

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V. BHATT

WRIT APPEAL Nos. 915 AND 888 OF 2015

07-10-2015

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WRIT APPEAL No. 915 OF 2015

Between:

The State of Andhra Pradesh, rep., by its Principal Secretary, Revenue (Excise)
Department, Secretariat Buildings, Hyderabad and others

... Appellants

And

T. Sridhar Reddy and another

... Respondents

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

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WRIT APPEAL Nos. 915 AND 888 OF 2015

PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

These appeals are directed against the order dated 15-09-2015, whereby Writ Petition No. 21398 of 2015 filed by respondent No.1, has been allowed. The first writ appeal has been filed by official respondents, whereas the second writ appeal has been filed by respondent No.5, in the writ petition.

In the writ petition, respondent No.1 had challenged the allotment of A4 shop in favour of the appellant in Writ Appeal No. 888 of 2015, made by the Prohibition and Excise Superintendent, Kurnool. He also sought direction to allot the said shop in his favour. The appellant in Writ Appeal No. 888 of 2015 as well as respondent No.1 participated in the selection process by drawl of lots. In the process they were at serial Nos.2 and 1 respectively, i.e., respondent No.1 was the first successful applicant and the appellant was the second for allotment of A4 shop. It appears, when lots were drawn, respondent No.1 was not present and hence, the shop was allotted in favour of the appellant in Writ Appeal No. 888 of 2015 placing reliance upon Clause (g) of sub-rule (6) of Rule 12 of the Andhra Pradesh Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 (for short, 'the Rules')

Learned counsel for the appellant in Writ Appeal No. 888 of 2015 submits that Clause (g) of sub-rule (6) of Rule 12 of the Rules clearly provides that a successful applicant should be present at the time of drawl of lots and comply all formalities including signing of the registers and if he fails to do so, it is open to the authorities to allot the shop to the next successful applicant and since the appellant was the next successful applicant, the concerned authorities have rightly allotted the shop to him.

We have perused the relevant rules. Rule 12 provides for submission of applications and selection of applicants for grant of licence. Rule 12 (6)(d) and Rule 12 (6) (dd) were amended/inserted vide G.O.Ms.No.218, dated 22-06-2015. After the amendment, Rule 12 (6) (d) and Rule 12 (6) (dd) read thus:

“Rule 12(6)(d): Where there are more than one application for a Notified shop, the selection among the eligible applicants for grant of licence shall be by drawl of LOT by the Collector, irrespective of the presence of the applicants.

Rule 12 (6) (dd): The Collector, after selecting the applicant in respect of an A4 shop, may continue drawl of lots and select not more than two applicants from among the remaining applicants as reserve applicant(s), who may, subject to the provisions of these rules, be allotted the A4 shop, in case the applicant selected first fails to comply with the conditions laid down in these rules on the day of drawl of lots or subsequently.”

We have also perused Clauses (f) and (g) of sub-rule (6) of Rule 12 which read thus:

“(f) The successful applicant shall sign his name or affix his thumb impression against the relevant entry in the register maintained for the purpose.

(g) Where the successful applicant is not available at the place of selection, the earnest money deposit submitted along with the application in the form of Demand Draft shall be forfeited and the selection process shall be continued by taking a fresh LOT, if necessary. The procedure shall be continued till the selection of applicant for the shop is finally made.”

Our attention was also invited to Rule 14 which provides for signature in the register. Rule 14 reads thus:

“14. **Signature in the Register:-** Every applicant, who has been selected for the grant of licence, shall sign his name or affix his thumb-impression against the relevant entry in the register maintained for the purpose. The District Collector shall also obtain the signatures of all the applicants in a separate register maintained for the purpose.

From perusal of these rules, it is clear, as crystal, that an applicant need not remain present at the time of drawl of lot and he can comply the conditions laid down under the Rules either on the day of drawl of lot or subsequently. Rule 14 also provides that every applicant, who has been selected for the grant of licence, shall sign his name or affix his thumb impression against the relevant entry in the register maintained for the purpose. The District Collector under this rule is expected to obtain a signature of the applicant in a separate register maintained for the purpose.

In other words, neither Rule 14 nor Clauses (d), (dd) and (f) of sub-rule (6) of Rule 12 provide that one should remain present at the time of drawl of lots and comply with all the conditions immediately thereafter and in any case, the same day. Clause (g) of sub-rule (6) of Rule 12, as a matter of fact, provides that where a successful candidate is not available at the place of selection, the earnest money deposit submitted along with the application in the form of demand draft shall be forfeited and the selection process shall continue by taking a fresh lot, if necessary. It does not state that if the applicant is not present, they should continue the selection process and allot the shop to the second successful applicant. Clause (g) of Rule 12(6) will have to be read with other clauses of sub-rule (6) of Rule 12 and Rule 14 and not in isolation. Learned single Judge has considered all these rules in proper perspective. We do not find any reason to interfere with the order.

Hence, the writ appeals are dismissed.

Miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

07-10-2015

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