

State of Punjab and Others

Vs.

Mulkh raj and co. and others

State of Punjab and Others

Vs

M/s. Tarsem lal bachan lal

Civil Appeal Nos. 1381-1382 of 1974 and 1737 of 1974

(CJI A.N.Ray, M.H. Beg, P.N. Shinghal JJ)

28.01.1977

JUDGMENT

Beg, J.

1. Civil appeal 1381 of 1974 has come before us after grant of a certificate of fitness of the case for appeal by the High Court of Punjab and Haryana under Article 133 (a) of the Constitution on February 2, 1973. The writ petition before the High Court (C. W. 442 of 1970) was one out of a batch of petitions all of which except this one were dismissed. The only ground on which this particular petition seems to have been allowed was that the demand for the balance of the liquor vend fee, held to be due, was considered to have been waived or the default condoned by the Excise Department. The High Court, however, held that it was unable to agree with the contention of the learned Counsel for the respondent that "If the Department either deliberately or by mistake or negligence forgoes the fulfillment on any particular condition of the licence, it thereby debars itself from proceeding against a licensee for contravention of any other condition of the licence for contravention of any other condition of the licence or contravention of any of the 1956 rules". We find it difficult to discover the ground on which the order of cancellation of licence of the petitioner in writ petition 442 of 1970 was set aside after distinguishing it from other cases.

2. Civil Appeal 1382 of 1974 by certificate arises out of a decision of the Full Bench of the High Court of Punjab and Haryana on December 21, 1971, holding that re-auction of the liquor vend was not in accordance with Rule 36 of the Punjab Liquor Licence Rules, 1956, because eight valuable days were lost between the cancellation of the licence and re-auction. It was also held there that a cancellation of the licence under Section 36 of the Punjab Excise Act, 1914, had to take place quasi-judicially after due service of the notice on the licensee to show cause why it should not be cancelled. Although, the merits of the last mentioned proposition need not be examined by us as it rests on a sound footing, yet, we find it difficult to uphold the order that the demand for a sum of Rs. 36,636 on account of shortfall should also be quashed on account of non-compliance with rules of natural justice in cancelling the licence in proceedings under Section 36 of the Act. We think that the two liabilities were erroneously considered by the High Court to be inextricably linked up. In the circumstances of this case, the High Court need not have interfered, even with the cancellation of the licence for the year 1969 to 1970 which had expired. The respondent should have been left to his

remedy, by means of an ordinary civil suit, if he claimed a right to hold back payment.

3. Civil Appeal 1737 of 1974, by special leave, is directed against an order of the High Court of Punjab and Haryana in which the cancellation of a licence for a liquor vend and a notice of demand for deficiency of licence fee for country liquor vend for the year 1968 to 1969 was quashed by the High Court by a very short order merely on the ground that the decision in *M/s. Mulkh Raj Krishan Kumar & Co. v. State of Punjab* [1972 PLR 698 : AIR 1973 P 7 H 62), had been given by the Punjab and Haryana High Court holding that the absence of a show cause notice was fatal to an order of cancellation of the licence. We do not think that, even if the respondent ought to have been given a hearing before cancelling the licence, this could dispense with his liability to deposit the amount of the balance of the licence fee or invalidate the notice of demand for it. Indeed, after the lapse of the year for which the licence for liquor vend was granted, there was no point in quashing a licence which had expired. The respondent, if aggrieved, should have been left to assert his alleged rights in an ordinary civil Court.

4. For the reasons give above, we allow these three appeals and set asked the judgments and orders of the High Court of Punjab and Haryana and dismiss the writ petitions. The parties will bear their own costs.

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