(2005) 09 GAU CK 0078

In the Gauhati High Court

Case No : Writ Petition (C) No''s. 164, 172 and 173 of 2005

Benoy Bhusan Das APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 07-09-2005

Acts Referred:
Constitution of India, 1950 — Article 14
Tripura Excise Rules, 1990 — Rule 154, 29, 29A

Citation : (2006) GLT 9 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : M. Kar Bhowmik, Somik Deb and R.K.P. Singh, for the Appellant; T.K. Roy and S. Chakraborty, for the Respondent

Judgement

A.B. Pal, J.—The above three writ petitions which involve same question of law and similar question of facts are proposed to be disposed of by this single judgment.

2. The Petitioner in W.P. (C) No. 172 of 05 is a licensee for retail vending of foreign liquor since 19.4.88 when the Collector of Excise, North Tripura (third Respondent herein) issued the licence for the first time on deposit of Rs. 3,000/- being the annual fee payable in advance. Since that date, the license has been renewed every year without break with increased deposit of licence fee. For the year 2004-05, the Petitioner deposited Rs. 1,31,800/-as license fee as per direction of the said Respondent. The liquor shop of the Petitioner has been entered into the Excise register as Dharmanagar foreign liquor shop No. 2. By memorandum dated 15.3.04, all the 20 foreign liquor licencees in the North Tripura district were directed by the third Respondent to ensure collection of Excise revenue as per target laid down in the memorandum at Annexure-P/4. For the shop of the Petitioner, the target was Rs. 73 lakhs for the year 2004-05 and it was the highest target among the 20 shops. The Petitioner not only achieved the said target but far exceeded the same by collecting Rs. 78,76,230/- during

the said financial year. It was indicated in the memorandum dated 15.10.04 (Annexure-P/4) that any shortfall in revenue collection would draw dissatisfaction of the authority at the time of their subsequent renewal of licence. These workings in the said memorandum gave rise to a reasonable and legitimate expectation that on achieving the target the license would be renewed. But the hopes so generated by the said memorandum were belied when by memorandum dated 30.3.05 (Annexure-P/6), the Commissioner of Taxes (second Respondent herein) informed the Collector of Excise, North Tripura (third Respondent herein) that the State Government have decided to invite fresh tenders for settlement of Dharmanagar foreign liquor shop Nos. 1, 2 and 3 and Salema foreign liquor shop. The collector, Excise was directed to take steps for floating tenders for settlement of those foreign liquor shops and to allow the licencees of those shops to continue for a further period of three months with effect from 1.4.05. This was followed by a memorandum dated 4.4.05 (Annexure-P/7) issued by the third Respondent declaring the decision of the Government to invite fresh tender for settlement of Dharmanagar foreign liquor shop Nos. 1, 2 and 3 for the year 2005-06 and at the same time, renewing the said licences for three months only with effect from 1.4.05 after realisation of proportionate license fee at the last year''s rate for stock clearance. These decision of the State Government expressed in Annexures-P/6 and P/7 for settlement of only three shops by inviting tender have been impugned in the present writ petition on the ground of discrimination as all other 17 foreign liquor shops in the North Tripura district who were initially granted licence by selection, as has been done in the case of the Petitioner, have been favoured with renewal of licence without switching over to tender method.

3. The Petitioner in W.P. (C) No. 164 of 05 is the licencee of the Dharmanagar foreign liquor shop No. 1 since 1992-93 and his licence has been renewed every year without any break. Like the all the licence holders in the North Tripura district he was granted licence by selection method and every year he has paid licence fees at increased rate. By memorandum dated 15.10.04 (Anneseure-P/4), he was also required to achieve a target of Rs. 25 lakhs for the year 2004-05 and he almost achieved the target. He was also given to understand by the said memorandum that any shortfall in revenue generation shall draw dissatisfaction of the authority at the time of renewing of license. His grievance is also same that he has been picked up like the licencee of Dharmanagar foreign liquor shop Nos. 2 and 3 for the tender method while all other 17 licencees appointed by selection method have been favoured with renewal of license even though they have not achieved the target fixed for them by the said memorandum.

4. The Petitioner in W.P. (C) No. 173 of 2005 is the licencee of the Dharmanagar foreign liquor shop No. 3 since 1.4.93 and the said licence has been continued from year to year without any break. The Petitioner has been paying the license fees in increased rate and the target fixed for his shop for revenue generation for the year 2004-05 by memorandum (Annexure-P/4) has been almost achieved. But her business of long 14 years had been sought to be discontinued by the

Respondents by declaring the decision of the State Government to switch over to the tender method for settlement of only three shops in Dharmanagar for reasons not explicit in the impugned documents. The same grievance has been advanced like that of the Petitioners in other two writ petitions that by picking only three foreign liquor shops from amongst twenty in the North Tripura district a hostile discrimination has been intended to be done by the Respondents. All the three Petitioners thus have sought appropriate direction to the Respondents to renew their licences like the other 17 licenscees of the North Tripura district setting aside the impugned documents initiating the process of switching over from selection method to tender method in respect of three shops of the Petitioners.

5. The Respondents by a joint counter affidavit contested the prayer contending, inter alia, that the retail licences have been issued on year to year basis and the Respondents are competent to switch over from selection method to tender method for the purpose of generating more revenue and introducing more transparency. It has further been contended that it is the policy of the State Government to gradually introduce tender method for the aforesaid purposes in phased manner and in the first phase only three shops of Dharmanagar have been chosen for settlement by tender method. Same method shall be introduced for all other foreign liquor shops gradually as it is not possible to complete the exercise for all the foreign liquor shops in one go. It has further been contended that the said three liquor shops have already been put into tender and the Respondents have received bids of a much higher amount than the existing licence fees which are paid by the Petitioners. In this view of the matter, it has been contended that by switching over to the tender method in phased manner no hostile discrimination has been made against the Petitioners.

6. I have heard Mr. M. Kar Bhowmik, learned sr. advocate, Mr. Somik Deb, learned advocate and Mr. R.K.P. Singh, learned advocate for the Petitioners. Also heard Mr. T.K. Roy, learned Advocate General along with Mr. S. Chakrabory, learned advocate for the Respondents.

7. Mr. Deb advances an argument that if the revenue generation was the target of the Respondent then the licencees who have achieved that target fixed by the Respondents should not have been denied renewal of licenses while those licencees who failed to achieve the target of revenue generation have been given renewal by selection method. This act of rewarding the non-performer does not support the contention that revenue generation was one of the purposes prompting the Respondents to switch over to the tender method. For his client Kanu Bhusan Datta of foreign liquor shop No. 2 the target fixed by the third Respondent was Rs. 73 lakhs for the year 2004-05 and the said Petitioner has far exceeded that target with the hope and expectation that his performances would fetch reward by renewal of his license for the year 2005-06. By memorandum dated 15.10.04 (Annexure-P/4), the Collector of Excise in the concluding paragraph cautioned all the licensees that in case of any shortfall from the target

their subsequent renewal of license may suffer dissatisfaction of the authority. In other words, the Collector of Excise laid louder hint that performer should be rewarded by subsequent renewal. This had given rise to legitimate expectation which has been most arbitrarily and illegally upset by the impugned memorandum whereby the decision to switch over to tender method has been expressed. On the question of legitimate expectation Mr. Deb makes reference to the decision of the Supreme Court in Madras City Wine Merchant'' Association v. State of Tamil Nadu and in three other cases reported in Madras City Wine Merchants'' Association and Another Vs. State of T.N. and Another, In concluding part of para 48 of the judgment, the following observations have been made:

From the above it is clear that legitimate expectation may arise:

(a) If there is an express promise given by a public authority; or

(b) Because of the existence of a regular practice which the claimant can reasonably expect to continue;

(c) Such an expectation must be reasonable. However, if there is a change in policy or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise.

8. Mr. Deb submits that in the cases in hand all the licencees were appointed by selection method and they were given year to year continuation without any break on payment of requisite license fees as per direction of the Respondent and this being the regular practice the Petitioners can reasonably expect that the same shall continue as it is renewable after their achievement of the target allotted by the Respondent for the revenue generation for the year 2004-05. It is true that if there is any change in the policy or in public interest then such legitimate expectation cannot be given any value, but in the present case no such change of policy has been declared for all the foreign liquor shops of the State. There cannot be a policy only for three shops while only in North Tripura district there are 20 shops. The policy of the State Government should be framed for all the foreign liquor shops in the State not for a few and if such a policy is framed for the purpose of three shops only then the same being unreasonable and with ulterior motive is liable to be struck down. In another judgment of the Supreme Court in Secretary to Govt., Tamil Nadu and Another Vs. K. Vinayagamurthy, which has been referred to by Mr. Deb, certain direction of a Division Bench of the Madras High Court has been affirmed. In that case, the Government of Tamil Nadu framed new policy for the sole purpose of augmentation of excise revenue and for that purpose ordered renewal of licenses of 7000 shops after re-categorisation as per procedure laid down in certain Government memoranda. The Madras High Court directed that the Government is at liberty to go ahead with the grant of privilege of retail vending of Indian-made foreign liquor to the extent of 7000 shops as decided, but the Government shall adhere to the places of retail vending which have been licensed for the excise year 2001-02 and held by the Petitioners and renew the license of the

Petitioners for the excise year 2002-03. The factual matrix of the said decision are not in pari materia with the factual situations of the cases in hand, but the position that has emerged from the said decision is that there is no place of arbitrariness even in the framing of a new policy. Mr. Deb submits that the State Respondents cannot go away from the charges of arbitrariness and mala fide in switching over to the tender method mentioned by saying that it is the policy decision of the Government which is unassailable and beyond courts'' scrutiny. There is a clear decision of the Supreme Court in this regard in Union of India and Others Vs. Dinesh Engineering Corporation and Another etc., In concluding part of para 12 of that judgment which has been strongly relied on by Mr. Deb reads as follows:

Any decision, be it a simple administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision. If it is so, then be it a policy decision or otherwise, it will be violative of the mandate of Article 14 of the Constitution.

9. Mr. M. Kar Bhowmik, learned Sr. Counsel placed an argument on the same line as advanced by Mr. Deb and, therefore, this judgment need not be burdened with reiteration of the same points.

10. Mr. T.K. Roy, learned Advocate General strenuously urged that the tender method being within the competency of the Respondent following a policy decision of the State Government, the court should not step into this exclusive arena of the executives. Referring to the provision of the Rule 29A of the Tripura Excise Rules, 1990, he submits that the licence for the sale of foreign liquor may be granted by the Collector either by selection or by auction or by tender. Again in Rule 154 of the said rules, it has been provided that fees for licence for the retail vend of the intoxicants shall be fixed by auction subject to a reserved fee sanctioned in each case by the Excise Commissioner. Clause (c) of Sub-rule (i) of Rule 154 of the said rules being relevant for the present controversy is quoted below:

(C) For settlement of shops on auction, the minimum reserved fee will be notified by the Excise Commissioner for each such shop keeping in consideration the quantity of the intoxicant estimated to be sold during the current year and/or the actuals of the preceding three years, as the case may be.

11. This provision provides how the minimum reserved fee has to be notified taking into consideration the quantity of the intoxicants estimated to be sold and the actual of the preceding three years. These two provisions create certain confusion for the reason that while Rule 29(a) empowers the Collector with the previous permission of the Excise Commissioner to grant licence by selection or auction or tender, Clause (c) of Sub-rule (i) of Rule 154 contemplates determination of the minimum reserved fee for settlement of shops on auction only. Clause (d) of that rule provides for selection method and how the license fees shall be fixed for the shops selected by that method. Thus, the tender

method is completely missing in Rule 154 and this apparent contradiction could not be reconciled by the learned Advocate General.

12. The pleadings canvassed and the submissions advanced by the learned Counsels for the parties bring forth one admitted position that the State Respondents are at liberty to switch over from selection method to tender method in terms of Rule 29(a) of the said rules if the purpose is for augmentation of the excise revenue and introduction of transparency as has been contended by the learned Advocate General. But in doing so, the Respondents cannot adopt an arbitrary method or discriminate between the license holders without any reasonable and rational basis. The argument advanced by Mr. Roy that introduction of tender method is the policy decision of the State Government which shall be introduced in phased manner could not be substantiated by any documentary evidence or even by the pleadings and the counter affidavit as to how the phases have been determined and what shall be the time frame within which all the foreign liquor shops of the State shall be brought under the new policy frame. It has also remained unanswered why only three foreign liquor shops of the thee Petitioners in Dharmanagar Sub Division alone have been picked up for introduction of the new tender policy and why all other shops of other districts have been left out from that policy onslaught. If transparency is one of the objects of introducing temder policy, it has not been made clear how a policy of choosing only three shops while leaving the others from the tender method can be said to be transparent enough. To a pointed query why in the first phase only the shops of the Petitioners have been selected for tender method, the answer of Mr. Roy is that as these three shops have achieved the target fixed by the third Respondent it has perhaps been considered that they would generate more revenue and more license fees and for that purpose, the three shops of the Petitioners have been placed for tender method. This argument of Mr. Roy seems to me quite paradoxical particularly for the reason that the Respondent in its memorandum at Annexure-P/4 while fixing the target for each of the 20 foreign liquor shops, cautioned that any shortfall in achieving the target will draw displeasure of the authority which will be reflected at the time of considering the renewal of their licences. Amazingly, the three Petitioners who are performers and one of whom has far exceeded the target and two others also nearly achieved the target have drawn displeasure of the Respondent while all other 17 shops of the North Tripura district who are non-performers and have failed to achieve the target have drawn the pleasure of the Respondents as they have been rewarded by renewal of their licenses through selection method. If the argument of Mr. Roy is the correct position behind introduction of the new policy of tender method then it has to be said that such a policy only for three shops of the Petitioners is unreasonable, arbitrary, whimsical and, therefore, is liable to be struck down.

13. For the foregoing discussions, I am of the considered view that the impugned memoranda (Annexures-P/6 and P/7) whereby tender method has been sought to be introduced only for three shops of the Petitioners leaving all other shops in

the same selection method are not sustainable in law being arbitrary and perverse, violative of the provision of Article 14 of the Constitution and, therefore, they are liable to be set aside which I hereby do. It is, however, made clear that the State Respondents are at liberty to go ahead with any method prescribed by law including the tender method, but such change of policy or method should not be only for a few but should be for all and for that purpose, the introduction of the new method or policy should be done within a definite time frame even if it is intended to be done in a phase manner. The licences of the Petitioners should, therefore, be renewed in the same way as has been done in the case of other 17 license holders of North Tripura district all of whom have been granted licence by selection method.

14. This writ petition is accordingly closed with the above observations and directions leaving the parties to bear their own costs.

