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Court : Rajasthan

Decided On : Jul-04-1978

Reported in : 1978WLN(UC)230

Judge : D.P. Gupta, J.

Appeal No. : S.B. Civil Writ Petition No. 1633 of 1976

Appellant : Chunnilal

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. Bhandari

Disposition : Petition dismissed

Judgement :

D.P. Gupta, J.

1. In this writ petition the petitioner has challenged the recovery sought to be made from him in respect of the contract for retail sale of country liquor pertaining to the year 1971-72 and has played that the demand raised against him for a sum of Rs. 4723.52 p. by the District Excise Officer, Udaipur vide his notice dated June 15, 1974 be quashed.

2. It is not in dispute that the petitioner obtained a licence for sale of country liquor for the year 1971-72, under the provisions of the Rajasthan Excise Act 1950 & the Rajasthan Excise Rules 1956, under what is known as the guarantee system and he could not lift the liquor to the full extent as per the terms of his contract. The petitions case is that he was unable to lift the liquor for the guaranteed amount as adequate stocks of liquor was not available in the warehouse and the respondents were not in a position to supply liquor as demanded by the petitioner and that inspite of the fact that the petitioner was willing to lift the liquor in accordance with the terms of the contract but the respondents cancelled the licence of the petitioner prematurely and yet raised a demand for the recovery of Rs. 4723.52 p. against the petitioner.

3. The respondents, in their reply, hive asserted that the petitioner did not comply with the terms of his licence and as he failed to lift the monthly quota of liquor, the licence was cane lied and that the petitioner was liable to make good the loss arising out of the non-fulfillment of the terms of his contract.

4 The parties are not at variance in respect of the fact that the guarantee amount agreed to by the petitioner for the year in question was Rs. 5541/- and that the amount which remained due after adjustment of the security deposit made by the petitioner was Rs. 4723.52 p. and the same was claimed by the respondent by a demand notice. However, according to the petitioner he was prepared to fulfil the terms of his contract but there was paucity of stock of liquor with the respondents and on that account the petitioner was unable to fulfil the terms of the contract regarding the retail sale of country liquor to the full extent. The petitioner has not been able to substantiate the objection raised by him about the inadequacy of stock of liquor, because it is admitted by him that on July 27, 1971, the District Excise Officer, Udaipur gave a notice to the petitioner that an amount of Rs. 1085/- remained due against him on account of non-payment of guarantee amount up to the month of June 1971. The notice was replied by the petitioner on August 31, 1971 but no allegation of inadequacy of stocks of liquor at the warehouse was made in his reply. The respondents have stoutly denied the allegation made by the petitioner that he could not lift the liquor because of short supply and have stated that there was no short supply during the relevant period The respondents have

also placed the record relating to the liquor contract of the petitioner for the year 1971-72 before me and it appears from a perusal thereof that no question of any short supply was ever raised by the petitioner. Thus, the contention of the learned Counsel for the petitioner that the petitioner was unable to comply with the terms of the contract on account of short supply of liquor cannot be accepted.

5. It was further argued by Mr. Bhandari, learned Counsel for the petitioner, that the petitioner could not be made liable for the amount of installments of guarantee amount which fell due after the cancellation of the licence of the petitioner. This contention is also without any substance. Under condition No. 2 of the licence, the licence holder was liable to lift liquor in accordance with monthly installments and if any amount remained due for any month then the licence holder was liable to deposit the same up to the 10th of the next succeeding month. In case the licence holder failed to comply with the conditions, then the concerted officer could realize the amount from the security deposit of the petitioner or he could realize the same other vise, from the petitioner. In addition thereto, the licence of the petitioner was liable to be cancelled for non fulfillment of the contract of lifting liquor according to the monthly installments specified in Clause 1 of the licence. Beside that Clause 24 of the licence authorises the concerned officer to reauction the shop at the risk of the licence holder, where the licence is cancelled in accordance with Clause 2 of the licence and the loss that may be caused on account of reauction, could also be realised from the licence holder. In the present case the records show that the liquor shop at village Barri, District Udaipur. in respect of which the licence was taken by the petitioner for the year 1971-72, was sought to be reauctioned on September 25, 1971 but again on November 22, 1271, but no bids were received by the District Excise Officer and the attempt to reauction the shop was unsuccessful.

6. Thus, in accordance with the conditions of Clause 24 and of the licence, the petitioner was liable to pay the guarantee amount, after adjustment of the security deposit and the amount of installment already paid by him. The notice (Annexure 3) making a demand for Rs. 4723.52 p. cannot therefore, be held to be invalid.

7. No other argument was advanced by the learned Counsel for the petitioner before me.

8. In the aforesaid circumstances, the writ petition has no substance and is, therefore dismissed. However parties are left to bear their own costs.