(1993) 09 SC CK 0108

In the Supreme Court Of India

Case No : Civil Appeal No. 3908 Of 1987

Bhanwar Lal (Dead) now his Lrs. and Others APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 14-09-1993

Acts Referred:

Citation : (1995) 4 SCC 246 Supp

Hon'ble Judges : Yogeshwar Dayal, J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Grant of licence for the retail sale of country liquor in the State of Rajasthan is governed by the Rajasthan Excise Act, 1950 and the rules framed thereunder. Notice dated 16/1/1975 was issued inviting tenders for the grant of such licences. The appellant submitted the tender on 6/2/1975. The tenders were opened on 7-2-1975 and the appellant''s tender was found to be the highest. As a condition of the tender notice the appellant deposited the earnest money amounting to Rs. 1,02,000.00. For the reasons best known to the respondents, despite the opening of the tenders, the Excise Commissioner tried to sell the liquor-vend by way of auction. It is, however, not disputed that no a auction was taken in respect of the auction sale and finally the liquor-vend was offered to the appellants on 1/3/1975. Meanwhile by a telegram dated 12/2/1975 the appellants had requested the Excise Commissioner to grant the licence to the appellants forthwith failing which they would withdraw the tender. It is further the case of the appellant that on 8/2/1975 they withdrew the tender. As mentioned above the Excise Commissioner by its letter dated 1/3/1975 accepted the tender of the appellants and offered the liquor-vend to them. The appellants however, did not accept the licence for the retail sale of country liquor and demanded the refund of the earnest money deposited by them. The Excise Commissioner, however, by his order dated 13/3/1975 forfeited the earnest money. The appellants challenged the said order by way of a writ petition before

the Rajasthan High court. Learned Single Judge of the High court dismissed the writ petition. Letters Patent bench by a detailed and well-reasoned judgment upheld the findings of the Single Judge and dismissed the appeal.

2. We have heard learned counsel for the parties. It is contended by the learned counsel for the appellant that in the facts and circumstances of this case specially when the Excise Commissioner attempted to resell the liquor-vend by auction, they rightly withdrew the tender and as such are entitled to the refund of the earnest money. It is further contended that since they had withdrawn the tender before its acceptance no contract came into existence and as such the earnest money could not be forfeited.

3. We do not agree with the contentions of the learned counsel. Clause ''Ka'' of the tender form is as under:

"I/We shall have no right to withdraw the tender given by me/us, otherwise the earnest money deposited by me/us may be forfeited by the Commissioner."

In the face of clear undertaking quoted above, given by the appellants they have no right to claim the refund of the earnest money. Even if their withdrawal be deemed to be justified they are not entitled to the refund of the earnest money deposited by them. In this case it is not disputed that the appellants being the highest tenderers they were offered the licences to run the liquor-vend by the Excise Commissioner by its order dated 1/3/1971 which the appellants declined to accept. There is, thus, no justification for the appellants to ask for the refund of the earnest money.

4. We have been taken through the judgment of the division bench of the High court. We agree with the reasoning and the conclusions reached thereunder. The appeal is dismissed. No costs.

