

(2018) 11 UK CK 0263
In the Uttarakhand High Court
Case No : Special Appeal No. 968 Of 2018

Chandan Singh Bisht

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:

Citation : (2018) 11 UK CK 0263

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Singh, J

Bench : Division Bench

Advocate : Anil Kumar Joshi, Prabha Naithani

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, C.J.

1. This Appeal is preferred against the order passed by the learned Single Judge in Writ Petition (MS) No. 3308 of 2018 dated 31.10.2018.
2. The appellant herein filed the writ petition seeking a mandamus to quash the impugned order dated 13.08.2018 passed by the District Excise Officer, Udham Singh Nagar as it related to forfeiture of security money, and also a mandamus commanding the respondents to return the security money deposited by the petitioner in terms of the allotment order.
3. The order, impugned in the writ petition, dated 13.08.2018 records that the petitioner had not only failed to carry on business, but had also failed to pay the minimum monthly guarantee; he had intimated the authorities, by his letter dated 1st August, 2018, that he had closed the shop from 30.07.2018; he was called upon to pay the minimum monthly guarantee to the Government; as he failed to do so, his licence was being cancelled, and the amount deposited by him was being forfeited; and action would be taken against him for recovery of the amounts due from him in accordance with law. It is this order which is under challenge in the writ petition. The appellant-writ petitioner's grievance, as is

evident from Paragraph 9 of the writ petition, is that the shop, which was allotted to the appellant-writ petitioner, was on Aliganj Road, Kashipur, and the same was shifted by the Excise Department to Fal Mandi, where already another shop existed; and, since the shop of the appellant-writ petitioner was shifted unilaterally from his original place, he had submitted his unwillingness to run the shop at the new place on 28.07.2018. The appellant-writ petitioner has not questioned the action of the respondents in shifting his shop from Aliganj Road, Kashipur to Fal Mandi. His inability to operate the shop is for no fault of the Department and since he had, on his own accord, expressed his unwillingness to run the shop at the new place, the respondents were justified in passing the order impugned in the writ petition dated 13.08.2018.

4. The learned Single Judge has, in our view rightly, held that the petitioner's inability to run the liquor shop was not on account of any action on the part of the State, but for other reasons for which the State could not be blamed. We see no reason, therefore, to interfere with the order under appeal.

5. Sri Anil Kumar Joshi, learned counsel for the appellant-writ petitioner, would however contend that it is because of the unilateral act of the respondent officials in shifting the liquor shop, allotted to the petitioner, from Aliganj Road, Kashipur to Fal Mandi, where there already existed another shop, was the petitioner unable to carry on business at the new premises; and the action of the respondents, in unilaterally transferring the shop from one place to another without the appellant-writ petitioner's consent, is illegal.

6. The action of the respondents in shifting the shop of the appellant-writ petitioner from Aliganj Road, Kashipur to Fal Mandi is not under challenge in the writ petition, nor is any copy of the proceedings, whereby the shop of the appellant-writ petitioner was shifted, placed on record.

7. We see no reason, therefore, to examine these contentions in an appeal preferred against the order passed by the learned Single Judge in a writ petition where the order impugned related to forfeiture of the monthly minimum guarantee, and intimating the appellant-writ petitioner that action would be taken against him for recovery of dues in accordance with law.

8. Leaving it open to the appellant-writ petitioner, if he so chooses, to question the action of the respondents, allegedly in shifting his shop from Aliganj Road, Kashipur to Fal Mandi unilaterally, the appeal fails and is, accordingly, dismissed.