(2001) 03 AP CK 0067

In the Andhra Pradesh High Court

Case No : WA No. 282 of 2001

Government of A.P. and others — APPELLANT

Vs

A. Sudhakar — RESPONDENT

Date of Decision : 07-03-2001

Acts Referred:
Andhra Pradesh Excise Act, 1968 — Section 28, 29

Citation : (2001) 2 ALD 617 : (2001) 2 ALD 614 : (2001) 3 ALT 602

Hon'ble Judges : S.B. Sinha, C.J;S.R. Nayak, J

Bench : Division Bench

Advocate : Government Pleader for Proh. and Excise, for the Appellant; Mr. A. Ravinder, for the Respondent

Judgement

Satyabarata Sinha CJ

1. This writ appeal is directed against a judgment dated 5th February, 2001 passed by a learned single Judge of this Court whereby and whereunder the writ petition filed by the respondent herein was allowed.

2. The writ petitioner-respondent in his writ application prayed for a writ in the nature of mandamus to declare the action of the respondents-appellants in not granting proportionate remission of licence fee for the writ petition from 18-4-1997 to 17-6-1997 pertaining to IL and FL shop situated at Bheemaram village of Hanamkonda Mandal Warangal District as illegal and to direct the respondent No.3 to levy licence fee from 18-6-1997 to 31-3-1998 and to grant remission of proportionate licence fee for the period 18-4-1997 to 17-6-1997.

3. Admittedly, an auction was held on 17-6-1997 and the licence was granted in favour of the writ petitioner on 18-6-1997. The licence, fee, however, was demanded from 18-4-1997.

4. It is not in dispute that a Division Bench of this Court in WP No.5539 of 1998, wherein the petitioner was granted licence on 3-6-1997 but was demanded to pay licence fee from 18-4-1997 has held:

"There is no averment that the petitioner was in any way responsible for the non-grant of licence for the period anterior to 3-6-1997. As such, it will be very reasonable to levy the licence fee on the petitioner only from 3-6-1997 and proportionate licence fee for the period from proportionate licence fee for the period from 18-4-1997 to 2-6-1997 has got to be computed and be deducted from the rents payable by the petitioner. The writ petition is allowed to the extent indicated above."

5. Learned Counsel appearing on behalf of the appellants, however, has drawn our attention to another judgment of a Division Bench in WP No. 19647 of 1997, of which one of the learned judges who presided over the Division Bench in WP No.5539 of 1998 was a Member, wherein it is held:

"2. 18-4-1997 is the date on which the auction was to be held, but it was postponed and was held in the month of May, 1997. The Excise year commences from 1st of April and expires on 31st March of succeeding year. The rentals in this case have not been fixed on the basis of number of days on which the business is permitted to be done, but it is on the basis of the fixation of upset price. For the shops in question, upset price was fixed at Rs. 12,00,000/-. The petitioners had knowingly participated in the auction and both the petitioners and the Government were under impression that the upset price was the minimum. In the instant case, the amount is not above the upset price, but the learned Counsel for the petitioners points out that discrimination has been done, as, in other similarly situated cases, remission has been granted. But, no such instance has been brought to our notice. On the other hand, the instance, which has been brought to the notice of this Court by the learned Government pleader, is where the upset price itself was reduced in view of the circumstances in that case.

Learned Counsel for the petitioners further submits that in view of the judgment dated 12-12-1991 rendered by a Division Bench of this Court in WA No.341 of 1991, the remission has to be granted to the petitioners. But, the facts in the said case have got no bearing in this case, as, in that case, after grant of rights to vend the liquor, there was a delay of 29 days in issuing the licences and as such the remission was directed to be granted for the said period of 29 days. In the circumstances, we do not find any substance in this case."

6. The question, that arises for consideration in this appeal, is as to whether licence fee can be demanded from a date anterior to the date of grant of licence.

7. As noticed hereinbefore, in WP No.5539 of 1998, the Division Bench has held that as the petitioner was not in any way responsible for non-grant of licence for the period anterior to 3-6-1997, the proportionate licence fee for the period from 18-4-1997 to the date of holding of the auction should be dedicated from the rents payable by the licensee. Fairness and reasonableness demand that such a course of action could have been taken in WP No.19647 of 1997. However, the learned Bench had proceeded on the basis that despite the stipulation made in the notice inviting tender, the petitioners had knowingly participated in the

auction. That may be so. But having regard to the fact that the petitioner herein, during the aforementioned period, did not derive any advantage of being a successful bidder in the auction, in our opinion, it would be wholly unjust if he is saddled with licence fee for that period. Further, the bid amount in this case was above the upset price. The decision of the Division Bench in WP No.19647 of 1997 has no application to the facts on hand for two reasons viz., (1) in that case, the amount was not above the upset price and (2) that in that case no instance has been brought to the notice of the Court that proportionate dedication has been granted in other cases. As indicated hereinbefore, even in WP No.5539 of 1998, similar relief has been granted.

8. For the reasons aforementioned, we do not find any reasons to differ from the opinion of the learned single Judge. The writ appeal is dismissed. No costs.