

SalimuddIn and Party Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-08-2001

Reported in : 2001(2)WLC77; 2001(2)WLN1

Judge : Dr. Ar. Lakshmnan CJ. and; Bhagwati Prasad, J.

Appeal No. : D.B. Civil Special Appeal (Writ) No. 332 of 2000

Appellant : SalimuddIn and Party

Respondent : State of Rajasthan

Advocate for Def. : Dinesh Maheshwari, Adv.

Advocate for Pet/Ap. : N.M. Lodha, Adv.

Judgement :

ORDER

Lakshmanan, CJ.

1. Heard Mr. N.M. Lodha, learned counsel for the appellant and Mr. Dinesh Maheshwari, learned counsel, for the respondents.

(2). This special appeal is filed by the appellant against the order passed by the learned Single Judge in DBCW Petition No. 1098/2000 dated 18.4.2000. The writ petition was filed by the appellant-petitioner by making three prayers which are as under:-

- (1) The respondents may kindly be directed not to make any recovery in pursuance to short fall caused from the months of January, 2000 to April, 2000;
 - (2) The respondents may further be directed to make adequate supply of liquor in pouches as per demand of the petitioner.
 - (3) The respondents may kindly be directed to refund the amount recovered in past, as alleged short fall.
- (3). Before the learned Single Judge an argument was advanced that since earlier writ petition was withdrawn, without reserving any liberty, the present writ petition is not maintainable. Accepting the contention, the learned Single Judge, dismissed the writ petition on the ground that the second petition cannot be maintained for the same grievance.
- (4). When this appeal was listed today for hearing, we heard the arguments on merits and also on the question of maintainability of the second writ petition.
- (5). Mr. Dinesh Maheshwari, learned counsel for the respondents submits that the present writ petition is not maintainable as the same arise out of a matter of contract between the petition and the answering respondents with whom the petitioner-appellants have bound themselves.
- (6). We have perused the prayers made in both the writ petitions. In the present writ petition prayer (1) relates to directing the respondents not to make any recovery in pursuance to the short fall caused from months of Jan, 2000 to April, 2000 and prayer (2) to make adequate supply of liquor in pouches as per demand of the petitioner. The 3rd prayer relates to refund of the amount recovered in past as alleged shortfall.
- (7). The prayer in the earlier writ petition was to the effect, directing the respondents not to make any recovery in regard to the periods before January, 2000.
- (8). Since we have decided to dispose of the matter on merits, we are not inclined to render any finding on the maintainability of the present writ petition.

(9). Mr. Dinesh Maheshwari, learned counsel for the respondent, submits that the supply of liquor in a particular container, of the choice of the appellant was not the term of the contract nor they could insist for supply in a particular container only. The entire submission of Mr. Lodha centers around only one allegation that the supply of liquor was not made to the appellant in pouches as per their demand. This only is treated to be the ground by the appellant-petitioner for maintaining the writ petition.

(10). Mr. Dinesh Maheshwari, learned-counsel for the respondent, submits that the present petition has been filed with an intention to wriggle out of the contractual obligation and, therefore, the present writ petition is not maintainable and was rightly dismissed by the learned Single Judge, and that the contractual obligation, flowing from the licence being granted in favour of the appellant-petitioner, carry binding and legal force and, therefore, the contention of the appellant running contrary to the contractual obligations, are wholly untenable and deserves to be rejected. We see merit and force in this submission.

(11). It is settled law that the matter in question is purely a contractual matter and the appellant is aware of the specific terms and conditions on which the licence is issued and granted. The terms and conditions have specifically been notified to all the tenderers, including the appellant, and the appellant has submitted his tender, being aware of the entire terms and conditions of the licence to be issued to them and have consented to abide by the same.

(12). It is also alleged that in order to avoid payment of exclusive privilege amount, for which licence was obtained by them, the present writ petition has been filed. It is submitted by Mr. Maheshwari that the appellant has taken exclusive privilege, fully conscious of the terms and conditions notified to them, and they are aware of the fact that under the terms of the contract, Licensing Authority can regulate the supply of the liquor to any godown in any month and the licensee is not entitled for any compensation or reduction of the contractual amount. The appellant is therefore well aware of the condition that they are not entitled for any rebate or compensation, even if supply is affected for any reason, in any godown.

(13). Our attention was drawn to the term 5.10.1 which shows that liquor can be supplied in one standard measure 5.10.1 in poly pack pouches of 200 m.l. Apart from this, which the permission of the State Government, different sizes of packing of liquor can be supplied,

(14). A bare look at the aforesaid clause makes it evident that the appellant's claim of supply in pouches is fundamentally baseless. It is stated that he appellant has been lifting the liquor to the much less quantity and not coming out with the deposit challans of the requisite issue price and not maintaining pro-rata progress. It is submitted that the petitioner-appellant has remained in arrears to the tune of Rs. 1 ,77,000,00/-, apart from the interest thereon. The petitioner who defaulted in payment of the exclusive privilege amount, in our opinion, is not entitled to invoke the jurisdiction of this Court and that too in the name of baseless allegation of non-supply of liquor in pouches. In our opinion, the cause sought to be stated in the writ petition is fundamentally non-existent and, therefore, the writ petition and the appeal is devoid of any merit and, deserves to be dismissed.

(15). Accordingly, we dismiss the appeal.