(1991) 06 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17825 of 1990

M. Raj Kumar, contractor, Arrack Unit — APPELLANT

Vs

The Excise Superintendent and Another — RESPONDENT

Date of Decision : 21-06-1991

Acts Referred:

Andhra Pradesh Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969 — Rule 22
Andhra Pradesh Excise Act, 1968 — Section 17(1)
Constitution of India, 1950 — Article 226

Citation : (1991) 2 ALT 611

Hon'ble Judges : Syed Shah Mohammed Quadri, J

Bench : Single Bench

Advocate : R.S. Raju, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Syed Shah Mohammed Quadri, J.

1 . The petitioner was the highest bidder in the auction held on 15-9-90 for the arrack unit twin cities group of 128 arrack shops for the excise year 1990-91. The auction was knocked down in his favour. The petitioner complied with all the formalities for issuing of the licence. However the licence for Osmanshahi arrack shop was not issued to the petitioner. Challenging the action of the 1st respondent in not issuing the licence, he filed W.P. No. 13977/90 on 24-9-90. On 5-10-90 this court disposed of the writ petition with a direction to the 1st respondent to issue licence for the shop at Osmanshahi in the existing premises. The respondents curried the matter in appeal, W.A. No. 1223/90. On 29-10-90 a Division Bench of this court dismissed the writ appeal. The petitioner says that he could not transact any business on account of not issuing of the licence and that he sustained heavy loss. He was thus constrained to issue notice to the respondents proposing to initiate proceeding under the Contempt of Courts Act. It was then licence No. 19 in respect of the said Osmanshahi Shop was issued on 17-11-90. The petitioner says that in spite of the direction of this court the

respondents have not issued the licence till 17-11-1990 and that till that date he had not transacted any business or located the shop in respect of Osmanshahi arrack shop.. He further says that u/s 15 of the Andhra Pradesh Excise Act the 1st respondent is the competent authority to issue licence and until a licence is issued the lease will not take effect having regard to the Explanation to Sub-section (1) of Section 17 of the A.P. Excise Act (for short "the Act") and Rule 22 of the A.P. Excise (Lease of Right to sell Liquor in retail) Rules (for short "the rules"). On these facts the petitioner claims remission of rentals for the period from 1-10-90 to 17-11-90 praying a writ of Mandamus directing the respondents to grant remission of rentals and all other obligations for the said period in respect of Osmanshahi arrack shop for the Exise Year 1990-91.

2. Notice before admission was ordered on the writ petition on 13-12-1990.

3. The respondents filed a counter-affidavit stating, inter alia, that the petitioner and 8 others were the highest bidders-the auction purchasers in respect of arrack unit Twin cities, Hyderabad, consisting of 128 arrack shops for the lease period from 1-10-90 to 30-9-1991. In view of the objection taken by the Municipal Corporation of Hyderabad, the licence in respect of Osmanshahi arrack shop was not issued to the petitioner. It is stated that though technically the licence was not issued to the petitioner, he has drawn the entire M.G.Q. of the group, i.e. the quota fixed for Osmanshahi for October and November, 1990 and carried on the business at the said premises without any hindrance. The excise officials made surprise checks on different dates and found that the petitioner was carrying on the business in the said shop. Having regard to the conduct of the petitioner in carrying on the business at Osmanshahi shop though no licence was issued to him, and as the licensees have also lifted the entire quota of arrack fixed for the shop, the allegation of the petitioner that he had not conducted any business in respect of Osmanshahi arrack shop from 1 -10-90 to 17-11-90 is a blatant lie. It is further stated that though there had been delay in granting licence by the 1st respondent under special circumstances, the petitioner transacted the business and also paid the entire demand of monthly rentals of Rs. 1,25,00,007/- for the months of October and November, 1990 voluntarily without any protest. The petitioner is also bound to pay rentals, and he is not entitled to claim proportionate remission of the rentals in respect of Osmanshahi arrack shop. In the circumstances, it is prayed that the claim of the petitioner being without any justification be rejected and the writ petition be dismissed.

4. The Petitioner filed a reply affidavit denying the allegations in the counter affidavit and reiterating the facts stated in the affidavit filed along with the writ petition. It is denied that the petitioner lifted the total M.G.Q. for the months of October and November,1990 in those months. It is added that as on 31-12-1990 there was a short drawal of 1,80, 406 bulk litres. It is further stated that as and when the petitioner draws M.G.Q. the authorities are accounting it for the months of October, November and December. It is also denied that the petitioner had drawn M.G,Q. and conducted business. In the circumstances, it is prayed

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that the writ petition may be allowed.

5. Sri R.S. Raju, the learned counsel for the petitioner, submits that the point raised in the writ petition is covered by the judgment rendered by me in W.P.No. 15546 of 1990, dated 11-2-91. The learned counsel further submits that u/s 17 read with Rule 22 the petitioner becomes entitled to carry on business only when the licence is issued; admittedly the licence was issued to the petitioner on 17-11-90 and petitioner commenced his business from 18-11-90, therefore, the petitioner is entitled to remission of the rentals.

6. The learned Government pleader, on the other hand, contends that the petitioner paid the issue-price for the entire M.G.Q. for the months of October and November; he had drawn M.G.Q. for all the shops of the group including the shop in question and when surprise checks were made it was found that the business was being conducted at the shop at Osmanshahi; so on these facts the petitioner is not entitled to remission of rentals and for these reasons, the judgment in the earlier case has no application to the facts of this case.

7. On the contentions raised by the learned counsel for the parties, the question that arises for consideration is whether the petitioner is entitled to remission of rentals for the period 1-10-1990 to 17-11-1990.

8. It has been noticed above, the petitioner along with others was the highest bidder and auction purchaser for a group of 128 arrack shops including the shop at Osmanshahi. The licence for Osmanshahi shop was not issued to the petitioner though the auction was confirmed in his favour on 15-9-90. On 24-9-90 the petitioner was put to the necessity of filing a writ petition (W.P.No. 13977 of 1990) for issuing licence, which was allowed on 5-10-1990. The respondents carried the matter in appeal (W.A.No. 1223/90) against the judgment in the said writ petition, which was dismissed on 29-10-90. But the licence was issued about 20 days thereafter. No doubt these facts, without anything more, having regard to explanation to Sub-section (1) of Section 17 and rule 22, would have entitled the petitioner for remission of the rentals for the period 1-10-90 to 17-11.90 and that is what is laid down in the judgment dt. 11-2-91 in WP. No. 15546/90 relied on by the learned counsel for the petitioner.

9. It is not disputed that u/s 15 of the Act the 1st respondent is the competent authority to issue licence. Explanation to Sub-section (1) of Section 17 of which reliance is placed by the learned counsel for the petitioner is in the following terms:

"17. (1) xxx xxx xxx xxx xxxx Explanation- - A lease shall not take effect until the Collector or any other competent officer has issued a licence under this Act."

It may also be apt to refer to Rule 22 of the Rules here which reads as follows :

"22. The lease for the sale of liquor granted to the auction-purchaser shall not take effect until he obtains a licence from the licensing authority. It shall be the responsibility of the auction purchaser to execute the counter-part agreement

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rendered in Rule 21, complete other formalities within the time specified in Rules 18 and 19 and obtain in respect thereof. If the auction purchaser fails, to do so, the said lease be liable to be reauctioned."

10. A combined rending of the Explanation referred to above and Rule 22 makes it clear that the lease for the sale of liquor granted to the auction purchaser does not take effect until he obtains a licence from the licensing authority (in this case the 1st respondent). The auction purchaser (biader) is under an obligation to execute the counterpart agreement and complete other formalities specified in Rules 18 and 19 and obtain the licence. It he fails to do so, the authorities arc entitled to reduction the shop.

11. In the instant case, the petitioner paid the issue price for the entire M.G.Q. including the M.G.Q. of Osmanshahi shop. (He has also withdrawn the minimum guarantee quantity for the months of October and November including the M.G.Q. of Osmanshahi shop. As the learned counsel for the petitioner disputed drawal of M.G.Q. with reference to Osmanshahi shop I directed (he learned Government Pleader to produce the records. From a perusal of the records it is clear that on 2-11-90 the petitioner applied for special permission to draw short drawn M.G.Q. for the months of October. In the said application he did not exclude the M.G.Q. referable to Osmanshahi shop. Thus it is clear that the petitioner paid the issue price of M.G.Q. for the whole group of shops including Osmanshahi shop and has drawn M G.Q. for the entire group of shops including the Osmanshahi shop. Further, in the counter-affidavit filed by the respondents the following instances of the business being carried on in Osmanshahi shop have been noted: --

S.No. Date of Detection Crime No. &date Name of the accused 1. 16-10-90 1/90-91, 16-10-90 Sri P. Prakash Goud 2. 19-10-90 3/90-91, 19-10-90 S/o. P. Pandurangam 3. 20-10-90 4/90-91, 20-10-90 engaged by the peti- 4. 22-10-90 5/90-91, 22-10-90 petitioner, as reported 5. 23-10-90 6/90-91, 23-10-90 by the Local Excise 6. 24-10-90 7-90-91, 24-10-90 officer. 7. 25-10-90 9/90-91, 25-10-90 8. 27-10-90 12/90-91, 27-10-90 9. 29-10-90 13/90-91, 29-10-90 10. 8-11-90 15/90-91, 5-11-90 11. 9-11-90 12/90-91, 9-11-90 12. 10-11-90 17/90-91, 10-11-90 13. 11-11-90 14/90-91, 11-11-90 14. 12-11-90 19/90-91, 12-11-90 15. 13-11-90 16/90-91, 13-11-90 16. 14-11-90 21/90-91, 14-11-90 17. 15-11-90 18/90-91, 15-11-90 18. 16-11-90 23/90-91, 16-11-90

12. From the above it is clear that the petitioners, though was not authorised in law to carry on business, deposited the issue price, withdrew M.G.Q and earned on the business. The proceeding under Article 226 of the Constitution are intended to grant redress to the petitioner where he is subjected to injustice and arbitrary action. These proceedings cannot be used as handle for circumventing the provisions of the Act and gaining unfair advantage. From the above facts it is clear that except for having a valid licence for the period 1-10-90 to 17-11-91, the petitioner drew all the benefits as lessee in drawing M.G.Q. and conducting business, as such he is not entitled to remission of the rentals.

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13. For the above reasons, the writ petition is devoid of any merit, it is, therefore, dismissed but with costs. Advocate''s fee Rs. 500/-.

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