(1995) 09 AHC CK 0107

In the Allahabad High Court

Case No : C.M.W.P. No. 908 of 1993

Panna Lal — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 27-09-1995

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1995) 09 AHC CK 0107

Hon'ble Judges : V.N. Khare, J;M. Katju, J

Bench : Division Bench

Advocate : Arun Tandon, for the Appellant;

Final Decision : Allowed

Judgement

V.N. Khare, J.—This petition under Article 226 of the Constitution is directed against the order dated 4th May. 1993 passed by District Excise Officer, Jaunpur.

2. The petitioner along with other persons were the highest bidder in respect of country liquor groups of shops known as Kerakat Group comprising of 24 shops for the excise year 1991-92. The petitioner in accordance with the Rule 20(2)(U) furnished security in form of fixed deposit receipts from Scheduled Bank and pledged the same in favour of the licensing authority which was valid till the final settlement of all the claims. It is alleged that the petitioner paid all the excise dues and is not a defaulter. This fact has been admitted in the counter-affidavit. Since there was no dues against the Petitioner, the fixed deposit receipts, pledged by the Petitioner, were returned to him by the licensing authority. After lapse of time, the District Excise Officer issued the impugned notice directing the petitioner to refund the interest accrued on the fixed deposit receipts pledged by the petitioner for the excise year 1991-92. It is at this stage that the petitioner has come up to this Court by means of this petition under Article 226 of the Constitution.

3. We have heard learned Counsel for the parties. Learned Counsel for the

petitioner argued that the bank guarantee in the form of fixed deposit receipts was pledged with the licensing authority only in order to safeguard the interest of the department in the event petitioner does not pay the excise dues for the excise year and as such If the petitioner has cleared all the dues, he is entitled to take back fixed deposit receipts as well as the Interest accrued thereon. Learned Counsel for the petitioner relied upon the Rules 20 and 25 of the U.P. Excise Licence (Tender-cum-Auction) Rules, 1991 framed under the Act, which run as under:

20. Licence Security.--(1) in case the Licensing Authority has accepted the highest bid which shall include basic licence fee in the case of Bhang and country liquor a sum equal to one fourth of the total bid offered by the highest bidder shall be paid in advance as security for the due performance of the contract in the following manner:

(i) A sum equal to one-half of the aforesaid security shall be paid immediately on the fall of hammer in case or by Bank Draft. In case a bidder has already furnished some cash or bank draft under the proviso to Clause (b) of Rule 10 such amount shall be adjusted towards the security.

(ii) The balance one-half of the aforesaid security shall be deposited by the auction-purchaser within 10 days of the auction out of which one-third shall be deposited in cash or bank draft and rest two-third either in cash or in the form of fixed deposit receipts obtained from a scheduled bank for the period of licence duly pledged to the Licensing Authority or in the form of bank guarantee valid till the final settlement of all the claims and dues of the Government in respect of the auctioned shop or group of shops.

25. Adjustment/refund of advance security deposit.--The security referred to in Sub-rule (1) of Rule 20 shall, unless it is forfeited, be refunded at the end of the excise year. The aforesaid security may be refunded at an earlier stage in case all dues and claims of Government in respect of the auctioned shop or group of shops have been cleared by the licensee. In the discretion of Licensing Authority, the advance security deposit may also be allowed to be adjusted towards the payments of bid money, in the closing months of the excise year. All interest accruing on fixed deposits shall vest in the Government.

4. A perusal of the aforesaid rules shows that the security which is required to be deposited in the form of bank draft in favour of the licensing authority is only for ensuring the performance of the contract. If the highest bidder commits any default, it is open to the licensing authority to encash fixed deposit receipts to the extent of the liability of the highest bidder and further if it is found that the highest bidder has deposited all the excise revenue for the excise year and is not a defaulter, it is incumbent upon the licensing authority to return the fixed deposit receipts along with the interest accrued thereon to the highest bidder, and it is not open to the licensing authority to appropriate the interest, accrued on the fixed deposit receipts.

5. Learned standing counsel appearing for the Respondents, on the strength of later part of Rule 25, argued that the impugned demand has been made in accordance with the rules, which provides that all interest accruing on fixed deposit shall vest in the Government. In fact, this rule has to be read in the context of rules applicable in the case of settlement of licence for country liquor. This provision will be available to the department only when it is found that the highest bidder has committed default in payment of excise dues. In this view of the matter, we do not find substance in the argument of the learned standing counsel.

6. In view of this, we find that the order of the District Excise Officer is contrary to law. We accordingly quash the order dated 4th May, 1993.

The writ petition is allowed.

