(2015) 01 JH CK 0026

In the Jharkhand High Court

Case No : Writ Petition(C) No. 4940 of 2014

Awadh Associates Pvt. Ltd. APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:
Bihar and Orissa Excise Act, 1915 — Section 22, 89, 89(2)(g), 89(9), 90(9)

Citation : (2015) 2 AJR 722 : (2015) 2 JLJR 106

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : V. Shivnath, Senior Advocate and Rahul Saboo, for the Appellant; Anil Kumar, J.C. to A.G., Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Seeking quashing of order dated 11.09.2014 of Technical Committee constitute by the State of Jharkhand, rejecting the bid of the petitioner-company, the present writ petition has been filed.

2. At the outset, the learned counsel for the respondent-State of Jharkhand submits that the controversy involved in the present writ petition has already been adjudicated and finally decided by this Court in "Chhattisgarh Distilleries Ltd., Kolkata through its Director v. State of Jharkhand and Others" [W.P(C) No. 5056 of 2014] and therefore, the present writ petition is liable to be dismissed.

3. Briefly stated, one Ramji Prasad director of the petitioner-company has been operating as a wholesale manufacturer, supplier and dealer of country liquor in the State of Jharkhand between the period 2002 to 2008. The said Ramji Prasad was granted wholesale dealership for the period 2008 to 2011 also however, a dispute arose with respect to licence fee for the period between August, 2008 to March, 2009. Case No. 12 of 2009 was filed which was allowed vide order dated 18.12.2010 holding that he was not liable to be pay licence fee for the aforesaid period. Subsequently, the petitioner-Awadh Associates Pvt. Limited was

incorporated as private limited company which took over business of said Ramji Prasad. The petitioner-company which participated in the tender for appointment of wholesale dealer in the State of Bihar has been found eligible by the Excise Department, Government of Bihar. Pursuant to Notice Inviting Tender for grant of exclusive privilege for manufacture and supply of country liquor for sachets in bottle specified in Schedule-1 for the period between 01.10.2014 to 31.03.2018, the petitioner submitted its bid annexing the certificate issued by the Excise Assistant Commissioner, East Singhbhum certifying that the said Ramji Prasad had two years requisite experience. It is further stated that Clause 16(ix) of the Notice Inviting Tender (NIT) is ultra vires Rule 53A to the rules as contained in Notification No. 471F dated 15.1.1919.

4. Heard the learned counsel for the parties.

5. The learned Senior counsel appearing for the petitioner submits that the respondents have arbitrarily applied provision of Rule 53 made under Section 89 of the Bihar Excise Act, 1915 because the said rule relates to retail licence and it cannot be applied in cases of grant of exclusive privilege of wholesale supply of country liquor. The learned Senior counsel for the petitioner refers to proceeding dated 11.09.2014 and submits that the proceeding with respect to M/s. Genuine Bottlers, Sarswati complex, Garhwa indicates that its technical bid has been accepted. The proceeding with respect to Kumar Bottlers, Nawatoli, Daltanganj, Palamau also indicates that the technical bid of M/s. Genuine Bottlers has been accepted however, why the technical bid of M/s. Kumar Bottlers has been accepted, has not been explained by the respondents and therefore, the decision taken by the tender committee suffers from procedural irregularities and therefore, liable to be quashed with reference to decision in M.D., H.S.I.D.C. and Others Vs. Hari Om Enterprises and Another, and in GRIDCO Limited and Another Vs. Sri Sadananda Doloi and Others, , it is submitted that the judicial review of the decision taken by the Tender Committee is permissible in as much as, the bid of the petitioner-company has been rejected on minor technical plea whereas, bid of M/s. Kumar Bottlers has been illegally accepted by the respondents.

6. The learned counsel for the respondent-State of Jharkhand controverted the submissions made on behalf of the petitioner and resisted the prayer made in the writ petition.

7. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

8. In so far as, the plea with respect to Rule 53 being ultra vires of Bihar Excise Act, 1915 is concerned, the issue has already been decided by this Court in W.P. (C) No. 5056 of 2014. The allegation regarding ineligibility of the M/s. Kumar Bottlers and M/s. Tarini Natural Resources Pvt. Limited 77/B, Park Street, Kolkata has also been elaborately dealt with in the said judgment.

9. In the said case, this Court has observed as under:

16. "Mr. Krishnan Venugopal, the learned Senior Counsel appearing for the petitioner further submitted that delegation by notification dated 15.01.1919 does not confer power on the Board of Revenue to make Rules under Section 89. Only the State Government is empowered to frame Rules under Section 89(9) to impose restrictions for grant of exclusive privilege. By incorporating a Condition under Clause 15 (xix) the Board of Revenue has incorporated an ineligibility, which it is not empowered to prescribe as a condition in NTT. It is thus, submitted that the Board of Revenue can incorporate condition in NIT but it cannot prescribe ineligibility of a tenderer. There can be no dispute that by issuing administrative instructions, the government can fill up the gaps and supplement the rules. The only restriction is that the executive instructions should not be inconsistent with the statutory provisions and it must run subservient to the Rules already framed. In Sant Ram Sharma Vs. State of Rajasthan and Another, , it has been held that to fill up the gaps and supplement the rules, the government can issue instructions not inconsistent with the Rules already framed. In P.H. Paul Manoj Pandian Vs. Mr. P. Veldurai, , the Hon''ble Supreme Court has observed that, "the powers of the executive are not limited merely to the carrying out of the laws. In a welfare State the functions of the executive are ever widening, which cover within their ambit various aspects of social and economic activities. Therefore, the executive exercises power to fill gaps by issuing various departmental orders. The executive power of the State is coterminous with the legislative power 6f the State Legislature. In other words, if the State Legislature has jurisdiction to make law with respect to a subject, the State executive can make regulations and issue government orders with respect to it, subject, however, to the constitutional limitations". However, the difficulty arises in cases where there is no statutory rules framed or the rules are silent on any particular point. The present writ petition was filed seeking quashing of Clause 15(xix) of the NIT on the ground that the said Clause is ultra vires Rule 53(a) contained in notification dated 15.01.1919. By filing a rejoinder affidavit and during the course of hearing, it was contended on behalf of the petitioner that Rule 53(a) is not attracted in the present case, as the said rule relates to retail sale. The respondent-State of Jharkhand has also taken a stand that Rule 53(a) does not govern the cases for grant of privileges. The private respondents have contended that in view of provision under Section 22 of the Excise Act, the Board of Revenue is competent to prescribe terms and conditions for NIT and thus, the conditions including Clause 15(xix) of NTT are valid conditions. Now, in the above background, this Court is required to decide, whether Clause 15(xix) of NIT has been validly incorporated in the NTT.

17. I find that power under Section 89(2)(g) is confined to retail sale of intoxicants which is not the case in hand. Moreover, under Section 90(9), the Board of Revenue has power for prescribing the restrictions under which or the conditions on which any license, permit or pass may be granted. It is no more in doubt that the Board of Revenue has power to prescribe condition in NIT. In "M/

s. Farinni Eleven UP" case, this Court authoritatively held that the Board of Revenue has authority to fix terms and conditions and the period of grant. For holding the Condition No. 15 (xix) ultra-vires to the parent Act and the Rules, it is necessary to take into consideration the purpose of the Bihar Excise Act, 1915 as a whole, starting from the preamble to the last provision thereto, and more particularly provision under Section 22 of the Act. On a reading of the entire enactment read as a whole, the purpose for enacting Bihar Excise Act, 1915 appears to be raising of revenue and regulation and control of liquor trade. Granting a license is to regulate the liquor trade in public interest. In P.N. Kaushal and Others Vs. Union of India (UOI) and Others, , it has been held that, trade in liquor has historically stood on a different footing from other trades. Restrictions which are not permissible with other trades are lawful and reasonable in so far as, trade in liquor is concerned. That is why even prohibition of the trade in liquor is not only permissible but is also reasonable. The State possesses the right of complete control over all aspects of intoxicants. By incorporating Condition No. 15(xix), the said purpose appears to have been carried out and therefore, Condition No. 15(xix) cannot be said to be ultra vires the parent Act. In K. Ramanathan Vs. State of Tamil Nadu and Another, , it has been held that the power to "regulate" carries with j it full power over the subject matter of Regulation and in absence of restrictive words, power must be regarded as plenary over the entire subject matter. In my view, the word "condition" itself connotes a limitation. The grievance of the petitioner is only with respect to Clause (xix) in Condition, No. 15 however, there are various other clauses such as, furnishing certificate of having good moral character, non-fulfillment of which can also be interpreted as ineligibility of a tenderer however, there is no challenge to those conditions."

10. Regarding the contention advanced with reference to proceeding of the Tender Committee in so far as M/s. Kumar Bottlers is concerned, I am of the opinion that the said plea is liable to be rejected. The contention raised on behalf of the petitioner is completely misconceived. While accepting the bid of M/s. Kumar Bottlers, the Tender Committee has observed that in the case of M/s. Genuine Bottlers, the minor objections have been rejected. Of course, there is no specific averment accepting the technical bid of M/s. Kumar Bottlers, the Tender Committee has clearly recorded that the objections raised against the bid of M/s. Kumar Bottlers are liable to be rejected. Thus, there cannot be any dispute that technical bid of M/s. Kumar Bottlers has been accepted by the Tender Committee. The proceeding dated 11.09.2014 rejecting the technical bid of the petitioner -company clearly indicates that the report dated 28.08.2014 of the Assistant Excise Commissioner, East Singhbhum discloses that during the tender period, the work under the agreement was not performed satisfactorily. I find that Clause 16 of the NIT provides that in case of unsatisfactory performance, the bid would not be considered. The petitioner-company has failed to produce any material on record establishing that the report dated 28.08.2014 of the Assistant Excise Commissioner, East Singhbhum was patently; erroneous and

therefore, it should not have been relied upon by the respondent-Tender Committee.

11. In the result, I find no merit in the writ petition and accordingly, the writ petition is dismissed.

