

State of Punjab

Vs

M/s Dial Chand Gian Chand and Company

Civil Appeal No. 1979 of 1970

(D. A. Desai, O. Chinnappa Reddy JJ)

22.04.1983

JUDGMENT

DESAI, J.-

1. This is one of those usual run of mill cases by liquor licensee who after giving bids at auctions take advantage of the licence granted and then wants to wriggle out of the obligations incurred under the licence.
2. The respondent gave his bid for country liquor vend at Bagrian in Sangrur district at an auction held on March 25, 1969 and its bid being the highest in the amount of Rs. 1,32,000, was accepted. The authorities under the Punjab Excise Act and the various orders and rules issued thereunder held auction for different country liquor vends in Patiala district adjoining Sangrur district on March 22, 1969. It with regard to the bids received for 15 bids and directed reauction on March 26, 1969. Pursuant to this order, when fresh auctions were held in respect of 15 vends in Patiala district on March 26, 1969 it included a vend at villages Gulwati. Village Gulwati is at a distance of four to five furlongs from Bagrian where the vend for which the bids of the respondent was accepted was to be located. The highest bids for Gulwati vend was in the amount of Rs. 68,000 which was accepted. The respondent felt that there may be an unhealthy competition and it may be adversely affected by setting up of a vend at Gulwati and therefore started making representations to the Excise and Taxation Officers calling upon them to close the vend at Gulwati. Even when the respondent was lodging the protests, it was operating the vend at Bagrian. Undoubtedly, at one stage, the respondent offered to surrender its vend at Bagrian. But it was never surrendered and the protest of the respondent fell on deaf ears. Ultimately, the respondent and one Banarsi Das whose bid for vend at Bhadson was the highest, filed two writ petitions in the High Court of Punjab and Haryana at Chandigarh.
3. In this appeal, we are concerned with Civil Writ Petition No. 996 of 1969 filed by the present respondent. The respondent, inter alia, contended in the writ petition that it was never intimated that at a short distance from Bagrian though in adjoining district, a country liquor vend shall be set up and auctioned when the auction was held for Bagrian vend, and it was alleged that there was an implied premise not to set up a vend at a nearby place which would adversely affect the business of the respondent. It was also contended that the vend at Gulwati was opened without complying with the requirements of Rules 3,6 and 6 of the Punjab Intoxicants Licence and Sale Orders, 1956 and the action of the authority in establishing the vend was illegal and a direction be issued to close the vend. There were numerous other contentions about the validity of the auction and the licence fee with which we are not concerned. The relief prayed for in the writ petition was that a writ in the nature of mandamus be issued direction the respondents to forthwith close the country liquor vend

at Gulwati and until the vend is so closed not to make recovery from the petitioner of the so-called licence fee concerning the liquor vend at Bagrian. Alternatively, it was prayed that a writ in the nature of mandamus be issued directing the respondents to take over the liquor vend at Bagrian from the petitioner discharging him from the liability of paying the licence fee. A further prayer was that the respondents be restrained from recovering the licence fee except with reference to the actual quantity of liquor that may be sold. We have referred to the specific prayers because the High Court has granted the prayer which was neither made nor which the High Court could have granted as if awarding damages in exercise of its jurisdiction under Article 227 of the Constitution. To the writ petition, the respondent impleaded (i) the State of Punjab, (ii) the Excise and Taxation Commissioner, (iii) the Deputy Excise and Taxation Commissioner, (iv) the Excise and Taxation Commissioner, (iv) the Excises and Taxation Officer, Sangrur and (v) the Excise and Taxation Officer, Patiala, as respondents 1 to 5 respectively. Respondent 4, the Excise and Taxation Officer, Patiala and respondent 3, Deputy Excises and Taxation Commissioner, Patiala filed the returns. The High Court was of the opinion that the returns filed were not proper as they did not satisfy the requirements of Rule 6 of Chapter 4-F (b) of Volume V of the Rules and Orders of the High Court which requires the return to the rule issued in a writ cases to be made by an affidavit. Approaching the matter from this angle, the High Court held that no proper return has been made to the rule issued in these cases. But having so held we find that the High Court did look into the return wherever necessary and therefore the approach of the High Court at least prima facie has caused no prejudice to the appellant.

The High Court held that the country liquor vend at Gulwati was set up without prior sanction of the State Government which was mandatory and therefore the action of the setting up of a country liquor vend at Gulwati was clearly not in accordance with law. The High Court incidentally held that this unlawful action has caused a damage to the respondent. The High Court, of course, did not grant the prayer of directing the respondents to closes the country liquor vend at Gulwati but moulded the relief as under :

After considering all the circumstances of the case we think it would meet the interest of justice if we merely direct that the respondents shall not recover from the petitioners so much of the licence fee (otherwise due from them for the respective vends purchased by them at the auctions for their respective districts) as has been recovered by the State from the auction-purchasers of Gulwati and Saholi vends respectively for the year in question i. e. for 1969-70.

In other words, when the bid of the respondent was accepted, the respondent incurred a liability to pay Rs. 1,32,000 from which the High Court gave the respondent remission of Rs. 68,000 for which licence fee, the Gulwati was licenced.

5. After the High Court pronounced judgment on January 6, 1970, a review petition was filed on behalf of the respondent seeking review of the judgment of the High Court. The High Court found no substance in the review application and rejected the same. The High Court granted a certificate under Article 133 (1) (a) of the Constitution. Hence this appeal by certificate.

6. At the hearing of the appeal, no one appeared on behalf of the respondent. Respondent's bid for country liquor vend at Bagrian given at the auction held on March 25, 1969 was accepted. This is not in dispute. A licence was issued to the respondent. There is no material on record to show that any assurance was held out to the respondent that no liquor vend will be opened within a short distance from Bagrian. It appears that the auction held for 15 vends in the adjoining Patiala district on March 26, 1969 included a country liquor vend at Gulwati. It is not in dispute that the Gulwati is

at a distance of four to five furlongs from Bagrian. The question is whether the respondent committed any illegality in setting up a vend at Gulwati and auctioning the same. The further question is whether respondent can have any grievance about it or is entitled to any relief on that count.

7. The High Court referred to paragraphs 3,5 and 5 of the Punjab Intoxicants Licence and Sale Orders, 1956 ('1956 Orders' for short). They may be extracted.

3. Under Section 8 (2) of the Punjab Excise Act, the general superintendence and administration by the Financial Commissioner in matters relating to excise shall be subject to the following restrictions :

(a) No shop may be licensed for the sale of liquor or intoxicating drug in any village or in any ward or quarter of a town in which a licence did not previously exist without the sanction of the State Government.

(b) The number of liquor and intoxicating drug shops which may be licensed in any local area, shall be subject to the orders of the State Government.

4. Shops may be licensed for the sale of liquor and intoxicating drugs in only such villages and in such wards or quarters of towns as the Financial Commissioner shall, subject to the control of the State Government, from time to time, direct.

5. No licence for the sale of liquor or drugs may be given unless either there is an ascertained demand for such liquor or drugs in the locality concerned, or it is granted to counteract the illicit supply of liquor or drugs in that locality, nor in the cases of liquor licenses for no consumption without the inquiry prescribed by Orders 8 to 15 of these Orders.

Interpreting paragraph 3, the High Court held that as paragraph 3 is couched in negative language, it appears to be mandatory and therefore, no new country liquor vend can be opened without the sanction of the State Government. The High Court then proceeded to observe that no document was placed on record to show that the State Government had sanctioned opening of a vend at Gulwati. The High Court, in this connection, referred to Annexure B/1 issued by respondent 5 Excise and Taxation Officer, Patiala giving public notice of the auction to be held on March 26, 1969 for 15 liquor vends at various places in Patiala district and observed that Gulwati does not find place in this list. It is difficult to appreciate the approach of the High Court in this cases. Rule 4 of the 1956 Order shows that the Financial Commissioner had the power to open licensed shops for sale of liquor and intoxicating drugs and this power could be exercised subject to the control of the State Government. It appears that the Punjab Government had empowered in the month of February 1969 the Excise and Taxation Commissioner to exercise powers of Financial Commissioner, that changes in excise arrangement regarding the opening and closing etc. of the vends may be made by the Excise and Taxation Commissioner, if felt necessary by him under intimation to Government in respect thereof. Mr. H. S. Gill, Deputy Excise and Taxation Commissioner has stated in the return filed by him that the Excise Department considering the overall demand of liquor in the relevant area and the trends of the sales, came to the conclusion that the

vend at Gulwati may be opened. If the State Government had empowered the concerned officer and if in exercise of the power a vend was directed to be opened, we fail to see how such opening of the vends at Gulwati could be said to be not in accordance with law. The assertion of Mr. Gill could not be lightly brushed aside on the specious plea that no order or communication of the Punjab Government issued in February 1969 was produced before the High Court. Assuming that the High Court is right in holding that the delegate the functions enjoined on it by clauses (a) of Rule 3 of 1956 Order, the High Court ought to have examined the various provisions power of general superintendence and administration on the Financial Commissioner in matters relating to excise, subject to restrictions therein mentioned. And Mr. Gill asserts in the return that the Excise Commissioner was authorised to exercises powers of Financial Commissioner. This was not controverted and it cannot be rejected in a cavalier manner. We are therefore unable to accept the conclusion recorded by the High Court that the opening of a country liquor vend at Gulwati was not in accordance with law.

8. The High Court approached the matter from a slightly different angle and held that there is not material to show that Rule 5 of 1956 Order was complied with. The High Court overlooked the fact that there is a presumption, undoubtedly rebuttable that official acts are presumed to be done in proper manner.

9. The High Court also did not appreciate that writ petition was filed by a licensee who participated in the auction with eyes wide open and on untenable plea wanted to wriggle out of the bargain. In this connection, one can advantageously refer to decision of the Constitution Bench of this Court in *Har Shankar v. Dy. Excise and Taxation Commissioner* wherein it has been held that the writ jurisdiction of the High Courts under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred. It was also held that by attempting to exploit the licences without the burden of licence fees subject to which the licence fees subject to which the licence was granted, the licensee are seeking to work the licences on such terms as they find convenient.

10. Lastly, Mr. Sharma urged that the High Court granted a prayer not sought by the respondent in the High Court and the prayer is as if damages were awarded for some wrongful act on the part of the officers of the Excise Department. The High Court having held that a direction for closing down the liquor vend at Gulwati cannot be issued, it was not open to the High Court to work out for itself and rewrite the contract between the parties. The respondent was under an obligation to pay the amount of the bids. The High Court gives remission to the respondent on an untenable grounds that presumably the opening of the liquor trade of the respondent. The proportion of remission is worked out on the basis that the bid for Gulwati vend would be directly proportionate to the loss presumably suffered by the respondent. This assumption is wholly untenable. There is no material for reaching this conclusion. The High Court could not have converted writ petition into a suit for recovery of damages and that too without recording a finding that there was any breach of contract. We are satisfied that the High Court was in error in granting the relief.

11. Accordingly, this appeal is allowed and the judgment and order of the High Court is quashed and set aside and the writ petition filed by the respondent in the High Court is dismissed with costs throughout.

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