

Sham Lal and Others

Vs

State of Punjab

Civil Appeal Nos. 2504-2508 Of 1969

(CJI A.N. Ray, R.S. Sarkaria, P.N. Shinghal, Jaswant Singh JJ)

30.04.1976

JUDGMENT

SARKARIA, J. –

1. This judgment will govern the disposal of these seven appeals filed on the strength of certificates of fitness granted by the High Court of Punjab and Haryana.
2. The appellants have been carrying on business as liquor contractors. At the annual excise auctions held for the year 1968-69, they were the highest bidders for the country liquor vends at various places in the State of Punjab, and the auctions were knocked down in their favour.
3. Since the questions involved and basic facts - with immaterial variations - are common, it will be sufficient to refer to the facts of the case giving rise to Civil Appeal No. 1641 of 1971, in which only arguments have been specifically addressed to us by Shri T. S. Munjral, Counsel for the appellant. The appellant-firm in this case gave the highest bids of Rs. 2,64,000 and Rs. 1,03,000 respectively and got licences in Form L-14 for retail country liquor vends at Jandiala and Bundala in Jullundur district. The material conditions of the licences announced at the auction and accepted by the appellants, were that annual quotas of liquor (in proof litres) for the vends at Jandiala and Bundala were 11,000 and 4,600 proofs respectively. Of the annual licence fees representing the highest bids, 1/24th was to be deposited within seven days of the auction or by the last day of the month in which the auction took place. The appellants had duly deposited these amounts before April 1, 1968.
4. Condition 15(ii) of the contract was that the licensee for retail vend of country spirit had to pay the whole amount of licence fee in 24 equal instalments, each instalment being payable by the 10th and 25th day of each month, beginning from the month of April, 1968.
5. Condition 18 reads as follows :
  - (i) A licensee shall not be entitled to any compensation or claim for damages if the supplies of country liquor to him falls short of the quota fixed in respect of his vend or vends. He will, however, be entitled to the refund of the proportionate license fee in such a contingency provided he established to the satisfaction of the Excise Commissioner that such a shortfall of supplies did not occur because of any fault on the part of the licensee himself. Such claims for refund shall be preferred and considered only after the close of the financial year 1968-69.

(ii) Subject to availability and genuine demand of the area concerned, the Excise Commissioner or an officer authorised by him in his behalf may, in his discretion allow additional quota of country liquor, i.e. over and above the quota fixed for his vend or vends on payment of proportionate additional license-fee.

6. According to condition 26, subject to the directions issued by the Excise Commissioner from time to time regulating the supplies from different distilleries in Punjab for various districts/areas, the licensed vendors were free to obtain their supplies of country spirit, wholly or partly from any of the licensed distilleries or the licensed warehouses in Punjab.

7. Under condition 27, the retail vendors were to obtain their requirement of country spirit from the wholesale vendors.

8. Rule 25(2) of the Excise Rules provided :

Subject to availability and genuine demands of the area concerned the Excise Commissioner or an officer authorised by him in this behalf may, in his discretion, allow additional quota fixed for his vend on payment of proportionate additional licence fee.

9. The appellants admittedly defaulted in the payment of certain instalments of the license fee. Thereupon the Financial Commissioner cancelled the licence for Jandiala vend on February 10, 1969. The cancellation was revoked on March 13, 1969. Excepting this interlude of some days there is no dispute between the parties that the vends at both these places, despite defaults on the part of the licensee, were operated by the appellants for the whole year ending March 31, 1969. It was alleged in the write petition that instead of cancelling the license of the petitioners owing to defaults committed by them in payment of instalments, the supplies of liquor were restricted against payment of proportionate licence fee, by the Financial Commissioner. In consequence, the quantity of liquor which the petitioners were allowed to lift and sell at the two vends was about 40% to 50% only of the quotas fixed for these vends. It was alleged that there was a breakdown of supplies in January 1969; as a result, the Inspectorate staff and other officers were instructed not to grant permits to the licensees unless proportionate license fee for the quantity of the liquor mentioned in the application for permit was first deposited in the Government Treasury. Because of these and other factors, the appellants were not able to reach the expected turnover of business and yield of income therefrom.

10. The Department issued demand notices for the recovery of the deficiency or loss in licence fee as arrears of land revenue.

11. On the preceding facts, the appellants instituted the writ petitions for quashing these notices of demand and prayed for a mandamus directing the respondents not to make recovery of any sum due except with reference to the quantity of liquor actually lifted and sold by the appellants.

12. They further prayed that the respondents be enjoined from black-listing the appellants.

13. These demand notices were challenged on various grounds. It was contended : that the provisions of Punjab Excise Act and the Rules framed thereunder relating to the levy of licence fee are beyond the legislative competence of the State Legislature; that Sections 30A, 34, 39, 59 and 60 of the Act authorising, inter alia the Financial Commissioner to fix fee for the grant of licence by auction, are unconstitutional and void as they do not lay down any guidelines for fixing the licence

fee and as such are violative of Article 14 of the Constitution; that the unconscionable terms and conditions of the licence offend against the provisions of Articles 19(1)(f) and (g) and Article 31 of the Constitution inasmuch as they impose unreasonable restrictions on the appellants' right to carry on business etc.

14. The questions relating to constitutional validity of the provisions of the Punjab Excise Act and the Rules framed thereunder are no longer *res integra*. Those questions stand concluded by the judgment of this Court in *Har Shankar v. Dy. Excise and Taxation Commissioner* [(1975) 3 SCR 254 : (1975) 1 SCC 737]. Mr. T. S. Munjral has consequently not reargued those questions.

15. Counsel has now canvassed only two points before us. First, that as soon as a default was committed by the appellant in the payment of any instalment of the licence money, the Financial Commissioner should have cancelled the licence and re-auctioned the vend. It is pointed out that indeed, the Financial Commissioner had cancelled the licence for Jandiala vend on February 10, 1969 because of delay in the payment of certain monthly or fortnightly instalments of the licence fee but he had, without any request from the appellant, revoked the cancellation by an order, dated March 13, 1969. It is also maintained that during the interregnum between this cancellation and revocation of the cancellation, the vend had remained closed. Secondly, the making of the supplies of liquor conditional on payment of the proportionate amounts of the licence fee, amounted to a breach of the conditions of the contract; consequently, the Revenue was not entitled to anything more than proportionate licence fee relatable to the quantity of liquor actually supplied to and lifted by the appellants.

16. In our opinion, neither of these contentions is sustainable.

17. Mr. Munjral has been unable to point out any condition of the licence which limits the liability of the licensee to the amount of liquor actually lifted by him or actually supplied to him against payment of the proportionate amount of the license fee. On the contrary, conditions 15(ii) and 18, extracted above, show that thereunder the licensees were bound to pay the whole of the license fee for which they had bidden at the auction in 24 equal, fortnightly instalments, on the fixed dates, even if the supplies of liquor to him fell short of the quota fixed for the vends. In the instant cases, the appellants had admittedly defaulted in payment of certain instalments on due dates in accordance with these conditions. According to the appellants, the liquor supplied was only 40% to 55% of the total quota; while according to the statement of case filed by the Department, it was 75% of that quota and the shortfall occurred not due to any refusal to supply on the part of the Department, but due to the failure of the licensee to ask for full supply against payment of the proportionate amount of the licence fee. In any case, the proper course to be followed by the licensee was the one indicated in condition 18. But he has not adopted that course. He does not want to abide by the terms of the contract, at the same time he wants to keep the benefit he might have made by operating the vends for the whole year. In the counter-affidavit, the Revenue had denied that the vend had remained closed for any period of time during the licence year.

18. The impugned demands have been raised in this case respect of the balance of the licence fee which remains unpaid after adjustment of the amounts due against the security deposits.

19. In *Har Shankar's* case this Court disapproved the conduct of such liquor licensees who offer bids with full knowledge of the terms and conditions attaching to the auctions and thereafter try to wriggle out of the contractual obligations arising out of the acceptance of their bids by resorting to Article 226 of the Constitution. Speaking for the Court, Chandrachud, J. observed : [SCC pp. 745-

The announcement of conditions governing the auctions were in the nature of an invitation to an offer to those who interested in the sale of country liquor. The bids given in the auctions were offers made by prospective vendors to the Government. The Government's acceptance of those bids was the acceptance of willing offers made to it. On such acceptance, the contract between the bidders and the Government became concluded and a binding agreement came into existence between them. The successful bidders were then granted licences evidencing the terms of contract between them and the Government under which they became entitled to sell liquor. The licensees exploited the respective licences for a portion of the period of their currency, presumably in expectation of a profit. Commercial considerations may have revealed an error of judgment in the initial assessment of profitability of the adventure but that is a normal incident of the trading transactions. Those who contract with open eyes must accept the burdens of the contract along with its benefit. The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees though the medium of auctions cannot by writ petitions be questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. Reciprocal rights and obligations arising out of contract do not for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract.

20. What has been extracted above applies aptly and with greater force to the cases before us; for, here the vends were operated by the licensees for the full period of the license year ending March 31, 1969. Having exploited the licences for the entire period without discharging the full burden of the fees payable for the same period, the appellants are seeking to avoid contractual obligations voluntarily incurred and to work the licences on terms as they find convenient.

21. In these circumstances, the High Court rightly refused to exercise its extraordinary jurisdiction under Article 226 of the Constitution in their favour.

22. The appeals fail and are dismissed with one set of costs, excepting C.A. No. 2504 to C.A. No. 2508 of 1969 in which the parties shall pay and bear their own costs.

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