

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.13630 of 2009

ORDER:

The grievance of the petitioner was with regard to the order dated 21.07.2008 passed by the Prohibition and Excise Superintendent (FAC), Tirupathi, and the consequential attachment notice dated 26.06.2009 issued by the Prohibition and Excise Inspector, Rajampet, whereby the sum of Rs.4,40,155/- was sought to be recovered from the petitioner by way of attachment of his properties. A consequential direction was sought to the respondent authorities to refund the Earnest Money Deposit of Rs.2,00,000/-.

The petitioner participated in the tender process for grant of licences to sell Indian Made Foreign Liquor (IMFL) through shops. His tender was in relation to shop No.428 in Ward No.3 of Nagari Municipality. On the day of opening of the tenders, he alleged that he was prevented from entering the premises where the tenders were opened by the henchmen of the Chairman of Nagari Municipality who was interested in seeing that the licence for the said shop was given to his protégé. In the writ affidavit, the petitioner set out at great length the details of what transpired on the said day and how the amount snatched from him was recovered by the police authorities from the sons of the Chairman of Nagari Municipality.

However, though the petitioner could not attend the tender opening, his bid was found to be the highest. But, as he was absent and failed to deposit 1/6th of the bid amount, the next highest bid was accepted and the difference between the two bids was sought to be recovered from him under the impugned order and attachment notice.

By order dated 09.07.2009, taking note of the serious allegations made by the petitioner about the inaction of the Prohibition and Excise Department authorities in preventing formation of a cartel allegedly leading to the situation where the petitioner was prevented from participating in the bid proceedings, the attachment notice dated 26.06.2009 was suspended.

W.V.M.P.No.2667 of 2009 was filed by the Prohibition and Excise

Department authorities to vacate the above order.

By way of a detailed order dated 08.06.2011, the vacate stay petition was dismissed and the interim order was made absolute. In the said order, this Court recorded the main plea of the petitioner that because of the inability of the respondents in creating a peaceful atmosphere for proper conduct of the auction, the petitioner could not be present in the auction hall and was not even aware as to whether he was the highest tenderer or not. This Court also took note of the petitioner's plea that no notice was issued prior to the passing of the impugned order and attachment notice calling upon him to pay the balance bid amount and obtain the licence. This Court took into account the copies of the press reports which supported the petitioner's plea as to the lawless behaviour of rowdy elements at the place of auction. Being mindful of the fact that the applicable rules did not envisage any notice, this Court however observed that when the tenderer was not present at the place of the auction, fairness required that the authorities should give him a notice informing him that he became the highest bidder and calling upon to pay the balance amount. This Court further opined that failure to give such a notice did not justify the authorities in treating the petitioner as a defaulter and mulcting the liability arising on account of the alleged loss of revenue upon him.

Admittedly, the aforesaid order dated 08.06.2011 has attained finality as the Prohibition and Excise Department authorities did not choose to file an appeal assailing the findings recorded therein.

Thus, as the matter stands, it is clearly established that the Prohibition and Excise Department authorities failed to secure a conducive atmosphere at the place of the auction so as to ensure protection of the State's interest by generating the maximum revenue for grant of a licence to sell IMFL through the subject shop. The entire process seems to have been hijacked by the Chairman of Nagari Municipality who wanted to secure the said licence for his own protégé. There is no material placed on record to rebut the detailed allegations made by the petitioner in this regard. Having no one to blame but itself, the Prohibition and Excise Department cannot now search for a scapegoat to make good the loss of revenue suffered by the State because of its abject submission to the powers that be.

The writ petition is therefore allowed setting aside the impugned order dated 21.07.2008 and the consequential notice dated 26.06.2009. As this Court has

already held in the order dated 08.06.2011 that the action of the Prohibition and Excise Department authorities in seeking to mulct the liability arising on account of the alleged loss of revenue upon the petitioner is not justified, there is no legal foundation or basis for the authorities to retain the Earnest Money Deposit of Rs.2,00,000/- paid by the petitioner. There shall accordingly be a direction to the authorities to refund the said amount to the petitioner within four weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Date:08.09.2015

GJ