
(2003) 05 RAJ CK 0086
In the Rajasthan High Court
Case No : Civil Writ Petition No. 303 of 2003

Chandan Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-05-2003

Acts Referred:

Rajasthan Excise Act, 1950 — Section 30A

Citation : (2003) 4 RLW 2530 : (2003) 1 WLN 677

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Advocate : N.M. Lodha, for the Appellant; Dinesh Maheshwari, for the Respondent

Judgement

Tatia, J.—Brief common facts of all these writ petitions are that the respondents No. 2 issued notices inviting tenders for grant of exclusive license for sale of liquor for different areas in the State of Rajasthan, for the year 2002- 2003. In response of said N.I.T., the petitioners submitted their tenders along with requisite earnest money. The petitioners are successful bidders and got the exclusive license for sale of liquor for the area for which they gave their bid. As per the conditions prescribed for the grant of the license for the sale of liquor, the petitioners were required to furnish cash security equal to 17 percent of the exclusive license amount within period of 10 days from the date of publication of acceptance of bid by affixing the information of acceptance of the bid. The petitioners were given two options for furnishing the security, one, by way of depositing the entire amount as mentioned above or by depositing 10% of license amount instead of 17% (after adjusting the adjusting the earnest money) with Bank Guarantee of the amount, equal to 10% of bid amount, for a period three months beyond the license period. The petitioners opted for the second option and deposited 10% of the bid amount and furnished Bank guarantee of the amount equal to the 10% of the bid amount. The cash amount was deposited within the period but the bank guarantees were submitted by the petitioners after the period available to them for furnishing the bank guarantee. These facts

are not in dispute. The respondents issued demand notices against the petitioners demanding interest @ 2% per month for the period of delay on the ground that the petitioners failed to furnish the bank guarantees within the period available to them for furnishing the bank guarantees. Mainly, dispute between the petitioners and the respondents is that whether the petitioners are at all liable to pay the interest to respondents only because of the reason that the petitioners failed to furnish the bank guarantee within the period available to them?

2. According to petitioners, as per the provisions of the Act and the Rules framed there under and so also as per the prescribed performa of license, no amount of interest on late deposit of bank guarantee can be levied by the respondents. Respondents can charge and demand interest only u/s 30- A of the Rajasthan Excise Act, 1950 (in short "Act of 1950"). The Section 30-A permits respondents to charge the interest, if the amount of any duty, fee or other demand is due under the Act or the Rules made there under. The interest can be charged under the section from the day on which the said amount became due. According to the petitioners, admittedly, neither the duty nor the fee or any other demand is due in the petitioners and the non-furnishing of the Bank Guarantee cannot be treated as any amount of duty, fee or other amount due. It is further pleaded that neither under the Act or the Rules nor there is any clause in the agreement or license providing levy of interest because of the late deposit of the bank guarantee. Even the respondents cannot claim interest over the security amount.

3. In some of the writ petitions it is also submitted that if the court comes to the conclusion that as per the instructions issued by the respondents, the conditions relating to charge of interest on late deposit of bank guarantee exists, then the condition itself is illegal and against the principle of equity and the same deserves to be quashed. In some of the writ petitions the amount of the demand is also disputed on the ground that the respondents could have charged interest over the 7% amount only because at the most in case of cash deposit of the security the petitioners were required to deposit 17% of the bid amount against which the petitioners have already deposited 10% of the bid amount in cash.

4. In one of the writ petition No. 323/03 Hanuman Singh and Ors. v. State and Ors., the petitioners tender for a sum of Rs. 54,43,92,999/- was accepted by communication dated 7th March 2002. The petitioner was required to deposit security in the form of cash amounting to Rs. 5,50,06,000/- and was required to give the bank guarantee of Rs. 5,44,40,000/-. The petitioners submitted an application on 16th March 2002 and requested that petitioners has already submitted Bank Draft of Rs. 2,52,50,000/- and against the balance amount, petitioner's other amount is lying with the department may be adjusted. For this request of the petitioner, the respondents made adjustment of Rs. 1,40,00,000/- on 31 March 2002 and Rs. 1,55,00,000/- on 15 April 2002. The petitioner submitted bank guarantees of Rs. 22,00,000/- and Rs. 1,95,00,000/- on 30th March 2002 which were within the available time limit for deposit of the bank

guarantees. The petitioner submitted two bank guarantees on 8 April 2002 and on 10 May 2002 of Rs. 3,25,00,000/-, 2,40,000/- respectively. The petitioners was served with a notice dated 4 May 2002 by the respondents demanding Rs. 9,47,086/- which is the amount of interest on two counts; Rs. 6,71,753 due to the late furnishing of the bank guarantee, Rs. 2,75,333/- for late payment of cash security. However, this demand of Rs. 9,47,086/- was increased to Rs. 17,21,419/- on the ground that the respondent department is entitled for the interest of Rs. 7,24,333/- as the petitioner has furnished the bank guarantee late.

5. In the above facts, the petition No. 323703 also has common ground of challenge, the right of the respondents to demand the interest on the ground of the late furnishing of the bank, guarantee in addition to the challenge to the respondents' demand of interest for the cash security amount which is, according to petitioner already lying with the respondents and the petitioner gave letter of request to the respondents in time but the respondents adjusted the amount after the period within which the petitioner was required to deposit the cash amount.

6. According to learned counsel for the petitioners, the respondents can charge interest only in the eventualities which are given in the Section 30-A of the Act of 1950. As per Section 30-A of the Act of 1950, the respondents can charge the interest in cases where (1) duty, (2) fee or (3) other demand is due against any person under the Act of 1950 or the Rules made there under. The right to claim interest accrues only when amount becomes due. Further, the Section 30-A also prescribed rate of interest which is only 1-1/2% per month for the period of three months and thereafter 2% per month if default continues after the period of three months. According to learned counsel for the petitioners, there is no other provision in the act which permits respondents to charge the interest. Therefore, according learned counsel for the petitioners, any demand contrary to the Section 30-A is illegal. Here in these cases admittedly neither any amount of duty, fee or other demand is due against the petitioners. Non-furnishing of bank guarantee, by no stretch of imagination can be treated as not making payment of "duty", "fee" or "other demand." The petitioners submitted bank guarantee covering the entire period of the contract and they would not to make any payment of any amount to the respondents. It is also submitted, that interest can be charged against, in cases where the other party is deprived of any cash or any money is withheld by the defaulting party. Even if the petitioners would have submitted their bank guarantees within the prescribed period of time even then that could not have been encashed by the respondents nor could it have been treated as money in the hand of the respondents. Therefore, also there is no reason for charging interest on the ground of non-furnishing of the bank guarantee by the petitioners.

7. Learned counsel for the petitioners further submitted that even for charging interest, the respondents are required to pass an order, determining the "due" and thereafter can issue notice of demand by following the procedure given

under the Rule 76-A of the Rajasthan Excise Rules, 1956. It is also submitted by the petitioners that before raising this demand, no opportunity of hearing was given to the petitioners and therefore, the respondents have violated the principles of natural justice.

8. The respondents submitted reply and denied the allegations of the petitioners. The respondents submitted that petitioners having obtained the contract and having operated the same and derived the benefits under the contract are not entitled to turn around and say that the security could not have been demanded, The security amount is an integral part of and an essential condition of the contract and it became a demand due against the petitioners when the tenders were accepted and it was required to be deposited within time permitted under the terms of the contract. The petitioners were fully aware of the condition No. 17.5 of the tendered document which specifically provides that delayed deposit of security with bank guarantee was liable to be visited with interest at the rate of 2% per month. Learned counsel for the respondents advancing arguments in support of their contentions, further submitted that the petitioners have no right to challenge the conditions of the tendered document and the terms and conditions of the contract and, therefore, they have rightly not sought any relief of declaration of quashing of any of the conditions of the tendered document or any part of the contract.

9. Learned counsel for the petitioners in arguments submitted in addition to what has been mentioned above, that the security amount is only an "Amanat". The recovery of interest on late deposit of security has been stayed by the Division Bench of this Court in *Rajendra Kumar v. State* (1), the amount is required to be determined and if the outstanding amount of any duty, fee or other demand is not paid till due date then interest at the rate as given u/s 30-A at the rate of 1.5% per month for three months and 2% thereafter can be charged. Charging of interest otherwise will be against the statutory provisions and if it is allowed then that would be rewriting of the statutory provisions by instructions. Learned counsel for the petitioners relies upon the judgments reported in *Commissioner of Income Tax Vs. Sirpur Paper Mills*, (2), *State of U.P. and Others Vs. Sitapur Packing Wood Suppliers etc.*, (4) and *M/s. VVS Sugars Vs. Govt. of Andhra Pradesh and Others*, It is also submitted that no particular date was fixed for giving option for opting for bank guarantee nor any option was called for. Even if the interest can be levied then that can be only over 7% and not over 20% or over 17% of the license amount. If bank guarantee has been given latter then 7% amount only was not paid and, therefore, interest can be charged only on that amount. Since no opportunity of hearing was given to the petitioners before issuing notice of demand, therefore, the petitioners could not raise any objection regarding rate of interest, computation of interest and legality of charging interest. Since respondents have not passed any order determining the liability of the petitioners and quantifying the interest, therefore, petitioners have no alternative remedy available to challenge the action of the respondents except by way of approaching this Court under Article 226 of the Constitution of India.

10. It was also pointed out that in the most of the matters, temporary sanction was given on 28th and 29th March, 2002 and up to 31 st March, 2002, there were holidays and the business was to start from 1st April, 2002, therefore, in such circumstances, bank guarantees could not have been given nor the amount could have been deposited before start of the business. The petitioners made earnest efforts of getting the bank guarantees as early as possible and even the banks informed that the process for giving bank guarantee is in progress.

11. I considered the rival submissions and the documents placed on record as well as considered the judgments relied upon by the learned counsel for the parties. It is clear from the facts that the petitioners in their writ petitions, admitted that they entered into a lawful contract. According to the petitioners themselves this contract is statutory contract. It is the specific case of the petitioners that both the parties are bound by the terms of the contract. Even in rejoinder it is the specific case of the petitioners that it is a statutory contract and no one can go beyond the terms of the said contract. In view of this stand alone, the plea of the petitioners that if there is any term of charging the interest for late deposit of security amount and due to late furnishing of the bank guarantee, it is illegal; cannot be accepted. Even if the petitioners would not have admitted the terms and conditions of the contract as binding even then the petitioners have no right to challenge any of the term and condition of the contract after taking part in the process of entering into contract by submitting bids knowing well about the said condition as part of the condition of the contract and thereafter, acting upon the contract and further after deriving the benefit of the contract for substantial period of contract. Learned counsel for the respondents rightly relied upon the judgment of Division Bench of this Court delivered in the case of Bhanwarlal and Ors. v. State of Raj. and Ors. (6), decided on 29th October, 1985 wherein the Division Bench while dealing with the matter of the contract under the Rajasthan Excise Act, 1950 itself held that "The petitioners have given tenders subject to conditions mentioned therein and, therefore, they are bound by them."

12. So far as contention of the petitioners in most of the writ petitions that the prescribed performa which has been published by the respondents under the Rules contains no clause of charging interest on late deposit of security amount and bank guarantee is concerned, appears to be factually wrong. The respondents are right in submitting that the tender document is a complete set of document and part of it has been placed on record by the petitioners themselves. The Ex.2 specifically in its para No. 1 itself made known to the petitioners that for these contracts detail instructions and conditions have been issued and those instructions and conditions shall be inseparable part and parcel of the contract. The petitioners put their signatures on this document Ex.2 and admitted that he read over all the terms and conditions issued for this tender. The petitioners did not disclose that the detail instructions and conditions of the tender itself contained condition No. 17.5 which specifically provides that the security amount along with bank Guarantee if will be submitted after delay, for

the delayed period, the licensee will have to pay interest at the rate of 2% per month. Therefore, contention of the petitioner that there is no condition of charging interest on security amount or due to late furnishing of the bank guarantee is available in the tender document is liable to be rejected. At the cost of repetition it will be relevant to mention here that the petitioner in rejoinder again admitted that no one can travel beyond the terms and conditions of agreement and this contract is statutory contract.

13. So far as the contention of the learned counsel for the petitioners that the interest can be charged only u/s 30-A of the Act of 1950 is concerned, it is clear that this provision is of general applications. It is not the case of the petitioners that the respondents had no lawful authority to prescribe the conditions for entering into the contract of giving exclusive license for sale of liquor. It is also not the case of the petitioners that the respondents have put the conditions of charging of interest without any authority of law. Just contrary, the contract in question is admittedly a statutory and binding contract is admitted stand of the petitioners and the petitioners have rightly admitted it so. Therefore, if by lawful agreement, the petitioners bound themselves to the terms and conditions, of the contract, neither they can disown the part or any condition of the contract nor they can rely upon the general provisions of charging interest in the cases of dues which is provided in Section 30-A of the Act of 1950.

14. In addition to above, the Section 30-A do not prohibit against entering into contract for the purpose of levy of interest and rate of interest. The language of Section 30-A also do not contain any nonobstante clause like "notwithstanding any contract contrary" to make Section 30-A applicable over even statutory contract executed under this very Act of 1950 itself. Therefore, the entire basis of the petitioners that respondents cannot charge or levy interest otherwise than under the provisions of Section 30-A is devoid of any force. Section 30-A of the act of 1950 is a provision enabling the State to charge the interest when any fee, duty or any amount due has not been paid by the any person and there is no other provision in the act or the rules or in contract for charging interest then in those matters also by virtue of Section 30-A the state can charge the interest from the defaulting person. By no stretch of imagination it can be construed that the state or the authorities acting under this act of 1950 and the rules of 1956 and have the power of prescribing conditions for grant of license and have lawful authority to enter into contract cannot put a condition of levy of interest by making provision in the contract itself. In view of the above discussion as per the term of the contract, the amount becomes due as per the condition of the contract and is "due" but with liability of interest also as per the term of the contract and not as per the Section 30-A of the Act of 1950.

15. The judgments relied upon by the learned counsel for the petitioners in support of the plea that condition of charging interest, as demanded by the respondents, on the basis of the conditions contained in the tendered documents, if will be given effect to then it will amount to rewriting of statutory

provision by instructions, have no application to the facts of these cases in view of the reasons mentioned above. Rather if the contention of the petitioners is accepted then it will amount to putting something in Section 30-A to restrict respondents from entering into any contract containing the liability of payment of interest and the rate of interest on default in doing something despite the fact that law permits respondents to determine and lay down the conditions for grant of exclusive license for sale of liquor.

16. It is also submitted that by not giving bank guarantee within stipulated period, neither the petitioners have deprived the respondents from any money nor the respondents could have utilised any amount of money out from the security amount of the bank guarantee, therefore, there is no reason for demanding interest only on the ground that petitioners failed to submit the bank guarantee within period despite the fact that the petitioners have submitted the bank guarantee for the entire period. The argument apparently is attractive but in fact it is otherwise. Once petitioners agreed to give cash security and they opted for alternate of furnishing cash security took benefit of not making payment of 7% cash amount, they have no right to question whether this amount can be utilised by the respondents or not. If this contention is accepted then anyone after accepting the terms and conditions of submitting security and after entering into lawful contract can question, since the security amount cannot be utilised by the other party, therefore, what for there can be a condition of cash security if the risk is for which security is demanded can be adequately secured by other modes as questioned by the petitioners by saying that it is a "Amanat"? Suffice it to say that it is the prerogative of the person who, is to award contract to decide how he can secured due performance of the contract. The security can be decided looking to the nature of the contract, and the risk involved, the period involved. It also depends upon the competition between the parties who want to get the contract because of the reason that by awarding contract in favour of one person or party and upon failure of successful party in performing the contract, not only process of re-inviting tenders will have to be followed but in some cases like present the time which is lost that can't be adequately compensated and will result into causing huge loss to the state exchequer. Therefore, greater the risk factors strong securities are required to secure due performance of the contracts by putting conditions of furnishing of the cash security and even if the security amount cannot be utilised forthwith still it is a reasonable condition of the contract and it prohibits the successful bidder from flouting the terms of the contract and avoids him from frustrating the contract. If the petitioners had any objection about incorporating the condition of demand of security cash or in the form of bank guarantee or against the fixing of the time limit then they had choice not to compete for the license and it is not the case of the petitioners that by putting the condition numbers 17.5 in the instructions the petitioners have been discriminated or the condition had been put to exclude certain persons or to give benefit to certain persons. Otherwise also if the petitioners had any objection then such objection could have been

raised by the petitioners only before submitting their offer in response to the notice inviting tender. The petitioners consciously and knowingly in response to the NIT, after accepting all the conditions of not only the Annex. 2 but also instructions issued for the contract, voluntarily applied and by competition and by excluding other to the contract and earned the profit by commercial activity have no right to challenge the reason behind putting the condition of security as it is conditions of levy of interest. It will be relevant to recapitulate the fact that the total period of exclusive license in question is only one year. Stakes involved are very high. No longer period is given to the successful bidders to complete the formalities of giving security amount and bank guarantee. By opting for giving bank guarantee, the petitioners deprived the respondents from 7% of the cash amount which they would have paid to the respondents before start of their business which by opting for bank guarantee the petitioners had not paid to the respondents and thereby, the petitioners deprived the respondents from this amount and enjoyed the benefit of this 7% amount. Therefore, the petitioners are not right in saying that the respondents have not been deprived of any amount. The petitioners derived benefit of retaining of the license amount and for this, if it was agreed by the petitioners and the respondents that in case of late furnishing the bank guarantee by the petitioners, they will have to pay an amount which was quantified by petitioners and the respondents to be equal to the 2% per month for the default period, the petitioners after availing benefit, cannot assail this condition of interest.

17. After all these legal issues, the question survives is whether the demand notices issued by the respondents demanding payment of interest from the petitioners are issues in violation to the principles of natural justice and therefore, liable to be set aside? Undisputedly, straightway without giving any notice to the petitioners and without giving opportunity of hearing, the demand notices were issued by the respondents. The condition No. 17.5 of the tendered document provides levy of interest at the rate of 2% for the default period/delayed period. Condition No. 17.1 provides that the security is required to be deposited within a period of 10 days from the day of publication of the information of acceptance of the bid or before start of the shop (business) whichever is earlier. Here in some of the cases, it is alleged that temporary sanctions were given on 28th and 29th March, 2002. The commencement period of exclusive licence is from 1st April, 2002 and is to end on 31st March, 2003. The term of license is bound to be expired on 31st March, 2003. Therefore, if bid acceptance information is not affixed on notice board before "ten days from the 1st April, 2002 then the successful bidder will not get the full ten days time for furnishing the security because of act of the respondents. If the successful bidder does not start business from 1st April, 2002 to avail the benefit of ten days for giving the security as per condition No. 17.1, he will have to lose business out of the period available under the license without his fault. Therefore, question arises regarding interpretation of the "delayed period" given in condition No. 17.5 of the tendered document. This period could have been determined only after

giving opportunity of hearing to the petitioners by the competent authority. The amount over which the interest could have been charged, could have been determined only after giving opportunity of hearing to the petitioners. In addition to above, any defence against the liability of the petitioners should have been examined before raising the demand against the petitioners by the respondents because of the reason that levy of interest in the facts of these cases depends upon various factual aspects and unless and until those facts are decided, the respondents could not have raised the demand and the quantification of the interest is not automatic as it is dependent upon the various factors, some of which are mentioned above. Therefore, in the facts of these cases, the issuance of the demand of interest against the petitioners without giving opportunity of hearing to the petitioners certainly violates the principles of natural justice, hence the demand notices as issued cannot be allowed to stand on this ground alone. Even in the cases where more than ten days' time was available to the petitioners for submitting bank guarantees and they failed to submit the bank guarantees within a period of ten days, still on what amount and what period, the interest can be charged, should have been determined after given opportunity of hearing to the petitioners which has not been done in these cases. Therefore, the demand notices issued against these petitioners, how had adequate time to submit the bank guarantee, also deserve to be quashed and set aside.

18. In the Hanuman Singh v. State of Rajasthan (7), the additional point raised is that the respondents have themselves delayed adjustment of the security amount lying with them, therefore, the respondents are not entitled to claim any interest on the ground of delayed adjustment of security amount by themselves. There is force in the submission. The respondents cannot punish the petitioners on the basis of default committed by the respondents themselves by not making adjustments as and when it could have been and it should have been adjusted. But since the demand raised against the petitioner in this case also contains amount of interest on the ground of late submitting the bank guarantees by the petitioners and the demand notice itself has been issued without determination of the liability of the petitioner and without giving opportunity of hearing to the petitioner, therefore, the demand notice issued in this matter also deserves to be set aside.

19. Therefore, the writ petitions of the petitioners are partly allowed. It is held that the respondents are entitled to charge the interest @ of 2% per month as per condition No. 17.5 of the tender document from the defaulting petitioners on the ground of late submitting security and late furnishing of the bank guarantees. Since the demand notices have been issued in violation to the principles of natural justice and without affording opportunity of hearing to the petitioners, therefore, the impugned demand notices are quashed. However, the respondents will be free to pass appropriate order after giving opportunities of hearing to the petitioners regarding their liability of the amount as per condition No. 17.5 contained in Tender Document and shall be entitled to recover the

determined amount from the petitioners. Since the bank guarantees furnished by the petitioners are valid up to the 30th June, 2003 only, therefore, the respondents are directed to renew the bank guarantees on or before 25th June, 2003 for further period of six months within which the respondents may pass appropriate order after giving opportunities of hearing to the petitioners regarding claimed demand of the respondents. In case of non-renewal of the bank guarantees by the petitioners in time given above, the respondents shall be free to encash the bank guarantees after 25th June 2003 and refund entire or that part of the amount which is found in excess to the determined liabilities of the petitioners. No order as to cost.