(1981) 03 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : L.P.A. No. 28 of 1980

Shesh Ram APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 10-03-1981

Acts Referred:
Punjab Liquor Permit and Pass Rules, 1932 — Rule 5.38, 5.38(3), 5.38(5)

Citation : (1981) 10 ILR HP 92

Hon'ble Judges : V.D. Misra, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : M.L. Sharma, for the Appellant; Bhawani Singh, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Thakur, J.—The Appellant filed a writ petition in this Court praying for the cancellation of the auction of excise licences, held on 28-3-1980, pertaining to Mandi district, for the financial year 1980-81. The writ petition was, however, dismissed by the learned single Judge on 24-12-1980. Aggrieved by the said decision the Appellant has preferred this Letters Patent Appeal.

2. The relevant facts may be stated. In pursuance to the announcement made by Respondents 1 to 3, excise licences of various categories pertaining to Mandi district were to be auctioned unit-wise for the financial year 1980-81, that is, for the period 1-4-1980 to 31-3-1981. The auction of such licences was originally held on 19-3-1980. The Appellant also took part in this auction and was the highest bidder for as many as 24 units. The bids as given in the said auction were submitted to the Financial Commissioner (Excise) for his approval. The Financial Commissioner, however, refused to confirm the bids, except for Tehsil Karsog, being of the view that the revenue fetched was inadequate. Consequently, the excise licences for the remaining tehsils were ordered to be re-auctioned on 28-3-1980. The Respondents 1 to 3 believed that there had been some pooling amongst the various bidders and on that account the bids remained on the lower side, except for Karsog tehsil. Accordingly decision was

taken by the Financial Commissioner (Excise) on 27-3-1980 and formal sanction was accorded Under Rule 5.38(5) of the Punjab Liquor Licences Rules, 1932 (as applicable to Himachal Pradesh) that in case exigency arose the auction of licences could be held on 28-3-1980, on tehsil-wise basis. As such, initially bids were taken unit-wise, but due to pooling device of the excise licensees, the bids were again not only inadequate, but in majority of cases no bids at all were given. Consequently the auction had to be held on tehsil-wise basis.

3. It is contended by Shri M.L. Sharma that the learned single Judge has gravely erred in dismissing the writ petition. It is vehemently argued by him that the tehsil-wise auction of the licences is not only contrary to the announcements made but also against the excise rules. He has also contended that the action of the authorities smacks of mala fide and was a device to throw out the Appellant from the business. He has drawn our attention to the announcement made for holding auctions on 28-3-1980 and has stressed that the auction could only be held unit-wise and not tehsil-wise. He has pointed out that the Appellant and other small contractors like him, were taken by surprise when the bids were invited on tehsil-wise basis. At any rate, according to the Appellant, they had not come prepared to bid on that basis and believed that they could bid for the units of their choice. It is further contended that according to Rule 5.38 of the Punjab Liquor Licences Rules, 1932 (Excise Rules in short) the Collector had to give a timely notice of the date and place of the auction and had also to specify the condition to which the auction will be subject. However, in the auction so held no timely notice was given that the auction would be held on tehsil-wise basis. He has specifically referred to Sub-rule (5) of Rule 5.38 of the Excise Rules. It is convenient to reproduce the same:

He will then proceed to put up each shop to auction after carefully explaining its locality. The auction of two or more shops at one time requires the sanction of the Financial Commissioner in each case.

Relying on this Sub-rule, it is strenuously contended by the learned Counsel that each shop had to be auctioned separately and not all the shops together within a tehsil. It is further contended that even if it is assumed that the auction of two or more shops could be held at one time in terms of the orders of the Financial Commissioner, separate sanction had to be obtained in each case. It is also contended that in any event licences for L-l and L-10 vends could not be auctioned with other units but had to be auctioned separately in terms of the announcement made.

4. The learned Counsel for Respondents 1 to 3 has, however, vehemently controverted the above contentions of the learned Counsel for the Appellant. He has referred to the reply filed on behalf of these Respondents wherein it has been stated that in the normal course the shops would have been auctioned unit-wise as indicated originally in the excise announcement for the year 1980-81 and the same method was tried even on 28-3-1980, but it failed and the department had to meet the pooling device of excise licensees by auctioni g the same on

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tehsil-wise basis. It is further contended that the auction on tehsil-wise basis has been held to safeguard the interest of the State and also in accordance with the Excise Rules.

5. We have heard the learned Counsel for the parties at length. As indicated earlier above, the Financial Commissioner on 27-3-1980 had accorded sanction to hold auction on tehsil-wise basis if the exigency so required. Under Sub-rule (5) of Rule, 5.38 of the Excise Rules, the Financial Commissioner was competent to sanction the auction of two or more shops at one time. As such, no fault can be found with the sanction so accorded by the Financial Commissioner to hold the auction on tehsil-wise basis, that is, treating a tehsil as one unit. Apparently, such sanction was given to safeguard the interest of the State so as to get adequate revenue. Actually in this way, there was an increase of Rs. 4,53,600/- in the auction amount as compared to the auction held on 19-3-1980. The record of the auction proceedings held on 28-3-1980 has been placed before us in a sealed cover. We have examined the same. We find that in majority of the auctions held on unit-wise basis on that day, no bids were received at all and in some cases there was only one bidder and in others there were two or three bidders. The bid sheets are signed by the Collector (Deputy Commissioner). As such, the exigency had arisen that the auction had to be held on tehsil-wise basis. Since the competent authority had sanctioned such a course, the Collector could legitimately resort to it. Accordingly, it cannot be said that the action of the sanctioning authority or the auctioning authority was mala fide. On the contrary, it can be reasonably inferred that the intending bidders had resorted to the pooling device. At any rate, the interest of the State had to be safeguarded. The plea of the learned Counsel for the Appellant that L-I and L-10 vends could not be auctioned with other units is untenable, in view of the fact that the Financial Commissioner was competent to accord such a sanction. No such rule has been shown from which such a restriction may be inferred. Similarly, the plea that in each case separate sanction had to be given, cannot also be sustained. The sanction as given by the Financial Commissioner is in unambiguous terms that the auction was to be held on tehsil-wise basis for the remaining tehsils, within Mandi district. The plea appears to be hyper-technical and has no sub-tance. The plea that a timely notice of the conditions of the auction to be held on tehsil-wise basis, was not given, is in our opinion not without substance. In order to appreciate the contention, it is desirable to reproduce Sub-rule (3) of Rule 5.38:

(3) The Collector will give timely notice of the date and place of the auction. This notice will also specify:

(a) the conditions to which, the auction will be subject;

(b) x x x x x x x (c) x x x x x x x (d) x x x x x x x (e) x x x x x x x

6. The term "timely notice" has not been defined under the rules. As such, we have to give a reasonable interpretation to this term. We have to bear in mind that this term has to be interpreted keeping in view the subject matter of auction

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and other factors like proper publicity about the terms and conditions of the auction, reasonable time to intending bidders to reach the place of auction and also make arrangement of funds to effectively bid at the auction etc. It is not the case of the Respondents that the intending bidders were aware about the auction being held on tehsil-wise basis prior to the date of auction. Even on the date of auction the efforts were initially made to make auction unit wise, separately. When the exigency arose, as discussed earlier above, the auction was held on tehsil-wise basis. We are of the view that this was not a timely notice about the conditions of auction. Bearing in mind the relevant factors and considerations as briefly pointed out above, the question arises as to what would be considered to be a timely notice in such auctions. The learned Counsel for the Appellant referred to a decision in Rajamallaiah and Another Vs. Anil Kishore and Others, in support of his submissions. The case relates to the auction of excise shops in Andhra Pradesh. We find that Rule 4 of the Andhra Pradesh Excise (Lease of Right to Sell Liquor in Retail) Rules, deals with the auction notice. It is useful to reproduce the relevant portion of the said rule:

4. Auction Notice.-(1) Whenever it is proposed to grant the lease for sale of liquor in retail in respect of a shop or a group of shops a notice of the proposed auction containing the particulars mentioned in Sub-rule (2) shall be published, at least ten days in advance of the date of auction, by the Collector of the district in the Andhra Pradesh Gazette or in the District Gazette or in such other manner as the Collector may deem fit:

(Provided that the time limit of 10 days shall not be applicable in the case of postponed auctions).

(2) The auction notice shall contain the following particulars, namely:

(i) x x x x x x x x x x x x x x?

No doubt, there is no specific period provided in the excise rules applicable to the present case, all the same, on the analogy that Andhra Pradesh rules also concern the auction of excise shops, we can extract some guidelines to interpret the term "timely notice". As such, we are of the view that at least 7 to 10 days advance notice of the auction as required Under Sub-rule (3) of Rule 5.38 was reasonably essential.

7. During the course of arguments we put it to the learned Counsel for the Appellant that even if we come to the conclusion that no timely notice was given regarding the auct on being held on tehsil-wise basis, what relief we could give to the Appellant. We made it clear that the financial year was closing within some days and even if any writ was issued, it would be an apparent exercise in futility. At any rate, we made it clear that we cannot issue futile writs. It was, however, submitted by the learned Counsel for the parties that some guidelines be given in this respect. It is on this understanding that we have given a reasonable interpretation of the term "timely notice" for future guidance. But, in view of our above observations we cannot give any relief to the Appellant.

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8. For the foregoing reasons, we have no alternative but to dismiss the appeal but with no orders as to costs.

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