

(2015) 10 SHI CK 0056
In the High Court Of Himachal Pradesh
Case No : CWP No. 2439 of 2015

Sumit Gupta and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 27-10-2015

Acts Referred:

Citation : (2015) 10 SHI CK 0056

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Sanjeev Kuthiala, Advocate, for the Appellant; Shrawan Dogra, Advocate General, M.A. Khan, Anup Rattan and Romesh Verma, Additional Advocate Generals, for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—The brief facts giving rise to this writ petition are that a public notice was issued by respondents No. 2 and 3 under the aegis of respondents No. 4 inviting applications for allotment of license of Retail sale of L-14 (Country Liquor) as also L-2 Indian Made Foreign Liquor (IMFL) for the year 2015-2016 within the State of Himachal Pradesh. Since the process of allotment was not completed within the stipulated time, therefore, the respondents vide public notice dated 26.3.2015 invited applications for the allotment of remaining licenses for the aforesaid outlets.

2. The petitioners successfully participated in the draw of lots held on 30.3.2015. Petitioners No. 1 and 2 were successful allottees with respect to vends situated at Ajauli Unit bearing Unit Nos. 31, 32, 33 and 37 of District Una, whereas, petitioner No. 3 was the successful allottee of Bangana bearing Unit Nos. 46 and 48. The petitioners No. 4 and 5 on the other hand were successful allottees with respect to the Unit at Khad bearing Unit No. 14. It is not in dispute that all the petitioners being successful allottees had deposited 5% of the license fee alongwith basic fee which was duly accepted by the respondents. It is also not in dispute that the petitioners have thereafter furnished the bank guarantee(s) as

also surety bond (s).

3. The grievance of the petitioners is that despite having been successful in the draw of lots and having completed all the codal formalities, the outlets were not allotted to them. Rather, the respondents unilaterally issued public notice in the newspaper on 1.4.2015 and notified the retail units afresh including the outlets already allotted in favour of the petitioners. It is contended that the entire exercise was undertaken only in order to benefit the private respondent No. 5 whose father infact is running liquor vend throughout Una.

4. The official respondents in the reply have sought to justify their action, by contending that there were no offers for 34 Units pertaining to District Una having license fee over 40 crores rupees and consequently no takers. After considering the viability of these Units, possibility of their allotment in combination with other units/vends was explored and public notice dated 26.3.2015 was issued by respondent No. 2 for inviting applications for the allotment of remaining licenses of the retail outlets. However, 07 units having license fee of Rs. 6,88,89,269/- could only be allotted in the draw of lots held on 30.3.2015 and large number of units having license fee of over 33 crore rupees remained un-allotted. These 07 units/vends were not confirmed by the Excise & Taxation Commissioner (respondent No. 2) and thereafter these units were re-clubbed in the interest of revenue and new unit No. 53 was constituted and public notice dated 31.3.2015 was thereafter issued seeking fresh applications for allotment of the newly constituted unit.

5. It is the further case of the respondents that separate notices were issued to the petitioners intimating that the units allotted to them have not been confirmed by the Excise and Taxation Commissioner and their units have been re-clubbed with newly constituted unit for which the draw of lots would be held on 1.4.2015. The petitioners were also advised to file fresh applications for allotment of newly constituted unit and as such, the petitioners were given due opportunity to participate in the allotment process. It is further stated that the allotment thereafter made in favour of respondent No. 5 was strictly in conformity with law.

6. Respondent No. 5 has filed separate reply wherein, it has been averred that allotment made in his favour is strictly in accordance with law.

7. We have heard the learned counsel for the parties and have gone through the entire record of the case carefully.

8. It is not in dispute that all allotments of the vends/units are subject to confirmation by the Excise and Taxation Commissioner-cum-Financial Commissioner (Excise), in terms of Condition No. 1.3 of Chapter-I of the Announcements of Excise Allotments for the year 2015-16 which reads as under:--

"1.3 All the allotments of the vends/units or renewal of licenses of the vends/units shall be subject to confirmation by the Excise & Taxation Commissioner-

cum-Financial Commissioner (Excise), Himachal Pradesh, who reserves the right to reject any allotment/renewal without assigning any reason for doing so."

9. It is while exercising the powers under the aforesaid clause that respondent No. 2 did not confirm the allotment made in favour of the petitioners despite their having paid 5% of the licence fee and completed certain other formalities. It is further not in dispute that the decision taken by respondent No. 2 for grouping of vends was taken in order to safeguard the government revenue. Once it is so, then no exception can be taken against this action of respondent No. 2 in view of the judgment rendered by the Hon''ble Supreme Court in *Rishi Pal and Co. Vs. State of H.P. and Others*, wherein Condition No. 1.3 (supra) has been upheld. Needless to say that the judgment in *M/s. Rishi Pal's case* (supra) has thereafter been followed by this Court in *Hem Raj versus State of Himachal Pradesh and others* 2015 (1) Him. L.R. (DB) 561 and in CWP No. 2220/2015 titled as *Satish Singh versus State of H.P. and others*, decided on 05.08.2015.

10. The learned counsel for the petitioners would vehemently argue that once the petitioners have deposited 5% of the licence fee alongwith basic fee and had even furnished the bank guarantee(s) and surety bond (s), the respondents were estopped from re-grouping the vends and thereafter allotting the same to respondent No. 5.

11. Even this plea is not available to the petitioners as similar contentions have already been considered and thereafter rejected in *Hem Raj's case* (supra) and it was held:--

"6. For reiteration, in the face of Unit No. 23 standing obliteration it would be an abuse of the equitable principle of promissory estoppels to stretch it to a scenario as in the instant case when with the unit qua which it is canvassed to be purportedly generated has faded into oblivion by a tenable act of the respondents. In other words, it would be a travesty of the rules permitting exercise of un-circumscribed powers embedded in the authority concerned to create/constitute new units by regrouping of hitherto units in case merely on the strength of deposit of license fees by the petitioner herein of renewal of an extinct liquor vend/unit, the equitable principle of promissory estoppel is permitted to sprout. The latter rule is a rule of equity and is unavailable to be drawn, when rules as in the instant case governing the issuance of liquor license to the aspirants exist. Even otherwise, the act of the respondents in rendering extinct Unit No. 23 by resorting to by its tenable act of regrouping create a new unit No. 45 is buoyed or fostered by a profiteering motive of the Government Annexures P-9 and P-10 portray that since no application for renewal of license in respect of four units namely Kunihar, Darlamore, Bhararighat and Dumehar having a license fee of Rs. 4.23 crores were received, as such, for want of receipt of application for renewal of units aforesaid which application if received would have reared a revenue of Rs. 4.23 crores to the State exchequer the legally authorized step of the respondent to regroup of the units aforesaid with Unit No.

23 and thereby create/constitute newly ascribed unit No. 45 is to be presumed to be a legally warranted step prodded by statistical data. The petitioner has omitted to display any material portraying that no statistical data losses of revenue to the respondents existed before they proceeded to obliterate units aforesaid and on regrouping/realigning thereof theirs having constituted a new Unit No. 45 in which the participation of the petitioner herein too was elicited. For lack of adduction on record of the aforesaid material an invincible conclusion which ensues is that the respondents in resorting to the act of regrouping/realigning of Units and on such regrouping, ascribing a new unit number had carried out a stretched and thoughtful exercise. Preponderantly then, when the said exercise is not imaginative or conjectural rather is obviously to buoy revenue or obviate loss to the exchequer in the sum of Rs. 4.23 Crores, it cannot be construed to be smacking of any malafides or arbitrariness."

12. Mr. Sanjeev Kuthiala, learned counsel for the petitioners has thereafter vehemently argued that the entire exercise of the respondents was contrary to the principles of natural justice and undertaken only with an intent to confer undue benefit upon respondent No. 5.

13. We again find no force in this submission for the simple reason that prior to issuing the public notice, all the petitioners were duly informed through individual notices to this effect and it is only thereafter that respondent No. 5 in an open draw was declared to be successful allottee. Therefore, it can be safely concluded that the entire process of inviting applications for allotment of remaining units has been carried out by the respondents in a just and legal manner and there is no reason to conclude that any undue advantage thereby has been conferred upon respondent No. 5.

14. Learned counsel for the petitioners would then place reliance upon the judgment of Hon"ble Supreme Court in case titled Commissioner Excise and Another Vs. Manoj Ali and Another, , to contend that initiation of proceedings for cancellation of a licence leads to serious consequences and the Commissioner of Excise being a statutory authority, was duty bound to oversee strict observance of the terms and conditions of the licence as per the provision of the Excise Act and the Rules framed thereunder by the licensee and his conduct should have been above board. He further contends that the exercise of statutory function cannot be and should not be arbitrary and capricious. Whereas in the instant case, respondent No. 2 by not accepting the bid of the petitioners has acted in a most arbitrary and capricious manner and, therefore, the decision taken by respondent No. 2 to re-allot the said liquor units should be set aside and the petitioners should be allowed to run the liquor vends as allotted to them.

15. We for more than one reason find no force in the aforesaid submission. Firstly, the issue in hand regarding regrouping of vends in order to safeguard government revenue is already covered by the judgment of the Hon"ble Supreme Court in M/s. Rishi Pal and Co. (supra) and secondly this Court in Satish Singh's case (supra) has clearly held that there is no provision either in the

policy or the rules which may stipulate automatic or deemed confirmation of any application for renewal as the same has been specifically made subject to the confirmation by the Financial Commissioner. In such circumstances, we fail to see as to how the principles of natural justice have been violated.

16. Having said so, we find no merit in this writ petition and the same is accordingly dismissed alongwith all pending application (s), if any, leaving the parties to bear their own costs.