before the High Court of Assam and Nagaland. The High Court set aside the order of the appellant and the Board of Revenue. This appeal has, therefore, been brought up to this Court by the appellant against that judgment of the High Court by special leave.

3. The appellant had purported to cancel the licence of the respondent for contravention of Rule 300 of the Rules framed under the Eastern Bengal and Assam Excise Act No. I of 1910, which reads as follows:

300. No licensed wholesale or retail vendor shall wilfully adulterate or add any thing to cause the deterioration of any intoxicant sold or kept for sale by him. He shall not sell any intoxicant which he knows to have been adulterated or to have deteriorated and shall not store such intoxicant or permit such intoxicant to be stored on his premises.

The appellant came to the finding that the respondent had wilfully adulterated or caused the deterioration of the liquor in 10 of the bottles which were found by the Superintendent of Excise on his sale rack; and that was the order which was upheld by the Board of Revenue. The High Court noticed the fact that the Board of Revenue had held that there was no direct evidence to show that the respondent had wilfully caused deterioration in the strength of the liquor in question or that some one else did this on his behalf. The Board of Revenue then proceeded to consider whether there were circumstances in the case to justify recording a conclusion against the respondent, and, for that purpose, raised a presumption that the respondent must have knowledge that the liquor in the bottles was adulterated, in the absence of proof to the contrary. The High Court rightly pointed out that such a presumption is not justified on the language of Rule 300. The Board of Revenue, in support of its view, had relied upon some sections of the Excise Act which prescribed penal action in cases of possession of adulterated liquor It is to be noticed that the proceedings against the respondent were taken not on the ground of being in possession of adulterated liquor, but on the ground that he had deliberately adulterated it. There could, therefore, be no presumption that the charge against him must be treated as proved simply because bottles of adulterated liquor were discovered on the rack in his shop The High Court also noted the fact that the Board was wrong in thinking that the respondent in his explanation did not deny knowledge of the fact that the bottles were adulterated when, in fact, he had done so. The Board having thus gone wrong on the face of the order in this respect of drawing incorrect presumption, the High Court exercised its jurisdiction to issue a writ of certiorari quashing the orders of the appellant and the Board of Revenue on the ground that there was, in fact, no evidence at all on which a reasonable person could have come to the conclusion that the respondent had himself adulterated the liquor in the bottles.

4. Having heard learned Counsel, we are unable to find any error in the judgment of the High Court. The significant point is that the licence of the respondent was cancelled on the finding recorded by the appellant and upheld by the Board of Revenue that the respondent had deliberately adulterated the liquor in the 10 bottles with the object of causing deterioration and making profits. He was not

charged with storage of deteriorated intoxicant under the last part of Rule 300 quoted above. So far as deliberate adulteration by the respondent is concerned, there was no material on which such a finding could have been recorded. Learned Counsel appearing for the appellant pointed out some circumstances which, according to him justified such a finding. He started with the proposition that it was the duty of the Warehouse to supply 30 UP liquor to the respondent and, while 10 bottles on the sale rack were found deteriorated to a considerable extent, 5 bottles on the same rack and all the bottles tested from sealed boxes by the Superintendent of Excise were found to contain liquor of proper strength. The Supdt. of Excise also had reported that all these bottles were from the same consignment issued at the same time from the Warehouse. From this circumstance, an inference was sought to be drawn that the 10 bottles on the sale rack must have been deliberately adulterated by the respondent. The facts have, however, to be viewed in the back-ground of the earlier discovery of defective bottles by the Superintendent of Excise in the month of June. A very reasonable possibility exists that some of the bottles, which had defective closures, were issued in this consignment of 24th July, 1965 by the Warehouse either deliberately or inadvertently. The explanation given by the respondent was, therefore, very reasonable and the fact that 10 bottles were found with adulterated liquor was consistent with his explanation, though, of course, it was also consistent with the finding recorded by the appellant and the Board of Revenue. On this possibility, the most adverse inference that could be drawn against the respondent was that he did not follow the instructions issued by the Superintendent of Excise on 24th June, 1965 by carefully checking the bottles and returning them if they were in defective condition. One circumstance, which was relied upon by both the appellant and the Board of Revenue, was that, in his comments on the explanation of the respondent, the Superintendent of Excise added that he had noticed signs of tampering with the covers of two of the bottles. This circumstance was not noted by him in his memo drawn up at the time of the inspection, nor was it mentioned in his first report to the appellant. At that stage, all he had said was that the covers appeared to him to be suspicious. The suspicion could be because the covers were defective and loose. That was a defect which he had been noticed earlier by the Superintendent of Excise himself in some bottles stored in a number of liquor shops, indicating that the defect must have occurred in the Warehouse where the sealing of bottles was being carried out. If there were clear signs of tampering with the closures in the two bottles, that was a strong circumstance indicating that the deterioration may not have taken place in the Warehouse and may be the result of deliberate adulteration after the bottles were received by the respondent. This assertion of the Superintendent of Excise that there were signs of tampering with the covers of two bottles was not only omitted from his original inspection memo and the report to the appellant, but, at the later stage, when he recorded it in his comments no opportunity was given to the respondent to explain this new fact. Signs of tampering were mentioned by the Superintendent of Excise in his comments behind the back of the respondent. In fact, if there had been signs of tampering, the Superintendent would have prominently drawn the attention of the respondent to them at the time of inspection and would have clearly mentioned it both in the memo and in his report to the appellant. The respondent, in these circumstances, could have explained this charge if he had been asked to do so. It was against all principles of natural justice to allow the Superintendent of Excise to put down a new fact, to give no opportunity to the respondent to explain it and to record a finding on its basis against him. In all these circumstances and while possibilities exist that the tampering of the bottles was not done by the respondent and the bottles might have been received in defective condition with deteriorated liquor from the Warehouse itself, the High Court was quite justified in

setting aside the orders of the appellant and the Board of Revenue.

5. Learned Counsel brought to our notice five decisions of this Court in which principles have been laid down for exercise of jurisdiction to issue a writ of certiorari by High Courts under Article 226 of the Constitution. It is unnecessary to quote from those judgments, because we have already indicated above how the orders of the appellant and the Board of Revenue suffer from an apparent error of law in the matter of the raising presumptions and how principles of natural justice have been violated. In these circumstances, no charge can be brought that the High Court exercised its jurisdiction in quashing the orders of the appellant and the Board of Revenue.

6. The appeal is dismissed with costs.