

(2023) 03 TEL CK 0045
In the Telangana High Court
Case No : Writ Appeal No. 316 Of 2023

State Of Telangana

APPELLANT

Vs

M Mohan Reddy

RESPONDENT

Date of Decision : 14-03-2023

Acts Referred:

Andhra Pradesh Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 — Rule 7, 12(1), 12(5), 12(6)(b), 12(6)(e), 12(6)(g), 16

Citation : (2023) 03 TEL CK 0045

Hon'ble Judges : Ujjal Bhuyan, CJ;N. Tukaramji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. D.L.Pandu, learned Government Pleader for Excise Department representing the appellants and Mr. K.Durga Prasad, learned counsel for the respondents.

2. This writ appeal has been preferred by the State against the judgment and order dated 24.08.2022 passed by the learned Single Judge allowing W.P.No.20076 of 2014 filed by the respondents as the writ petitioners.

3. Respondents had filed the related writ petition to return the Earnest Money Deposit (EMD) of Rs.5,00,000.00 each to the respondents for Shop No.3 at Sl.No.32, Ward No.116 of Greater Hyderabad Municipal Corporation (GHMC), Patancheru, Medak District and for Shop No.7 at Sl.No.36 of Ward No.116 of GHMC, Pathancheru in Medak District.

3.1. Pursuant to Gazette Notification No.10 dated 14.06.2014 issued by appellant No.2, respondents had applied for grant of licence for shop Nos.3 and 7 respectively along with non-refundable fee of Rs.25,000.00 each and demand draft of Rs.5,00,000.00 each towards EMD. The selection was to take place by drawal of lots on 23.06.2014. It is stated that though the drawal of lots was fixed on 23.06.2014, for reasons beyond their control, respondents could not be

present in the office of appellant No.2. Later on, respondents came to learn that their applications were the sole applications in respect of the two shops and that the two shops were allotted to them. However, no communication was received by the respondents. On 02.07.2014 when the respondents approached appellant No.2 for refund of EMD, they were informed about the allotment of two shops to them and that due to non-payment of licence fee, the said allotment in their favour had been cancelled. Therefore, the EMD was forfeited.

3.2. It is with the above grievance that the related writ petition came to be filed.

3.3. According to the respondents, no communication was received by them with regard to allotment of the two shops in their names. It was also not informed to them that they were the single applicants in respect of respective shops. Therefore, they had no means to know the outcome of the selection process.

4. Appellants filed counter affidavit. Stand taken was that Gazette Notification was issued for allotment of 176 A4 shops (retail vends) in Medak District for the year 2014 - 2015. Appellants had received 1217 applications for 161 A4 shops and single applications were received for the remaining shops. While acknowledging that respondents had filed applications in respect of the two shops, it was stated that respondents were issued entry pass on 21.06.2014 allowing them to take part in the drawal of lots scheduled on 23.06.2014. However, respondents did not take part in the selection process on 23.06.2014. Insofar the shops in question were concerned, since only single applications were received, applications of the respondents were favourably considered and shops allotted to them. Thereafter, respondents were required to make the balance payment of licence fee after adjustment of EMD. However, the respondents not only failed to appear on the date of drawal of lots but also immediately thereafter showing willingness to pay the balance licence fee as per the Andhra Pradesh Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 (briefly, "the Licence Rules" hereinafter). Much later they had approached appellant No.2 on 02.07.2014 for refund of EMD amount which was rejected by the appellants on the basis of the Licence Rules.

5. Learned Single Judge adverted to the relevant provisions of the Licence Rules more particularly to Rule 12(6)(b) as well as to condition No.8 of the licence conditions. Thereafter, learned Single Judge held that there was no communication by the appellants to the respondents regarding allotment of the shops to the respondents. In such circumstances, no adverse inference could have been drawn for absence of the respondents on the date of drawal of lots. Therefore, learned Single Judge while allowing the writ petition held that respondents are entitled to refund of the EMD amount and directed the appellants to refund the EMD amount to the respondents within eight weeks.

6. Insofar the rule position is concerned, Rule 12(5) of the Licence Rules says that selection process is to be undertaken in the presence of the applicants available at the place on the date and time notified. As per sub-rule (6)(a), the

selection process would be taken up shop wise as notified in the District Gazette. That apart, sub-rule (6)(b) says that the licensing authority at the commencement of selection process shall announce the names of the persons and number of persons who had filed applications for a particular shop. In case of a single application for a shop, sub-rule (6)(c) says that if the licensing authority is satisfied that the applicant is eligible for grant of licence and the statutory requirements have been fulfilled, he shall collect the licence fee and grant licence. If the licensing authority is not satisfied, he is required to reject the application by recording reasons therefor.

7. From the above, a view can reasonably be taken that it is the duty of the licensing authority to notify the number of applications and the names of the applicants applying for a particular shop. This would be applicable even in case of a single application for a particular shop. That apart, the licensing authority must be satisfied that the sole applicant is eligible for grant of licence and that the statutory requirements for grant of licence have been fulfilled. It is only thereafter that he shall collect the licence fee and grant licence. Therefore, there is a duty on the licensing authority to notify the applications along with the names in respect of a particular shop which would be applicable even in the event of a single application. Further, in case of a single applicant the licensing authority must be satisfied that the applicant fulfils all requirements for grant of licence.

8. We may also advert to condition No.8 of the conditions governing drawal of lots which is relatable to Rule 12 of the Licence Rules. It says that the applicant or his power of attorney holder shall be present at the place of drawal of lots at the time of drawal of lots. In the event of their absence, his application would not be considered. However, condition No.9 which is in tune with sub-rule (6)(b) of Rule 12 of the Licence Rules says that the authority under whose aegis the drawal of lots may take place shall in the case of any shop where only one application is received, declare the same in favour of that applicant subject to the condition that all the other conditions have been met. Therefore, merely because there is one application would not ipso facto lead to the conclusion that such applicant would be granted the licence. It would have to be scrutinised by the licensing authority as to whether it fulfils all the other terms and conditions.

9. It is in the above backdrop and upon perusal of the record, learned Single Judge did not accept the contention of the learned Government Pleader that when it is a case of a single applicant, no such notification is required to be issued or presence of the applicant at the time of drawal of lots would not be required. Learned Single Judge held as follows:

27. Firstly, it is to be seen that till the date fixed for drawal of lots, it is not known as to how many applications are received for grant of licence for a particular shop, i.e. either a single application or multiple applicants applying for the same and as to in respect of which shop the successful applicant would be selected by drawal of lots. Secondly, if an applicant, like the petitioners, who

were not present or could not be present on the day at the place of drawal of lots, would not be aware as to whether they were declared as successful applicants being a single applicant or through drawal of lot as there is no method prescribed under the Licence Rules for communicating the result of selection process.

28. It is not even the case of the respondents that any point of time prior to the date fixed for selection of successful applicant by taking into consideration all the sealed envelopes, any communication by way of display or in writing is made at the venue as to number of applications received shop-wise, for the applicants to know as to whether their application is the single application or they would be going through the process of selection by drawal of lots, so as to attribute knowledge to the applicants to remain absent.

29. On the other hand, it is only when an applicant enters into the place where drawal of lots is to take place by obtaining entry pass under Rule 7 of Licence Rules, and the licensing authority at the commencement of selection process announces the names of the persons and number of persons participating for a particular shop, one would come to know of the number of applications received shop-wise. Thus, the contention of the respondents that where only one application is received, the same is to be deemed as successful applicant, without being issued with any communication in that regard, in the view of this Court cannot be accepted.

30. The above conclusion of this Court is further fortified, by virtue of the fact that a discretion is vested with the licensing authority, as the said authority is required to be 'satisfied' as to eligibility or otherwise of the applicant by being present at the place where selection process is undertaken and thus, merely being single applicant, the selection is not automatic. The issue can also be considered from another angle. In the application which is required to be submitted for grant of licence viz., Form A-3(A), one is required to provide certain information and also enclose various declarations and affidavit in the prescribed format. If the contention of the respondents is accepted, where one merely files an application, which is either incomplete or insufficient or does not furnish necessary documents, and if it happens to be the only/single application for a particular shop, he would have to be granted with licence, even without opening the sealed envelope submitted. That could not have been the intention of the Legislature while enacting the law and the Executive while framing the rules.

31. It is only when a selection is confirmed in favour of an applicant i.e., after opening of the sealed envelope containing the application along with duly executed declarations and affidavit and other documents as specified in Rule 12(1) of the Licence Rules and the licensing authority being satisfied as to the eligibility of the applicant for grant of licence, the licensing authority can direct the applicant for payment of licence fee. It is only upon failure of applicant to make payment of licence fee as per Rule 16 of the Licence Rules, as directed by

the licensing authority, the condition imposed in Rule 12(6)(e) & (g) relating to forfeiture of EMD would get triggered and not otherwise.

32. It is not in dispute that both the petitioners did not take part by entering into the place whereat the selection of candidates were to be undertaken by drawal of lots. Merely by the reason of the petitioners being the single applicants for the respective shops, would not make them as successful applicants for the said shops, unless and until a confirmation is recorded to the said effect by the licensing authority that the applications filed by them are otherwise in order. Further, where an applicant, having not been present at the place whereat drawal of lots was to be taken up, considering such applications in selection process would not arise at all. Even assuming if the contention of the respondents is to be accepted, the authority ought to have issued communication in the nature of confirmation, calling upon such applicant to comply with Rule 16 of the Licence Rules immediately.

33. In the facts of the present case, no such communication was issued to the petitioners and the same is not disputed by the learned Government Pleader appearing for the respondents. The Confirmation Register, as produced before this Court, shows an endorsement in pencil as 'absent' in respect of shop Nos.3 and 7'. Thus, it cannot be said that the selection in favour of the petitioners has been confirmed by the licensing authority on the date of drawal of lots. Once no communication is issued to the applicant, confirming his selection, the applicant cannot be considered as a successful applicant requiring him to comply with the other conditions, more so, when no satisfaction of the licencing authority for allotment in his favour is recorded.

34. Thus, the contention of the respondents that since the petitioners, being the single applicant and having failed to make the payment of balance of licence fee as per Rule 16 of the Licence Rules, stand disqualified to claim refund of EMD amount, cannot be countenanced.

35. On the other hand, the petitioners, though having made an application, for being selected for grant of licence in respect of Shop Nos.3 and 7 and making the payment of Rs.5,00,000/- each as EMD, would be entitled to seek refund of the same, since they were not present on the day so fixed for selection at the place of drawal of lots, more so, when it is not shown to this Court as to the petitioners being issued with any communication confirming their selection for the particular shop and the petitioners failing to comply with the other conditions specified while making application and as per the Rules.

36. In view of the above, this Court is of the view that the petitioners are entitled for the relief of refund of EMD amount of Rs.5,00,000/- each paid by them at the time of making applications.

10. Learned Government Pleader has urged the same contentions as were argued before the learned Single Judge. Further he has submitted that because of the lapse of the respondents State had to incur heavy loss.

11. Upon due consideration, we do not find any error or infirmity in the view taken by the learned Single Judge. That apart, the licence period was for 2014 – 2015 which had long expired.

12. We, therefore, do not find any good reason to entertain the appeal, which is accordingly dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.