(2002) 01 MP CK 0004

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 3325, 4569, 5103, 5104, 5105, 5106 and 5107 of 2001

Aashi Enterprises and another — APPELLANT

Vs

State of M.P. and others — RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:
Foreign Liquor Rules — Rule 14
Madhya Pradesh Excise Act, 1915 — Section 12

Citation : (2002) 4 MPLJ 246

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Rajendra Tiwari and N.C. Jain, Dilip Pandey and Pratulya Shandilya, for the Appellant; Rohit Arya, For Intervener, P.D. Gupta, Dy. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

The present batch of writ petitions, being inter linked and inter connected on the base of a common factual matrix and similar legal issue, was heard analogously and is disposed of by this common order. For the sake of clarity and convenience the facts in W.P. No. 3325/2001 are adumbrated herein.

The facts as have been adumbrated in the writ petition are that the petitioner No. 1 is a partnership firm and the petitioners No. 2 is the power of attorney holder of the petitioner No. 1. The State Government has the monopoly in the trade and manufacture and sale of country and India made foreign liquors. It has been selling country made foreign liquor from the shops for quite sometime in the past. In 1999, the Government changed its policy and amended the certain provisions in the M.P. Country Spirit Rules, 1995 (for short ''the Rules''). The licence forms were also amended. It was categorically mentioned in the licence form that along with the country liquor there would be permission to sale foreign liquor from the shops by the licensee.

According to the writ petitioner the Excise Commissioner on the basis of the policy on 8-3-2001 issued instructions. The Collector who is the authorised person to conduct auction issued conditions of sale by auction of country/liquor (excluding beer) and in paragraph 21 of the sale notice it was mentioned that foreign liquor can be sold along with country liquor. It is putforth in the petition that shops were put for auction before 31st March 2001 but the bidders did not come forward as a result of which no auction could be completed. This compelled the State Government to extend the period of tenders for one month in respect of licence obtained by the previous licensee. Thereafter on 28-4-2001 in pursuance to the advertisement the petitioner submitted tenders for taking the entire shops in Sidhi group and Bedhan group. In tenders the petitioner had offered 21% less from the upset price in the case of Sidhi group and 10% less in the case of Bedhan group. His tenders were not disposed of till 30-4-2001. On 30-4-2001 the tenders were again invited on basis of single shop. The petitioner objected to the same and he was informed that his tenders of 28-4-2001 have been sent to the State Government and similarly tenders submitted on 30-4-2001 would also be sent to the State Government for sanction. It has been pleaded in the writ petition that the tenders were opened on 30th April 2001 and the price was very low. At that juncture, the petitioner gave an application on 1-5-2001 requesting the Collector to put the shops known as Sidhi shop No. 2, Sidhi country liquor shop No. 3, Kuchwahi, Kubari, Amiliya to reauction as he was prepared to offer more than 10% above the prices accepted. Taking note of the offer given by the petitioner the Collector decided to issue another advertisement and accordingly the advertisement was published on 2-5-2001 in ''Daily Samay''. In the said advertisement it was clearly mentioned that the shop-wise tenders were invited for country/foreign liquor shops on the basis of instructions issued on 8-3-2001 and other instruction published by the Collector. Accordingly, the petitioners gave their tenders for several shops and ultimately seven country/ foreign liquor shops namely Sidhi No. 2, Sidhi No. 3, Kuchwahi, Amiliya, Kubari, Naurhiya and Sarai were given to the petitioner. He obtained these shops for a sum of Rs. 61,40,413.00/-. It is putforth in the petition that in the licences the respondents 2 and 3 have withheld the permission of sale of country liquor from foreign liquor shop and foreign liquor from country liquor shop as a result of which great loss is caused to the petitioner. It has been setforth that in similar matter in Ujjain, the licence has been issued to sell country liquor and foreign liquor simultaneously from any of the shops in respect of which licence has been granted. Similar situation also does exist, as has been pleaded, in the city of Jabalpur. However, as averred in the petition, in the case of the petitioner the said permissions are not being issued as a result of which they can not bring foreign liequor from Saraj to their seven shops in the district of Sidhi and further they can not carry country liquor to the foreign liquor shop in Sarai. Further the case of the petitioner, the two licences have been issued in Form 2A which is contrary to the Rules. It is pleaded that the petitioner gave notice through his counsel dated 7-6-2001 to grant permission to him to sell country liquor and foreign liquor from all his shops.

It is noteworthy to state here that during the pendency of the writ petition certain facts were brought to the notice of the petitioner, and he sought permission to amend the writ petition which was allowed. It has been highlighted by the petitioner that the State Government had issued a letter to the Excise Commissioner instructing him to the effect that the State Government had decided that foreign liquor could be sold from the country liquor shops and country liquor could be sold from foreign liquor shops. But the State Government reconsidered the matter and has directed that from the date of issuance of the instructions the said conditions deemed to be set aside and the Excise Commissioner was directed not to act upon any more on the letter dated 16-7-2001. The said letter was issued on 20th July 2001 which has been brought on record as Annexure P/12-A. Consequent upon this letter the Excise Commissioner has issued a letter dated 20-7-2001 as contained in Annexure P/12-B. By the said letter the Excise Commissioner has directed that the sale of liquor from either of the shops would not be available to the individual shop.

It is urged in the petition that the instructions from the State Government as well as the Excise Commissioner are not applicable to the petitioner and the State Government is estopped by the doctrine of promissory estoppel after the petitioner has entered into an agreement for running the shops in the District of Sidhi. It is further putforth that as per the 1995 Rules which has been amended in the year 1999, foreign liquor is permissible to be sold from country liquor shops and country liquor is similarly permissible to be sold from foreign liquor shops. It is also urged by making a reference to the advertisement on the basis of which the petitioner has given its offer and if it was made known that either of the liquor would not be allowed to be sold from the said shops the petitioner would not have offered the higher bid. It is averred that by own conduct the respondents are varying from the Rules which are in vogue. With these averments prayers have been made seeking quashment of the Annexures P/12-A and P-12-B with a further prayer to command the respondents to grant permission to the petitioner for sale of country spirit from the foreign liquor shops and foreign liquor from the country liquor shops and to compensate the loss sustained by the petitioner and to pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case.

A return has been filed by the respondents 1 to 4 contending, inter alia, that the benefit under the M.P. Country Spirit Rules, 1995 as amended in the year 1999 is not available to the petitioner for the sole reason that the petitioner is not a ''group licensee''. It is also urged by them that the facilities for transporting and selling country liquor from foreign liquor shops and vice versa cannot be awarded as the petitioner has been given licence as per notification dated 2-5- 2001, Annexure P-5. It is also highlighted that by the advertisement dated 2-5-2001 shops-wise tenders were invited for country/liquor shops and the petitioner''s tenders for individual shops were accepted by the respondents. It is urged that the concession of sale of country liquor from foreign liquor shops and vice versa has been given only in cases where the licence has been granted under ''group auction''. The said facilities are not applicable in the case of the petitioner where shop-wise tenders were invited. A copy of the letters dated 20-7-2001 and 30-7-2001 have been brought on record as Annexures R-1 and R-2. It is the case of the respondents that the petitioner is bound by the terms and conditions of the licence and he cannot claim a right beyond the licence. It is the stand of the respondents that by virtue of Annexure P-5, the applicant obtained the shop-wise licence and permission to sale country liquor from foreign liquor shops and vice versa is not applicable to auction. The plea of the petitioner with regard to assurance given to him by the respondents has been categorically disputed. Emphasis has also been laid on different type of licence holding the field and assertion has been made with regard to the licence granted in favour of the petitioner that petitioner does not belong to the group licence category. Reliance has been placed on Clause 20 to highlight that there is discrimination between group auction and shop wise auction. According to the respondents because of the failure of group auction of the country liquor shops in Sidhi the competent authority resorted for shopwise auction as per Annexure P-5 and the petitioner being successful bidder was allotted the licence for individual shops. It is also putforth that there has been no discrimination as no shopwise licensee has been granted the benefit which has been claimed by the petitioner. Reference has been made to licences Annexures P-7 and P-8 that they are in respect of "Ekal Dukan Bar Licence" and the same are under Rule 8 and licence vide Annexure P-6 is under Rule 9. It is putforth that the petitioner is not entitled to the grant of permission as claimed by him.

An additional return has been filed indicating that the petitioner has misconceived the provisions regarding grant of permission for selling foreign liquor from the country liquor shops which is available in respect of group auction and not to such licensees who have licences of single shop. A reference has been made to Rule 33 which is the General Licence Conditions. Emphasis has been made that as the petitioner is not a bulk licensee he has no right to claim the sale of India made foreign liquor from the country shops.

I have heard Mr. N.C. Jain, Mr. Rajendra Tiwari, learned senior counsel alongwith Mr. Rakesh Jain, Dilip Pandey and Mr. Pratulya Shandilya for the petitioner, Mr. Rohit Arya, learned counsel for the intervener and Mr. P.D. Gupta, learned Dy. Advocate General for the State.

It is submitted by Mr. N.C. Jain as well as Mr. Rajendra Tiwari that the State Government is estopped by doctrine of promissory estoppel from taking a decision like the one it has taken after the petitioner has entered into agreement for running the shops to sell foreign liquor from the country liquor shops and country liquor from the foreign liquor shops. It is urged by them that the petitioner had made offers for several shops and hence, they cannot be treated as individual shops but should be regarded as the part of shops settled in lots. The learned senior counsel for the petitioner have canvassed that the licences which have been issued in favour of the petitioner go a long way to show that they were conferred this privilege and the same cannot be curtailed by the arbitrary action of the State Government. Reference has been made to the nature of licence issued in the requisite format to highlight that the reasons given by the State Government are totally irrational and not germane to the issue. Mr. Jain has referred to Rule 6 of the Rules and Rule 14 of the Foreign Liquor Rules to show that the stand taken by the State Government is absolutely unjust. Reference has also been made to section 12 of the M.P. Excise Act. The senior counsel for the Petitioner have relied upon the decisions rendered in the cases of Vij Resins Pvt. Ltd. and Others Vs. State of Jammu and Kashmir, and Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, .

Mr. P.D. Gupta, learned Deputy Advocate General for the State, on the contrary, has submitted that the contentions advanced by the petitioner are devoid of substance inasmuch as the policy decision was totally different and the reliance by the petitioners on the Rules is of no avail as the petitioner is not a group licensee. It is urged by him that where licences have been granted under the group auction in respect of those licence only the facilities/concession to sell country liquor from the foreign liquor shops and vice versa is permitted and not in respect of any other shops. It is urged by him that the persons who have got the shop wise licence they cannot claim the privilege as putforth in the petition. The learned Dy. A.G. has submitted that the entire case is dependent upon the facts which are available on record and does not warrant any interpretation of any Rule and the question of promissory estoppel is not at all attracted.

To appreciate the rival submissions raised at the Bar I have carefully perused the pleadings brought forth on the record and documents. The heart of the matter is whether at any point of time the petitioner was given to understand that he will be able to sell country liquor from the foreign liquor shops and vice versa. It is not in dispute that the tenders were made on various dates and eventually the shops were sold on shop wise basis. It is putforth by the learned counsel for the petitioner that settlement on shop wise basis would mean acceptance of tenders qua single individual shop. The submission of the learned Dy. Advocate General that a shop wise grant does not mean a singular shop and it can be in respect of some shops but it cannot be given the status of licence granted under the group auction. Submission of Mr. Gupta is that concept of group auction stands in contradistinction to settlement on shopwise basis. To get into the centrum issue, it is apposite to refer to Annexure P-3 wherein conditions of auction are stipulated. Clause 2 of the same reads as under:

On a perusal of the said clause it becomes quite vivid that the concept of ''Samuha'' or group is quite different. The term ''Samuha'' is given a distinct concept in the said clause. Certain clarifications have been added to the same. In Clause 2.3 it has been provided that the foreign liquor barring beer can be sold from the country liquor shops and country liquor can be sold from the foreign liquor shops but the same is applicable to the group shops. Rule 2.4(a) also stipulates about the country and foreign liquor shops and deals with the reserved price of the group shops. In this context I may profitably refer to Clause 21 which occurs in Annexure P-4. The same reads as under:

If the aforesaid paragraph is understood in proper perspective it conveys a meaning that permission would be granted to the country liquor shops to sell foreign liquor and for such purpose the licence holders of the foreign liquor shops can procure the same from any of the foreign liquor shops in respect of which he has been granted the licence but the same shop should be a part of ''Samuha''. The same principle is applicable in respect of the country liquor shops and the country liquor can be lifted from any of the shop obtained in the ''Samuha'' licence. At this juncture, I may also profitably refer to the letter dated 30th July, 2001 which has been brought on record as Annexure P-12/B. On a scrutiny of the same it transpires that wherever the licence for liquor shops sanctioned after putting them to auction in groups, will be treated in a different manner than two or three shops which have been put to auction in one lot, in paragraphs 3 and 4 of the said letter it has been provided as under:

If the aforesaid paragraphs is read conjointly with the conditions which have been referred to hereinbefore it becomes plain as noon day that the shops were put to auction in a well defined group comprising the country liquor and foreign liquor shops. The group of shops has been given the stamp of a ''unit'' and it stands in a different footing than the shops which have been sold in the category of individual shops. An individual shop does not necessarily mean a singular shop. It may be more than one. There is a gulf of difference between the shops which have been sold in ''group'' than the shops which have been sold in the individual pattern/manner. The averments which have been made in the writ petition clearly go a long way to show that the petitioner is not an allottee of shops in ''group'' or ''Samuha'' and hence, the concession available to such an unit is not extendable to him. This also finds support from the Annexure P-7 which incorporates the Bar licence conditions. The condition No. 1 of the said licence clearly postulated that the licensee will take the supply of country liquor from the warehouse and shall not sell any spirit from any other source.

In this context I may also profitably refer to sub-rule (3) of rule 6 of the Rules which reads as under:

"(3) the transport of country spirit from a warehouse to a retail country spirit shop under license C.S. 2-A shall be done on the basis of an authority issued by the concerning warehouse officer, whereas transport of country spirit from a retail shop under license C.S. 2-A to a shop holding license of C.S. 2-B, F.L. 1-A or F.L1-AAA attached to it, shall be carried out under a pass in form C.S. 4 issued by the Circle Sub Inspector. Transport pass authorizing transport of spirit under sub-rule (1) shall be in form CS-5."

In this context I may also profitably refer to format No. C/S2-A which is issued under rule 9 of the Rules whereby shop has been auctioned under the group licence. The condition No. 1-a of the said format reads as under:

"1-a Licensee shall procure his supply of foreign liquor from F.L. 1-A shop of the same group designated for the purpose by the licensing authority and shall not stock sale foreign liquor procured from any other source."

In this context I may refer to the condition 6-A in the form F.L. 1-A issued under the M.P. Foreign Liquor Rules, 1996. The said condition reads as under:

"(6-A) The licensee shall procure his supplies of country liquor from a C.S. 2-A shop of the same group designated for the purpose by the licensing authority and shall not stock / sale country liquor procured from any other source."

If these conditions are read harmoniously it becomes quite perceptible that the petitioner has no authority to bring country liquor from the foreign liquor shops and sell the same from there. It is so because he has not obtained the licence in group auction. He might have the licences in respect of more than one shop but more than one does not mean a licence for a ''group''. Word ''Samuha'' stands in a different footing and an artificial distinction made by the Department. The meaning of the word cannot be taken at the common parlance as a different meaning is given to it in the sale notice and in the other documents.

In view of the aforesaid premises the concept of promissory estoppel does not arise as the foundation on which the right is claimed by the petitioner, is totally unwarranted and untenable. Initially the department might have extended the benefit but when it later on realized that there is a distinction the same was denied to the petitioner. A benefit availed which is not just cannot be claimed as a matter of right. Withdrawal of such a benefit is not impermissible as the doctrine of promissory estoppel does not apply to such circumstances. I may hasten to add that the petitioner stands on a different footing than the persons who obtained the licence being successful in the ''Samuha'' auction which is a different unit under the policy. As there is total difference between the two categories of transaction and licences are different the steps taken by the authorities and the order passed by them cannot be regarded as discriminatory. Claim of equality by the petitioner is sans merit and hence, the action of the authorities cannot be found fault with.

In view of my preceding analysis, I do not find any merit in any of the writ petitions and accordingly the same are dismissed.