

(1991) 02 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5073 of 1990

Sunil Talwar Murlidhar and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1992) 1 WLC 632 : (1991) WLN 104

Hon'ble Judges : Milap Chandra Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Milap Chandra Jain, J.—This writ petition has been filed for directing the respondents (i) to allow remission of Rs. 24,43,449/- for the months of October and November, 1990, during which the petitioners were not able to open their liquor shops due to curfew, (ii) not to adjust any amount from the security amounts and (iii) not to cancel the licence on account of the non-payment of the said amount. The facts of the case giving rise to this writ petition may be summarised thus.

2. The petitioner No. 1 was granted licence under the Rajasthan Excise Act, 1950 (hereinafter to be called "the Act") for the period from April 1, 1989 to March 31, 1991 for the exclusive privilege for selling country liquor on 75 shops and 45 sub-shops. Curfew was imposed in the entire municipal limits of Jodhpur from October 24 to November 19, 1990. As a result thereof, the liquor shops could not be operated at all during the curfew periods. There was proportionate loss in retail sale of liquor. By letter dated November 21, 1990 (Annexure 4), respondents were requested to grant remission of the said amount of Rs. 24,43,499/-. It is apprehended that the demand for the said amount may be raised and it may be deducted from their security amounts. In similar circumstances, remission was granted to Kota shops by order dated April 22, 1988 (Annexure 5).

3. In reply to the show cause notice, the respondents admit that the licences for the exclusive privilege for selling liquor of various kinds have been granted to the petitioners for the period from April 1, 1989 to March 31, 1991 and curfew was imposed in the municipal area of Jodhpur. Remaining allegations of the writ petition have been denied. Three preliminary objections have been raised. Firstly, the petitioner No. 1 is neither a partnership firm nor a company and hence it is not a legal entity. Secondly, the petitioners want to avoid contractual obligations, they are liable to pay the amounts of the licences of the exclusive privilege in terms of the contract. Thirdly, the writ petition involves disputed questions of facts. It has also been averred that the licences Annexures 1, 2 and 3 for the exclusive privilege to sell liquors for the group of shops known as "Jodhpur Bilara Baori Mathania group of shops" were granted for complete group of shops for the yearly amount mentioned in them, it is wholly wrong to say that the amounts of exclusive privilege were calculated on the basis of any particular number of dry days or any particular hour of the business, no amount was calculated for any separate shop and the yearly amount of privilege was to be paid in 12 equal instalments in terms of the conditions of licences. It has also been averred that the imposition of curfew at Jodhpur did not entitle the petitioner to claim any compensation or deduction in any amount, neither the business of the petitioner fell nor they suffered any loss on account of the curfew, they have no right to claim damages or remission, the petitioners are bound to pay the entire amounts of the exclusive privilege in accordance with the terms of the contracts, the rights of the parties are governed by the terms of the contract and not by the constitutional provisions, no question arises of the violation of Article 14 of the Constitution of India, there is neither any arbitrariness nor any unreasonableness in requiring the petitioners to deposit the entire amounts of exclusive privilege in terms of the licence Exs. 1 to 3, curfew had no effect on the business of the petitioner as it is well known that person in need of any commodity procure and store it as soon as they get an opportunity for the same and in such circumstances the tendency is to procure more than what is actually needed in the ordinary course from any shop at any price and admittedly, there was no control over the prices, there is no question of equitable estoppel and unjust enrichment and the order Annexure 5 granting remission to Kota shops was wrongly issued and it cannot be a precedent.

4. The question for consideration in this writ petition is whether the petitioners are entitled for the remission on account of the imposition of curfew during the months of October and November, 1990. Schedules "A" to "G" and statements, papers Nos. 28 and 29, show the loss on account of imposition of curfew on the basis of the amount of exclusive privilege per day. The actual loss suffered by any shop on account of imposition of curfew has neither been stated in the writ petition nor any of these statements. It has not been averred in the writ petition that the sale for the months of October and November, 1990 in any shop was less than the average monthly sale during the years 1989-90 or 1990-91. There is a great force in the contention of the learned Counsel for the respondents that

there is human tendency to purchase and store more than actual requirements in such circumstances. This may be particularly more for the consumers of liquor. The condition No. 12 (Kha) of the licence Annexure 1, condition No. 18 of licence Annexure 2, condition No. 17 of licence Annexure 3 clearly specify that the licence will not be entitled for any damage on account of the closure of the shops or reduction of the hours of sale. The petitioners are bound with these conditions.

5. Many disputed questions of facts are also involved in this writ petition. Complete remission has been claimed on the basis of exclusive privilege amount per day for those days even during which there was partial curfew. The days of partial and complete curfew have not been specified. The following observations of His Lordship of the Supreme Court made in *D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others*, are fully applicable in this case:

Speaking entirely for myself, my conscience protests to me that when thousands remediless wrongs await in the queue for this Court's, intervention and solution for justice, the petitions at the behest of diamond exporters and dry fruit exporters where large sums are involved should be admitted and disposed of by this Court at such a quick speed. Neither justice nor equity nor good conscience deserves these applications to be filed or entertained.

6. Thus there is no substance in the writ petition, It is summarily dismissed.