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In the Andhra Pradesh High Court

Case No : Writ Petition No. 3951 of 2003

P. Mohan Ram Reddy APPELLANT

Vs

Prohibition and Excise Superintendent RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 30, 31, 31(4)
Andhra Pradesh Excise Act, 1968 — Section 72(1)
Constitution of India, 1950 — Article 14

Citation : (2008) 4 ALD 416

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : M.S. Prasad, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—Petitioner seeks to issue a writ of mandamus to declare Condition No. V(f) of Auction Notification of the respondent published in the District Gazette, Chittoor, dated 8.4.2002, and the action of the respondent in not refunding the advance amount of Rs. 1,50,000/- paid by the petitioner by way of DD as illegal and arbitrary and against the principles of natural justice and to direct the respondent to refund the said amount along with interest.

2. It is the case of the petitioner that pursuant to the notification, dated 8.4.2002, issued by the respondent for grant of leasehold rights for sale of Indian Liquor, Foreign Liquor and Beer in retail under IL 24 licence for the lease year 2002-03, the petitioner submitted an application on 15.4.2002 along with challan for Rs. 5,000/- towards non-refundable application fee and also D.D. for a sum of Rs. 1,50,000/- towards 1/3rd of the annual licence fee. It is stated that he could not present on the date of selection fixed on 17.4.2002, as an accident took place in front of the bus, in which he was travelling, which resulted in blockage of road. As he was not present at the time of selection, the amount

paid by him was said to have been forfeited and leasehold rights have been granted in favour of third party by drawing another lot again. The petitioner is not questioning the action of the respondent in selecting some other person. But, he made a representation, dated 25.4.2002, enclosing a copy of FIR registered by the police relating to the accident, requesting to refund the amount paid by him. In fact, the said amount has not been refunded in view of the Auction Condition No. V(f), which stipulates the forfeiture of the amount and, therefore, the petitioner questions Condition No. V(f) of the Auction Notification.

3. A counter has been filed by the respondent stating that pursuant to the Notification, dated 8.4.2002, inviting applications for grant of leasehold rights to sell Indian Liquor, Foreign Liquor and Beer in retail under IL 24 licence for the lease year 2002-03, the petitioner submitted an application on 15.4.2002 along with challan for Rs. 5,000/- towards non-refundable application fee and also D.D. for a sum of Rs. 1,50,000/- towards 1/3rd of the annual licence fee. The selection for grant of IL-24 licence has been taken place on 17.4.2002 at 11.00 a.m. and the petitioner was selected for the first shop of Tirupathi Rural Mandal, but neither the petitioner nor his power of attorney holder was present to sign in the selection registers and, therefore, the selection of the petitioner for the first shop of Tirupathi Rural Mandal was cancelled after waiting for a reasonable time and after making announcement and accordingly, the deposit amount of Rs. 1,50,000/- was forfeited to the Government as per conditions of the Notification, and after drawal of lots again, fresh candidate one Sri C. Janardhan Rao was selected by deleting the name of the petitioner. It is stated that the ''Selection Authority'' has cancelled the selection of the petitioner and forfeited the deposit amount to the Government strictly in accordance with the conditions of the Notification and in accordance with Rule 31(4)(e) of A.P. Indian Liquor and Foreign Liquor Rules, 1970 (for short "1970 Rules"). Thus, it is stated that the forfeiture of the amount is not illegal, arbitrary and contrary to law.

4. Learned Counsel appearing for the petitioner submits that forfeiture of the amount under Condition No. V(f) of the Gazette Notification, dated 8.4.2002, is illegal and contrary to the provisions of the A.P. Excise Act and the Rules made thereunder. If the petitioner was not entitled to get shop in question due to his absence at that particular time, the question of forfeiting the said amount does not arise in view of the fact that the other bidders are available for the said shop.

5. In support of his contention that the petitioner is entitled for refund of the amount deposited, he relied on an unreported judgment of this Court in W.P. No. 14919 of 2002, dated 25.9.2002, wherein it was held that when cancellation of the licence was held to be illegal and when the licensee was prevented from carrying the business by cancelling the licence illegally, the licensee is entitled for refund of the licence fee.

6. On the other hand, the learned Government Pleader appearing for the respondent submits that Rule 31(4)(e) of the 1970 Rules, which empowers the respondent to forfeit the amount, was upheld by a learned Single Judge of this

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Court in an unreported judgment of this Court in W.P. No. 10127 of 2001, dated 17.9.2001. In the instant case, having failed to question the statutory Rule 31(4)(e) of the 1970 Rules, the petitioner cannot question the condition in question and, therefore, the petitioner is not entitled for any relief.

7. The only question that arises for consideration is as to whether imposition of Condition No. V(f) is illegal and arbitrary?

8. Admittedly, the petitioner has not questioned the statutory Rule 31(4)(e) of the 1970 Rules, which empowers forfeiture of such amount.

Rule 31(4)(e) of the 1970 Rules reads as follows:

Where the successful applicant is not available in the place of selection, the deposit submitted by him, shall be forfeited and the selection may be made by taking a fresh LOT after deleting his name. The procedure shall be continued till the selection of applicant for the shop is finalized.

9. Condition No. V(f) of the District Gazette Notification, dated 8.4.2002, reads as follows:

Where the successful applicant or his power of attorney holder is not available in the place of selection or being present but refused to affix his signature/thumb impression in the Selection Register, the deposit submitted by him shall be forfeited and the selection will be made by taking a fresh LOT after deleting his name. This procedure shall be continued till the selection of the applicant for the shop is finalized. It is the responsibility of the successful applicant to select the premises in conformity with rules. He should submit the boundaries of the proposed premises of the shop and lease deed for verification before the grant of licence, failing which the deposit made by him will be forfeited to Government and his application will stand rejected.

10. On a combined reading of the statutory Rule as well as the Condition in question, it can be said that Condition No. V(f) is only inconsonance with the Rules. But, in the instant case, the petitioner has not challenged the Rule 31(4)(e) of the 1970 Rules.

11. Under the A.P. Excise Act, if the sale or buy is within the district, the Excise Superintendent is the competent authority for grant of licence.

12. In the instant case, the Excise Superintendent issued Gazette Notification after approval of the location, licence fee etc., by the Commissioner of Excise.

13. u/s 72(1) of A.P. Excise Act, 1968, the Government is empowered by notification to make rules for carrying out all or any of the purposes of the Act.

14. Under Rule 31(4)(e) of the 1970 Rules, where the successful applicant is not available in the place of selection, the deposit submitted by him, shall be forfeited and the selection may be made by taking a fresh LOT after deleting his name. The procedure shall be continued till the selection of applicant for the shop

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is finalized.

15. My learned brother Sri Justice Goda Raghuram considered the validity of Rule 31(4)(e) of the 1970 Rules in the above unreported judgment, wherein it is held thus:

On the interactive analysis of Rules 30 and 31 read in the context of the 1970 Rules as a whole, it is apparent that 1/3rd of the annual licence fee that is required to accompany an application for IL 24 licence is in the nature of a deposit to ensure the bona fides of an applicant. In case of plurality of the applicants, Rule 31(4)(b) read with the 1998 Rules requires selection by drawal of lots. Sub-rule (e) of Rule 31(4) mandates forfeiture of the deposit in a situation where the selected applicant is not willing to take the licence. Sub-rule (d) of Rule 31(4) obligates the successful applicant to sign his name and affix his thumb impression against the relevant entry in the Register maintained for the purpose. Sub-rule (e) ordains that where the successful applicant is not available at the place of selection, the deposit submitted by him shall be forfeited and the selection may be made by taking a fresh lot after deletion of such applicant''s name and the above procedure shall be continued till the selection of an applicant for the shop is finalized.

The sanction in the nature of forfeiture postulated by the 1970 Rules is intended to limit the applications only to serious bidders for the licence as the conduct of the selection and the drawal of lots entails administrative expenditure which is also a factor that animated the prescription of the sanction of forfeiture for the non-compliance with the procedural prescription of the Rules. Further, in the absence of any prescription for the forfeiture of the deposit of an applicant, who is not present at the time of selection or who has not affixed his thumb impression on the relevant register or who having been selected is not willing to take the licence, the process of drawal of lots could be seriously undermined and manipulated by even non serious applicants filing multiple applications so as to have a better chance in the drawal of lots. There could be many other rational reasons, which have fertilized the prescription of sanction by way of forfeiture of the deposit. The prescription of a deposit in an amount of 1/3rd of the licence fee also sub serves this purpose. While testing the vires of a legislation or a statutory prescription, particularly in the context of a challenge as to its being arbitrary, it is settled law that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times may assume every state of facts which can be conceived existing at the time of legislation. The Court is also obligated to presume that the Legislature/rule making authority understands and correctly appreciates the need of its own people and that its laws are directed to problems made manifest by experience (emphasis) (See Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others,).

In the aforesaid analysis, this Court is unable to persuade itself that Rule 31(4)(e) of 1970 Rules is invalid as offending Article 14 of the Constitution of India. As

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the absence of the petitioner at the time of selection on 11.5.2001 definitely falls within the matrix of Rule 31(4)(e) of the 1970 Rules and enables forfeiture of the deposit, the action of the respondents in forfeiting the deposit of the petitioner cannot be invalidated

16. In view of the aforesaid facts and circumstances of the case, I am of the opinion that the analogy that has been adopted in the above unreported judgment, can also be applied to the facts of the case on hand and consequently, the petitioner is not entitled for refund of the licence fee.

17. It is needless to observe that the legal proposition relied on by the learned Counsel for the petitioner, as stated above, has no application to the facts of the case on hand, as it is not the case of the petitioner herein that he was prevented from carrying on the business by cancelling the licence illegally.

18. In view of the aforesaid facts and circumstances of the case and in view of the consideration of the Rule 31(4)(e) of the 1970 Rules by this Court as to its validity in the above unreported judgment, I am of the opinion that the petitioner is not entitled to question Condition No. V(f) of the District Gazette Notification, dated 8.4.2002. As such, the writ petition is devoid of merits and the same is liable to be dismissed. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

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