(1983) 07 KAR CK 0033

In the Karnataka High Court

Case No : WP 11601/83

Sri Raghavendra and Co. APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 14-07-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) 2 KarLJ 318

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. On 30.6.1983 I heard this case in full and made a brief order dismissing the writ petition in the unavoidable and compelling circumstances stated therein. I now proceed to give my reasons for dismissing the writ petition:

2. In accordance with the provisions of the Karnataka Excise Act, 1965 (Kar. Act 21 of 1966) (hereinafter referred to as the Act) and the Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules, 1969 (hereinafter referred to as the Rules), the Excise Commissioner in Karnataka, Bangalore (hereinafter referred to as the Commissioner) by his notification published in Kar. Gazelle dt. 13.4.83 notified that the lease of the right of retail vend of arrack in the Taluk of Periyapatna, Mysore Dist. for the period from 1.7.1983 to 30.6.1984 will be disposed of in public auction by the Deputy Commissioner, Mysore Dist., Mysore (hereinafter referred to as the DC) on 30.4.1983. In he public auction held on that day, the petitioner respondent No. 3 and other eligible bidders participated, alt which the former offered the highest bid of Rs. 2,37,200 per month. On the petitioner depositing one month''s rental on the spot as required by the Rules, the DC provisionally accepted his highest bid and forwarded the papers to Government through the Commissioner for confirmation under Rule 15 of the Rules.

3. While the proceedings for confirmation were pending before Government, respondent No. 3 filed a revision petition under the Act before Government inter alia offering a higher bid than the one offered by the petitioner and urging for

grant of right of retail vend of arrack of the taluk to him at the higher rate. On 24.6.1983 the Minister for Excise heard the petitioner and respondent No. 3 and taking ''the view that the confirmation of be bid offered by the petitioner would result in loss of revenue, refused to confirm his bid and directed its reauction and in conformity with the same, Government has issued an order bearing No. HD 186 EDC 83 dt. 24.6.1983 (Annexure-A) refusing to confirm the bid. In furtherance of the said order of Government, the Commissioner has issued notification No. EXE. EXS. I. 14/83-84 dt. 24.6.1983 published in the Extry. Gazette dt. 25.6.1983 proposing to re-auction the right of retail vend of arrack in Periyapatna taluk on 28.6.1983 at 10-00 a.m. (Annexure-B). In this petition under Art. 226 of the Constitution, the petitioner has challenged the order of Government dt. 24.6.1983 (Annexure-A) and the consequent notification issued by the Commissioner on the same day (Annexure-B).

4. On 27.6.83 this Court while issuing rule nisi, did not stay the re-auction but permitted the same to be held on the terms and conditions stipulated in an interim order made on that day. In that view, the re-auction was held on 28.6.1983 in which the petitioner and respondent No. 3 again participated. In the re-auction, respondent No. 3 has offered the highest bid of Rs. 2,81,100 thus resulting an increase of Rs. 43,900 per month or Rs. 5,26,800 for the whole year. With the dismissal of the writ petition on 30.6.1983 and the order made therein, the impediment, if any for entrusting the right of retail vend of arrack in Periyapatna Taluk to respondent No. 3 for Rs. 2,81,100 per month, stood removed on that very day.

5. In the petition, the petitioner had challenged the order as vitiated by mala fides. But, having regard to (the statement of objections filed by the respondents the records produced before Court, Sri. N. Santosh Hegde, learned counsel for the petitioner, in my opinion, very rightly did not seek to challenge the order as vitiated by mala fides. In this view, it is not necessary to set out the pleadings of the parties on the mala fides attributed by the petitioner or deal with the same.

6. The, petitioner has alleged that auction sale proceedings on 30.4.1983 were held in accordance with the Act and Rules and no illegality or irregularity had occurred in those proceedings and in that auction respondent No.3 did not offer a higher bid than the one offered by it, though it later sought to challenge the same on untrue and incorrect allegations before the Commissioner and Government. On this plea, the petitioner has urged that it was entitled for confirmation as of right, notwithstanding the fact that there would be an increase in revanue by accepting the bid offered by respondent No. 3 at the re-auction.

7. In justifying the impugned order made by Government and the notification issued thereto by the Commissioner, respondents 1 and 2 admit that the auction sale proceedings on 30.4.83 were held in conformity with the Act and the Rules and, there was no illegality or irregularity in the same and the bid offered by the petitioner was the highest. But, still respondents 1 and 2 have urged that the acceptance of the bid offered by the petitioner would have resulted in loss of

revenue, which has also proved correct in the re-auction and, therefore the order of Government not to confirm the sale was justified.

8. In a separate return, respondent No. 3 has supported the order of Government and the notification issued by the Commissioner. While so, supporting respondents 1 and 2, respondent No. 3 has alleged that the auction sale on 30.4.1983 was not held in conformity with the Act and the Rules.

9. Sri Hegde, has contended that when Government did not find any illegality or irregularity in the auction sale held on 30.4.1983, it was bound to confirm the auction sale in favour of the petitioner under Rule 15 of the Rules, notwithstanding the later higher offer made by respondent N. 3.

10. Sri M.R. Achar, learned Government Advocate, appearing for respondents 1 and 2, has contended that there would be loss of revenue or possibility of loss of revenue, which had come true in the re-auction, was by itself a ground on which it was open to Government not to confirm the sale under Rule 15 of the Rules. In support of his contention Sri. Achar has strongly relied on the rulings oil the Supreme Court in the State of Orissa v. Harinarayana Jaiswal, AIR 1972 SC 1816. Harishankar v. Excise and Taxation Commr., AIR 1975 SC 1121 and a decision rendered by me in Moolarangappa v. State of Karnataka, AIR 1979 Kar. 15.

11. Sri. A. Jagannatha Shetty, learned counsel for respondent No. 3 supported Sri Achar.

12. The allegation of the petitioner that the auction sale proceedings held on 30.4.1983 were in conformity with the Act and the Rules and in that auction he was the highest bidder and that respondent No. 3 who participated in that auction offered a lower bid than the one offered by him, that on his depositing one month''s rental as required by the Rules on the spot, the DC provisionally accepted the same and recommended to Government for its acceptance are not disputed by respondents 1 and 2 who are primarily concerned with the same. In this view, this Court has necessarily to accept all these pleas of the petitioner and examine his case on that basis only. At the hearing also Sri Achar in my opinion very rightly did not dispute the correctness of these pleas of petitioner.

13. On the legality or illegality of the auction sale proceedings, respondent No. 3 who evidently participated in the bid but did not offer higher bid at that auction but later sought to invalidate the same by offering a higher bid, even making wild allegations against the sale conducting officers, can hardly be accepted as true and correct. From this it follows that the auction sale held on 30.4.1983 was in conformity with the Act and the Rules and that the petitioner was the highest bidder in that auction and on his complying with the deposit of one month''s rental, the action of the DC in provisionally accepting the same and recommending to Government for its acceptance, was legal and valid.

14. An auction sale held and the highest bid provisionally accepted by the DC is

subject to confirmation by Government under rule 15 of the Rules. The power to confirm, which implies the power not to confirm, is however expressly conferred on Government by the Rules. In the absence of confirmation by Government and execution of a lease agreement under Rule 16 of the Rules, the highest bidder does not becomes entitled to vend liquor under the Act and the Rules.

15. In the impugned order the one and the only reason given by Government is that confirmation would result in loss of revenue to Government. But, in his order made on 24.6.1983, on the basis of which the impugned order notification has been issued, the Minister for Excise, has given two reasons namely (i) that the later offer made by respondent No. 3 was bona-fide and (ii) the acceptance of the highest bid of the petitioner would result in loss of revenue to the exchequer.

16. Earlier I have held that the auction sale had been held in conformity with the Act and the Rules in which the petitioner offered the highest bidand on his depositing one month''s rent, the DC had rightly accepted the same provisionally. At this stage it is relevant to notice that respondent No. 3 who was the previous contractor for a sum of Rupees two lakhs only, had participated in the auction sale and did not offer a higher bid. Without any doubt, respondent No. 3 who could not outwit the petitioner at the public auction, was trying to outwit him after the fair was over by raising a bogey and mud slinging on the auction sale with a bait of a belated higher offer. In these circumstances, it is difficult to hold that the offer of respondent No. 3 was bona-fide as concluded by the Minister without any discussion also. But, alas, this different conclusion reached by me does not help the petitioner to invalidate the impugned order.

17. Another reason given by the Minister and incorporated in the impugned order was that the confirmation would result in loss of revenue to the exchequer. This conclusion reached by the Minister, though based on the offer of respondent No. 3 was a factor that could legitimately be taken into consideration under Rule 15 of the Rules. Whether the confirmation would result in loss of revenue or not was primarily for Government to decide. Even the subsequent events have proved the correctness of the conclusion reached by Government.

18. The Supreme Court commencing from the very first important case in Guruswamy v. State of Mysore, AIR 1954 SC. 592 and all other cases that have been decided thereafter notably in Harinarayana Jaiswal''s, AIR 1972 SC 1816 and Har Shankar''s, AIR 1975 SC 1121, cases has ruled that loss of revenue was a factor on which the competent authority under the relevant excise law can refuse to confirm an excise auction sale and order re-auction. On the ratio of the rulings of the Supreme Court in all these cases, the impugned order made by Government cannot be held to suffer from an error of jurisdiction or illegality justifying this court''s interference under Article 226 of the Constitution.

19. Rule 15 of the Rules on which strong reliance is placed to sustain the case of the petitioner reads thus:

"Confirmation (1)-Whenever the Deputy Commissioner or the Divisional

Commissioner has accepted provisionally a tender, offer or bid he shall, forthwith submit to the State Government through the Excise Commissioner the records of the proceedings conducted by him for confirmation.

(2) The State Government shall, on a consideration of the records under sub-rule (1), and the interest of revenue pass an order confirming the disposal of the right to retail vend of liquor or refusing to confirm it. The order shall forthwith be communicated to the person concerned."

Sub-rule (1) of this rule requires the DC or the Divisional Commissioner that conducts the auction sale to forward records through the Excise Commissioner to Government for its confirmation. Sub-rule (2) empowers Govt. to confirm or refuse to confirm an auction on a consideration of the records and the interest of revenue. The first port of this sub-rule referring to ''on a Consideration of the records'' obviously means that Government should be satisfied that there was no illegality or incurable irregularity in the conduct of auction sale proceedings held either by the DC or the Divisional Commissioner as the case may be. The second part of the rule requires Government to be satisfied that the confirmation of auction sale does not result in loss of revenue to the State exchequer, which may arise for a variety of reasons that cannot possibly be exhaustively stated either by Government or by this Court. Whether both these should co-exist is the interesting and novel question that arises in this case which has been very strenuously urged by Sri Hegde.

20. In between the words ''on a consideration of the records'' and ''the interest of revenue ''of Rule 15 (2) of the Rules, the word ''and'' has been used. The word ''and'' is generally used as a conjunctive. But, the same is not decisive to hold that it has been used as a conjunctive only. In ascertaining whether the word ''and'' has been used as conjunctively or disjunctively, the Court must have regard to the scheme and object of the legislation. The construction to be placed by the Court should not defeat the object of legislation but should advance the object of legislation.

21.In Ishwar Singh Bindra v. State of UP, AIR 1968 SC 1450, the Supreme Court construed the word ''and'' occurring in Sec. 3 (b) (i) of the Drugs Act, 1940 before its amendment in 1962, disjunctively. In R.V. Brixton v. Prison Governor, (1937) 1 K.B. 305, the Court of Appeal read the word ''and'' occurring in the Disabled Soldiers Act, 1601 as disjunctive. Maxwell on the interpretation of Statutes, 11th Edn., states thus on the question:

"To carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions ''or'' and ''and'' one for the other".

22. Applying the above principles, the word ''and'' occurring in Rule 15 (2) of the Rules cannot be read as conjunctive only, but has to be read as disjunctive or conjunctive as the circumstances of the case warrant. In a given case illegality, incurable irregularity and loss of revenue may all exist in which case the word ''and'' has to be construed as conjunctively. But, in a given case, as the present

one, no illegality or irregularity in the auction sale may exist, but only loss of revenue may exist. In such a case it would be proper to interpret the term ''and'' as disjunctively. When there is loss of revenue or even possibility of loss of revenue, it is open to Government to refuse to confirm the auction sale though there is no illegality or irregularity in the auction sale at all.

23. In the present case, the sole reason set out in the impugned notification or one of the reasons given by the Minister is relevant to the Rule and the same cannot be interfered by this Court.

24. In Moolarangappa''s case, AIR 1979 Kar. 15. I have held that the order of Government made under Rule 15 of the Rules is not open to judicial review by this Court. But, that statement made by me appears to be very broad and is even wrong, the conclusion in that case was justified. An order made by Government under Rule 15 of the Rules is not beyond judicial review under Art. 226 of the Constitution. When Government finds that it should not confirm an auction sale on the ground of loss of revenue, this Court should normally accept the same, in the absence of any other compelling circumstances. In the present case there are no compelling circumstances warranting the interference by this Court. I have examined this case from this stand point and not; on broad proposition stated in Moolarangappa''s case.

25. On the above discussion, it follows that there are no grounds to interefere with the impugned order. These then are the reasons on which I have dismissed this writ petition on 30.6.1983.

