

PETITIONER:
RAJENDRA SINGH

Vs.

RESPONDENT:
THE STATE OF MADHYA PRADESH& OTHERS.

DATE OF JUDGMENT: 08/08/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
JT 1996 (7) 216 1996 SCALE (5)793

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P.JEEVAN REDDY.J.

Leave granted.

These appeals are preferred against the judgment of a Division Bench of the Madhya Pradesh. High Court allowing the Letters Patent Appeal preferred by the State of Madhya Pradesh against the judgment of a learned Single Judge who had allowed the writ petition filed by the appellant. While we agree fully with the reasoning and conclusion of the Division Bench, we think it necessary at the same time to emphasise a few aspects relevant in the case of such contracts. First, the relevant facts briefly.

For the excise year 1994-95, the appellant was the highest bidder for certain number of liquor shops. His bid in a sum of Rs.11,67,00,000/- was accepted, payable in monthly instalments of Rs.97,25,000/- each. After making the necessary deposits and after complying with other conditions, licences were granted to him and he commenced the business with effect from 1.4.1995. He failed to pay the monthly rental (licence fee) for the months of July and August, 1994. Thereupon a notice dated 9.8.94 (exhibit R-3) was issued by the authorities intimating him that he was in arrears of the licence fee for the months of July and August and that if he does not pay the same, the shops would be reauctioned. The appellant was asked to be present personally on 23.8.1994 for showing cause. Though the appellant received the said notice, he did not appear before the specified authority. He thus failed to avail of the opportunity of personal hearing afforded to him. (Though the appellant disputed this fact, the Division Bench has accepted the respondent's contention and has found as a fact that the appellant did fail to appear on the date of hearing. We accept the said finding.) On 2.9.94, a notification was issued - communicated to a large number of excise officers and other departments and a copy of which was also sent to the appellant stating that if the appellant

did not clear the arrears on or before 12.9.94, the shops would be sold by reauction to be held at 2.00 p.m. on 12.9.94. The said notification is marked exhibit R-12. It was also published in the daily newspaper, Nav Bharat Tixes, The notification mentioned the precise amount of arrears due from the appellant and stated that on the reauction being held, the existing licence in favour of the appellant shall stand cancelled. Since the appellant failed to pay, reauction was held on 12.9.94, whereafter, a demand was made upon the appellant for loss of revenue resulting from reauction, as provided by sub-section (4)(b) of Section 31 of the Madhya Pradesh Excise Act. We may set out sub-section (4) of Section 31 this stage:

"(4) Where a licence is cancelled or suspended under Clause (a), clause (b), clause (c) or clause (e) of sub-section (1),

(a) the fee payable for the balance of the period for which such licence would have been current but for such cancellation or suspension, may be recovered from the ex- licensee as excise-revenue;

(b) the Collector may take the grant under management or resell it at the risk and loss of the ex- licensee, but any profit realised by such management or resale which is not in excess of the amount recovered under clause (a) for such period shall be paid to the ex- licensee."

The appellant questioned the said demand by way of a writ petition in the Madhya Pradesh High Court. He submitted that he was not given due opportunity before cancelling the licence as required by sub-section (1-A) of Section 31, that there was no order of cancellation of licence as such and that there was no proper publicity for the reauction conducted. He submitted that on account of lack of due publicity, only one bidder was present at the reauction and that the shops were sold at a low price. The learned Single Judge was impressed by the said contentions and allowed the writ petition. On appeal, however, the Division Bench rejected all of them. Before we set out the reasoning of the Division Bench, it would be appropriate to set out sub-section (1-A) of Section 31. It reads:

"(1-A) Before making an order cancelling or suspending a licence, permit or pass under sub-section (1), the authority aforesaid shall record in writing the reasons for the proposed action, furnish to the holder thereof a brief statement of the same and afford him a reasonable opportunity of being heard."

The Division Bench held that as held by that Court in an earlier decision, "the court cannot take a hypertechnical view of the provisions and must understand the same in a reasonable manner. Substantial compliance with the requirements of the provisions would meet the ends of justice. Where a specific order of cancellation of licence is not passed but if the requirements are substantially

complied with, the court under Article 226 of the Constitution would not ordinarily interfere." The Division Bench referred to the notice exhibit R-3 and found as a fact that it was received by the appellant. The Bench also found that the notification (R-12) was duly communicated to all the Excise Officers, other departments, and to the appellant besides being published in the newspaper, Nav Bharat Times. After referring to the contents of exhibit R-12, the Bench held that the said notification was both an order of cancellation of the appellant's licence as well as notice of reauction. It also found that there was adequate publicity of the said notification and the fact that only one bidder appeared at the reauction was no ground for holding that there was no proper publicity. It gave reasons why bidder generally do not attend reauctions. The Division Bench also found as a fact that the appellant failed to appear on the date of hearing specified in notice (R-3). In the light of the said findings, the Division Bench held, and in our opinion rightly, that the learned Single Judge was in error in allowing the writ petition. We fully approve the reasoning of the Division Bench.

It has been held by a Constitution Bench of this Court in *Har Shankar & Other etc. etc. v. Deputy Excise and Taxation Commissioner and Others etc.* [A.I.R. 1975 S.C. 1121] that "(T)he writ jurisdiction of High Court under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred." At the same time, it was observed that the licences are not precluded from seeking to enforce the statutory provisions governing the contract. It must, however, be remembered that we are dealing with parties to a contract, which is a business transaction, no doubt governed by statutory provisions. While examining complaints of violation of statutory rules and conditions, it must be remembered that violation of each and every provision does not furnish a ground for the Court to interfere. The provision may be a directory one or a mandatory one. In the case of directory provisions, substantial compliance would be enough. Unless it is established that violation of a directory provision has resulted in loss and/or prejudice to the party, no interference is warranted. Even in the case of violation of a mandatory provision, interference does not follow as a matter of course. A mandatory provision conceived in the interest of a party can be waived by that party, whereas a mandatory provision conceived in the interest of public cannot be waived by him. In other words, wherever a complaint of violation of a mandatory provision is made, the Court should enquire- in whose interest is the provision conceived. If it is not conceived in the interest of public, question of waiver and/or acquiescence may arise - subject, of course, to the pleadings of the parties. This aspect has been dealt with elaborately by this Court in *State*

*Reference may also be made to the decision of this Court in *Assistant Excise Commissioner V. Issac Peter* [1994 (4)S.C.C. 104].

Bank of Patiala v. S.K. Sharma [1996 (3) S.C.C 364] and in *Krishanlal v. State of Jammu and Kashmir* [1994 (4) S.C.C. 422] on the basis of a large number of decision on the subject. Though the said decisions were rendered with reference to the statutory Rules and statutory provisions (besides the principles of natural justice) governing the disciplinary enquiries involving government servants and employees of statutory corporation, the principles adumbrated therein are of general application. It is

necessary to keep these considerations in mind while deciding whether any interference is called for by the Court whether under Article 226 or in a suit. The function of the Court is not a mechanical one. It is always a considered course of action.

There is yet another fact. The contract provides for payment of monthly rental on or before a, particular date. If the amount of monthly rental not paid before the due date, the licence is liable to be cancelled as provided by sub-section (1) of Section 31. It is true that before cancelling the licence, an opportunity of hearing should be given as provided by sub-section (1-A). While the opportunity to be given should be reasonable, the reasonableness or otherwise of the opportunity given must be judged keeping in view the time-frame available. It is a case of a contract stipulating monthly payments. If there is a default in paying a month's rental, notice proposing cancellation may follow. The time given to the licensee to show cause would naturally be a short one for the reason that soon thereafter the next month's rental (licence fee) falls due and if that is not paid, another show cause notice may have to follow. (It must be remembered that in this case, the default was for two consecutive months, July and August. The authorities evidently did not act in haste. Even after one month's default, they waited hoping that he should pay. But when he defaulted for the next month also, they issued the notice proposing cancellation.) What we wish to emphasise is that the opportunity contemplated by sub-section (1-A) cannot be operated in a leisurely manner. A realistic view has to be taken while determining whether the opportunity given was reasonable or not. The object of all excise laws is two-fold viz., to raise revenue and to regulate the trade in liquors which is a noxious substance. There is no fundamental right to trade in liquor (*Khoday Distilleries Ltd. v. State of Karnataka* 1995 (1) S.C.C. 574). The only right of the licensee is to seek to enforce the terms of contract (which is statutory in nature) and the statutory provisions governing the contract. The considerations aforementioned should be kept in mind while examining complaints of violation of statutory Rules, conditions add terms of contract as well as complaints of lack of reasonable opportunity.

Lastly, it is urged the before forfeiting the advance amount or the security deposit, a fresh opportunity of hearing ought to have been provided. From a perusal of the judgment under appeal, however, we do not find that any such contention was urged before it. For this reason, we decline to entertain this plea, which may involve investigation of factual aspects.

The appeals accordingly fail and are dismissed with costs. Advocate's fee Rs.5,000/-.