

MISCELLANEOUS CIVIL

Before R. S. Narula, C.J. and M. R. Sharma, J.

RAM NATH AND ANOTHER,—*Petitioners.*

versus

UNION TERRITORY OF CHANDIGARH
AND OTHERS,—*Respondents.*

C. W. No. 1041 of 1974.

July 24, 1974.

Punjab Liquor Licence Rules (1956) (As amended with effect from April 1, 1967)—Rule 36(17)—Constitution of India (1950)—Articles 14 and 19(1) (g)—Rule 36(17)—Whether ultra-vires Article 14 and 19(1) (g)—Auction of a liquor vend—Announcement of the bids having become highly excessive at the auction—Presiding Officer of the auction after such announcement—Whether can demand any portion or fraction of the whole of the amount of bid.

Held, that the decision regarding the reasonableness or otherwise of a restriction imposed on a citizen's right under Article 19(1) (g) of the Constitution of India has to be arrived at in the light of the circumstances in each case, and by keeping in view the policy and object of the impugned legislation and the mischief sought to be prevented by the impugned provision. Rule 36(17) of the Punjab Liquor License Rules (1956) is not *ultra-vires* the provisions of Articles 14 and 19(1) (g) of the Constitution of India because: (1) the fact that no appeal lies against the announcement made by the Presiding Officer at any stage of the auction that the bids have become excessively high is not relevant as he does not exercise any judicial or quasi-judicial function while holding a public auction of a liquor vend; (2) the Excise Rules do not make the Presiding Officer of the auction the final arbiter of the selection of the successful bidder. Under rule 36(22), the final decision as to the choice of the successful bidder of any particular liquor vend has to be made by the highest Excise Authority in the State, that is by the Excise and Taxation Commissioner on the basis of the detailed information furnished to him under rule 22(1) and with the background of his own vast and varied experience of excise contracts. This itself is a sufficient safeguard against the exercise of the power vested in the Presiding Officer by the proviso of rule 36(17) of the Rules in an arbitrary manner; (3) Articles 14 and 19(1) (g) cannot be made applicable to a case where one person is chosen rather than another to fulfill a particular contract, discretion for which must be left with the Government. A contract which is held from Government stands on no different footing from a contract held from a private party. A person who has not been given the contract cannot complain that there has been a deprivation of the right to practise any profession or to carry on any occupation, trade or business such as is contemplated by Article 19(1) (g); (4) merely because a statutory power is

discretionary, it cannot necessarily be considered to be discriminatory; and (5) the power conferred on the Presiding Officer cannot be categorised as arbitrary because it is only when the Presiding Officer, in his wisdom and with his special knowledge and experience, forms the opinion that bidding has assumed a highly excessive posture that he can impose the impugned condition. This is a sufficient guide-line in the circumstances of such cases.

Held, that although the proviso contained in Rule 36(17) of the Punjab Liquor Licence Rules, 1956 (as amended) places on the Presiding Officer of the auction of liquor vend the public duty to demand the "whole fee bid", and the manner of enforcing the demand (by refusing to entertain the bid unless the demand is met) is also indicated in almost imperative language, yet the provision requiring the deposit of the whole amount is nevertheless merely directory as (a) no rule or law invalidates an auction held in violation of the requirements of the proviso; (b) the auction bidders have no control over the Presiding Officer; and (c) strict adherence to the letter and not to the spirit of the proviso is likely to cause general injustice and inconvenience to the successful bidders at an auction at which strict conformity with the rule is not insisted upon. This rule, while providing that the Presiding Officer may direct the deposit of the whole of the bid amount, merely indicates the maximum extent to which the deposit may be compelled. Keeping in view the scheme of the Act and the Liquor Rules, and the object of raising and securing revenue, the doctrine '*Omne majus continet in se minus*' which means the 'greater contains the less' fully applies to the interpretation of the expression "whole amount bid" used in the first sentence of the proviso to Rule 36(17). Hence the proviso empowers the Presiding Officer of an auction under the Act to demand either the whole or any fraction or any part of the amount of the bid that may be made after he has made the announcement that the bids have become highly excessive.

Amended Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the impugned auctions held with respect to country liquor vends situate in Sectors 22, 19, 28, 35 and Indian Made Foreign Liquor and beer of Sector 22, for the year 1974-75 and restraining the respondents Nos. 1 to 3 for the grant of the said licence.

Mr. H. L. Sibal, Senior Advocate (M/s. S. P. Goyal, S. C. Sibal and A. K. Jaiswal, Advocates, with him) for the Petitioners.

J. N. Kaushal, Senior Advocate and Anand Swaroop, Senior Advocate (Ashok Bhan with him), for Respondents No. 1 to 3.

Tirath Singh Munjral, Advocate, for Respondent No. 4.

M. L. Puri, Advocate, for Respondent No. 6.

Ram Nath, etc., v. Union Territory Chandigarh, etc.,
(Narula, C.J.)

JUDGMENT

NARULA, C.J.—The validity and legality of the auction of the country liquor vends situate in Sectors 19, 22, 28 and 35, and of the Indian made foreign liquor and beer vend of Sector 22, Chandigarh, by respondents 2 and 3 (Excise and Taxation Commissioner, Union Territory, Chandigarh, and the Collector-cum-Deputy Excise and Taxation Commissioner, Union Territory, Chandigarh) in favour of one or the other out of respondents 4 to 7 for the financial year 1974-75, have been challenged by Ram Nath and Kewal Krishan in this petition under Article 226 of the Constitution mainly on two grounds, namely:—

- (i) that rule 36(17) of the Punjab Liquor Licence Rules, 1956, as amended with effect from April 1, 1967 (hereinafter called the Liquor Rules), is *ultra vires* Article 14 of the Constitution as it confers arbitrary, unguided and uncanalised powers on the Presiding Officer of the auction in the matter of holding whether the bidding is excessively high or not at any particular stage in any particular auction, so as to justify the imposition of the condition of immediate cash deposit of the bid amount which may extend to the whole of the amount of the annual fee, and that the said power vested by the impugned rule in the Presiding Officer is oppressive and amounts to an unreasonable restriction on the right of the petitioners under Article 19 (1) (g) of the Constitution; and
- (ii) that even if the said rule is not held to be unconstitutional, the impugned auctions of the liquor vends are illegal, because the condition of immediate advance deposit imposed by the respondents in the case of the impugned auctions was not in conformity with and within the circumscribed limits of that rule.

The circumstances in which these questions have arisen in the present case are not at all complicated and may first be noticed.

(2) The Punjab Excise Act, 1914 (hereinafter called the Act) applies to the Union Territory of Chandigarh. The vends in question had to be auctioned for the year 1974-75, in accordance with the

liquor rules. The petitioners were the sitting licensees of the country liquor vends at Manimajra and in Sector 22. In the Public notice for the auction of the country liquor, foreign liquor and beer vends for 1974-75 (Annexure P-1), issued by respondent No. 3, it was stated that the auctions would be held on Sunday, the 3rd March, 1974, at 10.30 A.M., at the Estate Office, Sector 17, Chandigarh, and that every bidder would have to deposit Rs. 25, which would be deducted from the amount of the advance of the successful bidders and would be refunded to the others. It was further stated in the notice that the successful bidder would have to deposit the amount of the advance licence-fee within seven days, and though the details of the conditions of auction were to be announced at the time of the auction, the bidders were required to bring from the tehsildars of their respective areas or from other competent officers certificates of solvency. Annexure P-2 to the writ petition is a copy of the relevant clauses of the auction conditions which were admittedly announced by the Excise Authorities at the time of the auction. The only conditions of the auction which are relevant for our purposes are those contained in paragraphs 3, 4 (i), 12 (i) and (ii) and 30 of Annexure P. 2. Those are reproduced below for ready reference:—

- “3. No person will be allowed to bid for any licence, unless he has deposited a sum of Rs. 25 into the Government Treasury or deposits that at the time of auction with the Presiding Officer. Such a person may, however, bid for more than one licence.
4. (i) As laid down in sub-section (2) of section 34 of the Punjab Excise Act (1 of 1914) a highest bidder of doubtful or unsound financial position may be required to furnish security or to make a reasonable deposit in lieu of security for the observance of the conditions of his licence, which will be enforced rigidly.
12. (i) The successful bidder shall deposit in the Government Treasury one-tenth of the annual licence-fees bid within a period of seven days of the date of auction and the aforesaid amount shall not be refundable to him.
- (ii) The successful bidder who is granted a licence for retail vend of country liquor shall pay the balance amount of licence-fee in ten consecutive equal instalments by the fifteenth of each month beginning in April.

Ram Nath, etc. v. Union Territory Chandigarh, etc.
(Narula, C.J.)

30. The highest successful bidder for a licence for foreign liquor (L. 2 and L. 10) shall deposit one-sixth of the annual licence-fee within seven days of the auction and shall pay the balance in ten equal instalments by the seventh of each month beginning from April. Failure to pay the advance of licence-fee shall entail rejection of the final bid and the licence in question may be resold by public auction or by private contract and any loss of revenue to Government shall be recoverable from the defaulting bidder as arrears of land revenue."

(3) It is alleged by the petitioners that when respondent No. 4 (Messrs Kidar Nath & Co.) gave its bid for Rs. 12,00,000 for the country liquor vend in Sector 22 after several bids had already been given, the petitioners gave their bid of Rs. 12,10,000, but respondent No. 3 (the Collector) illegally and arbitrarily required the petitioners to deposit one-sixth of the amount of the offered bid in cash at the spot before the petitioners' offer could be considered. It is further alleged that though the petitioners and some other sitting licensees showed their solvency certificates issued by the Collector, and also protested that the requirement of making deposit of one-sixth of the amount of the bid was neither in accordance with the auction notice (Annexure P-1), nor justified by the conditions of auction announced at the spot (Exhibit P. 2), their contention was rejected, the bid of the petitioners was not entertained and the lower bid of respondent No. 4 was declared to be the highest. The licensees of Sectors 19, 28, 35 and Manimajra (including respondents 5 and 7 who were the licensees of Sectors 19 and 35, respectively) submitted a written representation (copy Annexure P. 3) to the Chief Commissioner of the Union Territory on March 4, 1974, complaining of the competitive bidding for the vend in Sector 22 having been plugged by the excise authorities by placing an embargo on any one bidding beyond a certain amount without depositing one-sixth of the entire bid-money 'on the fall of the hammer'.

(4) After completing the auction of the Sector 22 vend, bids for Sector 24 vend were invited, and the highest bid of Rs. 8,25,000 given by one Raj Kishan was accepted without any bidder being required to make any cash deposit at any stage. During the auction of the Sector 19 vend, the impugned condition of cash deposit of one-sixth of the offered bid was imposed by the third respondent after

the petitioners had given the bid of Rs. 10,70,000. Respondent No. 5 (Messrs Jagan Nath & Co.) thereupon gave the bid for Rs. 11,10,000 after making a cash deposit of one-sixth of that amount. The request of the petitioners to allow them to offer a still higher bid without making any cash deposit was turned down by respondent No. 3. The impugned condition of cash deposit was imposed in case of the auction of the vends of Sectors 28 and 35, with the result that respondents 6 and 7 respectively, offered the highest bids of Rs. 8,76,000 and Rs. 7,00,000 respectively, after making the requisite cash deposit. In the case of the auction of the Indian made foreign liquor and beer vend in Sector 22, the condition of deposit of one-fourth of the amount of the offered bid was imposed, and the highest bid of respondent No. 4 was accepted on its depositing that much amount in cash at the spot. The petitioners claim that they were deprived of making higher bids in the case of all the three above-mentioned vends because of the imposition of the impugned condition.

(5) The highest bids given at the spot in the above-mentioned manner were subject to confirmation by respondent No. 2. Before such confirmation, the petitioners submitted their application, dated March 5, 1974 (Annexure P-4), to respondent No. 2 wherein they urged that the auction of the various vends held by respondent No. 3 was void and against the Liquor Rules and the auction conditions. In the course of that representation the petitioners offered to get the licence of the Sector 22 vend at Rs. 14,01,000, and the petitioners attached with the representation a bank draft in the sum of Rs. 75,000 and their solvency certificates. Notwithstanding the said offer of the petitioners, the second respondent approved all the above-mentioned highest bids of the respondents referred to above. Besides questioning the vires of the impugned rule which authorised the Collector to direct the whole of the amount of the bid being deposited in cash at the spot, the petitioners have urged that no rule permits the Collector to direct that one-fourth or one-sixth of the amount of the bid should be deposited at the spot, and that inasmuch as the impugned order passed by the Collector in the case of the three disputed auctions was not the whole of the amount of the bid, but a fraction thereof fixed by him according to his own whim, the auctions are liable to be set aside.

(6) Mr. Anand Swarup, the learned counsel for respondents 1 to 3, raised two preliminary objections to the maintainability of this

Ram Nath, etc. v. Union Territory Chandigarh, etc.
(Narula, C.J.)

petition. It was firstly contended rather faintly that this joint petition by two persons is not maintainable as they did not constitute a firm and are not shown to have given any joint bid for any vend. I am unable to uphold this objection for two reasons. One, that both the petitioners claim to have offered their bid for the Sector 22 Country Liquor Vend (paragraph 7 of the petition) and both claim to have been deprived of the right to have their bid of Rs. 12,10,000 entertained and recorded because of the impugned condition. Two, even if the petition is treated to have been filed by petitioner No. 1 alone (for adopting which course Mr. Sibal made an express offer), both the points in issue will have to be decided. The second objection is that petitioner Ram Nath, though admittedly present at the time of the auction of the Sector 22 vend, did not offer any bid either for any of the country liquor vendes of Sectors 22, 19, 28 and 35, or for the Indian Made foreign liquor and beer vend of Sector 22. Counsel for the Union Territory of Chandigarh has shown us the original bid sheets said to have been prepared at the time of the auction, copies of which have been annexed to the written statement of respondents 1 to 3 and marked Annexures R. 3/1 to R. 3/5. It is also urged that Kewal Krishan, the second petitioner, did not even deposit Rs. 25 as required under condition No. 3 of the conditions of auction without complying with which he was not authorised to bid for any vend. The respondents want us to infer from these facts that petitioner No. 2 was either not present at the auctions or had no interest in bidding for any of the vendes. Emphasis has also been laid by Mr. Anand Swarup on the fact that the averments of the Excise Collector in the "preliminary objection" contained in the written statement of respondents 1 to 3 regarding Ram Nath petitioner not having offered any bid for any of the vendes has not been controverted by the said petitioner in any counter-affidavit. It is further pointed out that even in the petition itself it has not been specifically alleged anywhere that the petitioners gave any bid for any of the vendes in question, i.e., the vendes of Sectors 19, 22, 28 and 35. Mr. Hira Lal Sibal, the learned Senior Counsel for the petitioners, has submitted in reply to this objection that there is no sanctity attached to the bid sheets produced by respondents 1 and 2, because the signatures of the bidders are not obtained on their respective bids, but the signature of only the highest or the successful bidder is obtained, which could be manipulated in

this case in collusion with the private respondents who have benefited from the impugned auctions. Be that as it may, the fact remains that the petitioners actually submitted their written protest, dated March 5, 1974 (Annexure P. 4), to the Excise and Taxation Commissioner of the Union Territory against the impugned orders, wherein they requested for reauction of the country liquor vend of Sector 22. It is not disputed that they offered a bid of Rs. 14,01,000 at least in that letter, and showed their *bona fides* by supporting the bid with a demand draft of a colossal amount. Mr. Sibal has relied on the following passage in the Division Bench judgment of this Court (which was prepared by me) in *Chiman Lal Ex-M.L.A. v. State of Haryana and another* (1):—

“I may at this stage dispose of a preliminary objection raised by Mr. Mittal to the maintainability of this petition and to the grant of any relief therein. The petitioner has not even alleged that any land belonging to him or any land on lease with him has been included in the saltpetre bearing areas sought to be auctioned under the impugned notification. Mr. Mittal submitted that in a situation like this, the petitioner has no personal interest in the matter, and that he is a busy body who should not be allowed to raise academic questions *pro bono publico* in writ proceedings. It is no doubt correct that the petitioner has not claimed any interest in any of the areas sought to be auctioned. He has, however, stated in paragraph 1 of the writ petition that he is doing extensive business in saltpetre, and this allegation has not been specifically denied by the respondents who are the State of Haryana and the Director of Industries, Haryana. As a person engaged in saltpetre business, he is certainly interested in ensuring the validity of auctions in which he may be able to take part. We do not, therefore, find any force in the preliminary objection of Mr. Mittal and accordingly reject the same.”

(1) 1970 Current Law Journal 442 at page 448.

Ram Nath, etc. v. Union Territory Chandigarh, etc.
(Narula, C.J.)

and argued that it cannot be said that the petitioners had no interest in the impugned auctions, or that their writ petition should be dismissed on that ground because

- (i) the petitioners are in the liquor trade for a very long time;
- (ii) the petitioners are sitting allottees of more than one liquor vend;
- (iii) the first petitioner had admittedly deposited Rs. 25 on account of the prescribed fee for taking part in the auction in dispute;
- (iv) the petitioner was armed with the requisite solvency certificate to be able to bid at the auction;
- (v) at least the first petitioner was undisputably present at the time of the impugned auction; and
- (vi) the petitioners had gone to the length of supporting their written offer with a demand draft for no less an amount than Rs. 75,000.

I find force in all these arguments of Mr. Sibal and hold that at least the first petitioner is a person interested in the matter and he cannot be non-suited on this preliminary objection. This writ petition cannot, therefore, be dismissed on this ground.

(7) Besides adopting and pressing the above-mentioned objections. Mr. Tirath Singh Munjral, the learned counsel for respondent 4, raised two additional points of preliminary nature. Firstly, he submitted that the petitioners should be non-suited because they have been guilty of suppression of a material fact, namely, that the impugned rule has been in existence since 1966 in Punjab, and since 1967 in the Union Territory of Chandigarh. Secondly, he argued that the first petitioner himself was required in the last auction relating to the year 1973-74 to deposit cash at the time of the auction under this very rule, and he having complied with the said requirement and having taken benefit of it, cannot now question

the validity of that rule as he is deemed to have been estopped by his aforesaid conduct from challenging the validity of the impugned rule. The date with effect from which the particular statutory rule has been in force is in my opinion not such a matter, the non-divulgence of which would amount to suppression of a material fact. The petitioners cannot, therefore, be held to be guilty of any *suppressio veri*. Nor is there any force in the second additional objection of Mr. Munjral that the mere participation by the first petitioner in the auction for the previous year according to the same condition disentitles him from invoking the writ jurisdiction of this Court. All the preliminary objections of the respondents, therefore, fail.

(8) Rule 36(17) around which the whole web of arguments has been woven by the learned counsel for the parties states as below:—

“36(17) The Presiding Officer shall not be bound to accept the highest or any bid. When the highest bid or any other bid is refused, the Presiding Officer shall record his reasons for doing so. He shall also record his reasons for accepting another bid. If the Presiding Officer is of opinion that the bidding is excessively high, he may announce that if any higher bids are made, he will demand an immediate deposit of the whole amount bid. If such an order has been passed, all subsequent bids shall be deemed to have been made subject to the condition that the whole fee bid shall be immediately deposited.”

(9) Since Mr. Hira Lal Sibal argued the second point first and the question of vires of the impugned rule afterwards, I will deal with his arguments in the order in which those were advanced. The second issue can be further split up into two points for determination, namely (a) whether the requirement to direct the deposit of the “whole amount” of the bid leaves any discretion with the Presiding Officer of the auction to order the deposit of any part or fraction of the amount of the bid, or it gives no such discretion with the result that if any deposit has to be ordered at all it must only be of the whole of the “amount bid”; and (b) in case it is held that if the Presiding Officer is of the opinion that the bidding is excessively high, he is empowered to order only the whole of the amount of the

Ram Nath, etc. v. Union Territory Chandigarh, etc.
(Narula, C.J.)

bid being deposited, and not any part thereof, are the impugned auctions liable to be set at naught merely because the orders to deposit the bid money passed by the Presiding Officer in all these cases were in contravention of the rule. Counsel contends that the Presiding Officer is a delegate of the Government and is vested with the limited discretion to make up his mind as to the stage at which he might consider that the bids have become highly excessive; but once he is of that opinion, and he decides to invoke the proviso, he has no option but to direct the deposit of the "whole amount bid." It was argued that the Presiding Officer may or may not announce that the bids have become excessive, but once he chooses to do so his discretion comes to an end, and the remaining requirement of the proviso comes into play automatically. It has been further submitted that the word "may" used in respect of the authority of the Presiding Officer to announce that he would demand an immediate deposit is in the context equal to "shall", and must be construed as such particularly because the last sentence in the proviso contains an express prohibition against the entertainment of any bid without the deposit of the whole amount of the bid after the announcement in question is made by the Presiding Officer. Counsel places reliance in this connection on the following passage in the judgment of the Supreme Court in the *State of Punjab v. Satya Pal Dang and others* (2):—

"The short question here is whether the provisions of Article 199(4) must be read as imperative or merely directory. The distinction between a mandatory provision of law and that which is merely directory is this that in a mandatory provision there is an implied prohibition to do the act in any other manner while in a directory provision substantial compliance is considered sufficient,"

and argues that the prohibition contained in the proviso being express, and not only an implied one, it is imperative for the Presiding Officer to strictly abide by the imperative provisions of the proviso which are mandatory and not merely directory or variable. In

the same case, however, the Supreme Court has further laid down as below:—

“In those cases where strict compliance is indicated to be a condition precedent to the validity of the act itself the neglect to perform it is indicated as fatal. But in cases where although a public duty is imposed and the manner of performance is also indicated in imperative language, the provision is usually regarded as merely directory when general injustice or inconvenience results to others and they have no control over those exercising the duty.”

Although the proviso places on the Presiding Officer the public duty to demand the “whole fee bid”, and the manner of enforcing the demand (by refusing to entertain the bid unless the demand is met) is also indicated in almost imperative language, the provision requiring the deposit of the whole amount is in my opinion nevertheless merely directory as (a) no rule or law invalidates an auction held in violation of the requirements of the proviso; (b) the auction bidders have no control over the Presiding Officer; and (c) strict adherence to the letter and not to the spirit of the proviso is likely to cause general injustice and inconvenience to the successful bidders at an auction at which strict conformity with the rule is not insisted upon.

(10) It was also argued that since only the minimum and not the maximum sale price of liquor can be and has actually been fixed under section 59 of the Act, there can be no question of the successful bidder necessarily suffering any loss as a consequence of giving an excessively high bid. This aspect of the matter has in my opinion no effect at all on the question whether the requirements of the proviso are directory or mandatory. It appears to me that the stage at which an announcement can be made under the proviso is left to the discretion of the Presiding Officer which he has to exercise in the peculiar circumstances of the particular auction keeping in view all the relevant circumstances, and even when he forms an opinion that the bidding is excessively high, he may or may not make the announcement in question. Though it is settled law that neither the mere use of the word “may” indicates that the provision is directory, nor the mere use of the word “shall” leads to a definite

Ram Nath, etc. v. Union Territory, Chandigarh, etc.
(Narula, C.J.)

conclusion about the requirement being mandatory or imperative, effect has to be given to the ordinary meaning of the two words if both the words are used in the same provision at different places in contradistinction to each other, and there is nothing in the context to indicate that one word was used at one place and the other at the other merely in order to avoid tautology. The relevant rules of interpretation of the word "may" or "shall" have been succinctly laid down by their Lordships of the Supreme Court in the following passage of their judgment in the *State of Uttar Pradesh and others v. Babu Ram Upadhya* (3):—

“When a statute uses the word “shall”, *prima facie*, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, *inter alia*, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.”

Applying the principles of construction laid down in the above-quoted passage from the judgment of the Supreme Court in *Babu Ram Upadhya's case* (supra), it appears to me that whereas the prohibition in the second sentence of the proviso is imperative; the authority conferred by the proviso on the Presiding Officer to make or not to make the announcement is directory. It is in this background that we have to see whether the proviso does or does not permit fraction of the bid money being ordered to be deposited. In my opinion “the whole” includes its part and when the proviso says that the Presiding Officer may direct the deposit of the whole

of the bid amount, it merely indicates the maximum extent to which the deposit may be compelled. In *Atma Ram v. State of Punjab and others* (4), it was held in connection with the interpretation of the word "estate" in Article 31-A of the Constitution that the expression "estate" included "portions of an estate". It was argued by Mr. Sibal in the case before us that if the intention was to allow the Presiding Officer to direct a portion or fraction of the amount of the bid money being deposited, nothing would have been easier than to say so in the proviso. An exactly similar argument was rejected by the Supreme Court in *Atma Ram's case* (supra) in the following words:—

"Another branch of the same argument was that if the makers of the Constitution intended to include within the purview of Article 31-A, not only entire estates but also portions thereof, nothing would have been easier than to say so in terms, and that in the absence of any specific mention of 'portions of an estate', we should not read that Article as covering 'portions of an estate' also. In our opinion there is no substance in this contention, because they must be attributed full knowledge of the legal maximum that 'the greater contains the less' *Omne majus continent in se minus*'.

Keeping in view the scheme of the Act and the Liquor Rules, and the object of raising and securing revenue, the conclusion appears to me to be inescapable that the doctrine "*omne majus continent in se minus*" fully applies to the interpretation of the expression "whole amount bid" used in the first sentence of the proviso to rule 36(17). Counsel for the petitioners suggested that such a conclusion would not be correct because it would come into conflict with the second part of the proviso which imperatively prohibits any bid being entertained without the deposit of the whole of the amount bid in case of an announcement having been made. The fallacy in this argument is that counsel wants us to construe the expression "whole amount bid" used in the two sentences of the proviso in two different ways. The expression in question used in the second sentence of the proviso must be given the same meaning which has been given to it by us by construing that very expression used in the first sentence of the proviso.

(4) A.I.R. 1959 S.C. 519.

Ram Nath, etc. v. Union Territory, Chandigarh, etc.
(Narula, C.J.)

(11) Faced with the situation that literal interpretation of the expression "whole amount bid" may lead to undesirable results, Mr. Sibal canvassed before us another interpretation of the expression. He submitted that according to recognised principles of interpretation of statutes it is permissible to add some words to the provision in order to give sense to an ambiguous piece of legislation. Making use of that rule of construction, Mr. Sibal has tried to persuade us to introduce the words "of the excess" after the words "whole amount" and before the words "fee bid" in the first sentence of the proviso. So construed, the relevant part of the proviso would read :—

"If the Presiding Officer is of opinion that the bidding is excessively high, he may announce that if any higher bids are made, he will demand an immediate deposit of the whole amount of the excess fee bid."

Thus construed the proviso would imply that when the relevant announcement is made by the Presiding Officer only such amount has to be deposited by every subsequent bidder in cash which is in excess of the highest bid which had been given before the announcement was made. By adopting this construction, argued counsel the whole difficulty would be solved, as (i) no discretion would be left in the Presiding Officer to arbitrarily fix any fraction of the whole amount of the bid, (ii) the object of the proviso to safeguard the revenue would also be satisfied as no requirement to make any deposit was there till the last bid before the announcement was made, and (iii) the persons who make bids after the announcement would not be placed in a more disadvantageous position merely because they are offering to make a higher bid. The way in which the counsel wants us to read the proviso is indeed very attractive and may possibly satisfy the intention and object behind the provision, but it does not appear to be possible for us to introduce words into the proviso for construing it when there is no ambiguity in the language of the proviso, and its meaning is clear. It is for the Government to consider whether it would or would not be more appropriate to amend the proviso so as to read it in the manner in which Mr. Sibal wants us to read the same without any amendment being made therein. The function of the Court is to find out what the law is and not what it should be. It is for the Legislature and the delegated legislative authority to make the law. Howsoever, much attractive the proposition placed before us by Mr. Sibal may be, it has to commend itself to the rule making authorities, and it is beyond the jurisdiction of this Court to change the law even slightly and even for the better by

any process of interpretation. I would, therefore, hold that the proviso empowers the Presiding Officer of an auction under the Act to demand either the whole or any fraction or any part of the amount of the bid that may be made after the announcement referred to in the proviso. That being so, the second point mentioned by me in connection with the effect of the proviso does not arise as the irresistible conclusion from the first finding is that the Deputy Excise and Taxation Commissioner, Chandigarh, who conducted the auctions did not transgress the limits of his authority under the proviso. The auctions cannot, therefore, be set at naught on that ground.

(12) This takes me to the question of vires of the proviso to rule 36(17). The only argument advanced by the learned counsel for the petitioners in support of this proposition is that the proviso does not contain any reasonable basis for imposing the condition of advance deposit of the bid amount, and that discrimination is, therefore, writ large on the face of the proviso. Mr. Sibal submitted that the proviso infringes the fundamental rights of the petitioners guaranteed to them under Articles 14 and 19(1)(g) of the Constitution as it confers arbitrary, unguided and uncanalised power on the Presiding Officer inasmuch as the matter has been left to the opinion of the Presiding Officer as to whether the bidding is excessively high or not. It was sought to be submitted that no guidance has been provided in the rule or in any of the Rules as to when the bid should be considered highly excessive. On account of this alleged want of guidance in the proviso, the condition authorised by the proviso is capable of being exercised in an arbitrary and discriminatory manner. Counsel added that insofar as the proviso authorises the Presiding Officer to demand an immediate deposit of the whole of the amount of the fee bid, it is highly oppressive and it imposes unreasonable restriction on the right of the petitioners to carry on the liquor trade. In support of the argument under Article 19(1)(g), it was further argued that no interest of the general public can possibly be served by the arbitrary power conferred on the Presiding Officer by the proviso, and that in fact the interest of the general public can be best served by invoking the power whereby the Presiding Officer is entitled to reject any bid in spite of the same being the highest. The State counsel contended on the other hand that the power of imposition of the condition of cash deposit is neither arbitrary nor discriminatory, and that the Presiding Officer has to see that the person offering the bid for the amount can be able to make any profit and that the pure quality of the liquor to be supplied to the public is also ensured by him. In the written statement it has been averred that the licensees may run

Ram Nath, etc. v. Union Territory, Chandigarh, etc.
(Narula, C.J.)

away at any time after bidding high and thereby necessitate the re-auction of the vend, and that although the loss on account of resale is recoverable from the defaulter, it is in fact rarely recovered as they either have no immovable property in their names or they get the same transferred in the names of others. Reference has been made to arrears of license-fee amounting to crores of rupees due from the country liquor vendees in the State of Punjab for the year 1968-69. It has also been pleaded by the respondents that the imposition of the impugned condition is in the interest of the public as the licensees who get vends on abnormally high license-fee try to indulge in malpractice by selling adulterated stuff to the public which amounts to playing with the lives of the people. It is on these grounds that the Government has in its written statement tried to justify the validity of the proviso and the reasonableness of the restriction imposed thereby.

(13) After hearing learned counsel for the parties at length I am of the considered view that for the reasons hereinafter assigned by me there is no force in either of the submissions made by Mr. Sibal in support of the attack on the vires of the proviso. The Presiding Officer of the auction of the liquor vends has to be a very high officer in the hierarchy of the State Excise Authorities. In the present case respondent No. 3 who held the auctions is the Collector-cum-Deputy Excise and Taxation Commissioner of the Union Territory of Chandigarh. With his experience in the field of auction of liquor vends, and with the information and data available to him regarding the fixed quota of a particular vend, the amount at which it was given during the previous years, the nature of the locality whose needs the vend has to cater, and the type of population which is expected to become customers at the vend, he should be the best person to form an idea as to when the bidding for a particular vend has become excessively high. In *Sri Ram-Ram Narain Medhi v. The State of Bombay* (5), it was held that the power of variation of the ceiling area, and the economic holding having been vested by the Bombay Tenancy and Agricultural Lands Act in the State Government and having been left to its subjective satisfaction having regard to the criteria therein specified, the provision of the Bombay Act vesting such a discretion in the State Government was not unconstitutional. Reference was made by the Supreme Court to the observations of

(5) A. I. R. 1959 S. C. 459.

Kania, C.J. in *Dr. N. B. Khare v. State of Delhi* (6) wherein it was stated that it is not proper to start with an assumption that the Provincial Government when making an order would abuse the provisions of the relevant statute in the performance of its duty, and to decide the question of legality of the statute on that basis. It was emphasised that the validity of the law cannot be contested because of an apprehension of its abuse. Again in the *State of Orissa and others v. Harinarayan Jaiswal and others* (7) it was held as below in connection with the sale of a liquor vend:—

“The sale in question is but a mode of raising revenue. Assuming that the question of arbitrary or unguided power can arise in a case of this nature, it should not be forgotten that the power to accept or reject the highest bid is given to the highest authority in the State i.e. the Government which is expected to safeguard the finances of the State. Such a power cannot be considered as an arbitrary power. If that power is exercised for any collateral purposes, the exercise of the power will be struck down.”

The reliance placed by Mr. Sibal on the observations of the Supreme Court in *Hari Chand Sarda v. Mizo District Council and another* (8) to the effect that the burden of proof of a restriction placed on a citizen's right under Article 19(1)(g) being reasonable lies on the Government does not advance the case of the petitioners. Decision regarding the reasonableness or otherwise of a restriction has to be arrived at (as laid down by the Supreme Court) in the light of the circumstances in each case, and after keeping in view the policy and object of the impugned legislation and the mischief sought to be prevented by the impugned provision. The fact that no appeal lies against the announcement made by the Presiding Officer of the auction is also irrelevant as the Collector is not exercising any judicial or quasi-judicial function while holding a public auction of a liquor vend.

(14) Secondly, the Excise Rules do not make the Presiding Officer of the auction the final arbiter of the selection of the successful bidder. The opening part of rule 36(17) itself shows that the Presiding Officer may not even accept the highest bid, but in that case he has to report the matter to the Excise and Taxation Commissioner.

(6) 1950 S. C. R. : 519.

(7) A. I. R. : 1972 S. C. : 1816.

(8) A. I. R. : 1967 S. C. : 829.

Ram Nath, etc. v. Union Territory, Chandigarh, etc.
(Narula, C.J.)

Rule 36(22) which prescribes the procedure to be followed by the Collector (the Presiding Officer of the auction) lays down that :—

“36(22)(1) The Collector shall forward to the Excise Commissioner :—

- (a) Statements in form M-14 and M-14-A showing the locality of each of the shops for which licences have been auctioned, the probable sales during the year (which shall be stated in proof litres), the lowest fee determined under clause (1) of this rule, the name of the licences and the amount for which the licences have been auctioned as compared to that of the preceding year ;
- (b) Statement showing the cases in which the licences have not been auctioned for the highest bid, and the reasons for rejecting the highest bid.

(2) If no intimation to the contrary is received within three weeks or by or before 28th March, whichever is earlier, the Collector may assume that the Excise Commissioner has accepted his proposals. The Excise and Taxation Officer shall forward a list of licenses and the shops obtained by them to the Superintendent of Police of the District, and to the Managers of all distilleries licensed in Punjab/Haryana.”

The above-quoted rule shows that the final decision as to the choice of the successful bidder of any particular liquor vend has to be made by the highest Excise Authority in the State, that is by the Excise and Taxation Commissioner on the basis of the detailed information furnished to him under sub-rule 22(1) and with the back-ground of his own vast and varied experience of excise contracts. Sub-rule (2) of rule 36(22) authorises the Excise and Taxation Commissioner (who in case of Chandigarh is the Chief Commissioner of the Union Territory) to accept or not to accept the recommendation of the Presiding Officer of the auction. To avoid hardship and uncertainty to the liquor contractors provision has been made in that sub-rule to assume approval of the auction by the Excise Commissioner in case he does not reject the highest bid or the offer of the bidder recommended by the Presiding Officer within three weeks. This itself is a sufficient safeguard against the exercise of the power vested in the Presiding Officer by the impugned proviso in an arbitrary manner.

(15) Thirdly, it has been authoritatively held by the Supreme Court in *C. K. Achutan v. The State of Kerala and others* (9) that Articles 14 and 19(1)(g) cannot be made applicable to a case where one person is chosen rather than another to fulfil a particular contract, discretion for which must be left with the Government. It was held that a contract which is held from Government stands on no different footing from a contract held from a private party. A person who has not been given the contract cannot complain that there has been a deprivation of the right to practise any profession or to carry on any occupation, trade or business such as is contemplated by Article 19(1)(g). This aspect of the matter has been dealt with at length in the case of *Harinarayan Jaiswal and others* (supra). As already observed that case related to the auction of a liquor vend. After referring to the fact that one of the important purposes of selling the exclusive right to sell liquor in wholesale or retail is to raise revenue as held in the earlier judgment of the Supreme Court in *Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer and others* (10), their Lordships observed :—

“It is for the Government to decide whether the price offered in an auction sale is adequate. While accepting or rejecting a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review. We fail to see how the plea of contravention of Article 19(1)(g) or Article 14 can arise in these cases. The Government's power to sell the exclusive privileges set out in section 22 was not denied. It was also not disputed that those privileges could be sold by public auction. Public auctions are held to get the best possible price. Once these aspects are recognised, there appears to be no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate. There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids—See *Union of India v. Bhimsen-Walaiti Ram* (11). By merely giving bids, the bidders had not acquired any vested rights. The fact that the Government was the seller does not change

(9) A.I.R. 1969 S.C. 490.

(10) A. I. R. 1954 S. C. 220.

(11) (1970) 2 SCR 594 = (AIR 1971 S.C. 2295).

Ram Nath, etc., v. Union Territory Chandigarh, etc.
(Narula, C.J.)

the legal position once its exclusive right to deal with those privileges is conceded. If the Government is the exclusive owner of those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government—nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights. The High Court was wholly wrong in thinking that purpose of sections 22 and 29 of the Act was not to raise revenue. Raising revenue as held by this Court in *Cooverjee Bharucha's case* (12) (supra) was one of the important purposes of such provisions. The fact that the price fetched by the sale of country liquor is an excise revenue does not change the nature of the right."

Applying the principles laid down by the Supreme Court in the above-quoted passage in its judgment in the case of *Harinarayan Jaiswal and others* (supra), it appears that the argument of Mr. Tirath Singh Munjral, learned counsel for respondent 4, is not without force that the writ relates to a stage of process of negotiations before any concluded contract for the sale of liquor vend could be arrived at, and that there was no vested right in the petitioners to complain at any stage prior to the acceptance of the bid of the successful bidder. The observations of the Supreme Court in the case of *Harinarayan Jaiswal and others* (supra) were again referred to in a recent judgment of the Supreme Court in *Purxotoma Ramanata Quenim v. Makan Kalyan Tandel and others* (13). It was another case relating to the disposal of a liquor vend. There again it was held that a condition relating to the manner in which a liquor vend can be sold by the Government is not violative of Article 14 of the Constitution, and that in matters relating to contracts with Government, the latter is not bound to accept the tender of the person who offers the highest amount. It was further held that the circumstances that the case of *Harinarayan Jaiswal and others* had been decided in the context of certain statutory provisions would not detract from the binding effect of the general principles enunciated in that case. The observations of the Supreme Court in *K. N. Guruswamy v. The State of Mysore and others* (14) about the policy and

(12) 1954 SCR 873 = (AIR 1954 S.C. 220).

(13) A.I.R. 1974 S.C. 651.

(14) A.I.R. 1954 S.C. 592.

purpose behind the Excise Acts and about the necessity to avoid brushing aside fetters imposed by the legislation at the pleasure of either the Government or its officers, and the binding nature of the Excise Rules has now to be read in the light, of and subject to the law laid down in the subsequent decisions of their Lordships referred to above. In this situation it is unnecessary to comment on the correctness or otherwise of the reasons assigned by the Government in its written statement in support of the impugned action. Apart from the reasons assigned in the return, another one which was advanced by Mr. Jagan Nath Kaushal, learned Advocate-General for the State of Haryana, who appeared before us for the Union Territory of Chandigarh, was that the object of the proviso is to enable the Government to recover the license-fee without any difficulty. Besides relying on the judgments of the Supreme Court in the *State of Orissa and others v. Harinarayan Jaiswal and others* (7) (supra), and in *Purxotoma Ramanata Quenim v. Makan Kalyan Tandel and others*, (13) (supra), Mr. Kaushal also placed reliance on the observations of a Division Bench of the Orissa High Court in *Sri Santosh Kumar Agarwalla v. State of Orissa and others* (15). It does not appear to be necessary to make any detailed reference to the judgment of the Orissa High Court as the learned Judges of that Court merely followed the law laid down by the Supreme Court in the case of *Harinarayan Jaiswal and others* (7) (supra).

(16) Fourthly law is well settled to the effect that merely because a statutory power is discretionary, it cannot necessarily be considered to be discriminatory. If any authority for this proposition is needed, reference can be had to *Messrs. Pannalal Binjraj and others v. Union of India and others* (16), *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar and others* (17), *Matajog Dobey v. H. C. Bhari* (18), *Shri Harish Chand v. Collector of Amritsar and another* (19) and *Arjan Singh v. The State of Punjab and another* (20).

(15) A.I.R. 1973 Orissa 217.

(16) A.I.R. 1957 S.C. 397.

(17) A.I.R. 1958 S.C. 538.

(18) (1955) 2 S.C.R. 925.

(19) A.I.R. 1959 Pb. 19 (F.B.)

(20) I.L.R. (1960) 2 Pb. 645.

Shri Dal Chand v. The State of Punjab, etc. (M. L. Verma, J.)

(17) Fifthly, the power conferred on the Presiding Officer cannot be categorised as arbitrary because it is only when the Presiding Officer, in his wisdom and with his special knowledge and experience, forms the opinion that bidding has assumed a highly excessive posture that he can impose the impugned condition. This is a sufficient guideline in the circumstances of such cases as the present one.

(18) No other point was argued by the counsel before us. None of the contentions raised by the counsel for the petitioners having succeeded, this writ petition must fail and is accordingly dismissed with costs.

B.S.G.

MISCELLANEOUS CIVIL

Before M. L. Verma, J.

SHRI DAL CHAND.—*Petitioner.*

versus

THE STATE OF PUNJAB, and others,—*Respondents.*

C.W. 1227 of 1974.

July 22, 1974.

Punjab Co-operative Societies Act (XXV of 1961)—Sections 55 and 56—Dispute arising in connection with election of a director of a Co-operative Bank—Whether falls within the ambit of section 55—Registrar or his delegate while acting under section 56—Whether has the power to re-count votes.

Held. that clause (c) of sub-section (2) of section 55 of the Punjab Co-operative Societies Act, 1961 provides that any dispute arising in connection with the election of any Officer of a Cooperative Society would be deemed to be dispute touching the constitution, management or the business of the said Society, and sub-section (1) of section 55 provides that any dispute touching the constitution, management or the business of such a Society shall be referred to the Registrar for decision. The term "Officer", as is clear from clause (h) of section 2 of the Act, is not defined exhaustively and besides the persons mentioned in the said definition, anybody else authorised to give directions in the management of the affairs of a