(2020) 06 SHI CK 0278

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1623 Of 2020

Sarla Devi APPELLANT

Vs

State Of Himachal Pradesh And Others RESPONDENT

Date of Decision : 17-06-2020

Acts Referred:

Citation : (2020) 06 SHI CK 0278

Hon'ble Judges : L. Narayana Swamy, CJ;Anoop Chitkara, J

Bench : Division Bench

Advocate : Ramakant Sharma, Ajay Vaidya

Final Decision : Disposed Of

Judgement

Anoop Chitkara, J

1. The petitioner, who had taken number of licenses of liquor and wine vends from the Excise Department of Himachal Pradesh, has come up before this Court, seeking mandamus to enforce the recommendation for grant of license for liquor vend for L-14 in Unit No.13, Jhalera, District Una, H.P., for the year 2020-2021 and also seeking quashing of the same vend allotted to 4th respondent, ignoring her claim despite the fact that she was the highest bidder.

2. The gist of the facts apposite to adjudicate this petition traces its origin to the lockdown in the entire country due to COVID-19 disease. The process of allotment of liquor vends for the financial year, 2020 - 2021 could not begin because of the lockdown. After the relaxation of the lockdown, when the Government started partial working, then the Excise Department re-started the process of allotment of liquor vends. However, the lockdown initially impacted the sale of liquor in the last week of the financial year, 2019-20 coupled with some other reasons, some of the licence holders could not deposit the dues within the stipulated time.

3. Vide Public Notice dated 14th May, 2020 (Annexure PR-1), the 2nd respondent

issued notice inviting applications for the draw of lots of the left out retail sale licensed outlets of Country Liquor (L-14/L-14A), retail sale licensed outlets of Indian Made Foreign Liquor (L-2), and retail sale of Country Fermented Liquor (L-20B), in the State of Himachal Pradesh. Vide this notice, the 2nd respondent invited the applications for the left out liquor vends in six Districts.

4. In all, the 2nd respondent had initiated the process for allotment of nine units, whereas the applications were received only for six units. During the proceedings of the Draw of Lots, the process of Left-out Excise Units/Vends, held on 20.05.2020 in respect of Una District (Annexure PR-1), the concerned wing of the first respondent shortlisted two persons as successful allottees. Such proceedings (Annexure PR-2) reflect the 4th respondent as the successful allottee in five Units and Smt. Sarla Devi (petitioner herein) as the successful bidder in one unit. Annexure PR-2 further reveals that the non- allotment of three units could result in net revenue loss to the extent of more than Rupees Five crores to the Government of Himachal Pradesh.

5. A perusal of Annexure PR-2 further reveals that during the above process, the 4th respondent sent a proposal stating therein that her Firm is ready to run all nine Units, including the five already allotted to it and even the one granted to the petitioner, Smt. Sarla Devi, at the current rate of Rs.18,54,78,736/-, provided the Excise Department clubs all these Units. The respondents found the said proposal in the interest of the State Government and concluded that allotting all these nine Units to the 4th respondent, would earn additional net revenue of Rs.5,25,89,654/- to the Government of Himachal Pradesh. Subsequently, the Selection Committee decided to club and grant all the nine units at their full value of Rs.18,54,78,736/- to the 4th respondent, and forwarded the proposal to the Confirming Authority.

6. Vide Communication dated 27.5.2020, the 2nd respondent, confirmed the Section Committee's proposal and directed the concerned authorities to take further necessary action regarding allotment of the nine liquor vends to the 4th respondent.

7. The grievance of the petitioner is that it was illegal for the respondents to debar her from the allotment, even though she was a successful bidder.

8. The answer to this contention lies in clause 2.1 of the announcements for the allotment of retail excise Vends by Renewal/Draw of Lots/Tender-cum- auction for the year 2020-21, which states as follows:-

"..............

The Commissioner of State Taxes and Excise-cum-Financial Commissioner (Excise) may, if no application is forthcoming in respect of a vend or a group of vends or unit, if it is expedient to do so in the interest of revenue, grant these licenses, alone or in combination with any other license for any vend or group of vends by resorting to any of the modes described above."

9. Furthermore, Clause 1.2 of the Announcements mentioned above empowers the Commissioner of State Taxes and Excise- cum - Financial Commissioner (Excise), Himachal Pradesh, to have done so. The Clause described above reads as follows:-

" The Commissioner of State Taxes and Excise-cum-Financial Commissioner (Excise), Himachal Pradesh, reserves the right to sell all or any of the licenses by allotment or by auction or by private contract or by calling tenders or by draw of lots or by renewal or by any other arrangement (including combination of the foregoing modes), which he may consider expedient in the interest of revenue. For this purpose, the mode of grant of these licenses may be changed by the Commissioner of State Taxes and Excise, whenever necessary before the actual grant of the license. The Commissioner of State Taxes and Excise may also modify the procedure contained in these terms and conditions to give effect to such mode of grant of license after determining Fixed License Fee, Excise duties or any other levy, in such manner as he may deem fit."

10. Learned Counsel for the petitioner submits that Clause 2.19 would prevail upon these two Clauses, wherein it mentions that the allotment process shall be conducted separately for each unit. We are very clear that Clause 2.1 of the Announcements discussed above, which is an enabling Clause. Thus, Clause 1.2, would prevail upon Clause 2.19 of the Announcements described above for the reasons that Clause 2.19 is only for procedural purposes. Be that as it may, one cannot lose sight of the fact that while granting licenses, the State parts with its privileges for specific consideration.

11. Given above, the process adopted by the respondents is neither arbitrary nor unreasonable and warrants no interference from this Court.

12. Consequently, this petition has no merits, and hence, it is dismissed. However, the respondents are directed to refund all refundable security amount to the petitioner in accordance with the Rules without any further delay.

13. We leave it open to the petitioner to take legal recourse, if she so desires, to claim for the loss of business, if any. However, we clarify that such recourse shall only be confined to such claim.

Pending miscellaneous application(s), if any, also stand disposed of.