(1985) 04 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : C.W.N. No. 118 of 1985

Swaraj Suri APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

Date of Decision : 09-04-1985

Acts Referred:
Constitution of India, 1950 — Article 47
Punjab Excise Act, 1914 — Section 12, 26, 3(12), 3(9), 34
Punjab Liquor Licence Rules, 1956 — Rule 1, 24, 35, 36, 36(18)

Citation : (1986) ShimLC 127

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : Chhabil Dass, for the Appellant; P.N. Nag, General for Respondent Nos. 1 to 3 and M.G. Chikara, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Desai, C.J.—Although Rule nisi has not been issued, the matter was argued at length and threadbare The rival submissions on points of law and fact have been carefully examined: (i) in light of the relevant statutory provisions contained in the Punjab Excise Act, 1914 (hereinafter referred to as "the Act") and the Punjab Liquor License Rules, 1956 (hereinafter referred to as "the Rules"), as amended from time to time and as applicable to the case in hand [Sections 3(9) and (12-a), 8, 9, 12, 26, 34, 35] and 59 and Rules 1, 24, 35 and 36, and (ii) keeping in view the principles laid down by the Supreme Court in several decisions relating to the grant of liquor licenses and, more particularly, the decisions in Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and State of Haryana and Ors. v. Jage Ram and Ors. AIR 1980 SC 2018, both of which are decisions rendered in the context of the statutory provisions with which the Court is herein directly concerned and also the decision in State of Orissa v. Harinarain AIR 1982 SC 1816.

2. The controversy between the parties relates to the grant of license in forms

L-2, L-10 and L-14 in District Una to the fourth Respondent by negotiations. There are in all 20 vends covered by the aforesaid categories of license in District Una, in respect of each of which an auction was held on March 18, 1985. The Petitioner was the highest bidder in respect of 4 vends. The fourth Respondent was the highest bidder in respect of one vend. Under Sub-rules (18) and (22) of Rule 36, all sales by auction are open to revision and the bids accepted are subject to confirmation by the Financial Commissioner to whom the Collector, who is the auctioning authority, has to forward statements showing the locality of each shop sold, the probable sales during the year, the lowest fee determined prior to the auction, the names of the persons to whom the shops have been sold for the highest bid etc. The second Respondent, who is the Excise and Taxation Commissioner and who has been invested with the powers conferred on the Financial Commissioner by the Act, received such statements in respect of the aforesaid auctions and having considered the results of the auction he refused to sanction the auction on the round that bid moneys were not as per expectation. On March 24, 1985, therefore, the second Respondent gave licenses in respect of all the excise vends of District Una by negotiations to the fourth Respondent in the presence of the Assistant Excise and Taxation Commissioner, incharge District Una and other Excise contractors for a consideration of Rs. 10,80,000.00 The consideration thus realised resulted in an increase of Rs. 10,80,000.00 over the consideration received in the previous year and also in an increase of Rs, 7,21,000,00 over the totality of consideration received as a result of the bids offered at the auction held on March 18, 1985.

3. The Petitioner challenges the aforesaid action on the part of the second Respondent on the grounds that: (i) under the law in force licenses, in forms L-2, L-10 and L-14 can be granted only by the Collector by auction and not by the second Respondent by negotiations, (ii) in any case, since a monopoly was to be granted to one person in respect of all vends covered by different categories of licenses an opportunity was required to be given to all interested parties to make offers in the course of negotiations and (iii) the exercise of power was mala fide since the fourth Respondent, who had procured licensee in respect of only one vend at the auction, was given the monopoly of all vends.

4. The challenge is sought to be met on behalf of the Respondents mainly relying upon the provisions of Sections 34, 35 and 59 of the Act read with Rule 36 and Clause 4 of the Announcements made at the time of auction of the excise licenses. The submission was that the grant of different kinds of licenses for all vends to a single person by negotiations was made in exercise of the statutory power which inhered in the second Respondent and which allowed the selection of any suitable mode therefore in order to realise the maximum excise revenue and that the action was taken bona fide in the interest of the public revenue after negotiations were held by the second Respondent with the interested excise contractors of District Una. The additional submissions was that the Petitioner, who had offered the bids at the auction with full knowledge of the terms and conditions attaching to such auction, which authorised the competent authority

to grant licenses in question by contract through negotiations, ought not to be permitted to raise a challenge to the power to grant those licenses accordingly, especially when he too was given an opportunity to enter into such negotiations but declined to avail of the same on the ground of his inability to manage all the vends in the district.

5. Numerous decisions rendered by the Supreme Court uniformly emphasis that the State has the power to prohibit trades which are injurious to the health and welfare of the public, that elimination and exclusion from the liquor business is inherent in the nature of such business, that no person has an absolute right to deal in liquor and that all forms of dealings in liquor have, from their inherent nature, been treated as a class by themselves by all civilized communities, A citizen, therefore, has neither a natural nor a fundamental right to carry on trade or business in liquor. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. Thewider right to prohibit absolutely would include the narrower right to permit dealings in intoxicants on such terms of general application as the State deems expedient. Since rights in regard to intoxicants belong to the State, it is open to the Government to part with those rights for a consideration even on a monopolistic basis. No statute forbids the Government from trading in its own rights or privileges ; the statutes enacted by different states, far from doing so, expressly empower them to grant leases of their rights and/or to issue licenses, permits or passes in that regard. The State has the power to direct that licenses may be granted subject to such conditions and restrictions and on payment of such fees, that is, such consideration, as may be prescribed. In such a scheme, it is not of the essence whether the amount charged to the licensees is pre-determined or whether it is left to be determined by bids offered in auctions or otherwise. The power of the Government to charge the price for parting with those rights and not the mode of fixing that price is what constitutes the essence of the matter. Once it is appreciated that auctions are only a mode or medium for ascertaining the best price obtainable for the grant of privilege to sell liquor, no objection could be validly taken to a direction lawfully issued that a class of licenses may be granted in any other mode so as to ensure the availability of a better price for the grant of the privilege. The amount charged to the licensees, though often called a fee, is not fee properly so called nor indeed a tax but is in the nature of the price or consideration for a privilege which the purchaser has to pay in any trading or business transaction. Such a charge is the normal incident of a trading or business transaction and it need bear no guid pro quo to the services rendered to the licensees. Whether or not the Government itself should carry on trade or business in a noxious or dangerous substance like liquor, which is injurious to the health and welfare of the public, especially in view of the directive contained in Article 47 of the

Constitution which enjoins upon the State to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks, in a matter of State policy with which the Court is not concerned, however, immoral sum governmental activity may appear, more particularly when it is undertaken to raise revenue.

6. The points in controversy have to be appreciated against the aforesaid background and in light of the relevant statutory provisions.

7. u/s 8 read with Section 12, subject to the control of the State Government and unless otherwise directed, the general superintendence and administration of all matters relating to excise vests in the Financial Commissioner whose jurisdiction extends to the whole of the State. Section 34, inter alia, provides that every license shall be granted subject to such restrictions and on such conditions as the Financial Commissioner may direct. Section 35 empowers the Collector to grant licenses for the sale of any intoxicant within his District subject to the rules made by the Financial Commissioner u/s 59. Section 59 empowers the Financial Commissioner to make rules, by notification, prescribing inter alia, scale of fees or the manner of fixing the fees payable in respect of any license and the authority by, the restrictions under and the conditions on which any license may be granted.

8. Rule 1 read with Rule 35 provides for the issue of licensees in Forms L-2, L-10 and L-14 by auction and the authority empowered to grant the licensees is the Collector. Rule 35, however, reserves to the Financial Commissioner the power to grant any such license on the payment of fixed fee. Rule 24 prescribes the following four kinds of fee leviable in respect of the grant of licensees; (a) Fixed fees; (b) Assessed fees; (c) Auction fees; and (d) Tender fee. Rule 36, which is material, prescribes the procedure for the grant of license by auction. In so far as it is relevant for the present purpose, the Rule provides that the Collector will give timely notice of the date and place of the auction and that such notice will specify the conditions to which the auction will be subject. Before the auction begins the Presiding Officer is under a duty to read out such notice. Though the Presiding Officer may accept the bids, they are subject to the confirmation of the Financial Commissioner. All sales are open to revision by the Financial Commissioner and, if a sale is set aside on revision, the Collector is authorised to re-sell the licenses by auction or by tender.

9. The conditions subject to which the auction for the licenses in question was held on the present occasion were published in the form of Announcements to be made at the time of auctions of the excise licenses for the financial year 1985-86. For the purposes of the decision of the present case, the material terms forming part of the Announcements are as follows: (1) the licenses shall be granted under Announcements and shall be subject to the provisions of the Act and the Rules; (2) the highest bids shall be subject to confirmation by the Excise and Taxation Commissioner, in whom shall vest a right to reject any bid without assigning any reason for doing so; and (3) the licensees in Forms L-2,

L-10 and L-14 may be granted on fees fixed by auction but the competent authority may, "if no bid is forthcoming in respect of a vend or a group of vends or if the situation otherwise warrants or it is expedient to do so," grant those licenses by contract through negotiations.

10. These various statutory provisions as well as the conditions of auction; when examined in light of the wide power of the State to prohibit and regulate the activity of sale of intoxicants, leave no room for doubt that there is no inherent lack of power, authority and jurisdiction in the Financial Commissioner or his delegatee to grant the monopoly of sale of intoxicants by issue of licenses by negotiations. In other words, the existence of the power cannot be doubted though the assumption or exercise thereof on given occasion may be open to challenge as being not in accordance with law or mala fide. Although under the relevant rules the licenses in the Forms in question are to be ordinarily granted by the Collector on fees fixed by auction, the bids accepted by the Presiding Officer are subject to confirmation by the Financial Commissioner in whom js expressly reserved the right to grant any such license even on payment of fixed fee. Besides, under the conditions of auction, as contained in the Announcements, which were known to the Petitioner, the competent authority, that is, the second Respondent had the authority to grant licenses by contract through negotiations it, inter alia, the situation so warranted or it was expedient so to do. Whether or not those conditions could be regarded as rules framed u/s 59 is a matter of no consequence once it is appreciated that in the aforesaid scheme of things governing the parting of the rights of sale of intoxicants which belong to the Stats what is of the essence is the power to charge the price and not the mode of fixing that price. In any case, it is not open to the Petitioner, who had offered the bids at the auction with open eyes and with full comprehension of the terms and conditions attaching to such auction, to challenge the power of the second Respondent to grant the licenses by private negotiations, which was expressly reserved, especially when no failed to avail of an opportunity offered to him to enter into such negotiations. The power to grant licenses on a monopolistic basis to the fourth Respondent is not shown to have been exercised mala fide or for purposes alien to the statute. There is no manner of doubt indeed that the power has been exercised on the present occasion in conformity with the object of the statute and in order to augment the excise revenue

11. Having regards to all the circumstances of the case, at the instance of the Petitioner, we do not thank any judicial intervention is called for in the exercise of writ jurisdiction. The writ petition is, therefore, summarily rejected.

