(1984) 07 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Writ Petition No. 281 of 1984

Champa Lal APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 03-07-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (1984) WLN 178

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—This is a petition under Article 226 of the Constitution, filed by the petitioner Champalal, praying that the temporary sanction (Anx.3) made in favour of Banshilal (non-petitioder Na.4), may be quashed and'' non-petitioners No. 1 to 3 (State of Rajasthan the Excise Commissioner Rajasthan, Panchawati, Udaipur and the District Excise Officer, Udaipur respectively), may be restrained from proceeding to award a contract to non-petitioner No. 4 and further from taking further steps in the matter of awarding the contract to non-petitioner No. 4. A direction has also been sought against the aforesaid non-petitioners Nos. 1 to 3 to determine the question of awarding the contract afresh after negotiations with the tenderers including the petitioners or in such other manner as may be considered appropriate, i.e. by fresh tender or auction.

2. The petitioner carries on the business of vending country liquor in the name of Champalal and party. State of Rajajthan (non-petitioner No I invited tenders for giving the contract (licence for exclusive privilege for selling country liquor for the years 1984-85 and 1985-86 for 85 shops situate within Udaipur City Circle. The last date of submission of tenders was January 16, 1984. |The petitioner submitted his tender for the shop named Mullalalie. He has submitted the copy of the tender marked as Anx. 1. Banshilal and Manoharlal (non-petitioners No. 4 and 5 respectively) also submitted tenders for the licence of selling country liquor

for the shops situate within Udaipur City Circle. Banshilal hnd submitted the tender for the shops known as Chetak Circle for a sum of Rs. 25 lacs. He also submitted tender for Surajpol she p for a sum of Rs. 26 lacs Manoharlal and Banshilal are real brothers and live jointly and have joint business. They submitted a tender for the entire group of city shops (I) in the name of Manoharlal for Rs. one crore, ninety two lacs and twelve thousand and (2) in the name of Banshilal for rupees one crore and fifty four lacs. The said tenders were opened on January 17, 1984 Anx. 2 (a photo copy of the tender of Manoharlal) was put on the notice board indicating that Manoharlal''s tender has temporarily (provisionally)(jrfsrif) been accepted. The case of the petitioner is that on the same date the Excise Commissioner proceeded to exhibit another notice Anx. 3 showing temporary (provisional) acceptance of the tender of Rs. 1 crore fifty four lacs in the name of Shri Banshilal (non-petitioner No. 4). The petitioner has further stated that that the act of exhibiting the notice (Anx. 3) conveying temporary (provisional) acceptance in favour of Banshilal (non-petitioner No. 4) was in disregard of the conditions of the tender and in breach of the rules relating to the award of contract. Hiving come to know about Anx. 3, the petitioner in a telegram to the Excise Commissioner and other authorities, stated that he is one of the tenderers and in the event of the highest tenderer backing out, he is prepared to negotiate for the award of the contract (exclusive pirvilege) for vending country liquor for the years, 1984-83 and 1985-86 and is prepared to deposit a sum of Rs. 8 lacs by a Demand Draft. A representation was submitted by him reiteratiog that there is a difference of rupees thirty eight lacs and fifty eight thousand in the tender the contract being for two years, the State Government will be put to a loss of about 80 lacs and the petitioner would be deprived of an opportunity to obtain the contract when he is prepared to pay more than rupees one crore fifty four lacs. In the representation, it was mentioned that the petitioner is prepared to negotiate for the award of the contract and offer a sum of Rs. one crore sixty one Lcs and submitted that he may be called for negotiations along with others. As nothing was done despite representation, and the petitioner was not called for negotiations, the petitioner apprehended that the Excise Ccmmissiorier may proceed to award the contract in the name of Banshilal for much lower amount. As the demand of justice made by the petitioner VES denied, he filed the writ petition in this Court on January 24, 1984 for the aforesaid reliefs.

3. The writ petition was admitted on January 25, 1984 and an ad-interim order was made on the same date to the effect that further proceedings in the matter of award of contract to non-petitioner No. 4 shall be stayed.

4. Replies to the writ petition, as well as stay petition, were filed on behalf of non-petitioners No. 1 to 3 on February 13, 1984 along with the documents : Exs. R.1 to RV. Reply was also filed by Mr. R. Balia, on behalf of non-petitioner No. 4, on Feb 20, 1984 contesting the writ petition.

5. After hearing the learned Counsel for the parties, the ad interim order passed

on January 25, 1984, was vacated on March 14, 1984. A petition for Special Leave to Appeal No. 4031/84, was filed by the petitioner before the Supreme Court. By order dated March 26, 1984, their Lordships of the Supreme Court declined to interfere with the order vacating the ad-interim order dated March 14, 1984. A direction was given to this Court to hear and dispose of the writ petition on April 2, 1984. Before the Supreme Court, learned conusel for the petitioner made a statement that the petitioner is prepared to offer Rs. 1,75,00,000/- per year as guarantee amount in the current financial year 1984-85. The Supreme Court has ordered that the matter is of great urgency looking to the loss of public revenue and as such the High Court should endeavour to dispose of the writ petition. It was made clear that the grant of the licence to be issued to non-petitioners No. 4 and 5 shall be subject to the result of the writ petition.

6. It may be stated that even prior to that, despite previous orders for listing the writ petition for hearing, the writ petition was not listed on March 15, and onwards. April 2, 1974 was declared as a holiday and, therefore, the writ petition could not be listed for hearing on that day. It was, however, listed on March IV, 1984 for hearing at serial No. 509. On April 3, 1984, learned Counsel for the petitioner filed the true and certified copy of the proceedings of the auction for contract at Ajmer for 1984-85. Learned Counsel for non-petitioner No. 4 also submitted an application stating that licences to vend liquor at Udaipur have been issued in favour of non-petitioner No. 4 period that vending of country liquor at Udaipur has started from April, 1 1984 and, so these two facts may be taken into consideration while hearing the writ petition.

7. Arguments were commenced and partly heard on April 3, 1984. On April 4, 1984, when the writ petition was taken up for further arguments, Mr. M.C Bhandari, learned Counsel for the petitioner, informed that he has filed an application on that day praying that the petitioner may be permitted to implead Raj;sh Kumar son of Bhanwar Lal as non-petitioner No. 6. Learned Counsel for non-petitioner No. 4 prayed for time to oppose the application to which the learned Counsel for the petitioner had no objection. Reply to the said application was filed on April 5, 1964. Mr. M.C. Bhandari prayed for time on April 5, 1984 and as the other learned Counsel had no objection, it was adjourned to April 9, 1984, S-B. was not formed and as such the case was not listed on April 9, 1984. It was, however, listed on April 23, 1987. On April 28, 1984, learned Counsel for the petitioner submitted that before passing the orders on the application for impleading Rajesh Kumar as non-petitioner No. 6 to the writ petition and proceeding further with the hearing of the case, notice may be issued to Rajesh Kumar. As this was not resisted by the learned Counsel for the non-petitioners, notice of the application dated April, 4, 1984 was ordered to be issued to Rajesh Kumar. On that day Mr. N.M. Lodha filed memo of appearance on behalf of Rajash Kumar. Mr. M.C. Bhandari, also delivered copy of the application to Mr. N.M. Lodha. On the same day, Mr. N.M. Lodha said that he will file reply to the application next day and shall deliver its copy in advance to Mr. M.C. Bhandari.

The case was adjourned to April 24, 1984. It appears from the proceedings of April 24, 1984, that no reply was filed on behalf of Rajesh Kumar. Aiguments were heard on the application for impleading Rajesb Kumar as non-petitioner No. 6. In the facts and circumstances of the case, the presence of Rcjesh Kumar for deciding the contioveisy between the parties, was found necessary and as such he was ordered to be impleaded as non-petitioner No. 6. Learned Counsel for the petitioner was directed to file amended cause title by April 27, 1984. Mr. N.M. Lodha stated that he will file reply to the writ petition, if necessary, by April 27, 1984. Mr. M.C. Bhandari piayed that further arguments may be heard on May 1, 1984. On May 7, 19H, learned Counsel for the petitioner prayed that the writ petition may to taken up on the next day (May 8, 1984) for further arguments, to which the other learned Counsel had no objection and order was passed accordingly. Arguments were partly heard on May 10, 1984 May 11, 1984, and May 15, 1984 and May 16, 1984 as S.B. was constituted for some time during court hours only.

8. Non-petitioners No. 1 to 3 have in their reply, amongst others, stated, (i) that the tenders were invited individually as well as in group and the petitioner did not submit any tender in group of 56 shops for Udaipur City Circle. The petitioner submitted only one tender the individual shop. i.e. Mulla Talai whereas non-petitioners Nos 4 and 5 submitted tenders for group of 56 shops of Udaipur City Circle. It has further, been stated that Manoharlal gave the tender for group individually whereas Bansbilal along with other partner Rajesh Kumar, submitted the tender in group; (2) that ron-petitioner No. 5 Manoharlal gave bid of Rs. 1192,12,000 and Banshilal and Rajesh Kumar gave tender for Rs. 1,54,00,000. (3) that when the tenders were opened and the name were displayed on the Notice Board vide notice Ex. RI on January 21, 1984, Manoharlal came forward with an application (Ex. RII) that on account of the fact that some of his partners have backed out, it is n. t possible for him to accept the offer. The defence taken was that when Manoharlal backed out, there was no option with the Excise Commissioner but to call the other person, who has given the tender for group of 56 shops Udaipur City Circle. The only other party was Banshilal along with Rajesh Kumar and, therefore, in the interest of of the State exchequer,the Excise Commissioner accepted the next highest tender of Banshilal and Rajesh Kumar for Rs. 1.54,000/-. It was denied that any other person should have been called for negotiations as per condition No. 12 Cs) of she tender, acceptance of the tender of Banshilal was displayed on the notice board vide. Ex. R.III. It was stated that the petitioner''s telegram was not considered as he d d not give initially any tender for group of Udaipur City shops and that the petitioner''s telegram was received on January 23, 1984, whereas the tender was accepted on January 21, 1984. It was also pleaded that the petitioner is not a bonafide tenderer and is unnecessarily trying to meddle with the affair at the behest of one third party. Reference was made to Anx. 6, which is on application filed by the petitioner in which address of the petitioner is written Shri Ratanlal Sualka, 33-FI Road Bhupalpura, Udaipur. It was stated that Ratanlal Sualka was one

Excise contractor, against whom an arrear of Rs. 3 lacs is outstanding, that he did not come directly to give tin tender being defaulter and that the petitioner has been deplayed by Lim to create hurdle by sending telegram. An objection was taken that the petitioner has a statutory alternative remedy by way of filing appeal u/s 9-A of the Rajasthan Excise Act, 1950 (No. II of 1950)(for shopt "the Act." herein) before the Baard of Revenue for Rajasthan, and as he has not aviled the same, (he petition deserves to be rejected on this count alone.

9. Non petitioner No. 4 has stated in the reply that non petitioner No. 4 and 5 are real brothers but neither they are living jointly r or they have joint business. It was denied that he has any concern with non-petitioner No. 5. It was averred in the reply that for the entire group of shops, only two tenders were received and the petitioner did not give tender for the group of city shops which are 56 in number tint he was tenderer only for one shop (Mulla Talai) and submitted tender for it for Rs 10,40,051/- and deposited earnest money to the tune of Rs. 2,100/-only, whereas the non-petitioner No. 4 was a tenderer for entire group of 56 shops having a liability to deposit Rs. 7,70,000 as earnest money The tenders were opened on January 17, 1984 and the tender of Manoharlal was put on the Notice Board on January 21, 1984. Non-petitioner No. 5 backed out before Anx. 2 was issued. It was pleaded that the contract has been rightly ordered to be awarded to non-petitioner No. 4 in accordance with the conditions of the tenders. In reply to ground (d), raised in the writ petition, it was stated that the patitioner himself did not chose to offer any tender for the entire group of shops and offered for one shop only; that the petitioner did not offer rupees one crore ninety two lacs and twelve thousand and the person who has offered one crore and ninety two lacs twelve thousand had backed out and, therefore, the estimate of loss of Rs. 80 lacs is not cornet and that the petitioner hay offered merely rupees one crore and sixty one lacs. Further, it has been stated that more than the aforesaid amount of rupees one crore and sixty one lacs is secured, even otherwise by the State as the non-petitioner No. 4 has offered his tender for one crore and fifty four lac & Rs. 7,68,000 deposited by non-petitioner No. 5 have already been forfeited and, no, if it cancel; the tender and the State Govt, decides to revert to the methed of negotiation", when there are no competitive teaders. it would have to refund Ry. 7,65,000/- to non-petitioner No. 5, An objection regarding alternative remedy of appeal u/s 9A of the Act was also taken Non-petitioner No. 6 filed reply to the writ petition on May 18, 1984. It was stated that he adopts the reply filed by non-petitioner No. 4. It was averred that the writ petition has become infructuous as the licence has been issued after the deposit of the security amount.

10. I have heard Mr. M.C. Bhandari, learned Counsel for the petitioner, Mr. A.K. Mathur, learned Additional Advocate General, Mr. Rajesh Balia for non-petitioner No. 4 and Mr. N M Lodha for non-petitioner No. 6, and have also carefully considered the pleadings of the parties and the documents filed by them.

11. The principal preliminary objection raised on behalf of the non-petitioner is

that extra ordinary jurisdiction under Article 226 of the Constitution should not be invoked in favour of the petitioner in as much as alternative remedy of appeal u/s 9-A of the Act was available to the petitioner and as he has failed to avail of that remedy, no relief should be granted under Article 226 of the Constitution.

12. The preliminary objection is resisted by the learned Counsel for the petitioner on the ground that bar of Section 9 A of the Act cannot be invoked when there is an infringement of the fundamental right of the petitioner, the right of the petitioner regarding the award of contract to him is involved in the case and that there has been breach of males framed under the Act. He also submitted that the writ petition has already been admitted and lce the writ petition has been admitted the bar of alternative remedy cannot be taken aid of for declining the relief to the petitioner.

13. The Excise Commissioner vide Anx. 3, temporarily (provisionally) accepted the next highest tender of non-petitioner No. 4 for 56 shops situated in Ladaipur City. As stated earlier non petitioner No. 4 gave tender for Rs. 1,54,00,000/- for the shops of the Udaipur City Circle. Anx. 3 is the order temporarily (provisionally) accepting the tender of non-petitioner No. 4 The petitioner has prayed in the writ petition "that called temporary sanction made in favour of Banshilal of the contract by his order dated 21-1-1984 (Annexured) be quashed.

14. Material portion of Section 9-A of the Act is as follows:

Appeals and revision (1) An appeal shall lie-

a. ... ...

(b) to the Board of ''Revenue from any order passed by the Excise Commissioner under this Act otherwise on appeal.

(2) Any appeal under Sub-section (I) may be preferred at any time within sixty days from the date of the order complained of.

(3) ... ...

(4) ... ...

15. The contention of the non-petitioner is that the order of temporary acceptance of the tender of non-petitioner No. 4, being an order passed by the Excise Commissioner under the Act is appeasable to the Board of Revenue. It is not in dispute that Anx. 3 is the order passed under the Act. It is also not in dispute that the order of temporary acceptance of the tender of non-petitioner is appealable u/s 9-A of the Act. The contention of Mr. M, C. Bhandri, learned Counsel for the petitioner, is that the bar of alternative remedy of appeal cannot be invoked in this case, for, the fundamental right of the petitioner has been infringed, as it has authoratitatively been laid down by the highest court of the country that the bar of alternative remedy of appeal should not be invoked when there is violation of the fundamental rights of the petitioner, who files the writ petition for their enforcement, under Article 226 of the Constitution, in these

circumstances, the question that crops up is whether the petitioner has fundamental right in the matter of grant of licence for exclusive privilege of selling the country liquor. There is no fundamental right to trade or business in intoxicant or otherwise deal in the country liquor. The State under its supervisory and regulatory power, has right to prohibit every form of activity in relation to intoxicants, i. e., its manufacture, storage, export, import, sale and possession. In this connection, reference may usefully be made to Coverjee v. Excise Commissioner (1); Nashirwar v. State of M.P. (2); Har Shankar v. Dy. Ex. P Commr. (3) and Devilal v. State (4). In fact of this well settled position, it is futile for the learned Counsel for the petitioner to argue that bar of alternative remedy of appeal u/s 9-A of the Act, should not be invoked as the fundamental rights of the petitioner in regard to the award of a contract relating to the grant of licence for exclusive privilege of selling the country liquor, have been infringed. As regards the argument that the writ jurisdiction should be invoked as there has bee breach of the rules under the Act and the conditions of tender notice, the following observations of the Supreme Court in Coveeree''s case (f) afford a complete answer:

As regards the other contentions of the learned Counsel, it is sufficient to say that if there has been any breach of the rules framed under the regulation by the officers concerned, the remedy for such breaches is provided for in the regulation itself. Here irregularities committed in conducting an auction sale cannot be said to have abridged the petitioner''s fundamental rights and so Article 32 is not attracted. It is open to the petitioner under Article 226 to approach the High Court for a ''mandamus'' if the officers concerned have conducted themselves not in accordance with law or if they have acted in excess of their jurisdiction.

It is correct that the writ petition was admitted on Jan. 25, 1984 after hearing the learned Counsel for the petitioner. The order (Anx. 3) is of January 21, 1984. On behalf of non-petitioners No. I to 3, reply was filed on February 13, 1984, in which a specific objection was taken that the petitioner has statutoay alternative remedy by was of appeal u/s 9-A of the Act before the Board of Revenue, and as the petitioner has failed to avail of the same, the petition deserves to be rejected on this ground alone. According to Section 9-A(2), the appeal under sub Section (I) of Section 9-A can be" preferred within 60 days from the date of the order complained of. Despite the specific objection having been taken by non-petitioners No. 1 to 3, the petitioner did not prefer any appeal against the order Anx. 3. There was sufficient time left for filing appeal even after the objection regarding maintainability of the writ petition was raised. For this reason, the argument that this objection cannot be given effect to as the writ petition has already been admitted, cannot be accepted.

16. Some of the High Courts have taken the view that where the petition has been admitted and entertained and arguments have been heard at length on merits, it is not right and proper to dismiss the petition on the ground of alternative remedy.

17. The second preliminary objection raised on behalf of the non-petitioners is that the original application filed by the petitioner has not been filed and on account of this conduct, he has disentitled himself from getting any relief. As the objection relates to the merits of the writ petition, I do not propose to examing it as preliminary objection as such.

18. As the learned Counsel for the parties had argued the writ petition at length, I consider it proper to examine it on merits.

19. Learned Counsel for the petitioner, vehemently, argued that the tender of non-petitioner No. 5 for Rs. 1 crore 92 lacs & 12 thousand was temporarily accepted vide Anx. 2 on January 21, 1984 as such after the acceptance of the tender, the Excise Commissioner had no jurisdiction to award contract to any other person and, that this has all been done in a clandestine manner tie also urged that under Condition No. 12(Ga),the petitioner being one of the tenderers, was entitled to bi called for negotiation. According to him, even when non-petitioner No. 5 had opted to back out from the tender, it was obligatory on the part of the Excise Commissioner to have negotiations with other tenderers and to have tried to secure the highest price for the contract and that in no case he could proceed to mechanically award the contract (exclusive privilege) in favour of the person, who gave the next highest tender as it was in contravention of condition No. 12 (Ga) of Anx.1, which clearly enjoins upon the Commissioner to negotiate with the other tenderers so as to obtain the highest price and not award it to the person who gave the next highest tender. On the other hand it was submitted by the learned Add. Advocate General that no a concluded contract had come into existence and when non-petitioner No. 5 had sub-muted an application (Ex. R.1) on Jaauary ;1,1,84 expressing his liability to accept the offer, the Preise Commissioner had no option but to give offer to the person, who gave the next highest tender for the group of 56 shops and it was offered to Banshilal (non-petitioner No. 4) and Rajesh Kumar (non-petitioner No. 6), who accepted the same, and in pursuance of that, they deposited 2% security amount on that day and so, thereafter, it was necessary to call any other tenderer for the group of 56 shops of Udaipur City Circle. These very arguments were also advanced on behalf of non-petitionors No. 1 and 6.

20. I have, given my most anxious and thoughtful consideration to the rival contentions of the learned Counsel for the parties. In this connection, it is relevant to examine the relevant provisions of the Act and the Rajathan Excise Rules, 1956 (hereinafter referred to as "the Rules").

21. Section 24 of the Act provides for grant of exclusive privilege of manufacture etc It says that subject to the provisions of Section 31 of the Act, the Excise Commissioner may order the prant to any person of a licence for the exclusive privilege of selling by whole-sale or by retail any country liquor ex intoxicating drug within any local area of those parts of the State of Rajasthan to which the Act extends. Section 31 deals with form and conditions of licences etc.

22. Section 30 deals with payment for exclusive privilege. It reads as under:

30. Payment for exclusive privilege - Instead of or in. addition to any duty leviable under this Chapter, the Excise Commissioner may accept payment of a sum in consideration of the grant of the licence for exclusive privilege u/s 24.

23. Chapter VII-B of the Rules deals with licence on payment of lump sum instead of or in addition to duty Rule 671 of the Rules, runs as under.

67-1 Licence on payment for exclusive privilege. - (I) Licence for exclusive privilege of selling country liquor by retail within day local area u/s 24 may be granted on condition of payment of such lump sum instead of, or in addition to excise duty, as may be determined by the Excise Commissioner and subject to such other terms and conditions as may be laid down by him.

(2) Licence for exclusive privilege of selling by retail country liquor at a ship may be granted either-

(a) by negotiations with the existing licences; offer under Sub-rule (1), or where no offer is made under Sub-rule (1) on account of any general or special direction of the Excise Commissioner, make an offer to any other person for the grant of a licence on the sams terms and conditions as those, contained in the offer under sub rule (1);

(b) by auction;

(c) by inviting sealed tenders;

(d) by negotiation with the third parties; (persons other than existing licences)

(3) Nothing in these rules shall prevent adoption of any of the above method in any order in respect of any shops or categories of shops or adoption of different methods for different categories of shops.

Rule 67-KK of the Rules, lays down procedure for invitation of scaled tenders Sub-rules (9), (10) and (11) of Rule 6/-KK, read as under:

(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 commission.

(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 to the (enderer with the tender shall in the event of such revocation be forfeited to the State.

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

24. The details relating to the tender for the year 1984-85 and 1985 86 are contained in Anx. 1. Tenders were invited under Rule 67-1 and Rule 67-KK. Condition No. 3 relating to the licence, is as under:

3?1? nqdkuks dh ^^d^^ ,oa ^^[k^^ lwph es ''kkfey gS ftles izR;sd nqdku ds lkFk Lohd`r mi&nqdkuks ds uke izR;sd nqdku ds fy, ,dkdh fo''ks"kkf/kdkj dh U;wure@vkjf{kr@jkf''k rFkk vusZLV euh crk;h x;h gSA ,dkdh fo''ks"kkf/kdkj dks jkf''k vkcdkjh ''kqYd vxj dksbZ gS rks vfrfjDr gksxh A

?2? ^d^ lwph es vafdr izR;ssd nqdku dk Vs.M+j vyx vyx fn;k tk;sxk A

?3? ^[k^ lwph es of.kZr nqdkuks dks xzqiokj fn[kk;k x;k gS Abu nqdkuks ls lEcU/k es izR;sd nqdku dk Vs.M+j vyx&vyx o izR;sd xzqi dh nqdkuks lkewfgd Hkh fn;k tk ldrk gS Atks O;fDr ^[k^ lwph dh nqdkuks ds fy, nksuks rjQ ds Vs.Mj nsuk pkgs mls ,d xzqi ds fy, ,d ,oa vyx&vyx nqdkuks ds ds fy, vyx&vyx Vs.Mj Hkjuk gksxk A tks O;fDr xzqi Vs.Mj nsxk mls Vs.Mj dk mDr xzqi dh nqdkuks ds ukEk Ik`Fkd&Ik`Fkd fnykus gskxs A ijUrq mDr xzqi dh nqdkuks dsk mlds }kjk dh tkus okyh ,dkdh&fo''ks"kkf/kdkj dh jkf''k dks ,d lkewfgd jde fnykuh gksxh A

The ojber important conditions are Conditions No. 12, 13 and 14, which are as under:

12-?d? ftu O;fDr;sk ds Vs.Mj Lohd`r fd;s tk;sxsa mUgs vkcdkjh vk;qDr ;k lEcfU/kr ftyk vkcdkjh vf/kdkjh }kjk mldks lwpuk ns nsh tk;sxh vkSj ,sls leLr Lohd`r Vs.Mjks dh lwph vkcdkjh vk;qDr dk;Zky; ds uksfVl cksM+Z ij yxk nh tk;sxh A

?[k? gj Vs.Mjnkrk vius Vs.Mj ls ikcUn pkgs mldk Vs.Mj Lohd`r gks ;k u gks A Vs.Mjnkrk ds vius VS.Mj ls ikcUn u jgus dh fLFkfr es Vs.Mjnkrk }kjk tek djk;h xbZ vusZLV euh tCr gks tk;sxh A

?x? vxj mldk Vs.Mj fdUgh dkj.kks ls Lohd`r ugh fd;k tkrk gS vFkok mPpLFk Vs.Mj dks Lohd`r djuk vko'';d ugh gksxk o ,slh fLFkfr es vk;qDr vkcdkjh dks ''ks"k Vs.Mjnkrkvks ls usxksfl''ku djds nwljs mPpLFk Vs.Mj dh jkf''k ls vf/kd jkf''k izkIr dj vuqKki= Lohd`r djus dk vf/kdkj gksxk A

?13? Vs.Mj Lohdkj gksus dh n''kk es lQy Vs.Mjnkrk dh Lohd`r ,dkdh fo''ks"kkf/kdkj dh jkf''k dks ekfld fdLr dk 1&1@3 xquk jkf''k flD;ksfjVh gS crkSj tek djkuh gksxh A mls bl jkf''k dh 70 izfr''kr jde Lohd`r VS.Mjks dh lwph vkcdkjh vk;qDr ds uksfVl cksMZ ij pLik gksus dh rkjh[k ls 3 fnu PkLik gksus d fnukad dks NksM+dj Hkhrj jkT;dks"k es tek djkdj pkyku dh izfr lEcfU/kr ftyk vkcdkjh vf/kdkjh dks is''k djuh gksxh A bl jde es Vs.Mj ds lkFk tek djk;h x;h vusZLV euh lek;skftr dh tkosxh A ''ks"k flD;ksfjVh dh jde VS.Mjnkrkvks dsk fnukad 15&3&1985 rd jkT; dks"k es tek djk dj pkyku lEcfU/kr vkcdkjh vf/kdkjh ds le> is''k djuk gksxk A rFkk o"kZ 1985&86 ds ,dkdh fo''kas"kkf/kdkj jkf''k es Hkh gksus okyh o`f) dks tek djkdj 15 ekpZ] 1985 rd iwfrZ djuh gksxh A

mlds vykok leLr nqdkuks ds fy, mijksDr flD;ksfjVh jkf''k ds leku jde dh ,d ;k ,d ls vf/kd eksrfcj ,dker lEcfU/kr ftyk vkcdkjh vf/kdkjh ds lUrqf"V dks fnukad 15&3&1984 rd izLrqr djuh gksxh A

?14? mijksDr vkbVe ?13? es vafdr vof/k es iw.kZ flD;ksfjVh jkf"k tek ugh djkus ,oa tekur izLrqr ugh djus ds gkyr es vkcdkjh vk;qDr dks Vs.Mj dh Lohd`r dks jn~n djus dk vkSj Vs.Mjnkrk }kjk Vs.Mj QkeZ ds lkFk tek djk;h x;h vusZLV euh rFkk flD;ksfjVh jkf"k dks izkIr djus dk vf/kdkj gksxk A

A few facts, bearing on the question, may also be recalled. The tenders were invited for the years 1984-85 and 1985-86 vide Notification dated December 24, 1983. The last date for submission of the tenders was January 14, 1984. Anx. 1 was a composite notice for limited shops as well as group of shops. On January 21, 1984, the notice Ex RI (Anx. 2) was put on the Notice Board. The temporary (provisional) acceptance of the tender of non-petitioner No. 4 for the shops of Udaipur City Circle was made on the conditions mentioned therein. Non-petitioner No. 5 gave tender for the group of 55 shops for Rupees one crore, 92 lacs and 12 thousand and non-petitioner No. 4 gave tender for rupees one crore, 54 lacs There were only two tenderers for the group of 55 shops of Udaipur City Circle. There was no third tender. The application Ex. RII dated January 20, 1984 was submitted to the Excise Commissioner by non-petitioner No. 5 on January 21, 1984. It was stated therein that he gave bid for rupees one crore 92 lacs 42 thousand, but the persons, who were partners with him are not ready for this amount and had not kept the promise and so, he allne cannot carry on as a sole partner By means of Ex. R.II, non-petitioner No. 6 backed out from the offer given by him in his tender. Thereafter, on January 21, 1984, notice Ex. Rill showing temporary acceptance of the tender of non-petitioner No. 4 was exhibited. The petitioner did not personally approach the Excise Commissioner that he is ready to take the contract of exclusive privilege on rupees one crore 61 lacs or more. The representation Anx. 6 dated January 21, 1984, was received in the office of the Excise Commissioner on Jan. 23, 1984; i.e., much after the acceptance of the next highest tender of non-petitioner No. 4. I have already reproduced Condition No. 3 (iii), which provides for mode of giving tender for individual and/or group of shops.

25. The first question is whether by Anx. 2, a concluded contract has come into existence so that after the concluded contract had come into (existence, the Excise Commissioner could not accept the tender of the next highest tenderer, narrely, non-petitioners No. 4 and 6 even if the highest tenderer had backed out.

26. Ex. RI (AM. 2) shows that the tender of non petitioner No. 5 was temporarily accepted. The words used in Anx. RI are ^^vL?kbZ Lohd`r fd;k x;k** A I It is stated in Anx. RI that in case the security amount is not deposited in time, the provisional acceptance shall be cancelled and fresh list of other tenderers granting temporary acceptance of the above conditions, will be notified. The provisional acceptance of tender was notified on certain conditions. Licence was to be granted after fulfilling the conditions, The acceptance of the conditions does not amount to acceptance of the tender. Condition No. 14 deals with forfeiture of the earnest money. It provides that if the security amount is not deposited in accordance with Condition No. 13, the Excise Commissioner will have a right to

cancel the tender and to forfeit

