

Excise Commissioner of U. P. and Others

Vs

Manminder Singh and Others

Civil Appeals Nos. 6217, 6218, 6219, 6221, 6222, 6228 and 6733 of 1983

(V. D. Tulzapurkar, D. P. Madon JJ)

06.09.1983

JUDGMENT

CHINNAPPA REDDY, J. –

1. Special leave granted in S.L.P. No. 8032 of 1983.

2. These appeals must go the same way as Civil Appeal No. 5997 of 1983 - they have to be allowed. Civil Appeal Nos. 6217, 6219, 6221 and 6222 of 1983 relate to the auction of the exclusive privilege of selling foreign liquor in the shops in Allahabad District while Civil Appeal No. 6218 relates to the auction of the exclusive privilege of selling country liquor. Civil Appeal No. 6228 of 1983 relates to the auction of the exclusive privilege of selling country liquor in shops in Bulandshahr District. The questions raised in all these appeals are the very questions decided by us in Civil Appeal No. 5997 of 1983. However, Shri S. S. Ray, learned counsel appearing for the respondent, Manminder Singh, in Civil Appeal No. 6217 of 1983, made a valiant effort to persuade us to dismiss the appeal. He submitted to us that we would have taken a different view of the facts in the earlier case, had it been brought to our notice that the Excise Commissioner had himself, on March 24, 1983 declined to order reauction of the country liquor shops of Chail group, when requested to do so by Ghanshyam Das Jaiswal. The same Excise Commissioner, just four days later, that is, on March 28, 1983, set aside the auction already held and directed reauction of the shops. It is true that on March 24, 1983 the Excise Commissioner did decline to order reauction but that was on a petition by a private party who sought reauction on the ground that he had been denied an opportunity to bid at the auction. At that time the Excise Commissioner did not have before him the report of the Deputy Commissioner of Excise. The report of the Deputy Commissioner was submitted to the Excise Commissioner on March 26, 1983 and it was thereafter that the Excise Commissioner considered the question whether to confirm or not to confirm the auction already held. The circumstance that he had earlier declined to interfere at the instance of a private party did not preclude the Excise Commissioner from considering the matter from the viewpoint of the interest of the revenue on the basis of further and fuller information. He had not yet confirmed the auction and it was therefore still open to him to do so. Shri Ray also urged that only 6 out of 28 foreign liquor shops had been auctioned and it was therefore wrong for the Excise Commissioner to set aside the auction on the ground that the bids were unsatisfactory without even waiting for the auction of the remaining 22 shops to be completed. We are unable to see any reason why the Excise Commissioner should wait for the auction of all the shops to be completed before taking action in the matter, if he was satisfied that his interference was called for. Shri Ray also suggested that the Deputy Commissioner of Excise had no statutory function to perform, that he was no more than a busybody and therefore the Excise Commissioner should not have acted upon his report. We see no force whatever in this submission. The Deputy Commissioner of Excise was an officer of the

Department in-charge of the District and he was certainly interested in securing the maximum revenue to the State. If as an officer of the Department interested in securing the maximum revenue to the State he submitted a comprehensive report to the Excise Commissioner, who was competent to take action in the matter, his action is to be commended and not criticised. We are unable to agree with any of the submissions of Shri S. S. Ray.

3. In Civil Appeal No. 6228 of 1983, Dr. Singhvi, learned counsel for the respondent, Amir Ahmed, submitted that in the case of the Bulandshahr District shops the Excise Commissioner had set aside the auction and ordered reauction on the basis of a petition from Shanti Kumar who claimed that he had been prevented from entering the auction hall and participating in the auction, an allegation which had been found to be false by the High Court as well as by the excise authorities themselves. We have considered this submission but we do not think that the High Court was justified in interfering with the order of the Excise Commissioner in the particular circumstance of the case and more particularly as the order of the Excise Commissioner had been made in the interest of securing the best revenue to the State. In our judgment in Civil Appeal No. 5997 of 1983 we have pointed out why it is not open to the High Court to issue straightaway a mandamus directing the Excise Commissioner to accept the bid of the petitioner before the High Court. We also do not think that it was necessary for the High Court in this case to embark into a discussion of the evidence and to record a finding whether or not Shanti Kumar had been prevented from entering the auction hall. The crux of the matter was that the Excise Commissioner came to the conclusion that the best possible revenue had not been secured by the auction, as was revealed from the circumstance that Shanti Kumar was prepared to offer a bid 40 per cent higher than the highest bid at the auction already held. The Excise Commissioner was satisfied about bona fides of the offer of Shanti Kumar having regard to the deposit of Rs. 9,65,000 made by Shanti Kumar which he offered could be forfeited, if the reauction did not secure bids at least 40 per cent higher than the highest bid in the previous auction. Whether Shanti Kumar was really prevented from entering the auction hall or not, the Excise Commissioner was satisfied about the bona fides of the offer made by him and therefore in the best interest of the revenue, he ordered a reauction. Since the provisional acceptance of the highest bid at the auction already held by the Collector was subject to confirmation by the Excise Commissioner, no vested right had accrued to anyone and if the Excise Commissioner on a consideration of all the circumstances came to the conclusion that it was in the best interest of the revenue to order reauction, it was not for the High Court to interfere with the discretion of the Excise Commissioner in a proceeding under Article 226 of the Constitution. Dr. Singhvi also urged that on March 24, 1983 the Excise Commissioner had himself reported to the Government that the allegation of Shanti Kumar that he was prevented from entering the auction hall was false and that the bids secured at the auction were adequate. But, when he so reported to the Government he did not have before him the deposit of Rs. 9,65,000 made by Shanti Kumar and the affidavit of Shanti Kumar containing the offer already mentioned. He received the affidavit and the bank draft on 26th and it was thereafter that he decided to order reauction. It may be that the Excise Commissioner is not bound to order reauction every time he receives a better offer and the Court will not interfere if he refuses to entertain better offers after the auction is held. On the other hand, if he receives substantially better offers and so, in the interest of the revenue, he orders reauction, then too the Court should not interfere.

4. We, therefore, allow all the appeals, set aside the order of the High Court and restore the order of the Excise Commissioner in each case. There will be no order as to costs.

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