

Dharmendra Kumar Singh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Aug-27-2013

Appellant : Dharmendra Kumar Singh

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Tomar

Judgement :

1 W.P. No.3766/2007 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR SINGLE BENCH: HONBLE SHRI JUSTICE A.K.SHRIVASTAVA Writ Petition No.3766 / 2007 PETITIONER : Shri Dharemendra Kumar Singh, S/o. Shri K.P. Singh, R/o. 249, W.N.Type Khamariya, District Jabalpur (M.P.) Versus RESPONDENTS:

1. State of M.p. through its Secretary, Excise Department, Vallabh Bhawan Bhopal
2. Excise Commissioner, Office Gwalior 3. Collector, Office of Collector, Jabalpur
4. Assistant Excise Commissioner Office of Collectorate, Jabalpur 5. District
Excise Officer, Office of Collectorate, Jabalpur (M.P.)

----- Petitioner by
Shri P.S. Tomar, Advocate. Respondents by Shri Sanjay Dwivedi, Government
Advocate. -----

ORDER

(27.08.2013) By this petition under Article 226/227 of the Constitution of India, the petitioner is claiming the following reliefs:-

7.1 ;g fd]. vkosnd dk efnjk nqdku vkoaVu 2007&2008 dh VsUMj 2 W.P. No.3766/2007 izf;k dk fjdk MZ vukosndx.kksa ls cqykus dh d`ik djsa rFkk fjdk WMZ ds voyksdu ds ipkr~ vkosnd dks fn;s x;s izkd`frd U;k; ds fl)kUrksa ds f[kykQ /kjksgj jkfk 7].03].000@& vadu lkr yk[k rhu gtkj :i;s dh jkfk jktlkr djus ds vknsk iznkZ ih&1 dks fujLr djus dh d`ik djsaA

7.2 ;g fd]. vkosnd }kjk tek dh x;h /kjksgj jkfk 7].03].000@& vadu lkr yk[k rhu gtkj :i;s]. cSad fMek.M MkV ,usDtj ih&2 dh jkfk vukosndx.kksa ls vfoYec C;kt lfgr vkosnd dks okfil djus ds vknsk nsus dh d`ik djsaA

7.3 vU; dksbZ mfpr vknsk]. tks ekuuh; U;k;ky; nsuk pkgs]. nsus dh d`ik djsaA

2.The contention of learned counsel for the petitioner is that in earlier petition i.e. W.P. No.2665/2007 (Shri Dharmendra Kumar Singh v. State of M.P. & Ors.) this Court on 28.02.2007 disposed of the petition by giving a direction that if the petitioner submits a representation before the Collector, Jabalpur with supporting documents and certified copy of the order passed in the said writ petition it may be considered by the Collector on the basis of analogy made in the order Annexure-P/7. The contention of learned counsel is that on bare perusal of Annexure-P/7 which consists of representation dated 1.3.2007 as well as order passed in 3 W.P. No.3766/2007 W.P. No.2665/2007 it reveals that on 1.3.2007 as directed by this Court the petitioner appeared and submitted representation but nothing has been done by the Collector. Hence, it has been prayed that proceedings in pursuance to show cause notice (Annexure-R/2) dated 23.03.2007 since it is in complete derogation to order of this Court in aforesaid writ petition be set aside and the reliefs claimed in the petition may be allowed to the petitioner.

3. Per contra, Shri Dwivedi learned Government Advocate submitted that it is incorrect to say that the petitioner ever approached the Collector on 1.3.2007 as submitted by him in the memorandum of petition. As a matter of fact, he never appeared. Had it been so, certainly in reply to show cause the gist of it would have found place in Annexure-R/2 dated 23.03.2007. Hence, the theory of appearing before the Collector on 01.03.2007 is an afterthought and therefore this petition be dismissed.

4. Shri Tomar learned counsel for petitioner submits that against the return, the petitioner has filed rejoinder and in para 10 it has been specifically averred that no show cause notice on 23.03.2007 was given to him, on the other hand alongwith copy of return, for the first time copy of Annexure-R/2 has been supplied to him, and hence he has filed the rejoinder denying the said fact. It has been thus prayed that this petition be allowed. 4 W.P. No.3766/2007 5. Having heard learned counsel for the parties, I am of the view that this petition deserves to be allowed in part and the case is required to be sent back to the Collector to re-decide the matter.

6. Indeed in W.P. No.2665/2007 filed by the petitioner following order was passed by this Court on 28.02.2007 :- The petitioner submitted an application for allotment of 8 shops (four groups JPB/C-6, JBP/C-8, JBP/C-23, JBP/C-

35) as mentioned in Annexure R/3. His application was accepted and he was selected for allotment, as revealed in Annexure P/1. The petitioner was required to deposit 90% of the basic licence fee amounting to Rs.2606170/-, 2540160/-, 902534/-, 254159/- (in all Rs.6303023/-) upto 18.2.07. He was further required to deposit security amount in all to the tune of Rs.8970746/-. Unfortunately, the father of the petitioner developed heart problem in the night on 11th of February 2007, which according to the petitioner was informed to the office of respondent no.3 on 12.2.07. It is further submitted that the petitioner was engaged in the treatment of his father and consequently failed to deposit the balance of basic licence fee on or before 15th of February, 2007. Shri Vinot Mehta, G.A. Submitted that the petitioner failed to deposit the remaining amount of basic licence fee and consequently 10% of the amount of basic licence which was deposited with the application is liable to be forfeited. It is further contended that on 19 th of February, 2007 this 10% amount has been forfeited. Liquor policy 2007-08 has been placed on record as Annexure R/1. Clause 2.3.8 of the same provides that in case, if security amount is not deposited upto 30 th of March, 2007 for any inevitable cause, the successful tenderer may deposit 50% of the security amount payable by him in cash or through Bank Draft, banker cheque, cash order and on such deposit the licence may be issued to him. For the remaining 50% of the security amount, the successful applicant may be granted time not exceeding one month. 5 W.P.

No.3766/2007 Although the aforesaid provision does not speak about default in the matter of deposit of basic licence fee but the respondents are required to examine whether in the case in hands, same analogy may be applied to the petitioner and whether the petitioner may be permitted to deposit the basic licence fee as well as all kinds of money payable under the said policy on account of the inevitable circumstances due to the heart problem of the petitioner's father. Accordingly, this petition is disposed of with a direction that the petitioner may make a representation before the respondent no.3 with supporting documents and certified copy of this order. In case, if respondent no.3 is of the opinion that the aforesaid analogy may be applied in the case of the petitioner, he may grant 3 days time to the petitioner to make deposit of all kind of money payable by the petitioner. It is made clear that the shops in question may not be auctioned unless decision is taken on the representation of the petitioner. Representation is to be made latest by tomorrow i.e. 1.3.2007. The writ petition accordingly stands disposed of.

7. This Court in the aforesaid order has found that clause 2.3.8 of the liquor policy of the year 2007-08 provides that if in case security amount is not deposited upto 30.03.2007 for any inevitable cause, the successful tenderer may deposit 50% of the security amount payable by him through Bank Draft, banker cheque, cash order and on such deposit licence may be issued to him. Further it was found that according to said policy for the remaining 50% of the security amount, the successful applicant may be granted time not exceeding one year. This Court further found that although there is no provision about default in the matter of deposit of the basic licence fees, but, it was found apposite that respondents should 6 W.P. No.3766/2007 examine as to whether in the case in hands the same analogy may be applied to the petitioner and as to whether petitioner may be permitted to deposit the basic licence fees as well as all kinds of money payable under the said policy on account of inevitable circumstances due to heart problem of his father and hence the aforesaid order was passed.

8. True, the averments made in the petition that the petitioner approached the Collector on the stipulated date 1.3.2007 has been emphatically denied in the return, but, on bare perusal of the document (Annexure-P/7) which is a

representation of the petitioner addressed to the Collector Jabalpur pursuant to the order dated 28.2.2007 passed in W.P. No.2665/2007 was submitted on 1.3.2007. There is an endorsement in the said representation that the certified copy of the order in the aforesaid writ petition and medical certificate of the father of petitioner are enclosed. On bare perusal of first page of this representation it is found that the official stamp of the Collectors office dated 1.3.2007 is very much there and hence I do not find any merit in the contention of learned Government Advocate that petitioner never approached the Collector on 1.3.2007.

9. I further do not find any merit in the contention of learned Government Advocate that had petitioner appeared before the 7 W.P. No.3766/2007 Collector on 01.03.2007 certainly in reply to show cause notice he would have stated this fact but since he did not file any reply to show cause notice it cannot be said that he did not appear on 01.03.2007. Indeed the picture would become more clear if the averments made in the rejoinder are seen wherein it has been specifically stated that for the first time alongwith return copy of show cause notice (Annexur-R/2) dated 23.03.2007 has been received and forthwith the petitioner filed rejoinder denying this fact in para 10.

10. Hence, I am of the view that in compliance of the aforesaid order of this Court the petitioner submitted representation on 1.3.2007 and thus the show cause notice (Annexure-R/2) stating therein that petitioner did not appear, cannot be allowed to remain stand.

11. Resultantly, this petition succeeds and is hereby allowed in part. The show cause notice (Annexure-R/2) by which recovery has been proposed and in consequence if any proceedings are taken, are also quashed. The Collector Jabalpur is hereby directed to re-decide the matter in accordance with direction given by this Court in W.P. No.2665/2007. Needless to say that before passing any order, the petitioner may be heard. Shri Dwivedi, learned Government Advocate is hereby directed to send the copy of this order to Collector Jabalpur. The petitioner shall remain present 8 W.P. No.3766/2007 before the Collector Jabalpur on 16.09.2013. The petitioner shall also submit the certified copy of this order. The petitioner shall be free to file all other relevant documents in support of

his representation. Looking to the facts and circumstances, the parties are directed to bear their own costs. (A.K. Shrivastava) Judge 27.08.2013 SS

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