
(2011) 09 CHH CK 0064
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1599 of 2011

Jitendra Kumar Lal

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Chhattisgarh Excise Act, 1915 — Section 62(2), 62(3)
Chhattisgarh Excise Settlement of Licences for Retail Sale of Country/Foreign Liquor
Rules, 2002 — Rule 6, 8

Citation : (2011) 2 CGBCLJ 121 : (2012) 1 CGLJ 283

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Advocate : R.K. Gupta, for the Appellant; A.S. Kachhawaha, Dy. Advocate General, for the State and Other authorities of the State. Mr. Abhishek Sinha, Advocate, for the intervener/respondent No. 8 in W.P. (C) No. 1599/2011, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Shri Sunil Kumar Sinha, J.—Since common questions of facts and law are raised in these writ petitions, they are being disposed of by this common order. Collector (Excise) District Koriya, Chhattisgarh issued an advertisement dated 15.2.2011 calling applications for grant of license for 33 liquor shops in 19 groups in District Koriya for the year 2011-2012. The petitioners being desirous to obtain license for running liquor shops, submitted their applications for different groups in prescribed forms as per advertisement dated 15.2.2011. The petitioner in W.P. (C) No. 1599/2011 submitted applications for liquor shop of group No. 5 - Manendragarh, group No. 6 - Jhagrakhaand & group No. 10 - Nagpur; petitioner in W.P. (C) No. 1790/2011 submitted application for group No. 9 - Janakpur; petitioner in W.P. (C) No. 1791/2011 submitted applications for group No. 5 - Manendragarh & group No. 18 - Bartunga; petitioner in W.P. (C) No. 1792/2011 submitted applications for group No. 5 - Manendragarh, group No. 6 - Jhagrakhaand, group No. 7 - Khongapani & group No. 10 - Nagpur; like

wise petitioner in W.P. (C) No. 1793/2011 submitted applications for group No. 5 - Manendragarh, group No. 6 - Jhagrakhaand, & group No. 16 -Koriya Block. The applications were received till 5.30 p.m. of 28.2.2011. All the petitioners submitted their applications for respective groups which is not in dispute. A comparative chart of the applications received against different groups was prepared on 28.2.2011. According to the respondents, in all 5441 applications were received for allotment of liquor shops of different groups. The chart prepared on 28.2.2011 shows the number of application forms received for each group. After the scrutiny another omparative chart dated 3.3.2011 was prepared. In the said chart the number of applications received against group No. 4 - Pandopara, group No. 5 - Manendragarh, group No. 6 -Jhagrakhaand, group No. 10 - Nagpur, group No. 12 -Mohancolony, group No. 16 - Koriya Block & group No. 18 -Bartunga were different. The case of the petitioners is that the difference in total number of application forms against different group numbers is an outcome of manipulation of the authorities of the Excise Department who joined hands with the selected liquor contractors, in whose favour the shops of different groups were later on allotted. It is on these grounds and also on the grounds of alleged arbitrariness and malafides, the petitioners have prayed for quashing the results of lottery draw conducted on 15.3.2011 and to quash the entire selection relating to the ten groups in which difference in numbers of forms received has been determined on perusal of the 2 comparative charts.

2. The State and its authorities have contended that different counters were opened for receiving applications of different groups. In all 5441 applications were received on different counters. The chart prepared on 28.2.2011 was on the basis of number of applications received on different counters of different groups. However when the applications received on different counters were scrutinized on 1.3.2011, it was found that many applicants have submitted their applications on those counters which were meant for other groups. The total number of application forms i.e. 5441 were then scrutinized group-wise and a final chart dated 3.3.2011 was prepared showing the total number of applications received for each group. It is on this account, the variation in number of applications received for each group appears in 2 charts prepared on 28.2.2011 and 3.3.2011. However, the total number of application forms in both the charts are same. Therefore, the allegations relating to manipulation, arbitrariness and illegality are false and baseless.

3. It was further contended that when the complaint in this regard was received through one of the petitioners i.e. Jitendra Kumar Lal, the Collector (Excise) Koriya, Baikunthpur called the petitioner, made an inquiry in presence of the petitioner/complaint and District Excise Officer who brought all the records, and recorded finding that the difference in endorsement of number of applications against different groups in 2 chart was on account of submission of applications in wrong counter. It was found that when the applications were scrutinized on the basis of number and name of group mentioned in the application, the mistake was corrected and correct scrutiny chart dated 3.3.2011 was prepared and sent

to the concerned authorities. The Collector recorded the finding after inquiry that no illegality was committed in scrutiny and processing the forms. The copy of the order-sheets of the inquiry proceedings have been filed as Annexure-R/4.

4. Mr. R.K. Gupta, learned counsel appearing on behalf of the petitioners, raised similar grounds during the course of arguments. He took us to the 2 charts, one prepared on 28.2.2011 and the other prepared on 3.3.2011. He argued that the difference in number of applications received against different groups is on account of manipulation, therefore, the entire allotment by lottery system should be quashed.

5. Mr. A.S. Kachhawaha, learned Dy. Advocate General appearing on behalf of the State, argued that there was no manipulation; the allegations made by written complaint were inquired into by the District Collector who did not find the allegations to be proved; there is no change in the total number of forms received; the applications are submitted in the statutory format which contains the group number and name of the group. All the forms are still available with the respondents. They can be inquired into. The final scrutiny was made on the basis of group number and the name of the group which were filled in by the applicants; There are no allegation of manipulation in the contents of the application forms, therefore, the petitions deserve to be dismissed.

6. Mr. Abhishek Sinha, learned counsel appearing on behalf of one of the respondent in W.P. (C.) No. 1599/2011 supported the arguments advanced by learned counsel for the State.

7. We have heard learned counsel for the parties at length and have also perused the records of the writ petitions.

8. No presumption can be drawn regarding manipulation. The alleged manipulation has to be proved by concrete evidence. If the difference in 2 charts in total number of application forms received against each group is explained, the allegations relating to manipulation would not survive.

9. The State respondents have contended that in all 5441 forms were received on the counters separately made for each group. In the early hour of the day, numbers of applications submitted on the counters were low and in the last hour huge number of forms were submitted on the counters receiving them. Since a comparative group-wise chart was to be released immediately, without scrutiny, on the basis of number of forms received on each counter the chart dated 28.2.2011 was prepared. Thereafter scrutiny was done on 1.3.2011 and after the scrutiny, on the basis of the contents of each application form, the application forms were group-wise classified and a correct chart dated 3.3.2011 was published in which there was difference in number of application forms received against each group. We gather from the records that when a complaint was made by one of the petitioners, the Collector, on 5.3.2011 took cognizance of the complaint and issued notices to the District Excise Officer and petitioner/complainant- Jitendra Kumar Lal calling them to appear on 7.3.2011 to put up

their respective claims. The petitioner/complainant appeared before the Collector on 7.3.2011. The District Excise Officer also appeared before the Collector along with the entire records. The Collector examined the records and recorded the finding that the first chart dated 28.2.2011 was wrongly prepared and the second chart dated 3.3.2011 was correct. He did not find any substance in the complaint made by petitioner- Jitendra Kumar Lal and thus, the complaint was disposed of.

10. The system for allotment of the shops is that after receiving application forms for each group, all the forms are mixed and thereafter the licensees are selected on the basis of random lottery draw. If the forms submitted by the petitioners were included in the forms on which the lottery draw was conducted, the petitioners should have no legitimate grievances. There is no proof on record that the application forms submitted by the petitioners were not included in the lottery draws. If the application forms of the petitioners were included in respective lottery draws, only mistake in giving correct number in chart dated 28.2.2011 would not make any difference to the petitioners as in such a case the difference on account of mistake committed in classification would never be prejudicial to the rights of the petitioners.

11. This is not a case in which the petitioners are making allegations that manipulations in the contents of their forms were done and in that manner the processing vitiated or they were affected. We note that the application forms are to be submitted in the statutory format meant for that. In the statutory format, there are different columns and there is a particular column for mentioning the name of District and the group number. For the ready reference relevant portion of the statutory application form (also printed in the advertisement) is shown herein under:-

(Only relevant portion quoted)

12. If there is no manipulation in the District or group number of the application forms and they were properly scrutinized on the basis of entries made therein by the respective candidates including the petitioners and were mixed with the forms of the particular group on the basis of endorsement of the group number, no illegality would be said to have been committed because ultimately the forms were to be classified on the basis of their contents and not on the basis of submitting them on a counter which was not meant for the group for which the application form was submitted. On due consideration of the entire facts and circumstances of the case, we are of the view that the mistake committed in preparation of the first chart dated 28.2.2011 has been duly explained and only on account of such mistake the entire process of selection, in absence of proof of other allegations, cannot be held to be vitiated.

13. Petitioners in W.P. (C) Nos. 1790; 1791; 1792 & 1793 of 2011 have also prayed for quashing the lottery draw system for selection of the licensees. The lottery draw system is not a self invented system of the licensing authority. The

above system is statutory as per the provisions of Chhattisgarh Excise Settlement of Licenses for retail sale of Country/Foreign Liquor Rules, 2002 which has been framed in exercise of the powers conferred under clause (d), (e), (f), (g) and (h) of sub-section (2) and sub-section (3) of Section 62 of Chhattisgarh Excise Act, 1915 (No. II of 1915). The Rules are framed by State Government. Rule 8 (c) & (c-1) of the Rules reads as under:-

(c) The application form under rule 6 along with prescribed application fees shall be submitted to the Licensing Authority of the concerned district within prescribed date & time for grant of license for retail shop/group of country/foreign liquor in the proforma prescribed by the Excise Commission.

(c-1) The first, second & third applicant selected for retail shop/group of country/foreign liquor by the selection committee after lottery by computer must submit affidavit verified by the Notary in the prescribed proforma the next day during office hours.

14. According to these Rules, the selection of the licensee is made by lottery system. Unless the validity/virus of these Rules are challenged and the Rules are declared bad-in-law, the relief relating to quashing of lottery system in a casual manner as claimed in these petitions without challenging the virus of the Rules, cannot be granted.

15. In *Meerut Development Authority Vs. Association of Management Studies and Another*, the Supreme Court held that in disposal of public property by the State/Government grants and largesse, the bidders participating in the tender process have no other right except the right to equality and fair treatment.

16. In *Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others*, the Supreme Court held that "Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favouritism and nepotism. Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society. The decision should be made by the application of known principles and rules and in general such decision should be predictable and the citizen should know where he is, but if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis to the decision taken in accordance with the rule of law."

17. We have considered all the aspects in light of above decisions and the Rules, and we do not find present to be the cases in which interference is required on the grounds taken by the writ petitioners. The petitioners have utterly failed to make out any case of arbitrariness, illegality or discrimination.

18. For the foregoing reasons, we do not find any substance in the writ petitions. The writ petitions are liable to be dismissed and are hereby dismissed. No order as to cost(s).