(2007) 11 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Balraj Antil APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 05-11-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2008) 149 PLR 286 : (2008) 2 RCR(Civil) 640

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution is directed against recovery notice dated nil (P-4) passed by the Assistant Excise and Taxation Officer(X), Sonepat calling upon the petitioner to deposit the excise arrears of Rs. 10,63,665/-. The recovery is sought to be made from the petitioner on account of non-payment of licence fee which resulted into cancellation of the vend allotted to him. Subsequently, the vend was put to reallotment entirely at the risk of the petitioner under Rules 36(24) and (25) of the Haryana Liquor and Licence Rules 1970 (for brevity `the Rules''). The vend was reallotted to Radha Ram Jain for Rs. 4,51,000/ which was short by 10,49,000/-+ 5465/-interest so as the total amount recoverable from the petitioner has been calculated at Rs. 10,63,655/-. It is appropriate to mention that the liquor vend of L-14A was allotted to the petitioner in the draw of lots held in March 2006 for Rs. 30,00,000/-. He started running the vend and also paid instalments @ Rs. 3 lakhs per month till June, 2006. It is claimed that in July, 2006 the liquor vend caught fire resulting into huge loss. As a consequence, the petitioner offered to surrender the liquor vend to respondent vide letter dated 19.10.2006. The claim made by the petitioner is that the aforementioned application has to be treated as the one filed u/s 44 of the Punjab Excise Act, 1914 (as applicable to Haryana and for brevity `the Act'').

2. Mr. Gaurav Mohunta, learned Counsel for the petitioner has submitted that

once letter dated 19.10.2006 was sent to the Excise and Taxation Commissioner-respondent No. 2 which has been diarzed in their postal register then it becomes clear that the petitioner had expressed the intention to surrender the licence. According to the learned Counsel, the petitioner accordingly becomes entitled to benefit u/s 44 of the Act because he had expressed his inability to run the liquor vend. The learned Counsel has mentioned that no recovery could be effected by the respondent by the impugned order.

3. Ms. Bahri, learned State counsel submitted that according to Section 44 of the Act, the application could have been filed only before the Collector-respondent No. 3 along with specified fees with an express intention to surrender the licence. She has submitted that neither the application has been sent to the competent authority nor it was accompanied by the requisite fees which speaks volume about the intention of the petitioner and ,therefore, the liquor vend has been rightly cancelled by exercise of power under Rules 36 and 37.

4. We have thoughtfully considered the submissions made by the learned Counsel for the parties and are of the view that this petition lacks merits and the same is liable to be dismissed.

5. The petitioner was allotted the liquor vend in the category of L14A for a period of one year commencing from April,2006 to March, 2007 for a sum of Rs. 30,00,000/-. The allotment was subject to terms and conditions and further as per procedure of excise policy for the year 2006-07. According to the Haryana Liquor Licence Rules 1977 (for brevity `the Rules''), the petitioner was required to deposit Rs. 3,00,000/-per month which he deposited till June,2006 and thereafter defaulted. As a consequence, his licence became irregular and was liable to cancellation u/s 36(b) of the Act. An intimation in that regard was sent to the Excise and Taxation Commissioner-respondent No. 2 and necessary permission for reallottment of the vend under Rule 36(24) of the Rules was obtained. Accordingly, a show cause notice dated 3.11.2006 (P-2) was issued to the petitioner asking him to explain within seven days of the receipt of the said notice as to why his licence be not cancelled u/s 36(b) of the Act. He was also further asked to explain as to why his entire amount of security for un-expired period of the licence be not forfeited under Rule 37(36) of the Rules. The notice was duly served but no reply was sent by the petitioner. Accordingly order dated 21.11.2006 (R-4) was passed cancelling liquor vend licence allotted to the petitioner u/s 36(b) of the Act. The security of the petitioner was forfeited under Rule 37(36) of the Rules. There is no legal infirmity in the aforementioned procedure followed by the respondent.

6. The argument based on letter dated 19.10.2006 (P-1) is wholly misplaced. It would be necessary to read the provisions of Section 44 which reads thus:

44. Surrender of Licence:-(1) No holder of a licence granted under this Act to sell an intoxicant shall surrender his licence except 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 whole period for which it would have been current but for the surrender.

Provided that, if the Collector is satisfied that there is sufficient reasons for surrendering the licence, he may remit to the holder thereof the sum so payable for surrender or any person thereof.

(2) Sub-section (1) shall not apply in the case of any licence granted u/s 27(2).

Explanantion:-The word holder of a licence as used in this section include a person whose tender or bit for a licence has been accepted although he may not actually have received the licence.

7. A perusal of the aforementioned provisions shows that one month''s notice is required by the holder of the licence to be given to the Collector expressing his intention to surrender the licence along with payment of fee payable for the whole period for which the licence was valid. The question for consideration is whether the application filed by the petitioner before the Excise and Taxation Commissioner-respondent No. 2 deserves payment of any fee could be accepted so as to grant him benefit of proviso to Section 44. A perusal of the application dated 19.10.2006 (P-1) shows that it does not fulfill the basic requirement of Section 44 concerning payment of fees.

8. Even otherwise, the application was required to be filed before the Collector but it was misdirected and in fact was filed before the Excise and Taxation Commissioner. Moreover, there are doubts with regard to the filing of such an application as the respondent has denied the receipt of application by stating that application dated 19.10.2006 wherein it has been diarzed in the receipt register dated 18.10.2006 which is totally irreconcilable. Therefore, the petitioner can not claim that his case falls within the four corners of Section 44 entitling him remission of sum payable for surrender. Therefore, the argument is wholly without substance and the same is hereby rejected.

9. In view of the above, the writ petition fails and the same is dismissed. We uphold the reallotment of the liquor vend L-14A. However, keeping in view the peculiar circumstances of the case, we permit the petitioner to move appropriate application before respondent No. 2 with a prayer that the recovery be effected from him in easy installments. If such an application is filed within one week from the date of receipt of the order then the same be disposed of by respondent No. 2 within four weeks.

