

State of Punjab and Others

Vs

Ajudhia Nath and Another

Civil Appeals Nos. 1665 and 1966 of 1970

(D.A. Desai, A.D. Koshal, R.B. Misra JJ)

07.05.1981

JUDGMENT

BEG, C.J. –

1. This appeal by special leave comes up before us from the judgment and order of the Division Bench of the High Court of Punjab & Haryana dismissing the appeal of the State of Punjab against the judgment and order of the learned Single Judge given on March 27, 1967 in Civil Writ Case No. 2021 of 1966. The learned Single Judge had allowed the petition of the respondent M/s. Balbir Singh & Sons, who were the highest bidders at an auction for country liquor vends relating to certain villages in the district of Ferozepur for the year 1965-66. Under the terms of the licence issued to the respondent on conditions specified before the auction, the auction fee and the security had to be deposited before lifting the minimum quota of liquor fixed under the licence. For reasons not mentioned in the judgment of the High Court, which considered it unnecessary to go into them, the respondent-firm did not lift the minimum quota of liquor fixed under the licence. It also did not pay the full amount of licence fee as undertaken by it. The excise authorities of the appellant-State, therefore, demanded payment of the still-head duty on the entire minimum quantity of liquor which the respondent-firm was required to lift under the licence. The High Court allowed the petition following an earlier decision of that court merely on the ground that the respondent-firm had not been given an opportunity of being heard.

2. After the judgment under appeal before us, this Court has clarified the whole position in several decisions, and, in particular, in *Har Shankar v. Deputy Excise and Taxation Commissioner* ((1975) 1 SCC 737 : (1975) 3 SCR 254) followed in *Sham Lal v. State of Punjab* ((1977) 1 SCC 336 : AIR 1976 SC 2045). In *Har Shankar* case ((1975) 1 SCC 737 : (1975) 3 SCR 254), Chandrachud, J. speaking for the Constitution Bench of this Court said as under : (SCC pp. 745-46, para 16)

Those interested in running the country liquor vends offered their bids voluntarily in the auctions held for granting licences for the sale of country liquor. The terms and conditions of auctions were announced before the auctions were held and the bidders participated in the auctions without a demur and with full knowledge of the commitments which the bids involved. The announcement of conditions governing the auctions were in the nature of an invitation of an offer to those who were 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 all trading transactions. Those who contract with open eyes must accept the burdens of the contract along with its benefits. The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through 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 depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force.

3. In the aforementioned case of Har Shankar ((1975) 1 SCC 737 : (1975) 3 SCR 254), all the relevant authorities on the subject were quite exhaustively considered by this Court. Subsequent decisions of this Court have followed the principle laid down in Har Shankar case ((1975) 1 SCC 737 : (1975) 3 SCR 254). Learned counsel for the State also drew our attention to a recent judgment of the Court in State of Punjab v. Mulkh Raj & Co. ((1977) 3 SCC 582) where this Court held, inter alia, that considerations governing cancellation of licence under Section 36 of the Punjab Excise Act, 1914 are not relevant in considering the question whether the demand was lawful under the terms which became binding on both sides as a result of mutual obligations carried out by following the conditions on which the liquor vends were auctioned. It is the enforcement of the liabilities arising out of mutually agreed conditions of auction, which were sought to be enforced by the demand notice, which was quashed by the High Court.

4. Consequently, in consonance with our aforementioned decisions we allow this appeal, set aside the judgment and orders of the High Court of Punjab & Haryana.

## JUDGMENT

The Judgment of the Court was delivered by

Koshal, J. -

By this judgment we shall dispose of Civil Appeals 1665 and 1666 of 1970 in which common questions of law have arisen for determination by this Court.

2. The facts leading to the two appeals are undisputed and may be briefly stated thus. Licences to run liquor vends in various parts of Punjab during the financial year 1965-66 were sold by public auction shortly before April 1, 1965. Auctions were held at numerous places subject to identical conditions which were supplied to the bidders in writing. Condition 8 which is material for our purposes is reproduced below :

That the licensee shall lift each month the proportionate quota for the month fixed for his vend(s) or deposit still-head duty realisable thereon. In the event of any deficiency in the amount of still-head duty realisable from the lifting of the full proportionate quota due to the short lifting of the quota by the licensee or non-

deposit of the amount of the still-head duty, the said deficiency may be realised from the amount of security deposited by him at the time of grant of licence. The resulting deficiency in the amount of security shall be made good by the licensee within 7 days of such adjustment. In case the short lifting of proportionate quota or short deposit of still-head duty continues for two consecutive months or the licensee fails to make up the deficiency in the amount of security within the prescribed period of 7 days, his licence may be cancelled in addition to the recover of deficiency in still-head duty.

3. Ajudhia Nath who figures as respondent 1 in each of the two appeals and who carries on business of selling country liquor either in his own name or in the name and style of M/s. Ajudhia Nath Bal Mukand (a business concern arrayed as respondent 2 in Civil Appeal 1665 of 1970) was the highest bidder for the auctions pertaining to five villages situated in the district of Amritsar and a couple of villages in Ferozepur District. Accordingly the auctions were sanctioned in his favour and he was granted the necessary licences under the relevant provisions of the Punjab Excise Act (hereinafter referred to as 'the Act') and the Rules framed thereunder.

4. The licensee started his liquor-selling business in the said seven villages on April 1, 1965. By the close of the financial year 1965-66, however, he was unable to lift the minimum quota of country liquor and also failed to deposit the still-head duty which became payable by him under Condition 8 above extracted. He made applications claiming relief in the matter of payment of sums which had fallen due and such relief was granted to him in part by the Excise & Taxation Commissioner, Punjab, on the ground that sales of country liquor had been adversely affected by reason of the movement of population in the border areas of Punjab on account of the hostilities which broke out between India and Pakistan in the month of September 1965. Not satisfied with the relief so granted Ajudhia Nath filed two petitions under Article 226 of the Constitution of India before the High Court of Punjab & Haryana claiming, inter alia, that still-head duty was an excise duty which could be levied only on manufacture of goods and which he was not liable to pay by reason of the admitted fact that he was not a manufacturer of liquor. A grouse was also made by him of the fact that the applications claiming relief had been decided without affording to him an opportunity of being heard. One of those petitions (Civil Writ Petition 2034 of 1966) related to vends functioning in the two villages of Ferozepur District, while the other (Civil Writ Petition 2035 of 1966) covered the 5 vends located in the five village of Amritsar District. The petitions were allowed by a single order dated May 9, 1967 passed by D.K. Mahajan J., on the sole ground that a similar petition (Civil Writ Petition 2021 of 1966) had been allowed by Gurdev Singh, J., on March 27, 1966. The proceedings for the recovery of the shortfall in the deposit of still-head duty by Ajudhia Nath which had been initiated by the State of Punjab and its concerned officers (appellants 1 to 4 in each of the appeals before us) were quashed and the Excise & Taxation Commissioner, Punjab (appellant 2 in both the appeals) was directed to dispose of the "cases" of the respondents "in accordance with law after hearing the petitioners". D.K. Mahajan, J., adopted all the reasons on which Gurdev Singh, J., had based his order above mentioned.

5. Letters patent appeals preferred by the four appellants to the Division Bench of the High Court were summarily dismissed by Mehar Singh and Tuli, JJ., for the reason that a letters patent appeal against the judgment of Gurdev Singh, J., above

mentioned had met the same fate.

6. It is against the judgment of the Division Bench (which is dated August 29, 1969) that each of the appeals before us has been filed.

7. Mr. Dhillon, learned counsel for the appellants has drawn out attention to *State of Punjab v. Balbir Singh* (AIR 1977 SC 1717 (Printed herein in SCC in this volume at p. 252 supra) which reversed the judgment of Gurdev Singh, J., mentioned above and has contended that the very basis of the impugned judgment has consequently fallen to the ground. The contention is correct. As pointed out in *Balbir Singh* case (AIR 1977 SC 1717 (Printed herein in SCC in this volume at p. 252 supra) the judgment of Gurdev Singh, J., in Civil Writ Petition 2021 of 1966 had proceeded merely on the ground that the petitioner-firm therein had not been given an opportunity of being heard in relation to the demand notice issued to it for payment of the still-head duty on the entire minimum quantity of liquor which that firm was required to lift under the licence. In differing with the view expressed by Gurdev Singh, J., this Court made a reference to the following observations of Chandrachud, J. (as he then was) in *Har Shankar v. Dy. Excise and Taxation Commissioner* ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121), which was followed in *Sham Lal v. State of Punjab* ((1977) 1 SCC 336 : AIR 1976 SC 2045) :

The announcement of conditions governing the auctions were in the nature of an invitation to an offer to those who were 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 all trading transactions. Those who contract with open eyes must accept the burdens of the contract along with its benefits. The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through 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 depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force (see SCC PP. 745 & 746, para 16)

and concluded that the demand for the shortfall in still-head duty was based on the terms of a binding contract and that it sought to enforce the liabilities arising out of mutually agreed conditions of auction. Such a demand, in the opinion of this Court, could not be equated with a notice requiring the liquor vendor to show cause why his licence should not be cancelled. In making this distinction this Court further relied upon *State of Punjab v. Mulkh Raj & Co.* ((1977) 3 SCC 582 : AIR 1977 SC 1550) wherein it was observed : (SCC p. 583, paras 2 & 3)

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.....

... 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 balance of the licence fee or invalidated the notice of demand for it...

8. Thus, the proposition is by now well settled that although an opportunity of being heard has to be given to a liquor vendor when his licence is sought to be cancelled, the same principle of natural justice does not come into play when the demand is merely for payment of a sum becoming due under the conditions subject to which the licence was granted, and this proposition fully covers those appeals. The demands for payment of the amount of still-head duty which had become due under the contracts accepted by the respondents and had remained unpaid were demands arising under Condition 8 above extracted and had, therefore, resulted from the terms of those contracts. No question of affording to the respondents any opportunity of being heard thus arises and the impugned judgment, is therefore, liable to be reversed.

9. Faced with the above situation, Shri Munjra, learned counsel for the respondents, raised the following two contentions :

(a) Still-head duty is a duty of excise which could only be levied on a manufacturer and not on a mere vendor of goods manufactured by others.

(b) If the still-head duty mentioned in Condition 8 above extracted cannot be regarded as a duty of excise, it nevertheless amounts to a tax of some other kind for levying which the State lacks authority.

10. Reliance in connection with contention (a) is placed on Entry 51 of List II forming part of Schedule VII to the Constitution of India and on Section 31 of the Punjab Excise Act. The relevant portions of these provisions state :

Entry 51

Duties of excise on the following goods manufactured or produced in the State of countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India -

(a) alcoholic liquors for human consumption;.....

Section 31

An excise duty or a countervailing duty, as the case may be, at such rate or rates as the State Government shall direct, may be imposed, either generally or for any specified local area, on any excisable article -

- (a) imported, exported or transported in accordance with the provisions of Section 16; or
- (b) manufactured or cultivated under any licence granted under Section 20; or
- (c) manufactured in any distillery established, or any distillery or brewery licenced under Section 21;....

11. These provisions leave no room for doubt that a duty of excise on alcoholic liquors meant for human consumption cannot be recovered from the respondents because none of the three clauses of Section 31 covers their business activities. But then the first part of contention (a) that still-head duty is a duty of excise cannot be accepted in view of the dicta in *Har Shankar v. Dy. Excise and Taxation Commissioners* ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121) and *State of Punjab v. Balbir Singh* (AIR 1977 SC 1717 (Printed herein in SCC in this volume at p. 252 supra) to the effect that the shortfall in still-head duty represents nothing but sums recoverable by the appellants under the terms of a contract which was entered into by the respondents with their eyes open and that the latter cannot be allowed to have the best of both the worlds by exploiting the contract so long as it suits them and by repudiating it if and when it does not work to their advantage.

12. Shri Munjral has vehemently contended that still-head duty is only another name for excise duty inasmuch as it is nothing more or less than a duty inviable on the manufacture of alcoholic liquor. For this proposition he places reliance on a Division Bench judgment of the High Court of Punjab & Haryana in *Bhajan Lal Saran Singh & Co. v. State of Punjab* (1967 Cur LJ 460 (P & H HC)), the approval of that judgment by this Court in Civil Appeals 1042 and 1043 of 1968 decided on August 21, 1972 (*Bhajan Lal v. State of Punjab*, Civil Appeals Nos. 1042 and 1043 of 1968, decided on August 21, 1972), *State of M.P. v. Firm Gappulal* ((1976) 1 SCC 791 : 1976 SCC (Tax) 71 : (1976) 2 SCR 1041) and *Excise Commissioner v. Ram Kumar* ((1976) 3 SCC 540 : 1976 SCC (Tax) 360). These authorities, however, are of no help to him because, in every one of them, the still-head duty which was mentioned in the condition corresponding to Condition 8 in the present case was either expressly stated to be an excise duty or was assumed to be a duty of that character. In fact, in the case of *Bhajan Lal Saran Singh* (1967 Cur 460 (P & H HC) it was conceded on behalf of the State before the High Court that still-head duty was an excise duty and that is why the nature of the charge as excise duty was taken for granted before the High Court as well as in this Court. No question was either raised or decided as to whether it could at all be regarded as an excise duty. However, in later cases, namely, *Har Shankar v. Dy. Excise and Taxation Commissioner* ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121) and *State of Punjab v. Balbir Singh* (AIR 1977 SC 1717 (Printed herein in SCC in this volume at p. 252 supra) the demand for still-head duty recoverable under Condition 8 above extracted was specifically held to be a demand for money which had become due under an obligation created by terms of the contract. It is too late in the day, therefore, for Shri Munjral to contend that such a demand should be considered as one covering excise duty. He, however relies on the following passage in *Har Shankar v. Dy. Excise and Taxation Commissioner* ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121) : (SCC pp. 761-62, para 62)

The second decision on which the appellants laid stress was rendered by the High Court of Punjab & Haryana in *Fage Ram v. State of Haryana* (Civil Writ No. 1376 of 1967, decided on March 12, 1968). The argument is that this decision is based on the earlier decision of the High Court in *Bhajan Lal v. State of Punjab* (1967 Cur LJ 460

(P & H HC)), that the decision in Bhajan Lal case (1967 Cur LJ 460 (P & H HC)) was confirmed in appeal by this Court (Bhajan Lal v. State of Punjab, Civil Appeals Nos. 1042 and 1043 of 1968, decided on August 21, 1972), that there is no material difference between the rules and the procedure adopted in the instant cases and those which were struck down in Bhajan Lal case (1967 Cur LJ 460 (P & H HC)) and therefore the rules and the procedure followed therein must also be struck down for the same reasons. This argument overlooks the significant difference between the rules struck down in Bhajan Lal case (1967 Cur 460 (P & H HC)) and in Fage Rame case (Civil Writ No. 1367 of 1967, decided on March 12, 1968), and the amended rules now in force. Under the old Rule 36(23-A) still-head duty which was admittedly in the nature of excise duty was payable by the licensee even on quota not lifted by him. The rule and Condition 8 founded on it were therefore struck down in Bhajan Lal case (1967 Cur LJ 460 (P & H HC)) as being beyond the scope of Entry 51 of List II, the taxable event under the impugned rule being the sale and not the manufacture of liquor. Rule 36 was amended on March 31, 1967 in order to meet the judgment in Bhajan Lal case (1967 Cur LJ 460 (P & H HC)) but the High Court found in Jage Rame case (Civil Writ No. 1376 of 1967, decided on March 12, 1968) that even under the amended rule, still-head duty which was in the nature of excise duty was payable on unlifted quota of liquor. The position obtaining under the Rules as amended on March 22, 1968, which are relevant for our purposes is in principle different as the still-head duty is now only 0.64 paise as against Rs. 17.60 per litre which was in force under the old Rules and excise duty as such is not longer payable on unlifted quota. The principle governing the decisions in Bhajan Lal case (1967 Cur LJ 460 (P & H HC)) and Jage Ram case (Civil Writ No. 1376 of 1967, decided on March 12, 1968) cannot, therefore, apply any longer.

13. Special stress has been laid by Shri Munjral on the italicised portion of the passage above extracted and it is contended by him that the judgments in the cases of Fage Ram (Civil Writ No. 1376 of 1967, decided on March 12, 1968) and Bhajan Lal (1967 Cur LJ 460 (P & H HC)) were neither disapproved nor dissented from but were merely distinguished in Har Shankar case ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121), that while pointing out the distinction this Court took it for granted that in those earlier cases the charge of still-head duty amounted to an excise duty and that Condition 8 as obtaining in the present case being identical with the corresponding condition in those cases, it must be held that Har Shankar case ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121), is an authority for the proposition that the said Condition 8 seeks to levy nothing but excise duty in the form of still-head duty. A careful perusal of the passage cited (which appears at first sight to lend colour to the contention) leaves no room for doubt, however, that in deciding Har Shankar case ((1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121) this Court was not called upon to adjudicate on the constitutional propriety of Condition 8 above extracted, nor with the question as to the nature of the levy covered by that condition. All that the court said was that the corresponding condition in Har Shankar case (1967 Cur LJ 460 (P & H HC)) was a very different condition which could in no manner be construed to levy an excise duty. Besides, it was pointed out in the passage above quoted that the still-head duty mentioned in the relevant condition in the earlier cases (which was identical with Condition 8) was admittedly a duty of excise - a fact to which we have already adverted while holding that Condition 8 does not involve the imposition of a duty of excise but makes provision only for recovery of sums becoming due under a contract. We may also point out that the respondents are not connected in any manner whatsoever with the manufacture of alcoholic liquor and there was, therefore, no question at all of

levying a duty of excise on their operations which were confined merely to the sale of liquor manufactured by others and which, therefore, commenced only after the process of manufacture was completely over. For all these reasons, we repel the contention under examination.

14. Contention (b) is also without substance and need not detain us long. For one thing, it was never raised at any earlier stage and its consideration is bound to work prejudice to the cause of the appellants. Secondly, as already pointed out above, there is no impediment in the way of the demand being regarded as the enforcement of an obligation arising under the contracts which the respondents had entered into the exploited so long as the same worked to their advantage and which were fully permissible under sub-section(3) of Section 34 of the Punjab Excise Act. That sub-section states :

(3) Every licence, permit or pass granted under this Act shall be granted-

(a) on payment of such fees, if any,

(b) subject to such restrictions and on such conditions,

(c) in such form and containing such particulars,

(d) for such period,

as the Financial Commissioner may direct.

15. According to Shri Munjral the payment of licence fees is provided for in the conditions of auction apart from Condition 8 and, therefore, the latter cannot be regarded as providing for anything but the levy of a duty of excise or of some other kind. The argument is fallacious in view of the language of clause (b) of the sub-section just above reproduced. That clause allows the imposition of conditions on the grant of a licence, in addition to the payment of the licence fees which is a matter covered by clause (a). Condition 8 is, therefore, fully enforceable and there is no reason why still-head duty should be regarded as a tax of any kind whatsoever.

16. For the reasons stated, both the appeals are accepted and the impugned judgment, which cannot be sustained, is reversed so that both the petitions under Article 226 of the Constitution of India filed by the respondents before the High Court and accepted by it are dismissed. However, we leave the parties to bear their own costs.

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