(1995) 08 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 14383 of 1993

Surinder Kumar and Company — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 30-08-1995

Acts Referred:
Constitution of India, 1950 — Article 14, 21, 226

Citation : (1996) 113 PLR 215

Hon'ble Judges : R.S. Mongia, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mohan Jain, for the Appellant; R.C. Setia, Additional A.G., for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, J.—The petitioner being the highest bidder was allotted a liquor vend by the respondent at village Assaudha, Tehsil Ballabgarh District Rohtak for Rs. 6,10,000/- for the year 1989-90 i.e. from 1.4.1989 to 31.3.1990. The petitioner deposited a sum of Rs. 1,14,174/- as earnest money within the stipulated period.

2. Gram panchayat of village Assaudha filed a civil suit in the Court of Sub-Judge 1st Class, Ballabgarh against the petitioner and the State Government on the ground that no liquor vend can be allotted at the place where the petitioner was supposed to carry on the business of selling liquor. The Sub-Judge 1st Class, Ballabgarh granted stay on March 31, 1990, with the result that the petitioner could not start the liquor vend for which he had given the highest bind and had even deposited the earnest money, as observed above.

3. As the petitioner could not start the liquor vend for the entire period of the year 1989-90 (1.4.1989 to 31.3.1990), he asked for he refund of the earnest money in writing and even gave legal notice for its refund. The respondents having failed to refund the amount, the petitioner approached this Court.

4. Notice of motion was issued. In para 6 of the reply filed by the Joint Excise and Taxation Commissioner (Headquarters), it has been stated that the petitioner had requested for the refund of the earnest money. The case was sent to the Head Office for permission to refund the amount and the case is in process with the Government. The reply was filed on 19.3.1994. On August 2, 1994, an order was passed by this Court directing the respondents to file a specific affidavit as to why the refund was not being made to the petitioner. A short reply was filed by Shri Kali Ram, Under Secretary to Government Haryana, Excise and Taxation Department dated August 24, 1994 in which it has been averred as under :-

"That the case of the petitioner regarding remission of licence fee and excise duty on the quota allotted to the vend of the petitioner is under consideration of the Government and will be decided within a period of three months."

5. The facts of this case highlight the state of affairs in the respondent-department. No fact has been denied. It is not disputed that the petitioner could not establish the liquor vend at the place allowed to him by the respondents because of the stay order granted by Sub-Judge Ballabgarh. The State was a party in the suit. One may imagine that there was some justification for not refunding the amount upto March 31, 1990 (when the year 1989-90 was to come to close) as the stay which was granted on March 31, 1989 could have been vacated upto that date. However, there was no justification with the respondents not to refund the amount immediately after March 31, 1990. In spite of repeated written requests and legal notice, no substantial steps have been taken by the respondents to refund the amount. More than four years have elapsed even after March 31, 1996 and still the matter is under consideration of the Government. As to what justification the Government can give for not refunding the amount is for anybody to guess.

6. Consequently we allow this writ petition and direct the respondents to refund the amount of Rs. 1,14,174/- within a fortnight from today. Since we do not find any justification whatsoever for not refunding the amount atleast after March 31, 1990 we hold that the petitioner would be entitled to the interest at the rate of 15% per annum with effect from April 1, 1990 till the date of payment. The amount of interest shall also be paid alongwith the principal amount mentioned above.

7. It will be open to the Government to recover the amount of interest from the official/officer of the department who may be held responsible for not refund- ing the amount to the petitioner in time.

The petitioner would be entitled to the costs of this case which are quantified at Rs. 3,000/-.

