
(2006) 06 GAU CK 0031
In the Gauhati High Court
Case No : Writ Appeal No. 31 of 2006

Santanu Sinha

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 15-06-2006

Acts Referred:

Tripura Excise Rules, 1990 — Rule 29A

Citation : (2006) 4 GLT 766

Hon'ble Judges : I.A. Ansari, J;A.B. Pal, J

Bench : Division Bench

Advocate : S. Deb, for the Appellant; U.B. Saha and A.K. Bhowmik, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—The Appellant herein is presently the licensee of the retail vend of India Made Foreign Liquor (hereinafter referred to as "the IMFL") at Math Chowmuhan bazaar, which is commonly known as Math Chowmuhan FL shop. The Respondent No. 3, herein, namely, Collector of Excise, Govt, of Tripura, issued, on 18.01.2006. Notice Inviting Tender (in short, "the NIT") calling tenders for grant of license for retail vend of foreign liquor as well as country liquor shops by auction method for the year 2006-2007. The NIT made it clear that existing retail vend and country liquor shops would be settled through tender process in and around the existing site/location under the provisions of Rule 29A of Tripura Excise Rules, 1990, (in short, "the Rules of 1990"), for the year 2006-2007, subject to fulfillment of such terms and conditions as are required under the Rules of 1990. The NIT also stipulated that the successor of the retail vend of foreign liquor and country liquor shops shall have to take all liquor remaining within the retail shop at cost price, after depositing the value to the Collector of Excise, West Tripura, who will allow the liquor to be shifted to the retail vend of the successor and release payment to the licensee after recovery of arrear dues, if any, payable by him/her to the Government and that an

undertaking should be submitted by the tenderer in this regard. The NIT further stipulated that the bidder shall deposit 50% of the bid money in favour of the Respondent No. 3 in the form of deposit at call on any Branch of the State Bank of India. The NIT fixed the minimum bid money in respect of Math Chowmuhani FL shop at Rs. 3,40,000/-. Clause 3(v) of the NIT mentioned that no licence would be issued in favour of a bidder, who mentions a site, which is situated near school/ashram/ temple/public office/mosque etc. Clause 4 of the NIT also made it clear that in the event, an intending bidder fails to submit any of the required documents mentioned in the said terms and conditions, the bid laid by such an intending bidder would be summarily rejected. A corrigendum was, later on, issued by the Respondent No. 3 substituting the NIT for settlement of retail vend of foreign liquor and country liquor shop by auction method by the expression "NIT for settlement of existing retail foreign liquor and country liquor shops". The NIT, dated 18.1.2006 and the corrigendum published thereto, became the subject-matter of challenge in WP(C) No. 85/2006, which is still pending for disposal. When the bids were opened, Respondent No. 4 to the present appeal was found to be the highest bidder, but the site/location offered by him to run the retail vend of IMFL was, according to the Respondent No. 3, in close proximity of a place of worship. Thus, though Respondent No. 4 was the highest bidder, his bid was not accepted and though the present Appellant was the second highest bidder, the Respondent/authorities concerned decided to invite fresh tenders and issued a notification, in this regard, on 25.3.2006. In course of time, pursuant to the offers made by the Respondents/authorities concerned to return the bid money, the Writ Petitioner as well as the present Appellant withdrew their bid money. After having withdrawn the bid money, the Writ Petitioner (i .e., Respondent No. 4 in the present appeal), filed a writ petition seeking, inter alia, issuance of writ/writs of certiorari quashing the decision of the Respondents/authorities concerned rejecting the highest bid of the Writ Petitioner and also a writ of mandamus to issue licence in respect of retail vend of Math Chowmuhani FL shop in favour of the writ Petitioner. The writ petition came to be registered as WP (C) No. 195/2006. This writ petition was disposed of, on 1.12.2006, by making observations and directions as quoted herein below:

It appears that the Petitioner had participated in settlement of foreign liquor shop at Math Chowmuhani and he was declared as highest bidder. However, on technical ground the said shop was not finalized. In his favour and at the instance of the Government 50% of the bid money as per the NIT condition was allowed to be withdrawn by him. It has been brought to the notice of the Court that the said shop has not been finalized in favour of anybody and the Petitioner is still successful claimant and who is claiming to abide by all the conditions and norms of the Excise Department and is also in reference to the earlier deposit including 50% of the bid money indicated by the State Government is ready to deposit.

This writ petition is being disposed of at the admission stage at the consent of the parties and if the Petitioner is highest bidder and no adverse materials found

against him, which prohibits under law for allocation of licence and shop in his favour then the State Government subject to imposition of permissible conditions and norms of Excise Department may allocate the licence and running of the shop in question in favour of the Petitioner in respect of the year 2006-2007.

In view of the above observation, this writ petition is disposed of. Such decision may be taken expeditiously on production of the representation of the certified copy of this order in the interest of revenue.

2. Though the present Appellant was not a party to the WP (C) No. 195/2006 aforementioned, he has preferred this appeal on the ground that he was a necessary party to the writ petition and that the said writ petition ought not to have been disposed of without giving him an opportunity of having his say in the matter. This apart, the Appellant also challenges the order, dated 12.5.2006, passed in WP (C) No. 195/2006 aforementioned, whereby the writ petition was disposed of, the ground of challenge being that it is the executive function of the Government to determine if a particular location is or is not within the close proximity of the site/location of the retail vend in respect of which tenders are invited and since the Government had found that the site/location offered, in this regard, by the Writ Petitioner was in close proximity of a place of worship, no writ could have been issued directing the State Respondents/authorities concerned to reconsider the matter treating the requirement of Clause 3(v) of the NIT as a technical formality. Yet another ground of challenge posed to the impugned order, dated 12.5.2006, is that the Writ Petitioner, having elected to withdraw the bid money and having, in fact, withdrawn the bid money, could not have turned back and challenged the decision to invite fresh tenders. It is further contended by the Writ Appellant that though the Writ Appellant was the second highest bidder and the Writ Petitioner was the highest bidder, the fact remains that the bid offered by the Writ Petitioner was an informal one and in such circumstances, the Writ Appellant should have been offered the licence, but the Writ Appellant did not raise any objection thereto and decided to participate in the fresh tender process. However, the impugned order, dated 12.5.2006, submits the Writ Appellant, has the effect of altering this situation and such alteration in the situation was legally impermissible without giving the Writ Appellant an opportunity of hearing in the matter.

3. At the time of hearing of the present appeal, when it was pointed out that since the Writ Appellant was not a party to the writ petition, he could not have preferred, without leave of the Court, appeal against the impugned order, dated 12.5.2006, passed, in WP (C) No. 195/2006, an application has been made by the Writ Appellant seeking leave to prefer this appeal and the application, so made, has come to be registered as CM Application No. 31/2006.

4. We have heard Mr. S. Deb, learned Counsel for the Appellant and Mr. U.B. Saha, learned Senior Govt. Advocate, appearing on behalf of the State Respondents, namely, Respondent Nos. 1, 2 and 3. We have also heard Mr. A.K. Bhowmik, learned Senior counsel, appearing on behalf of the private

Respondent, i.e., Respondent No. 4.

5. It is trite that a person, who is not a party to a suit, may prefer an appeal with the leave of the Court and such leave should be granted if he would be prejudicially affected by the judgment. (See Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd., . A person, who is not a party to a decree or order, may, with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it.

6. In the case at hand, since the Appellant was the sitting lessee, he was one of the bidders, his bid was not found informal, he became one of the eligible bidders to participate in the selection process. Since the bid of the Writ Petitioner was found not to conform to the conditions of the NIT and the provisions of Rule 29A of the Rules of 1990, the Appellant, being the second highest bidder, could have been offered the licence and, in these circumstances, when the Respondents/authorities concerned decided to invite tenders afresh and even though the Writ Appellant had not objected to such a decision, the fact remains that when a writ petition was filed challenging the decision to invite fresh tenders, the Writ Appellant became a necessary party to the said writ petition inasmuch as his interest was inextricably involved with the outcome of the writ petition and, in these circumstances, the decision taken by the Government to invite fresh tenders could not have been disturbed without giving the Writ Appellant an opportunity of having his say in the matter. Viewed thus, we are firmly of the view that though the Appellant was not a party to the writ petition, he has the legal right to challenge the decision in the said writ petition and since the decision, in the writ petition, adversely affects his right without allowing him to have his say in the matter, we have granted him leave for preferring this appeal.

7. Now, turning to the appeal, what is necessary to mention is that Mr. U.B. Saha, learned Senior Govt. Advocate, has submitted that the directions, contained in the impugned order, are not with the consent of the State Respondents/authorities concerned and that the Respondents/authorities concerned had merely consented to the disposal of the writ petition at the admission stage itself. What needs to be, now, noted is that at the first blush, the impugned order, dated 12.5.2006. appears to be a consent order. On a close and microscopic analysis of the contents of the impugned order, dated 12.5.2006, we find that consent of the State Respondents, in the writ petition, was merely to the disposal of the writ petition at the admission stage itself. The State Respondents' willingness to get the writ petition disposed of, at the admission stage, is understandable, for, any delay in the disposal of the writ petition would have led to further complications.

8. What logically follows from the above discussion is that the directions given in the order, dated 12.5.2006, are not directions given with the consent of the parties concerned.

9. While considering the legality and correctness of the order, dated 12.5.2006, what needs to be pointed out is that the learned Single Judge has directed the State Respondents/authorities concerned to consider the Petitioner's case afresh in terms of the observations made in the writ petition. We are firmly of the view that without having interfered or without having set aside the decision of the State Respondents/ authorities concerned to invite fresh bids, no such direction could have been issued. We could have, ordinarily, remanded the matter to the learned Single Judge for disposal of the writ petition in accordance with law, but for the reasons that we assign herein below:

10. We find that there is no dispute that the Writ Petitioner had withdrawn the bid money. Having elected to withdraw his bid, the Writ Petitioner ought not to have been allowed to turn back and challenge the decision to invite fresh tenders, for, the Writ Petitioner cannot probate and reprobate. This apart, the conditions imposed, under Clause 3(v) of the NIT, are, we find, in conformity with the provisions of Rule 29A of the Rules of 1990 and, hence, a retail vend of IMFL cannot be allowed to run at a place, which falls within close proximity of a temple or a place of worship. A bare reading of the contents of Rule 29A of the Rules of 1990 makes it clear that the conditions imposed thereunder are mandatory and must be followed.

11. Coupled with the above, under Clause 4 of the NIT, it was made clear that the bid would be summarily rejected if any of the documents were wanting. The effect of Clause 4 of the NIT was that if location of the shop was not found in conformity with the relevant provisions of the Rules of 1990, bid would be summarily rejected. The finding as to whether a particular shop falls within close proximity of a temple is an administrative decision and such administrative decision can be disturbed only when the relevant factors are not considered or relevant factors are taken into consideration. There is no finding by the learned Single Judge that any relevant factor had not been considered or any irrelevant factor was taken into consideration, while treating the bid of the Petitioner informal on the ground that the site/location offered by him was within close proximity of a temple or a place of worship. The compliance of the condition with regard to the site/location could not have, thus, been described, as has been done by the learned Single Judge, as a technical formality or rejection of the bid on technical ground.

12. Because of what have been discussed and pointed out above, we are firmly of the view that the decision of the State Respondents/authorities concerned to invite fresh tenders and the issuance of notice, dated 25.3.2006, ought not to have been interfered with by issuing directions as have been done by the impugned order, dated 12.5.2006, aforementioned.

13. In the result and for the foregoing reasons, this appeal succeeds. The impugned order, dated 12.5.2006, is hereby set aside and quashed. The Respondents are allowed to proceed with their decision to invite fresh tenders for settlement of the retail vend of Math Chowmuhan FL shop. The liberty, which we

have, now, given to the State Respondents/authorities concerned to proceed with their decision to invite fresh tenders for settlement of the retail vend of Math Chowmuhani FL shop is without prejudice to the rights of the parties concerned in WP(C) 85/2006, which is pending for disposal.

14. Before parting with this appeal, it is further made clear that the observations made hereinabove shall not have any bearing on the question of maintainability and/ or merit of WP (C) No. 85/2006.

15. No order as to costs.