

ANDHRA PRADESH EXCISE (LEASE OF RIGHT TO SELL LIQUOR IN RETAIL) RULES, 1969

CONTENTS

1. Short title, extent and commencement
2. Definitions
3. Lease of right to sell liquor in retail
4. Auction Notice
5. Declaration etc.
6. Hall Ticket
7. Prohibition of certain persons to enter the place of auction
8. Benami bids or tenders not allowed
9. Disqualification
10. Officers authorised to conduct auction
11. Bids or tenders to be offered in monthly rental
12. Auction of shops
13. Submission of tenders on bidding
14. Removal of certain persons from the place of auction
15. Signature in the register
16. Payment of rental by the auction purchaser
17. xxx xxx xxx
18. Other Requirements
19. Additional formality to be completed by auction purchaser of arrack shops
20. Reauction in case of failure to deposit moneys
21. Counterpart Agreement
22. Commencement of lease

ANDHRA PRADESH EXCISE (LEASE OF RIGHT TO SELL LIQUOR IN RETAIL) RULES, 1969

ANDHRA PRADESH EXCISE (LEASE OF RIGHT TO SELL LIQUOR IN RETAIL) RULES, 1969

1. Short title, extent and commencement :-

(1) These Rules may be called the Andhra Pradesh Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969.

(2) They shall extend to all the areas where the Andhra Pradesh

Excise Act, 1968 is in force.

(3) They shall come into force at once.

2. Definitions :-

(1) In these rules, unless the context otherwise requires,-

(i) Act means the Andhra Pradesh Excise Act, 1968 (Act 17 of 1968);

(ii) Auction means the manner of inviting tenders as well as bids in public auction for the grant of lease for the sale of liquor in retail;

(iii) Auctioning authority means the officer authorised to conduct auction and call for tenders and to accept the bid or tender under Rule 10;

(iv) auction purchaser means the person whose bid or whose tender, is accepted by the auctioning authority;

(v) bidder includes his power of attorney holder;

(vi) excise year means the period of twelve months commencing from the 1st October of a year and ending with the 30th September of the succeeding year;

(vii) form means a form appended to these rules;

(viii) highest bidder means a person who offers the highest price or rental by bid or tender;

(ix) rental means the rent payable in respect of shops or a group of shops as part of sum in consideration of the grant of lease or licence or both payable under Section 23 read with Section 17 of the Act besides the issue price payable for the Minimum Guaranteed Quantity of arrack of the shop or group of shops in the case of arrack shops and Tree Tax and Tree Owners Rent payable in the case of Toddy Shops;

(x) tender includes his power of attorney holders;

(xi) Minimum Guaranteed Quantity means the minimum guaranteed quantity of arrack as fixed by the Commissioner under sub-rule (2) of Rule 3, that should be guaranteed by the successful auction purchaser to be lifted and transported by him from the place to be specified by the Department from time to time for the purpose of being sold in retail in the arrack shop or group of shops for which he has obtained licence under the Andhra Pradesh Excise (Arrack Retail Sale Special Conditions of Licences) Rules, 1969.

(xii) issue price means the price of arrack per bulk litre as notified by the Commissioner of Excise from time to time and payable by the lessee and licensee of an arrack shop or group of shops as part of sum under Section 23 read with Section 17 of the Act, for the entire Minimum Guaranteed Quantity of arrack for the said shop or group of shops besides the rental payable for such shop or group of shops.

3. Lease of right to sell liquor in retail :-

(1) Subject to the provisions of these rules and also subject to payment of issue price for the Minimum Guaranteed Quantity of arrack of the shop or group of shops as part of sum under Section 23 read with Section 17 of the Act for grant of lease of right to sell arrack in retail in the case of arrack shops, and tree tax and tree owners rent for grant of lease of right to sell toddy in retail in the case of toddy shops; besides the rental every lease of right to sell

liquor in retail shall be granted by public auction duly notified. The lease shall ordinarily be for the period of one excise year :

Provided that where the Commissioner considers it necessary to grant the lease of right to sell liquor in retail in any other manner he shall do so with the prior approval of the Government.

Provided further that the period of licence granted to Tappers Co-operative Society and to individual tappers under "Tree For Tappers Scheme" shall be for one year and the licence held by them shall also be renewed for one year at a time.

Provided also that no licence to sell arrack in retail shall be granted in any village situated in Scheduled areas, in which the population of Scheduled Tribes is more than 50% of the total population of such village:

Provided also that no licence to sell arrack in retail shall be granted in villages in Scheduled areas having less than 50% tribal population but which are forming islands and surrounded by the villages in Scheduled Areas having more than 50% tribal population.

Explanation For the purpose of this rule :

(a) Scheduled Tribe means any tribe or tribal community or part of or groups within a tribe or tribal community residing in Scheduled Areas and specified as such by a public notification by clause (1) of Article 342 of the Constitution of India.

(b) Scheduled Areas means such areas as the President of India may declare to be scheduled areas by an order under sub-para (1) of paragraph 6 in the Fifth Schedule to the Constitution of India.

(2) The Commissioner shall be, before the publication of the

auction notice under Rule 4, competent to fix the number of shops to be established in an area, their location, assignment of trees for tapping, and in the case of arrack shops the Minimum Guaranteed Quantity of arrack that should be guaranteed by the successful auction purchaser to be lifted from time to time and sold in retail in the arrack shops or group of shops during the excise year and the issue price payable to the Department.

4. Auction Notice :-

(1) Where it is proposed to grant the lease for sale of liquor in retail in respect of a shop or group of shops, a notice of the proposed auction, containing the particulars mentioned in sub-rule (2) shall be published, atleast [seven days] in advance of the date of auction, by the Collector of the District in the Andhra Pradesh Gazette or the District Gazette or in such other manner as the Collector may deem fit.

(2) The auction notice shall contain the following particulars, namely,-

(i) the name or locality of a shop or group of shops which sell liquor in the area;

(ii) the place of auction with time and date;

(iii) the last date, time and place for receipt of tenders;

(iv) the conditions governing the auction;

(v) the period of lease; and

(vi) any other matter which may be considered by the auctioning

authority necessary for information of bidders and tenders.

5. Declaration etc. :-

No person shall be permitted to bid or submit a tender unless :

(i) A declaration in Form A-1 is made on non-judicial stamp paper of the requisite value as per the provisions of the Indian Stamp Act, 1899 and attested by the Mandal Revenue Officer or Gazetted Officer of the Excise Department under his official seal.

(ii) A duly sworn in affidavit, in Form A-2 is made on non-judicial stamp paper of the requisite value as per the provisions of the Indian Stamp Act, 1899, containing the particulars of his own immovable property and the present market value thereof and encumbrances existing if any, disclosing all necessary particulars thereof, for an amount not less than one months existing rental of the shop(s)/Group for which the bid or tender is offered, or a Bank Guarantee for an equivalent amount is filed. [.....]

6. Hall Ticket :-

No person, other than the officers on duty shall enter the place of auction without presenting a Hall Ticket. The Hall Ticket may be issued by the Excise Superintendent or the Assistant Excise Superintendent concerned to any bidder or tenderer free of cost after he makes the declaration mentioned in Rule 5.

7. Prohibition of certain persons to enter the place of auction :-

Hall tickets shall not be issued to any person who,-

(a) has been convicted of any offences specified in clause (d) of sub-section

(1) of Section 31 of the Act in respect of which he has been penalised or convicted within the preceding five years:

(b) has been convicted or whose licence has been cancelled for breach of any of the conditions of licence granted under Section 31 of the Act within the preceding three years.

(bb) has been held guilty either in a departmental proceeding or in a court of an offence under Section 37 of the Act for adulteration of toddy or arrack by mixing any article injurious to public health or otherwise within the preceding five years.

(c) is suffering from leprosy or any other contagious disease;

(d) is a defaulter of excise revenue; or

(e) is adjudged as an insolvent by a competent Court.

8. Benami bids or tenders not allowed :-

No person shall bid or submit tender on behalf of any other person unless he holds a power of attorney from such person. If shall be incumbent on the bidder to be present at the place of aucti on.

9. Disqualification :-

(1) No lease shall be granted to the following persons, nor any such persons shall be entitled to hold the lease :

(a) person suffering from leprosy or any other contagious disease, who either in the shop, tope or any place, discharge personally such functions as would entail personal handling of liquor;

(b) persons who have been prohibited under Rules 5 to 8;

(c) persons who are ineligible to participate in the auction for the non-fulfilment of the conditions prescribed under Rules 5 to 8;

(d)

(i) persons who entered into a lease with Government for supply of arrack in a local area during the currency of such lease shall not be eligible to bid or tender for shops or group of shops in the area of operation of such contract.

(e) the defaulters in the payment of Excise revenue]. Explanation

(1) [Any defaulter having obtained stay from the competent authorities] for recovery of dues shall continue to be treated as a defaulter for the purposes of this rule and no lease shall be granted unless there is a specified direction in the stay order that the defaulter is not precluded from participating in [such auctions].

(2) If any person who is disqualified under this rule [is found to be holding a] lease, the licence thereof may be withdrawn in accordance with Section 32 of the Act and the Commissioner shall direct re-auction of the lease :

Provided that if such disqualification comes to the notice of the auctioning authority before the lease is granted but after the bid or tender is accepted the auctioning authority may cancel the bid or tender and conduct re-auction.

10. Officers authorised to conduct auction :-

Auction shall be conducted and bids or tenders, as the case may be accepted by the Collector or any other Gazetted Officer not lower in rank than a Deputy Collector authorised by the Collector in this behalf :

Provided that the Commissioner or the Collector may, in his discretion, authorise the Deputy Commissioner or any other officer of the Excise Department not lower in rank than an Excise Superintendent, to conduct such auction and accept bid or tender therefor;

Provided further that an officer not below the rank of a Revenue Divisional Officer may conduct the proceedings for re-auction of the shop for part of an excise year and every such re-auction shall be subject to the confirmation of the Collector;

Provided also that the Commissioner of Excise may authorise any Collector to conduct auctions and accept bids or tenders therefor in more than one district.

11. Bids or tenders to be offered in monthly rental :-

Quotations of bids or tenders shall be offered for the lease period, in terms of monthly rental [in respect of a shop or group of shops as put up for auction.

12. Auction of shops :-

(1) Right to sell liquor may ordinarily be auctioned shop-wise or group-wise according to the list of shops approved by the Commissioner under Rule 3. [The auctioning authority may, for reasons to be recorded in writing in advance either regroup any shop or split any group of shops and rearrange them in accordance with the administrative instructions issued on this subject by the Commissioner either at the commencement of the auction or at any time before the sale is knocked down.

(2) The Commissioner may withdraw any shop from the auction before the auction is commenced.

(3) The auctioning authority may, for sufficient cause, postpone the

date of auction of a shop or group of shops [or adjourn the auction as may be found necessary.

13. Submission of tenders on bidding :-

(1) The tender shall contain the following particulars and shall be submitted by the tenderer in a closed cover addressed to the auctioning authority upto the commencement of the bidding of the shops or group of shops, as the case may be :

(i) Name of the tenderer, his fathers name and address:

(ii) Name or location of the shop or the group of shops and the kind of shop for which he has offered his tender.

(iii) Monthly rental offered in figures as well as in words :

Provided that in respect of each shop or each group of shops. the tenderer or bidder shall be required to deposit as earnest money a sum equal to 50% of the monthly rental of the preceding year or where there are no rentals in the preceding year 50% of the rental as assessed by the auctioning authority in the form of a demand draft obtained in a Scheduled Bank in favour of the auctioning authority or in favour of the Commissioner of Excise before offering the tender and the tenders not accompanied by such earnest money deposit shall be forthwith rejected by the auctioning authority. The demand draft shall be pinned to the exterior of the tender cover.

Explanation [xxxxx] Provided further that in the case of a person whose tender for a shop or group of shops is not accepted, the earnest money deposited by him in respect of such bids shall, if he so desires, be treated as earnest money for other shops or group of shops at the same auction and if such amount is less than the amount of earnest money required to be deposited for the other

shops or group of shops the amount falling short shall be made good.

(2) The closed cover containing the tender shall be superscribed with the words "Tender for the Lease of the right for the year....to sell toddy/arrack at....(Place or the shop to be auctioned). The tenderer may obtain acknowledgment for the cover presented.

(3) Every tender shall be taken into consideration if it is presented to the auctioning authority before the commencement of bidding and no tender shall be received after the commencement of bidding for a shop or group of shops for which the tender is submitted.

(4) A tenderer shall also be eligible to participate in the bidding for the shop or group of shops.

(5) The tenderer shall be present at the place of auction at the time of opening of the tenders which shall be after the bidding is over but his absence shall in no way affect his tender or auction proceedings.

(6) It shall be at the discretion of the auctioning authority to accept or reject any tender or bid after recording the reasons therefor.

(7) A tender once submitted shall not be withdrawn before the expiry of a period of sixty days or until the shops or group of shops are finally disposed of in the auctions, whichever is earlier.

(8) The auctioning authority may if he so desires first announce at the commencement of the auction, the names of persons and the number of persons who had sent tenders for a particular shop or group of shops.

(9) The auctioning authority shall ask for tenders for pre-determined groups notified in Schedule-A and constituent units of

the predetermined group in Schedule-B simultaneously. The auction of the pre-determined group i.e., Schedule-A will be held at the first instance and bids taken. The same procedure shall be followed for the constituent Units in the pre-determined group i.e., Schedule-B. The tenders for Schedule-A and Schedule-B shall be opened only when the auctioning authority decides that the highest bid offered for Schedule-A or Schedule-B in auction has been satisfactory and consider tenders along with the highest bid offered. The highest amount either of tender or bid should be recorded for Schedule-A and Schedule-B and whichever fetches the highest amount either for Schedule-A or Schedule-B will be accepted and the rest of the tenders and bids should be rejected. Where the auctioning authority considers that the bid is not satisfactory and decides to postpone the auction, the tender cover should be opened only at such postponed auction after the bid is over. If there are successive postponements of auction the tender cover shall be opened only at the final auction. But it shall be open to any person to submit tender till the final auction is commenced for a particular group or unit either in Schedule-A or Schedule-B. When the auctioning authority is satisfied that the auction has resulted in the maximum oral bid likely to be offered, he shall open the tenders available and proceed to consider the issue of accepting the highest bid or tender either of Schedule-A or Schedule-B :

Provided that if the highest tender or bid is not satisfactory, the auctioning authority may reject the highest tender or bid and postpone the auction of the groups or units to a future day; Provided further that if the auctioning authority considers that the auction should be postponed for a future day for any reason, he may do so without opening the tenders;

Provided also that it shall be open to the auctioning authority to refuse to knock down the auction in favour of the highest bidder or accept the highest tender if such authority is satisfied after a perusal of the affidavit that the value of the assets declared in the affidavit is less than an amount equal to one months rental and that such bidder or tenderer cannot reasonably be expected to discharge his/her liabilities in terms of the lease;

Provided also that where the highest bid or tender is not accepted, the auctioning authority shall record the reasons thereof.

(10) After rejecting the highest bid or tender, the auctioning authority may either accept the next highest bid or tender or dispose of the right to sell liquor afresh at any subsequently notified auction:

(11) Where the monthly rental is Rupees one lakh and above all bids/tenders fetching amounts lower than the previous years amounts and such other groups as the Commissioner may decide shall be subject to the prior approval of Commissioner before final auctions. All such bids/tenders shall be valid only after final decision is given by the Commissioner of Excise.

14. Removal of certain persons from the place of auction :-

When it comes to the notice of auctioning authority that any person at the place of auction and during the time of bidding behaves or acts in a disorderly or riotious manner or in such other manner as is likely to cause loss to the Government or forbids any person from bidding, the auctioning authority may cause his removal from the place of auction.

15. Signature in the register :-

Every person whose bid or tender has been accepted shall sign his name or affix his thumb impression against the relevant entry in the register maintained for the purpose. [The auctioning authority shall obtain the signature of the highest bidder in the register].

16. Payment of rental by the auction purchaser :-

(1) The auction purchaser shall pay 2% of the annual rental as earnest money together with one months rental on the day of the auction immediately after the acceptance of the tender or bid as the case may be. The earnest money and one months rental shall be in addition to the rental deposit required in Rule 18. In case of

failure to remit the earnest money if any and one months rental on that day, the shop or group of shops shall be reauctioned. [In the event of re-auction, if the reauction results in monetary benefit to the Government, the original auction purchaser shall have no claim over it, but, if it results in monetary loss or if the right remains unsold for want of bidders, the original auction purchaser shall be liable to pay to the Government the resultant loss]

(2) Where a shop is assigned to a Tappers Co-operative Society, the Tappers Co-op. Society shall pay 2% of annual rentals as Earnest Money together with half months rental as fixed by the Government on or before the date prescribed for completion of formalities.

17. xxx xxx xxx :-

OMMOTED

18. Other Requirements :-

(1) The auction purchaser shall deposit [forty five days] rental in case of arrack shops and two months rental in case of toddy shops in cash or in fixed deposit receipt obtained from a Schedule Bank situated in the State of Andhra Pradesh or a District Co-operative Central Bank for the period of lease, within twenty days from the date of auction or before the commencement of the excise year whichever is earlier and if the auction takes place on or after first October, [on the same day of auction] and in case a Bank Guarantee is offered, such guarantee shall be in force for such period till all proceedings or claims arising from the auction also are finally settled and disposed of in accordance with Form A-3;

Provided that if the auctioning authority is satisfied that the auction purchaser could not for sufficient reasons pay the deposit or advance money or furnish the non-encumbrance or solvency certificate required under this rule within the time specified, he may on written request by the auction purchaser allow time upto ten days from the date of auction for fulfilling the requirements, in

case where the time interval between the date of auction and 30th September is less than ten days or where the auction takes place on or after 1st October. In former case the licensee will be liable to pay the rental and Issue Price as if he has obtained the licence from the 1st October and in the latter case from the date of auction.

(2) The auction purchaser shall also be required in all cases [xxxxx] to furnish a non-encumbrance certificate in respect of properties shown in his affidavit with a stipulation that during the currency of the relevant lease the properties shown therein shall not be alienated. [The auction purchaser shall also be required in all cases to furnish a solvency certificate from the concerned Mandal Revenue Officer, covering an amount not less than one months rental.

(3) Where a shop is assigned to a Tappers Co-operative Society or Tribal Arrack Co-operative Society or under Tree for Tapper Scheme or is withdrawn from auction and allotted to Tappers Co-operative Society or Tribal Arrack Co-operative Society, the Society need not deposit [one months rental]. It shall however pay the annual rentals in equal monthly instalments commencing from October.

(4) All interest accruing on [fixed deposit receipts shall vest in the Government] and may be adjusted towards the Government dues including interest, if any, outstanding against the auction purchaser and if there be no such dues it shall be refunded to the auction purchaser at the end of the lease period.

19. Additional formality to be completed by auction purchaser of arrack shops :-

(1) The auction purchaser in respect of arrack shop shall pay in advance an amount or furnish a bank guarantee of a scheduled bank or a nationalised bank situated in Andhra Pradesh State or Andhra Pradesh State Cooperative Central Bank for a like amount calculated at the rate of [Re.one] per litre in the case of 30o UP

arrack and Re. [0.60] paise per litre in the case of 600 UP arrack on the minimum quantity of arrack guaranteed for the year [on the same day] of the acceptance of the bid or tender or 30th September whichever is earlier and if the auction took place on or after first October [on the same day] of auction in accordance with Form A-3.

(2) The auction purchaser in respect of arrack shops shall also remit in favour of Andhra Pradesh Beverages Corporation an amount as Container Security Deposit at the rate of one rupee per litre of annual Minimum Guaranteed Quantity of his shop within ten days from the date of auction in case the auction takes place before the 20th September and by the end of September in case the auction takes place between the 20th and the 30th September, and on the day of auction if the auction takes place on or after the 1st October. The deposit may be in the form of Guarantee in Form A-3 or Fixed Deposit from a Scheduled Bank situated in the State of Andhra Pradesh or from the Andhra Pradesh State Co-operative Central Bank.

(3)

(a) The Licensee shall remit the cost towards any loss or damage caused to the containers like bottles/crates at the end of every month at the following rates to the Andhra Pradesh Beverages Corporation.

(a) Rs.1.75 per bottle of 180 ml;

(b) Rs.125.00 per pot-type container with lid;

(c) Rs.88.00 per bottle crate of 180 ml;

(d) Rs.100.00 per sachet crate.

(b) The containers shall be returned by the licensee by the end of the Excise year, failing which the containers Security Deposit shall be adjusted against the containers dues and the balance of containers dues if any, shall bear interest at eighteen per cent per annum from the date on which the amount becomes due.

(4) The security deposit referred to in sub-rule (2) shall always be maintained in full during the lease period by the licensees.

(5) At the end of the lease period, the deposit shall be refundable after finally settling the account of the licensee in regard to the total loss or damage caused to such containers while they were in his custody.

20. Reauction in case of failure to deposit moneys :-

(1) In case of failure to pay the deposit or advance money or to furnish the non-encumbrance certificate required under Rule 18 within the time specified, the auction shall be cancelled by the auctioning authority, the earnest money and any amount deposited under Rules 16 and 18, shall be forfeited to the Government and the right of sale shall be re-auctioned or alternative arrangements made at the risk of the original auction purchaser who shall continue to be liable in respect of the lease till the auction purchaser in a re-auction takes over.

(2) If the re-auction or the other arrangement results in monetary benefit to the Government, the original auction purchaser shall have no claim over it, but, if it results in monetary loss or if the right remains unsold for want of bidders, the original auction purchaser shall be liable to pay to the Government the resultant loss.

(3) The provisions of sub-rules (1) and (2) shall apply in relation to the auction purchaser in any reauction mutatis mutandis as they apply in relation to the auction purchaser in an original auction.

21. Counterpart Agreement :-

After tendering the deposit earnest money and advance amount, it shall be the duty of the lessee and the licensee to execute a Counterpart Agreement in conformity with the tenor of his licence, in Form A-4 in the case of arrack and in Form A-5 in the case of toddy on the stamp paper of the requisite value as per the provisions of the Indian Stamp Act, 1889 before taking out a lease or licence or both granted to him for the sale of arrack and toddy, as the case may be. The Counterpart Agreement shall come into force with effect on and from the 1st October of the year to which the auction relates in respect of shops auctioned on or before the 30th September and in case where the auction takes place on or after the 1st October, the counterpart agreement shall come into force from the date of auction.

22. Commencement of lease :-

The lease for the sale of liquor granted to the auction purchaser shall not take effect until he obtains a licence from the licensing authority. It shall be the responsibility of the auction purchaser to execute the counterpart agreement referred to in Rule 21, [and also] complete other formalities within the time specified in Rules 18 and 19 and obtain a licence in respect thereof. If the auction-purchaser fails to do so the said lease shall be liable to be re-auctioned. Death of auction purchaser If the auction purchaser dies after the acceptance of his bid or tender or during the currency of lease for sale of liquor, his heirs shall be entitled to the grant of lease or to hold the lease, as the case may be, after complying with the provisions of the rules in regard to execution of counterpart agreements and deposits. If the heirs do not intend to hold the lease, they shall within fifteen days from the date of the death of the lessee communicate in writing their unwillingness to Excise Superintendent of the district. In such case the sanctioning authority or the licensing authority as the case may be shall make alternate arrangements or re-auction the lease and any loss of revenue sustained by the Government in such a case shall be recoverable as arrears of land revenue from the property of the original auction purchaser.

