

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

(Through Virtual Mode)

Pronounced on :17.10.2024

Case No: WP (C) No. 1470/2022

Harmeet Kour, age 47 years,
W/o Late S. Hardev Singh
R/o H.No. 55/7, Nanak Nagar,
Jammu.

...Petitioner(s)..

Through :- Mr. Rahul Pant, Sr. Advocate
with Ms. Azha Iqbal, Advocate.

Vs

1. UT of J&K through
Commissioner/Secretary to
Government Finance Department,
Jammu and Kashmir Government,
Civil Secretariat, Jammu.
2. Excise Commissioner,
Jammu and Kashmir Government,
Excise and Taxation Complex,
Rail Head, Jammu.
3. Deputy Excise Commissioner
(Executive) Jammu and Kashmir
Government, Excise and Taxation
Complex Rail Head, Jammu.
4. Excise and Taxation Officer,
City Excise Range North Jammu
Excise and Taxation Complex,
Rail Head, Jammu.

.....Respondent(s)..

Through :- Mr. K.D.S.Kotwal, Dy.A.G.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The case is taken up for consideration for final determination with the consent of both the sides.
2. The petitioner though successful bidder at the location JMC, Ward No. 19-(North of Tawi) E, Jammu for the year 2022-23 yet the same later on came to be cancelled by the respondent No.4 on the ground that of the bid amount deposited by the petitioner of Rs.7,25,100/- the same was from the account of Miss Suman Gupta and as such the conditions of the

auction notice dated 23.05.2022 stand violated. As the period for which the auction notice was issued stands expired, the learned Senior counsel Mr. Rahul Pant appearing for the petitioner has argued that the amount deposited by the petitioner with the respondents is required to be returned back to the petitioner as the same has not been done by the respondents till date.

3. The objections to the petition have been filed by the respondents wherein the basic facts mentioned in the petition are not disputed. The stand of the respondent is that the petitioner cannot claim any amount as the auction notice itself provided that the bid amount shall stand cancelled in case there is violation of clause 13 of the re-auction notice dated 23.05.2022. The petitioner was aware of the auction notice and, therefore, cannot raise any complaint in case the amount deposited by the petitioner is withheld by the respondents.
4. It is suffice to mention that the auction notice was issued for the year 2022-2023 for allotment of 279 vends for off-premises retail sale of liquor (JKEL-2 license) in pursuance to S.O. 71 dated 22.02.2022. However, another re-auction notice was issued for the said year vide dated 23.05.2022. The petitioner had applied for the license and in pursuance to the e-auction conducted the bid of the petitioner was accepted and the petitioner deposited Rs.18.75 lac with the respondents and the balance amount was also deposited by the petitioner thereafter on the successful bidding for the license of sale of liquor. However, as per the impugned order No. 721-23/CRN dated 28.06.2022 the petitioner was not found eligible for the license for the period in question on account of violation of para 13 of the re-auction notice dated 23.05.2022.
5. The contention raised by the petitioner is that the basic license policy issued vide S.O. No. 71 dated 22.02.2022 and the auction notice issued vide dated 03.03.2022 did not contain the condition as mentioned in re-auction notice dated 23.05.2022 wherein it was mentioned that the bidders were required to make transactions on account of participation fee/EMD amount/bid amount from their own pan linked/KYC bank

accounts and default on this account shall make them ineligible and the amount shall be cancelled and forfeited without any further notice. It is also pleaded that the petitioner cannot be non-suited on account of the fault, if any committed by her, on account of the conditions which was only ancillary in nature and not part of the basic notification or the first auction notice issued by the respondents.

6. Mr. K.D.S Kotwal, Dy.A.G has argued that the petitioner cannot take any advantage at this stage as the terms and conditions of the re-auction notice were known to the petitioner but violated by her knowingly. The Condition No. 13 in the re-auction notice dated 23.05.2022 was part and parcel of the conditions which were required to be complied with by the petitioner. Lastly, it is submitted that the purpose of the said clause 13 was to prevent cartelization of the license which may be issued in pursuance to the auction notice.
7. Admittedly, Clause (13) of the e-auction notice dated 23.05.2022 which provides the manner in which the bid amount is to be shown while participating in the tender is not part of the basic Excise Policy 2022-2023 dated 22.02.2022 nor of the first auction notice issued on 03.03.2022 by the respondents. It cannot be disputed that the petitioner committed default inspite of Clause (13) of re-auction notice dated 23.05.2022. It is, however, not made out from the record that the petitioner had hidden the details of the amount after her bid was successful with the respondents in pursuance to the e-auction notice. The bid has been cancelled after the petitioner was declared successful. The respondent could have rejected the bid even before declaring the same to be successful but did not do so. It is not the case of the respondents that the petitioner had tried to camouflage her bid in any manner though the same may not be in accordance with Clause 13 of the re-auction notice dated 23.05.2022.
8. The petitioner has not only lost the successful bid and license but also the money deposited by the petitioner with the respondents as per auction Notice of 23.05.2022. As there is no deliberate attempt on the part of the petitioner to defeat the conditions of the Excise Policy and the

re-auction notice it would be too harsh upon the petitioner if she is denied the amount which has been paid by the petitioner to the respondents as successful bidder. The respondents being welfare State should not have retained the amount of the petitioner who tried to sustain herself by entering into venture though failed.

9. The petitioner has referred to **1991 Legal Eagle (SC) 272** titled '**Poddar Steel Corporation vs. Ganesh Engineering Works**' in support of her contention that the Clause 13 was only ancillary condition of the tender and not found in the basic excise policy or first auction notice and, therefore, the default, if any, committed by the petitioner should not enrich the respondents.
10. The court may not agree with the aforesaid contention of the petitioner as Clause 13 was incorporated with a purpose and cannot be said to be just inconsequential or foreign to the basic excise policy formulated vide S.O 71 dated 27.02.2022 and the first auction notice. The court, however, allows the relief on the ground as mentioned above, that there was no wilful and deliberate attempt by the petitioner to circumvent the conditions of the Policy or re-auction notice.
11. Keeping in view the discussion made above, the impugned order is partly set aside and the petition is allowed to the extent that the petitioner is entitled to deposited amount withheld/forfeited by the respondents qua the liquor license bid for the year 2022-23. The amount shall be paid by the respondents within a period of one month from the date of passing of this order and in default, the respondents will be liable to pay interest @ 6% per annum on the due amount from the date of passing of this order.

(PUNEET GUPTA)
JUDGE

Jammu:
17.10.2024
Pawan Chopra

Whether the Judgment is speaking? Yes/No
Whether the Judgment is reportable? Yes/No