Om Prakash Vs. the State and ors.

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Court : Rajasthan

Decided On : Mar-30-1993

Reported in : 1993WLN(UC)180

Judge : A.K. Mathur, J.

Appeal No. : S.B. Civil Writ Petition No. 1614 of 1993

Appellant : Om Prakash

Respondent : The State and ors.

Advocate for Def. : Mr. Maheshari

Advocate for Pet/Ap. : Mr. Mridul

Disposition : Petition dismissed

Judgement :

A.K. Mathur, J.

1. Petitioner by this writ petition has prayed that it may be declared that tender of respondent No. 3 is not eligible to be considered and respondent State and the Excise Commissioner should be directed not to consider the tender of respondent No. 3 any they should consider the tender of petitioner being the highest bidder for the grant of licence of Nagaur Merta Group for exclusive privilege of Foreign

liquor.

2. The applications for grant of licence for vending Liquor was invited on 4.2.93 on the conditions set out in the tender form. The licence was to be granted for both whole sale and retail in respect of Nagaur Merta Group. The bid for Rs. 4,53,00,000/-offered by the petitioner was the second highest. The respondent Son Singh Manoj Kumar and party also submitted their tender and offered highest bid but since one of the co-tenderer of this group was licence (Manoj Kumar) in the name of Dharampal & party which included Manoj Kumar and against that about Rs. 32,00,000/- remains to be unpaid, therefore, it is submitted that by virtue of Clause 15 of the Tender Conditions (Annex. 1), the respondent cannot be considered for the grant of a licence of liquor for the aforesaid area. An affidavit of the Officer-in-charge has been filed on behalf of the State and Commissioner and in that it has been mentioned that the amount due has been deposited on behalf of the licencees of the Alwar Group for 1992-93 and as well as of the respondents.

3. Mr. Mridul, learned Counsel for the petitioner submitted that in terms of the Clause 15, if any money is due from any of the tenderer then that their tender cannot be considered and that should be rejected. The Clause 15 reads as under:

15 vxj fdlh Vs.Mjnkrk ds fo:) vk;dj foHkkx dh cdk;k gksxh vFkok vuqkKki= izkIr djus ds fy, fdlh izdkj v;skX; gksxk rks mlds Vs.Mj ij fopkj ugh fd;k tk;sxk A blh izdkj o'kZ 92&93 ds vuqKk/kkjh;ks es ekg fnlEcj] 92 rd dh fdlh Hkh izdkj dh cdk;k gksus ij muds Vs.Mj dks Hkh vLohdkj fd;k tk ldsxk A

According to this clause, is any dues of the Excise Department or if he is disqualified for any other reasons then he will not eligible and his tender shall not be considered. Likewise that for 1992-93 if any money is due from the tender and same has not been paid by December, 1992 then his tender can be rejected. In the present case, Respondent was one of the co-tender was licencee for the Alwar Group and against that party, there were excise dues as mentioned above. Therefore, learned Counsel submitted that respondent though highest bidder is ineligible.

4. Mr. Mridul, learned Counsel for the petitioner has invited my attention to 1979 SC 1628 and 1987 SC 537 in support of the contention that if any guidelines have been laid down by the administrative authorities then they are bound to abide by it and they cannot make a departure.

5. It is true that once a guideline has been laid down by the Authority, they are supposed to adhered to in the normal course.

6. Mr. Maheshari learned Counsel for the respondents has submitted that in matter of excise, the State has exclusive privilege and no rules can bind them in order to get best of the price for their exclusive privilege. In support thereof, Mr. Maheshwari has invited my attention to 1989 (2) WLN 337 in which the earlier judgments of Hon'ble Supreme Court were considered including that of 1984 SCC 270 (Excise Commissioner UP v. Premjeet Singh Gujral and Ors.) in which it has been held that in matters of excise a latitude has to be given to the Government for securing the best of the price. My attention was also drawn to the decision given in S.B. Civil Writ Petition No. 1358 of 1991 {M/s. Shivdayal & party and Ors. v. State and Ors.) and other writ petitions, decided on March 29, 1991 by this Court at Jaipur Bench whereby Clause 15 came up for consideration and there also it has been held that the Clause 15 is not mandatory.

7. In these circumstances, after having considered the matter, I am of the opinion that Clause 15 is an administrative guideline laid down by the Commissioner and the Commissioner should abide by that guideline unless there are compelling reasons for departuring from the same as the paramount consideration is to obtain the best price for the distribution of the liquor licence. However, in the present case I need not to probe into enquiry further, suffice it to say that in view of the affidavit filed by the District Excise Officer (Prosecution) Jodhpur, that all the due amount of the party has been deposited) I do not find any merit in this writ petition and same is dismissed.