(1985) 10 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Special Appeal No. 155 of 1976

Bhanwarlal and Others — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 29-10-1985

Acts Referred:

Contract Act, 1872 — Section 5, 6, 7, 74

Citation : (1993) WLN 539

Hon'ble Judges : S.K. Mal Lodha, J;K. Bhatnagar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—By this appeal u/s 18(1) of the Rajasthan High Court Ordinance, 1949 the unsuccessful petitioners, (appellants) before us question the correctness of the Judgment dated May 14, 1976 of the learned Single Judge by which part of the impugned order EX. 7 (dated March 13, 1975) was quashed and it was left open to the Excise Commissioner, Rajasthan, Udaipur(respondent No. 2) to proceed according to law against the petitioners under Rule 74(5) of the Excise Rules, 1956 (for short "the Rules" hereinafter) after giving them a proper opportunity of hearing. The learned single Judge refused to quash the order Ex. 7 dated March 13, 1975 forfeiting the earnest money of Rs. 1,02,000/-. Licence for the retail sale of country liquor in this State are governed by the provisions contained in the Rajasthan Excise Act, 1950 (No. II of 1950) for short "the Act'') as amended from time to time. A notice for inviting tenders dated Jan. 16, 1975 and detailed instructions for the tender notice were issued. The petitioner has filed tender notice (Ex. 1) dated January l6, 1975. In response to the notice the appellants who will for the sake of convenience be hereinafter referred as the petitioners submitted their tender for the retail sale of country liquor for the group of shops of Jodhpur city. The tender was for Rs. 61,01,117/- They also deposited the earnest money of Rs. 1,02,000/- as required by the Rules. The tender was opened on February 7, 1975. Their tender was the highest. No intimation was given to them regarding acceptance of the tender personally or on the notice board. The petitioners sent a telegraphic notice Ex. 3 dated February 12, 1975 stating that the Excise Commissioner was bound to communicate acceptance and to ask them to deposit the security amount. It was also stated that the petitioners have reliably learnt that the Government was contemplating to auction the individual shops for Jodhpur on February 23, 1975 and as no tender in that respect was forth-coming nothing came out of it. A telegram Ex. 4 dated February 28, 1975 was sent to the Excise Commissioner intimating him that their tender stood with-drawn and they asked for refund of the earnest money. The Excise Commissioner, however, informed the petitioners that their tender had been accepted and they should deposit a part of the security amount within five days and the balance thereof by March 15, 1975. Again a telegram Ex. 5 was sent stating therein that the auction had already been conducted on February 23, and 24, 1975 despite their notice and this act of auction means that their tender had been rejected and stood withdrawn because of the non-acceptance. As the petitioners had not deposited the security amount as required by the Rules the earnest money deposited by them was forfeited. An order was also made under Rule 74(5) of the Rules declaring them disqualified for the period of three years for obtaining licence under the Rules. This led to the filing of the writ petition by the petitioners on May 8, 1975 praying that the order Ex. 7 dated March 13, 1975 forfeiting the earnest money may be quashed and a direction against the respondents to refund the said amount to them. It was also prayed that the declaration given in the order Ex. 7 that the petitioner would be disqualified to obtain the licence for three years under the Rules may be quashed.

2. The writ petition was contested on behalf of the respondents by filing a return. It was stated that the tenders of the petitioner were accepted on March 1, 1975. The acceptance order was pasted on the notice board of the office of the Excise Commissioner, Rajasthan, Udaipur on that very day. The petitioners were also sentan order intimating the acceptance of their tenders. The tenders are said to have been opened in the presence of the petitioners and were accepted and the acceptance was communicated. The petitioners did not deposit the security amount. The fact of unilaterally revoking the tender was denied. The forfeiture of the earnest money was justified on various grounds and the Rules. An objection was taken that the writ petition involves disputed and complicated questions of fact and law which cannot conveniently be decided by this Court in the writ petition.

3. The learned Single Judge held (1) that forfeiture of the earnest money cannot be said to be illegal and (2) that as no opportunity of hearing was given to the petitioners before debarring them from obtaining a licence for a period of 3 years it is not sustainable.

4. He however left it open to the Excise Commissioner, if he is so advised, to proceed according to law against the petitioners under Rule 74(5) of the Rules after giving them proper opportunity,

5. He accordingly by his order dated May 14, 1976 disposed of the writ petition. Hence this appeal as aforesaid.

6. We have heard Mr. H.M. Parekh for the appellants and Mr. R.C. Maheshwari Additional Government Advocate.

7. Arguments were heard on May 18, 1984. The appeal was ordered to be listed for dectation of judgment on May 19, 1984. Mr. R.C. Maheshwari, learned Additional Government Advocated, submitted the photo-stat copies of tender form and also of the letter dated May 19, 1984 on May 21, 1984. It was mentioned that these two documents are submitted for the perusal of the court and that the original tender is ready with the Officer Incharge. It may be mentioned that in the judgment of the learned single Judge reference has been made to Ex. R.1 which is a proforma of the tender form. In the beginning there was some controversy with regard to the tender form given by the petitioners. After seeing the original tender form, Mr. H.M. Parekh rightly did not pursue the matter further.

8. Mr. H.M. Parekh learned Counsel for the appellants has raised two contentions before us which were also raised before the learned single Judge and the new third contention mentioned here in below:

(1) that ah the petitioners have withdrawn the tenders submitted by them prior to the communication of acceptance of the same by the Excise Commissioner, on March 1, 1975, there was no. concluded contract and so the question of forfeiture does not raise.

(2) that there was no definite acceptance by the Excise Commissioner and as such on that ground.It cannot be said that the petitioners have failed to perform their part of the contract and so the forfeiture of the money is illegal and

(3) that in any case, entire earnest money could not be forfeited as u/s 74 of the contract Act, reasonable compensation should have been awarded.

The Additional Government Advocate has supported the judgment under appeal for the reasons given by the learned single Judge.

9. Tender form (copy Ex. R/1) prescribes the conditions for obtaining the licence to vend country liquor. A notice for inviting tenders vide tender notice Ex. R/1 dated January 16, 1975 was issued. In pursuance of that notice the petitioners submitted the tender for retail sale of the country liquor for the group of shops for Jodhpur city for Rs. 61,01.117/- and deposited the earnest money amounting to Rs. 1,02,000/- in accordance with the Rules. On February 12, 1975 the petitioners sent a telegram Ex. 3 stating that though their tenders were highest but. the same have not been accepted and that it was learnt that the Excise Department was contemplating to auction individual shops. It was inferred that the tenders seem to have been cancelled, and rejected. The Excise Department put up the individual shops for auction on February 23, 1975 but in respect of which no tender was given. The petitioners, however.again sent a telegram Ex. 4

to the Excise Commissioner, stating that the tenders stood withdrawn and asked for the refund of the money. The Excise Commissioner sent the letter Ex. 7 dated March 15, 1975 informing the petitioners that the tenders had been accepted and asked them to deposit the security amount within 5 days and the balance by March 15, 1975. The petitioners filed to deposit the security amount and so the Excise Commissioner informed them by the order Ex. 7 dated March 13, 1975 that as they had not deposited the security amount as required by the Rules, the earnest money deposited by them has been forfeited and under Rule 74(5) of the Rules they were declared disqualified for the period of 3 years to obtain licence under the Act.

10. We have examined the tender form Ex. R/1. Clauses (ka) and (kh) of the tender form are as follows:

?5? d& eq>s esjs A gekjs }kjk fn;k x;k VS.Mj okil ysus dk vf/kdkj ugh gksxk vU;Fkk esjs@gekjs }kjk dh xbZ vusZLV euh vf/kdkjh vk;qDr }kjk tIr dh tk ldsxh A

[k&vxj esjk@gekjk Vs.Mj Lohd`r gks tkrk gS rks eS@ge Vs.Mj uksfVl lacf/kr foLr`r fooj.k d iSjk 13 es vafdr flD;ksfjVh dh jkf''k dh vk/kh jde ?mijksDr iSjk 4 es vafdr vusZLV euh ds vykok? Lohd`r VS.M+j lwph vf/kdkjh vk;qDr ds dk;Zky; ds uksfVl cksM+Z ij pLik gksus dh fnukad ls 5 fnuks es udn tek djk nwaxk@nsxs A vxj eS@ge mDr vof/k es flD;ksfjVh jkf''k ,oa tekur 10 ekpZ 1975 ls igys ;reo;e udn tek ,oa is''k dj nwaxk@nsxs A vxj eS@ge mDr vof/k es flD;ksfjVh jkf''k rFkk tekur mijksDr vuqlkj ;Fkkdze ugh tek ,oa is''k dj ldk@lds rks vf/kdkjh vk;qDr dks vf/kdkj gksxk fd esjk@gekjs VS.M+j dh Lohd`fr jn~n dj esjh@gekjh vusZLV euh ,oa tek djkbZ gqbZ flD;ksfjVh dh jkf''k tCr dj ys A

Clause 12(kh) reads as under:

12&?[k?& blds vfrfjDr nqdku dks ''kq"d fnolks dh Hkh tks bl le; fu;r gS ;k tks Hkfo"; es vf/kdkjh vk;qDr }kjk fu;r fd;s tk;s] cUn j[kuk gksxk A ''kq"d fnolks dh lwpuk ykbZlsUl/kkjh lacf/kr vkcdkjh fujh{kd ls izkIr djsxk A blds vfrfjDr nqdku dks cUn j[kus o fcdzh le; ij tks fu;a=.k le;= ij yxk;s tk;sxs mudk Hkh ikyu ykblsUl/kkjh dks djuk gksxk vkSj mlds fy, mls dksbZ {kfriwfrZ ugh nh tk;sxh vkSj u ,dkdh fo''ks"kkf/kdkj dh jkf''k es dksbZ deh gh dh tkosxh A

Now, we may here also notice the relevant provisions of the Rajasthan Excise Act, 1950 (No. II of 1950) (for short "the Act" hereinafter) and the Rules.

11. Section 41 deals with the power of State Government and in pursuance of that Rule 93 of the Rules has been framed. Rule 93 confers powers on the Excise Commissioner to prescribe form for any licence, permit, permission or pass to be issued under the Rules or for any application or statement to be submitted under the Rules. Chapter VII B of the Rules deals with Licence on payment of lumpsum in-stead of or in addition to duty. Rule 67 I provides for licence on payment of exclusive privilege. R67 KK lays down procedure for invitation of sealed tenders. Sub-rule (5) of Rule 67 KK lays down that subject to the written sanction of the Excise Commissioner, licence under Rule 67 KK may be granted in respect of

group of shops. Sub-rules (8)(9)(10) and (11) are as under:

(8) All tenders received shall be recorded In a register in the form laid down by the Excise Commissioner. The Excise Commissioner shall be authority competent to accept or reject any tender. Where the amount offered by any tenderer is acceptable to the Excise Commissioner but such an amount has been offered by more than one tenderer, a decision shall be taken by the Excise Commissioner by drawl of lost in the presence of tenderers concerned, if any.

(9) Acceptance of a tender shall be communicated to the successful tenderers in the form laid down by the Excise Commissioner and the tenderer shall be required to furnish due security in cash within the time indicated in this communication.

(10) If the required security is not furnished within the time indicated acceptance of the tender may be revoked by the Excise Commissioner and the earnest money deposited by the tenderer with the tender shall in the event of such revocation be forfeited to the State.

(11) On the cover of the sealed envelope containing the tender submitted, tender shall not be required to indicate amount or name of shop for which tender is being submitted

Mr. H.M. Parekh in support of the submission placed strong reliance on Sections 5 and 6 of the Contract Act. The former provides that a proposal may be revoked at any time before the communication of its acceptance is complete, as against the proposer, but not otherwise. According to Section 5 of the Contract Act an acceptance may be revoked at any time before the communication of the acceptance is complete, as against the acceptor but not otherwise. Section 6 of the Contract Act says that a proposal is revoked under the four contingencies mentioned therein. Section 7 lays down that in order to convert a proposal into the promise the acceptance must be absolute and unqualified. In other words there should be certainty of acceptance. According to Clause 5(ka) of the tender form, petitioners bound themselves by stipulating that they would not withdraw the offer. It implies that, if they do so the earnest money deposited by them shall be liable to be forfeited. In accordance with Clause (5)(kh), if the petitioners did not deposit the security amount after the tenders have been accepted, the Excise Commissioner had a right to reject the acceptance of the tender and forfeit the earnest money. Clause 5(ka) lays down that tenderer shall be liable to forfeiture of the earnest money if he does not remain bound by his tender. These conditions are undoubtedly of statutory character, for they are prescribed by the Excise Commissioner in exercise of the power given to him under Rule 93 of the Rules. According to Clause (9) of Rule 67 KK acceptance of the tender is to be communicated to the successful tenderer in accordance with the form laid down by the Excise Commissioner and the tenderer is required to furnish due security in cash within the time indicated in the communication. In case the required security is not furnished within the time indicated in the acceptance of the tender, it may be revoked by the Excise. Commissioner under sub-r (10) of Rule 67 KK and the earnest money deposited by the tenderer is liable to be forfeited to the State. The petitioners have given the tenders subject to the conditions mentioned therein and, therefore, they are bound by them. The petitioners were thus bound by the tenders given by them. Mr. H.M. Parekh, has placed strong reliance on Chandulal v. State of Rajasthan and Ors. (S.B. Civil Misc. Writ Petition No. 647 of 1975, decided on February 18, 1976). We have read that decision and are of opinion that it cannot be availed of by the appellants. In that case the writ petitioner gave a tender on March 18, 1974 and withdrew that same on March 24, 1974. The provisional acceptance was made on March 20, 1974. The Excise Commissioner ordered the forfeiture of the security amount on failure of the petitioner to enter into an agreement. A defence was raised by the State that is was entitled to forfeiture by virtue of condition No. 5 (ka) but the learned Judge repelled it on the ground that at the time of contract there was no such condition in the tender form prevalent at the time, the tender form was delivered by the petitioner. It was on account of this, it was held by the learned single Judge that in the absence of such conditions the parties rights will be governed by the Contract Act. As the offer was withdrawn after 6 days of the acceptance of the tender there was no concluded contract and the earnest money could not be forfeited. So far as Somasundaram Pillai v. Provincial Govt. of Madras AIR 1947 Mad. 366 is concerned, we may state that the auction for licence of liquor shops was held under the conditions of sale, framed by the Board of Revenue. One of the condition there in provided that if the bidder committed a breach of the condition, he would be liable to make good the loss suffered by the Government. The plaintiff in that case gave bid for four shops but his bid for two shops was refused by the Collector, the competent authority, The sub-Collector accepted the bid given by the plaintiff who had no power to accept it. The collector was informed that he was withdrawing his bid and a fresh auction took place. It was held that in an enforceable contract there must be an offer and an unconditional acceptance and the provisional acceptance by the Sub-Collector was of no consequence and therefore, could not bind the plaintiff It was also held that as before the acceptance by the Collector, the plaintiff had withdrawn his offer, he was entitled to do so and he could not be made liable. It is significant to note that in that case, the learned Judges while observing that the appellant was entitled to withdraw his offer as there was no consideration to support his implied acceptance of the condition that once a bid had been made it could not be withdrawn, still they observed. "If the conditions of sale had statutory force, the position would of course be different but they had no statutory force. In that case the difference between provisional acceptance, conditional acceptance and absolute acceptance by the sale officer has been clearly pointed out. An absolute acceptance is where the sale officer, or the auctioneer, as the case may be is given full authority to accept a bid unconditionally. A provisional acceptance means that the auctioneer had only a right to receive the bid and pass them on to his superior who is the final authority to confirm and conclude the contract. Somasundaram Pillai Vs. The Provincial Government of Madras, was distinguished in The Rajanagaram Village Co-operative Society Vs. P. Veerasami Mudaly,

12. In Raghunandhan Reddy Vs. State of Hyderabad, it was held by the Division Bench of the A.P. High Court that though the Deputy Excise Commissioner had power to accept the bid, but that bid is not final till after the expiry of one month during which period the Excise Commissioner had power of revocation and, therefore, it followed that the acceptance is not final till the Excise Commissioner had approved it and as the plaintiff had withdraw his offer before the approval by the Excise Commissioner, there was no concluded contract and, so the State was not justified in refusing to refund the amount deposited by the bidder at the auction. It was further held that Clause (10), which permitted the Excise Commissioner to suspend or revoke the auction within one month of the auction was not a statutory condition, and it was for this reason that the learned Judges held that as the offer was withdrawn earlier to the acceptance by the Excise Commissioner there was no concluded contract and no amount could be forfeited.

13. Another authority, which may now be considered is Abdul Rahim Khan Vs. Union of India (UOI) and Others, The principle laid down therein was that where a bid at an auction is subject to its being accepted, it is open to the. party who has given bid at the auction to withdraw the same before the acceptance is given and revoke it and in such a case he would not be bound by the contract. The authorities, relied on by Mr. Parekh, learned Counsel for the appellants, are distinguishable on facts. It has already been stated that by Clause 5(Ka) of the tender form, the petitioners had clearly bound themselves inasmuch as they have stated that they had no right to withdraw the tender and that in case they do so the earnest money deposited by them can be forfeited. Reference has also been made here in above to Clause 5 (kha), by which the petitioners agreed that if they do not deposit the security amount after the tender had been accepted, the Excise Authorities would have the right to cancel the acceptance of the tender and forfeit the earnest money. Clause 12 (kha) thereof also makes the tenderer liable for forfeiture of the earnest money, if he does not remain bound by his tender. The reasons for all this have been correctly stated by the learned single Judge, when he observed as under:

There is an obvious rationale behind this compulsion on the tenderer not to withdraw his offer. The revenue earned by the vend of the country liquor Is quite a substantial part of the State Eudgent, and It is naturally Interested In dealing with It In a definite known manner. If the argument of Mr. Parekh was to be accepted that anybody can give a tender and before acceptance of it withdraw the same without attracting any penalty, it may lead to an administrative confusion In as much as the State would not be certain of any tenders being genuine. The whole procedure of tender and acceptance Is provided by these statutory rules and conditions and the petitioner having given their tender subject to those conditions is bound by them.

An argument was advanced, which was also raised before the learned single Judge that an attempt was made by the Excise Authorities to auction the individual shops, though nothing material came out of it. It would have been better had the decision of auction of individual shops taken after the acceptance or rejection of the petitioners-appellant''s tenders. However, this cannot be availed by the appellants as their tenders were not rejected in law. For the aforesaid reasons, while agreeing with the view taken by the learned Single Judge, we reject the first contention raised by the learned Counsel for the appellants and hold that no benefit can be taken by the learned Counsel for the appellants of the provisions contained in Sections 5 and 6 of the Contract Act.

14. Now, we take up the second contention that there was no definite acceptance by the Excise Commissioner and so, on that ground, it cannot be said that the petitioners-appellants have failed to perform their part of the contract and therefore, forfeiture of the money is illegal. In this connection, we shall first examine Ex. 8 dated March 1, 1975. The petitioner-appellants were informed by the Excise Commissioner that the tenders submitted by them have been accepted with certain conditions detailed therein. The words used in the letter Ex. 8 dated March 1, 1975 to which our attention was drawn are vLFkkbZ :i ls which according to the learned Counsel for the appellants is provisional acceptance and so, contended the learned Counsel, that there was no definite acceptance, as envisaged by Sections 7 of the Contract Act, which is as follows:

7. In order to convert a proposal into promise, the acceptance must:

(1) be absolute and unqualified;

(2) be expressed In some usual and reasonable manner, unless the proposal prescribes the manner in which it Is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made In such manner, the proposer, may, within a reasonable time after the acceptance is communicated to him, Insist that his proposal shall be accepted In the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

15. It was held in Jawahar Lal Burman Vs. Union of India (UOI), that u/s 7 of the Contract Act acceptance of the offer must be absolute and unqualified and it cannot be conditional. Reliance was also placed by the learned Counsel for the appellants on Badri Prasad v. State of M.P AIR 1970 SC 706.

16. Learned single Judge took into consideration the reply filed on behalf of the respondents that despite the use of the word vLFkkbZ the tender was accepted with no reservation or condition and that the petitioners could not go back thereafter and ask for the return of the earnest money. It should not be lost sight that the letter Ex. 8 dated March 1, 1975, contains acceptance of the tender despite the use of the words vLFkkbZ :i ls. It only makes mention of the various acts to be performed by the petitioners in pursuance of the acceptance of the tenders. Conditions No. 1 to 4 mentioned therein clearly bring this out, which are as under:

?1? fuxZe eqY; es tek djk dj tek ''kqnk pkyku lacaf/kr ftyk vf/kdkjh ds ikl izLrqr djs A VS.Mj ds lkFk tek djkbZ xbZ vusZLV euh dh jde bl es lek;ksftr dh tkosxh A flD;ksfjVh dk ''ks"k vk/kh jde fnukad 15-3-1975 ds iwoZ jkT; dks"k es mDr en es tek djk dj lqnk pkyku lacaf/kr vf/kdkjh ds ikl izLrqr djs A

?2? iSjk la[;k 1 es vafdr iwoZ flD;ksfjVh dh jkf''k ds leku jde ,d ;k ,d ls vf/kd tekur fnukad 15-3-75 ds iwoZ izLrqr djs A

?3? vki us vkcdkjh foHkkx dh dksbZ cdk;k ?o"kZ 1967&68? ds ns''kh ''kjkc dh cdk;k ds vykok vnkyrh vFkok jkT; ljdkj ls olwyh LFkfxr ds vkns''k gks ds vykok? ugh gSA

?4? jkTkLFkku vkcdkjh vf/kfu;e 1950 ,oe~ jktLFkku vkcdkjh fu;e 1956 ds rgr vki ns''kh ''kjkc dh nqdku ds ykblsUl ds ikus es dksbZ v;ksX;rk ugh j[krs gSA

By condition No. 1 reproduced herein above the petitioners were directed to deposit the security. This is the very same condition as is condition No. 5 (kha) of Ex. Rule 1, and this was to be complied even after the tender has been accepted. Condition No. 3 in the letter Ex. 8 is condition No. 15 of Ex. PI, which required that if the tenderer owed any arrears to the Excise Department, his tender would not be eligible. In other words, if at any time it is so found it will amount to a breach of contract on the paid of the tenderer. This according to us cannot be said to be a condition precedent so as to have kept the acceptance in abeyance. Condition No. 4 in Ex. 8 that the tenderer is bound by the Act and the Rules is also not a condition precedent because the very submission of the tender is subject to compliance with the Act and the Rules. Therefore, there is no justification for the argument of the learned Counsel for the appellants that the conditions mentioned in the letter Ex. 8 are in the nature of conditions precedent and the acceptance of the Excise Commissioner was only provisional and not absolute one. A reading of the letter Ex. 8 clearly shows that the Excise Commissioner had conveyed his acceptance and also bound himself unconditionally to the Under. The second contention has also no merit.

17. It was next argued by the learned Counsel for the appellants that even if the concluded contract is held to have come into existence, then, in view of Section 74 of the Contract Act, the entire earnest money amounting to Rs. 1, 02,000/- could not be forfeited and only the reasonable compensation could be claimed by the respondents. Section 74 of the Contract Act, is as follows:

74. When a contract has been broken, If a sum Is named In the contract as the amount to be paid In case of such breach, or If the contract contains any other stipulation by way of penalty, the party complaining of the breach Is entitled, whether or not actual damage or loss Is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named, or, as the case may be, the penalty stipulated for.

Explanation-A stipulation for Increased Interest from the date of default may be a stipulation by way of penalty.

Exception-When any person enters Into any ball-bond, recognizance or other Instrument of the same nature, or under the provisions of any law, or under the orders of the (Central Government) or of any (State Government), gives any bond for the performance of any public duty or act In which the public care Interested, he shall be liable, upon breach of the condition of any such Instrument, to pay the whole sum mentioned therein.

Explanation-A person who enters Into a contract with Government does not necessarily thereby undertake any public duty, or promise to do and act In which the public are Interested.

It may be stated that this contention was not raised before the learned single Judge. In the memo of appeal, this ground has not been taken. The petitioners bound themselves that in case they do not fulfil the conditions laid down in the tender and withdraw it, they would be bound by the terms of the tender inclusive of the forfeiture of the earnest money deposited by them. The condition has already been reproduced hereinabove and as such the earnest money was given with the tender and in accordance with Clause 5(kha) it could be forfeited in view of Rule 67-KK of the Rajasthan Excise Rules. The third contention being devoid of force is also rejected.

18. It may be stated that the conditions laid down in the tender are statutory conditions as u/s 41 of the Act the State Government has been given power to make Rules for the purpose of carrying out the provisions of the Act, and other law for the time being in force relating to the excise revenue in Rajasthan, and under Sub-section (2) of Section 41, the State Govt. has been empowered in particular and without prejudice to the generality of the provisions contained in the Act, to make Rules for prescribing the procedure to be followed and the matters to be ascertained before any licence for such vend is granted for any locality. Section 31 of the Act occurs in Chapter VI dealing with the forms and conditions of licences etc. It lays down that every licence, permit or pass granted under this Act, shall be granted (a) by such authority, (b) on payment of such fees (if any), (c) subject to such restrictions and on such conditions, (d) in such form and containing such particulars; and for such periods, as the State Govt. may prescribe by rules either generally or for any class of licences, permits or passes or as the State Govt. may direct for any particular licence, permit or pass. The learned single Judge has quashed that part of the order contained in the letter Ex. 7 issued by the District Excise Officer, by which it was declared that the petitioners are disqualified to obtain any licence form the Excise Department for a period of three years, as the learned Deputy Govt. Advocate, on the basis of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, conceded that the petitioners could not be debarred from obtaining licence under the Excise Act for a period of three years without having been given a hearing and admittedly, no opportunity of hearing was given to the petitioners-appellants before passing that part of the order. The learned single Judge, therefore, quashed that part of the order by which the petitioners-appellants were declared

to be disqualified to obtain any licence from the Excise Department for a period of three years and left it open to the Excise Commissioner, Rajasthan, Udaipur, if he is so advised, to proceed according to law against the petitioners-appellants under Rule 74(5) of the Rules but only after giving them a proper opportunity of hearing. This part of the order of the learned single Judge was not assailed by any of the parties before us and, therefore, it is affirmed.

19. As all the contentions raised on behalf of the appellants have been found to be devoid of force, the appeal filed by the petitioners-appellants has to be dismissed.

20. This appeal has no force and is, consequently dismissed with costs.

