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etc. (Mahajan, J.)

valid one as long ago as in 1891 and has stood the test of time ever thereafter. We do not, therefore, find any force even in this argument of Mr. Sharma.

No other point having been argued before us in this case, the appeal fails and is dismissed though without any order as to costs.

MEHAR SINGH, C.J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Gurdev Singh, JJ.

AJAIB SINGH AND OTHERS,—Appellants

versus

THE EXCISE AND TAXATION OFFICER, BHATINDA AND OTHERS,—Respondents

Civil Writ No. 789 of 1967

March 12, 1968

Punjab Liquor Licence Rules, 1956 and the Punjab Liquor Licence (First Amendment) Rules, 1967—Rules 36(5) and 36(23-B)—Amended Rules coming into force with effect from 1st April, 1967, though published in the Punjab Gazette, Extraordinary, dated the 14th March, 1967—Auction for financial year 1967-68 held on 21st March, 1967—Whether governed by Amended Rules—Auctioning of liquor shops in bunch without prior sanction of the Financial Commissioner (Excise and Taxation Commissioner)—Sanction obtained subsequently—Whether valid.

The Punjab Liquor Licence (First Amendment) Rules, 1967, were not in force on 21st March, 1967, when the auction was held, though they were notified in the Punjab Gazette Extraordinary, dated the 14th March, 1967. They were to come into force on the 1st of April, 1967, and so also the licence for the year 1967-68, the auction of which took place on the 21st of March, 1967. In the announcement, on the basis of which the auction was held, it was stated that all licenses would be subject to the provisions of the Punjab Excise Act (I of 1914) and the Rules framed thereunder from time to time.

Held, that the amended Rules will govern the reauction.

Held, that in case of auction of two or more shops at one time under Rule 36(5) of the Punjab Liquor Rules, 1956, prior sanction has to be obtained from Financial Commissioner (Excise and Taxation Commissioner). The rule provides that each shop must be auctioned separately. To auction them in a bunch is an exception to the rule ; and when an exceptional course is taken, the entire procedure prescribed for an auction has to be followed. Therefore, subsequent sanction to the auction cannot validate the auction.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the writ of demand, if any, against the petitioner and directing the respondents to forbear from making recovery of the sum mentioned therein or alleged to be due to Government.

T. S. MUNJRAL AND S. K. PIPAT, ADVOCATES, for the Appellants.

D. C. AHLUWALIA, ADVOCATE, FOR ADVOCATE-GENERAL, PUNJAB, for the Respondents.

ORDER

MAHAJAN, J.—This is a petition under Articles 226 and 227 of the Constitution of India and is directed against the demand of Rs. 6,04,284 by the Excise Inspector, Bhatinda. This demand is, dated the 8th of April, 1967, and is on account of the shortfall in the resale of country liquor vends at Old City, Sirki Bazar and Bus Stand, Bhatinda, and also the liquor vend, Maur Mandi.

In order to appreciate the impugned demand, it will be necessary to state a few facts. On the 23rd of February, 1967, the Excise and Taxation Commissioner, Punjab (respondent No. 3), published a pamphlet containing the conditions on which retail vends of country liquor and other excise vends for the financial year, 1967-68, would be auctioned. The financial year in question started on the 1st of April, 1967 and would end on the 31st of March, 1968. On the 21st of March, 1967, the petitioners and some other persons made bids for the vends. The petitioners' bid was the highest, it being 25,100 litres for Old City, Bhatinda, 34,200 litres for Sirki Bazar, Bhatinda; 20,300 litres for Bus Stand, Bhatinda and 39,100 litres for Maur Mandi. The total of all these four bids comes to

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1,18,700 litres. The procedure for the sale of vends has been radically changed from the year 1966-67, when the bidding was only for licence-fee, the quota of the vends for the liquor, that had to be lifted, being fixed. The still-head duty on the quota to be lifted, had to be separately paid. For the year 1967-68, the auction has been on the basis of the quota to be lifted and the so-called fee has to be determined by multiplying each litre of the bid quota by Rs. 17.60 (Clause 17 of Annexure 'A'—the terms and conditions of the auction for the year 1967-68. This amount of Rs. 17.60 per proof litre carries with it the still-head duty, as would be apparent from clause 18, the relevant part of which reads thus :—

“The still-head duty on ordinary spiced country spirit that is lifted over and above the total auctioned quota or the quota fixed by the Excise Commissioner under special conditions in respect of any licence, shall be Rs. 15 per proof litres;

* * * * *

For the purpose of changing the mode of auction, the liquor licence Rules of 1956 were amended by a notification No. GSR-23/P.A.I./14/S. 59/AMD.(18)/67, dated the 14th March, 1967, published in the *Punjab Government Gazette*, “*Extraordinary*”, dated the 14th March, 1967. According to the amount of quota, that had to be lifted and had been bid for by the petitioners, the total licence-fee came to Rs. 20,89,120. On the 31st of March, 1967, the petitioners sent a telegram to the authorities which was followed by a letter of confirmation, that they had withdrawn from the offer which was made by them at the auction and which had been provisionally accepted by the Officer conducting the auction. The receipt of the telegram and the letter confirming it is admitted by the Department. But the petitioners' stand, that they had the right to withdraw the offer, which had been accepted by the Officer conducting the sale subject to its confirmation by the Excise and Taxation Commissioner is not accepted. It is common ground that the highest bid, which had been accepted by the Officer conducting the auction, had not been accepted by the Excise and Taxation Commissioner, at the date of the withdrawal of the offer,—*vide* clause 2 of the Conditions of Auction. This clause reads thus :—

“All bids shall be subject to confirmation by the Excise Commissioner, Punjab, who may reject any bid without assigning any reasons.”

The provisions of the amended rule 36.22, also point to a similar effect. On the 4th of April, 1967, after the petitioner had withdrawn the bids made by them, the Excise and Taxation Commissioner confirmed the bids.

The Department's stand throughout has been that the petitioners are liable for the shortfall at the reauction as their bid was accepted by the Officer conducting the auction as the acceptance of the bid concludes the contract. The reauction was ordered and held under the amended rule 36.23-B. The reauction was held on the 7th of April, 1967, after due advertisement. It was specified in the advertisement that each vend will be separately reauctioned. What happened on that date is rather interesting. The shops were first sold individually according to the advertisement and as is provided in rule 36(5). It is then recorded on the bid sheet that there is no bid; and to that effect also, there is on a separate sheet a certificate of the Excise and Taxation Officer, Bhatinda, attached to each bid statement. Instead of moving the Excise and Taxation Commissioner for a sanction to auction the urban vends of Sirki Bazar, Old City and Bus Stand of Bhatinda Town and Maur Town in a group, the Deputy Excise and Taxation Commissioner, ordered that they be auctioned in a group. He himself then proceeded to conduct the auction. The final bid was 66,292 proof litres. The two main bidders were Roop Chand and Dwarka Dass; and at the fag end, Madan Lal made a bid of 84,250 proof litres; and finally the bid of Roop Chand for 84,260 proof litres was accepted. The licence fee determined on the basis of the sale comes to Rs. 14,84,836. It will be interesting to note that in the auction held on the 21st of March, 1967, the bidding was between Bajaj and Company, Ajaib Singh and Roop Chand, though the real contest was between Ajaib Singh and Roop Chand; and the difference between the final bid of Ajaib Singh, that was accepted; and the bid of Roop Chand, in Sirki Bazar, was 200 litres, Old City—600 litres, Bus Stand—100 litres, Bhatinda near Novelty Cinema—400 litres and Maur Mandi—100 litres. I have mentioned these figures only to indicate that Roop Chand and Company were keen contestants for these vends and it is Roop Chand and Company who have ultimately got the vends for a price much lower than what they would had to pay, if Ajaib Singh had not been the final bidder. Curiously enough, when the Deputy Excise and Taxation Commissioner asked for sanction of the Excise and Taxation Commissioner for regularizing what he had done under rule 36(5) this is what

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he said regarding the procedure that had been adopted by him on the 7th of April, 1967 :—

* * * * *

The urban vends of Sirki Bazar, Old City and Bus Stand of Bhatinda Town and Maur Town were first put to auction singly. There was no bid at any of these vends. Then all these urban vends were put to auction in a group. The bidding was quite brisk. Your approval to the auction of four urban vends in a group may be accorded under rule 36(5) of the Punjab Liquor Licence Rules, 1956."

In the same letter, in paragraph 5, while dealing with some other vends, this is what the Deputy Excise & Taxation Commissioner, recorded :—

"No shop was sold below the minimum quota, fixed for it except Kutiwal Village vend, the minimum quota of which was 2,490 P.L.; but it was reauctioned at 1,800 P.L. at the auction held on the 21st March, 1967, this shop was sold for 1,750 P.L. against the minimum quota fixed at 2,490 P.L. and your sanction was sought to sell it below the minimum quota. That sanction was accorded by you,—*vide* your memorandum No. 1100-X1, dated the 4th April, 1967. *Similar sanction may now be accorded for reduction of this vend again below the minimum quota fixed.* Also no shop was sold to any person whose name was borne on the State Excise Black List. * * * * *"

It is significant that regarding the underlined portion, (italicised herein), the Deputy Excise and Taxation Commissioner asked for a sanction in advance of the proposed auction, whereas in the case of the City vends of Bhatinda, already referred to, he was wanting to regularizing an act of his which was contrary to rule 36(5). For facility of reference, Rule 36(5) of the Liquor Licence Rules is set out below :—

36. The following procedure is prescribed for the grant of licenses by auction :—

* * * * *

(5) He will then proceed to put up each shop to auction after carefully explaining its locality. The auction of two

or more shops at one time requires the sanction of
the Financial Commissioner in each case.

* * * * *

It is in these circumstances that the impugned notice was issued to the petitioners for recovery of Rs. 6,04,284.

The petitioners' stand is that they were induced by the Department to become bogus bidders so as to raise the bids and increase the revenue of the State; that they were assured that their names would be included in the bid statement so as to bolster up the bids of other persons really interested in securing the contracts in question and, that they would not be actually granted licenses or made to run them for they had no experience whatsoever in this line. Thus the petitioners agreed to help the Department and it is in these circumstances that the bidding took place. There was a close contest between the petitioners and Roop Chand; that the signatures of the petitioners were not secured on the bid list soon after the close of the bid because the officers concerned tried their best to persuade Roop Chand to raise his bid a little more so that the auction sale could be finished in his favour. Roop Chand refused to oblige the Department and pointed out that the petitioners were bogus bidders. In order to show that Roop Chand was wrong, the Department persuaded the petitioners to append their signatures to the bid statement. Petitioner No. 12 also states that he was not present on the date of the auction, namely 21st March, 1967; and that he was made to sign the bid statement at Bhatinda on the 22nd of March, 1967. In support of their contentions, the petitioners add that their position was not such as to indulge in excise business and they, in fact, did not deposit the requisite amount, that is one-twenty fourth, within a week. On the contrary, they proceeded to back out of the auction on the 31st of March, 1967, and their stand was the same as it is now. It is not disputed that the Department did receive the telegram and the conformity letter sent by the petitioners that they were not willing to honour their bids which had been accepted by the Department. The Department has controverted the stand taken by the petitioners.

The contentions raised by the learned counsel for the petitioners which are purely legal excepting one which raises a question of fact, namely, that the petitioners were made a scape-goat in

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making the bid because they came to bid at the instance of the Department as bogus bidders, are enumerated below :—

- (1) That the notice to reauction, which had been issued to the petitioners under rule 36 (23-B) was issued under Rules that were not in force at the time when the auction was held. The amended Rules have come into force on the 1st of April, 1967; and, therefore, could not govern the auction that was held on the 21st of March, 1967;
- (2) That there was no completed contract till the final bid was accepted by the Excise and Taxation Commissioner. The final bid was not accepted till the 4th of April, 1967; and before that date, the petitioners had withdrawn their final bid, that is on the 31st of March, 1967;
- (3) That the resale on the 7th of April, 1967, was in direct violation of the Rules. There was no prior sanction of the Excise and Taxation Commissioner to put the shops to sale in a bunch;
- (4) That rule 36.23-B is *ultra vires* the Constitution of India; and, therefore, cannot be enforced; and
- (5) That the Excise and Taxation Commissioner is not competent to frame Rules regarding the auctioning of liquor vends.

It may be mentioned that there are many other subsidiary contentions raised in the petition; but none of them has been pressed. Therefore, we have not dealt with them. We have confined ourselves only to the contentions enumerated above. We also do not propose to deal with the question of fact which has been raised by the petitioners, namely, that they were bogus bidders, because there is a serious dispute on that matter between the petitioners and the Department.

So far as the first contention is concerned, it has no merit because the Punjab Liquor License (First Amendment) Rules, 1967, were notified in the Punjab Gazette, Extraordinary—A dated the 14th of March, 1967. It is no doubt true that these Rules were to

come into force on the 1st of April, 1967, and so also the license, the auction of which took place on the 21st of March, 1967. In the announcement, on the basis of which the auction was held, it is clearly stated that all licenses would be subject to the provisions of the Punjab Excise Act (I of 1914) and the Rules framed thereunder from time to time. The amended Rules had been gazetted prior to the auction. The auction was for the financial year 1967-68. The license was to be operative with effect from the 1st of April, 1967, and the amended Rules were also to operate from that date. Therefore, the contention, that the amended Rules will not govern the reauction, is without force and is repelled.

We do not propose to deal with the second and the fifth contentions in view of our decision on the third and the fourth contentions.

The third contention of the learned counsel has substance and must prevail. Rule 36(5) provides that each shop has to be put to auction after carefully explaining its locality. The auction of two or more shops at one time requires the sanction of the Financial Commissioner in each case. In the notice, that was issued after it was decided to reauction the shops, it was specified that each one of them will be auctioned separately. In fact, they were auctioned separately on the 7th of April, 1967. No bidder came forth to bid and it was at that stage that the Deputy Excise and Taxation Commissioner decided to personally come into the picture and sell the shops in one bunch. This decision was made on the 7th of April, 1967, and the shops were sold on that date to one of the bidders who was having neck to neck race with the petitioners in the prior auction that was held on the 21st of March, 1967. No sanction for this course was obtained from the Financial Commissioner (Excise & Taxation Commissioner). According to the learned counsel for the State, this sanction was given subsequently. The order, on the basis of which the Excise and Taxation Commissioner gave the sanction, has already been partly reproduced and it is not necessary to refer to it again. The contention of the learned counsel for the State is that the sanction could be subsequent to the auction, whereas the contention of the learned counsel for the petitioners is that there cannot be a subsequent sanction. In our opinion, the contention of the learned counsel for the petitioners is sound and must prevail. A sanction under clause (5) has to be a prior sanction

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and the reason for this is obvious. All auctions have to be notified. The first notification was that each shop will be auctioned separately. There is no notice to the public that all these shops would be auctioned in a bunch. As a matter of fact, not even an alternative notice was given that if bidders are not available for each individual shop, the shops will be put to auction in a bunch. In fact, by putting the shops to auction in a bunch, a sort of monopoly would be available; and if this fact had been notified, possibly more bidders would have come on the scene. But the fact remains that there was no notice to the public that all these shops would be auctioned in a bunch. Moreover, the sanction, in the nature of things, has to precede the decision to auction them in a bunch. The rule provides that each shop must be auctioned separately. To auction them in a bunch is an exception to the rule; and when an exceptional course is taken, the entire procedure prescribed for an auction has to be followed. Therefore, subsequent sanction to the auction cannot validate the auction. The learned counsel for the State was not able to give us any convincing reasons why we should take a different view of the matter than the one we have taken. It was observed by their Lordships of the Supreme Court in *K. N. Guruswamy v. The State of Mysore and others* (1), at pages 308-309 that

“ * * * This Court had occasion to observe in *State of Assam v. Keshab Prasad Singh and others*, Civil Appeal No. 176 of 1952 a fisheries case—that the sale of these licences forms such a lucrative source of revenue that State Legislatures have deemed it wise not to leave the matter to unfettered executive discretion; accordingly legislation has been enacted in most parts of India to regulate and control the licensing of these trades; Acts are passed and elaborate Rules are drawn up under them. It is evident that there is a policy and a purpose behind it all and it is equally evident that the fetters imposed by legislation cannot be brushed aside at the pleasure of either Government or its officers. The Rules bind State and subject alike.

The Act and the Rules make it plain that liquor licensing in the State of Mysore can only be done in certain specified ways and such discretion as is left to the authorities is strictly controlled by Statute and Rule. * * *”

(1) 1955 S.C.R. 305.

These observations fully apply to the facts of the present case. We are, therefore, clearly of the view that the third contention of the learned counsel has merit and must succeed.

So far as the fourth contention is concerned, reference may be made to our decision in *Jage Ram, etc. v. The State of Haryana, etc.* (2), and what we have said therein, equally applies here. Therefore, this contention is accepted.

For the reasons recorded above, we allow the petition and quash the impugned notice. The petitioners will have their costs in this Court, which are assessed at Rs. 200.

GURDEV SINGH, J.—I agree.

R. N. M.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

BHAJAN LAL AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS.—*Respondents.*

Civil Writ No. 339 of 1964

March 21, 1968.

Punjab Security of Land Tenures Act (X of 1953), Ss. 10-A and 18—Word 'Other Authority' in section 10-A(c)—Meaning of—Order of authority under section 18—Whether can be ignored under section 10-A—Words 'Other disposition' in S. 10-A(b)—Meaning of—Whether includes involuntary transfer—In cases of conflict between Ss. 10-A and 18—Which one to prevail.

Held, that the 'other authority' in clause (c) of section 10-A of the Punjab Security of Land Tenures Act, 1953 cannot be the Assistant Collector, the Collector or the Commissioner while exercising their jurisdiction under other provisions of the same Act including section 18. The 'other authority' in this clause refers to the authorities other than those under the Act, as authorities under the Act cannot be expected to ignore an order under the Act itself including an order

(2) C.W. 1376 of 1967 decided on 12th March, 1968.