

Excise Commissioner U. P. Allahabad and Others

Vs

Prem Jeet Singh Gujral and Others

Civil Appeal No. 5997 of 1983 and Special Leave Petition (Civil) No. 7983 of 1983

(E. S. Venkataramiah, O. Chinnappa Reddy JJ)

10.08.1983

JUDGMENT

CHINNAPPA REDDY, J. -

1. Special leave granted

2. On March 17, 1983, there was an auction of the exclusive privilege of selling country liquor in a group of twenty-four shops in Allahabad city known as the Chail group of shops. The respondents were the highest bidders - in fact, they were the only bidders, a circumstance which should arouse anyone's curiosity and suspicion. However, nothing turns on the circumstance in this case. The bid was for a sum of Rs. 1,19,00,000. Auctions for the privilege of selling foreign liquor and bhang and of the privilege of selling country liquor in rural areas were separately held on other days. The Deputy Commissioner of Excise, Allahabad submitted a report dated March 26, 1983 to the Collector, Allahabad stating that the bids were low and would result in a loss of revenue to the Government, if accepted and suggesting that it might be recommended to the Excise Commissioner that the auctions might be canceled and re-auctions held with a new strategy which he also suggested in the letter. On March 28, 1983, the Commissioner of Excise passed an order setting aside the auction of all the shops and directing a re-auction. The order may be use fully extracted here in full. It is as follows :

It became evident after the analysis of the results of auctions of the shops of country liquor, bhang and foreign liquor held on March 17, 18 and 24, 1983 of Allahabad district that the final bids of the shops accepted by the Collector and the bids received of the auction of the shops still postponed all taking together are comparatively less by (90-87) lacs to that of the licence fees of the last year such a heavy loss does not stand to reason in view of the trend of the results of auction received from other districts. The results of the auction held in the neighbouring districts of Allahabad are as follows :

#Name of the District Rate of Increment
1. Mirzapur .. . 86-8 per cent
2. Benares .. . 24-3 per cent
3. Pratapgarh .. . 15-8 per cent
4. Fatehpur .. . 13-6 per cent
5. Rea Bareli .. . 20-8 per cent##

Allahabad is a developed district in comparison with the aforesaid districts and I see no reason of such a heavy loss in the licence fees of the excise shops of this district.

The District Excise Officer of Allahabad has submitted report regarding the auction in which he has suggested only one alternative to save the heavy fall in the total revenue of the district that ways to

receive more revenue pertaining to the shops of country liquor of Tehsil Chayal (city group) should be adopted as there is margin of gain of revenue in this group only. The District Excise Officer has recommended that all the bids of auction of all the shops of country liquor, bhang and foreign liquor which were accepted provisionally should be rejected and the auction be held again. The Collector, Allahabad has not thought is reasonable to put any emphasis on the fact that reaction should be held after inviting tender (applications) for the same.

I considered all the aspects of this matter. The bids received at the auction of all these shops of Tehsil Chayal, Tehsil Phulpur, Tehsil Sirathu and Tehsil Sorab accepted by the District Collector are not sufficient. The details of the result of the auction given above held in neighbouring districts go to support this opinion of mine. There had been no considerable increase in the licence fees of excise shops of Allahabad District last year on the basis of which it could have been inferred that this is the reason of receiving bids of less amounts for the year 1983-84. The number of the licence fees of the last five years are as follows :

#	Year	Increment	Percentage	1978-79	1,52,84,988	----	1979-80	1,70,40,100	11-11980-
	81	2,23,67,107	31-31	1981-82	2,76,72,550	23-71	1982-83	3,30,34,950	19-4###

I am fully satisfied on the basis of the above information that bids of sufficient amounts have not been received pertaining to the shops in question. Therefore, I disapprove all the bids received at the auction of all the shops of country liquor, bhang and foreign liquor held on March 17, 18 and 24, 1983 and provisionally accepted by the Collector. The Collector should hold re-auction of the aforesaid shops after fixing the date and proper advertisement according to rules.

The respondents, who were the highest bidders at the auction of the country liquor shops, filed Civil Miscellaneous Writ Petition No. 411 of 1983 challenging the order of the Excise Commissioner. The High Court by its judgment dated April 29, 1983 quashed the order of the Excise Commissioner and directed him to accept the respondents bid. The High Court took the view that the Excise Commissioner had made an 'erroneous approach in law' and that his order was arbitrary and founded on irrelevant considerations. The focal point of the judgment of the High Court was its conclusion that Excise Commissioner was in error in thinking that the rise over the previous year's bid in the case of the shops in question was negligible and that it was the result of the application of an incorrect formula. The Excise Commissioner has invoked the jurisdiction of this Court under Article 136 of the Constitution.

3. The learned Attorney General submitted that the High Court was wholly in error in assuming to itself the role of the Excise Commissioner and substituting its judgment in the place of that of the Excise Commissioner on the question whether or not the bids were adequate and there was loss of revenue to the Government. It was also submitted that even if the Excise Commissioner had approached the question from a wrong angle and had taken not consideration irrelevant matters, the High Court should not have issued a mandamus compelling the Excise Commissioner to accept the bid of the respondents, but should have directed the Excise Commissioner to reconsider the matter. On the other hand, Shri. Tarkunde, learned counsel for the respondents, submitted that there was a contravention of Rule (11) and (12) of Paragraph 374 of general rules for conducting excise sales. He submitted that the High Court was right in holding that the Excise Commissioner had taken into consideration irrelevant matters.

4. The right of the State of sell the exclusive privilege of selling liquor is undeniable. That the main and important purpose of selling the privilege is to raise revenue for the State Exchequer, is also

undeniable. All the State in India have enacted excise laws for the purpose of arising excise revenue, among other objects. The task of protecting the revenue by securing the best price for the privilege, eliminating possible decrements, has necessarily to be entrusted to the executive Government and this is what has been provided in all the State excise laws. A public auction is considered to be one of the modes of getting the best possible price. It is for the Government to decide whether the price offered at an auction is adequate or not and whether the bid should be accepted or rejected. The mere offer of a bid does not create any vested right in the bidder.

5. Section 24 of the U.P. Excise Act enables the Excise Commissioner to grant to any person a licence for the exclusive privilege of selling by wholesale or retail any country liquor or intoxicant drug within any local area. Similarly Section 24-A enables the Excise Commissioner to grant to any person a licence or licences for the exclusive or other privilege of selling by wholesale or retail any foreign liquor in any locality. Section 30 provides for payment for the grant of such exclusive privilege. Section 30 is in the following terms :

(1) Instead of or in addition to any duty livable under the Chapter, the State Government or on its behalf the Excise Commissioner may accept payment of a sum in consideration of the grant of licence for any exclusive or other privilege under Section 24 or Section 24-A.

(2) The sum payable under sub-section (1) may either be fixed by auction or inviting tenders or otherwise or be assessed on the basis of the sales made or quota lifted under the licence or partly fixed and partly assessed in the aforesaid manner.

Paragraph 373 of the U.P. Excise Manual (Vol. I) deals with the general conditions that are applied to excise sales by auctions. Conditions 1 and 2 are as follows :

(1) The officer conducting the sales is not bound to accept any highest or any bid. In any case when the highest or any bid is not proposed to be accepted, the next highest bid should also be reported to the Excise Commissioner.

(2) The final acceptance of any bid is subject to the sanction of the Excise Commissioner, which in its turn, is subject to decision by the Government in appeal or revision, if any.

Paragraph 374 of the U.P. Excise Manual deals with the general rules for conducting excise sales. Rule 6 mentions :

At the time of the sale the person accepted as the auction purchaser shall be required to sign his name or affix his mark against the relevant entry of the licence in the Record G-14 it being explained at the time that the deposit paid in advance will be returned in the event of the licence being subsequently refused. The final bid accepted shall invariably be recorded with his own hand by the officer conducting the sales.

Rules (11) and (12) on which the respondents relied may also be extracted here and they are as follows.

(11) Each licence should ordinarily be put up to separate competition. As a rule bids should not be taken in amounts smaller than multiples of Rs. 5 up to Rs. 100 in

multiples of Rs. 10 from Rs 100 to Rs. 300 in multiples of Rs. 25 from Rs. 300 to Rs. 500 in multiples of Rs. 50 from Rs. 500 to s. 1000 and in multiples of Rs. 100 from Rs. 1000 to s. 2000. All bids above Rs. 2000 should be in even sums of Rs. 200. Where no reason to the contrary exists, the highest, bid, if adequate should be accepted. But this provision is subject to two important considerations. Firstly care should be taken to exclude bids obviously in excess of fair market-value of the licence or farm or which are the result of speculation or rivalry. The acceptance of such bids, even if the bidders fulfill their engagements, is immediately injurious to the interest of the consumer, and ultimately to the excise revenue. This precaution is particularly necessary in the case of farming contracts which are worked by means of sub-settlements made by the farmer. Secondly, it is necessary to guard against the acceptance of bids which may have the effect of constituting an overt or covert monopoly, and against the acceptance, as licence-holders of undesirable person or persons of doubtful solvency. No person whose name appears upon the district or State defaulter's list should be allowed to bid.

(12) When, after due weight has been given to the foregoing considerations, a bid has been finally or provisionally accepted at an auction, no subsequent offers in respect of the same engagement should be considered. The practice of nominally accepting a bid made at auction and then negotiating privately with other competitors for higher offers is legally indefensible and in all respects objectionable. If an adequate price is offered by the highest suitable bidder, it should be accepted : otherwise the lot should be withdrawn for re-sale at a subsequent date of for settlement by tender. Competitors must be given to understand that when a bid is once accepted the matter cannot be reopened, and that they must be prepared to go to the full extent they propose to offer before the close of the auction.

6. A perusal of the above extracted provisions of the U.P. Excise Act and the U.P. Excise Manual clearly establish that it is the State Government or the Excise Commissioner acting on behalf of the State Government that has to accept the amount offered as consideration for the grant of the exclusive privilege to sell liquor and that the bid can only be considered as finally accepted if it is sanctioned by the Excise Commissioner, subject again to the decision of the Government in appeal or revision. There can be no final acceptance of the bid by the officer conducting the auction. It can at best be provisional. Adequate price is the principal factor to be considered in the sanctioning of a bid by the Excise Commissioner. Rules (11) and (12) of Paragraph 374 contain guidelines for the guidance of the Excise Commissioner. But they are certainly not intended to create any right in the bidders. In the light of these provisions of the Act and the Manual, let us consider whether there was any justification for the High Court interfering in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution.

7. It appears that in the year 1982-83, twenty-three country liquor shops were grouped together and auctioned. Out of these twenty-three shops, eight were excluded from this group for the current year (1983-84) and included in some other group. Nine other shops were however added to the fifteen shops making a total of twenty four. Comparing the bid obtained in the year 1982-83 with the bid obtained in the year 1981-82 and adopting a formula which made allowance for proportionate rise or fall over previous year's actual licence fee, the Excise Department arrived at the figure Rs. 1,18,13,329 as the notional value for which the twenty-four shops could be considered to have been auctioned during the year 1982-83. On that basis, the Excise Commissioner arrived at the conclusion that the current year's bid was only 0.7 per cent higher than last year's licence fee and

this compared most unfavourably with the percentage of general increase in the other areas in the State and with the percentage of increase generally in the previous years. According to the respondents, the figure should have been Rs. 1,01,89,529 and not Rs. 1,18,13,529. Had this figure been adopted the increase would be seen to be substantial. This figure was arrived at by adopting previous year. Both the methods of calculation have been described in the special leave petition in some detail. We do not think it necessary to probe deeper into the rival methods of computation. It is not the function of this Court. Even assuming that there is some merit in the method of computation of notional value suggested by the respondents, it was a matter entirely for the Excise Commissioner to adopt the formula which he thought was more reasonable. It is not as if the formula adopted by the Excise Commissioner is so utterly unreasonable that it has necessarily to be thrown out of hand. It is not a slapdash, speculative formula based on any unintelligible hypothesis or on facts drawn from imaginary sources. It is as good and fair a formula as that thought of by the respondents. If the Excise Commissioner chose to adopt one formula instead of another, it is not for the Court to substitute its judgment in a proceeding under Article 226 of the Constitution and say that the other formula would have been better or should have been preferred. It is not the function of the Court at all. After all it is to the Government and the Excise Commissioner that the Legislature has entrusted the task of protecting the revenue and it was in the interests of the revenue that the Excise Commissioner was acting. There was no whisper of mala fides and it was not suggested that the Excise Commissioner was only pretending to protect the revenue. We are of the view that the High Court was in error in quashing the order of the Excise Commissioner.

8. The further direction of the High Court compelling the Excise Commissioner to accept the bid of the respondents is equally unsustainable. If the High Court thought that the Excise Commissioner's approach to the problem was wrong or that he had applied incorrect criteria or taken into account irrelevant considerations, the proper thing to do was to indicate the rightful approach, the correct criteria and the relevant consideration and to direct the Excise Commissioner to reconsider the matter in proper perspective. But as we are of the view that the High Court ought not to have quashed the order of the Excise Commissioner, we set aside the judgment of the High Court, dismiss the writ petition, filed in the High Court and restore the order dismiss the writ petition filed in the High Court and restore the order of the Excise Commissioner. The appellant is entitled to his costs.

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