

STATE OF HARYANA

v.

JAGE RAM

September 12, 1983

[Y. V. CHANDRACHUD, C.J., R. S. PATHAK AND
SABYASACHI MUKHARJI, JJ.]

Punjab Liquor Licence Rules, 1956—Rs. 36(3) and 36(24)—Sale of liquor—Vends by re-auction or by private negotiations—Whether vitiated by failure to give due publicity?

The respondents in this batch of appeals had obtained licences to sell liquor by offering highest bids at auctions held for sale of liquor-vends. On their failure to make payments due under the terms of auction, the State Government resold the liquor-vends in some cases, either by re-auction or by private negotiations and called upon the respondents to pay the difference between the amount which they were liable to pay and the amount realised by the resale of the vends. In other cases, the respondents were called upon to pay the amounts due under the terms of the original auction. The respondents filed writ petitions contesting the State Government's power to demand the various amounts which they had defaulted in paying and the High Court allowed the petitions. In appeals filed by the State Government, this Court held that since the rights in regard to manufacture and sale of intoxicants were vested in the State as a privilege, it was open to the State to part with those rights for consideration, and remanded the matter to the High Court calling for its findings on whether in cases in which the liquor-vends had been resold by re-auction it was necessary to give publicity to the same; and, if so whether such publicity had in fact been given. The High Court found that r. 36(3) of the Punjab Liquor Licence Rules, 1956, which was applicable in these cases, required publicity to be given to an auction-sale and this rule had been substantially complied with in all cases in which re-auction had been held.

Dismissing the appeals in which liquor-vends had been resold either by re-auction or by private negotiations and *allowing* the appeals in which liquor-vends had not been resold.

HELD: 1. When a rule requires 'publicity' to be given to an auction-sale, what is necessarily implied is that due steps must be taken to give sufficiently advance intimation of the intended sale and its material terms to the members of the public or, at least, to that section of the public which normally engage in the kind of business which is the subject matter of the auction-sale.

[924 B]

In the instant case, no notice as required by r. 36(3) was given to the public at all. Neither the time nor the date of the re-auction, nor the location

A or description of the vend which was to be put to re-auction, nor the conditions of the re-auction were ever published by the Excise authorities prior to the re-auction. What was done by the concerned authorities was to send telegrams to Excise Officers of five districts with a request that they should give publicity to the re-auction and those officers did not take any steps to publicise the re-auction. Since the re-auctions were not held in accordance with the rules, and since, especially, due publicity was not given to the re-auctions, the respondents cannot be held liable to make good the difference between the amount which was payable by them and the amount which was fetched at the re-auction. [923 F-H, 924 A]

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C 2. By r. 36(24) power has been conferred to re-sell a vend by public auction or by private contract. But this latter power has to be exercised with great care and circumspection. Public auction has to be the normal mode of selling public property. It is open to public gaze and eschews many temptations to which private contracts are subject. It is only when a public auction is not feasible or has failed to attract bidders after due publicity, that a private contract can be negotiated for disposing of public property or rights in such property. [927 B-C]

D In cases in which re-auctions though commenced as scheduled were withdrawn and licences were granted by private negotiations on the spot even if there were valid reasons were for revoking the decision to hold the re-auctions, the re-auctions should have been postponed and due publicity given to the decision to grant licences by private negotiations. The Excise authorities could not have abruptly decided to jettison the original intention of holding a public auction and grant licence by private negotiations on the spur of the moment. The decision smacks of arbitrariness, is unfair and unreasonable and cannot be allowed to stand. [926 C-D]

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F 3. The question whether the State has the power to charge the particular amounts to the licensees of liquor-vends is concluded by judgments of this Court affirming such a power in the State Government. Judgments of the High Court to the contrary in all those cases in which no question of re-auction of liquor-vends arises must therefore be set aside, and to that extent the appeals filed by the State have to be allowed. [925 F-G]

Har Shankar v. Deputy Excise and Taxation Commissioner, [1975] 3 S.C.R. 254; *State of Haryana v. Jage Ram*, [1980] 3 S.C.R. 746; & *State of Punjab v. Ajudhia Nath*, [1981] 3 S.C.R. 686; referred to.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1507 of 1969.

H Appeal from the Judgment and Order dated the 12th March, 1968 of the Punjab and Haryana High Court in Civil Writ No. 1376 of 1967.

WITH

Civil Appeal Nos. 1202-20 of 1970

From the Judgment and Order dated the 23rd day of July, 1967 of the Punjab and Haryana High Court in Civil Writ Petition Nos. 2934 & 2955 of 1968 and L.P.A. Nos. 597-599,68, Civil Writ Nos. 242-45/69, 423, 471, 477, 783-785, 787-89 & 792 of 1969.

AND

Civil Appeals Nos. 1564-67 of 1970

Appeals from the Judgment and Order dated the 20th November, 1969 of the Punjab and Haryana High Court in L.P.A. Nos. 57-59-69.

AND

Civil Appeals Nos. 743-94 of 1974.

From the Judgment and Order dated the 23rd July, 1969 of the Punjab and Haryana High Court in Civil Writ Nos. 343, 334, 353, 354, 365, 379, 381, 384, 385, 421, 422, 424, 456, 481, 493, 518, 519, 520, 529 of 1969, 2933, 2948, 2949, 2956, 2975-78, 3021, 3111, 3188 of 68, 254, 264, 307, 308, 715, 706, 674, 662, 661, 604, 596, 588, 554, 737, 786, 791, 798, 828, 836, 945, 839 of 1969.

R.N. Poddar for the Appellants in CA. 1507.

I.S. Goel and *R.N. Poddar* for the Appellants in CA. Nos. 1202-20.

M.S. Gujral and *R.N. Poddar* for the Appellants in CA. Nos. 743-794/74.

K.G. Bhagat, Additional Solicitor General and *R.N. Poddar* for the Appellants in CAs. 1564-67/70.

T.S. Munjral and *H.K. Puri* for Respondent in CA. 1507.

P.R. Mridul, *V.S. Desai*, *S. Rangarajan* in CAs. 1204 to 1206, CA. 1564-66 and in CA. 743, 762 & 770.

T.S. Munjral, *K. C. Dua* and *Poonam Malhotra* for the Respondents in CAs 1204-06, 1564-67, 743, 762, 764, 765-770.

R.C. Bhatia and *P.C. Kapoor* for Respondents in CAs. 1202-03, 1207-20, 744-761, 768, 766-769 & 771-794.

The Judgment of the Court was delivered by

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CHANDRACHUD, CJ. These appeals have a long history. Liquor vends were put to auction by the Excise Department of the Government of Haryana whereupon, the highest bidders were given the necessary licences to sell liquor. Some of the licensees committed default in the payment of amounts due from them under the terms of the auction. Thereupon, the vends were reaucted except for three vends which, though published for reauction, were given by private negotiations. The original licensees, who were called upon to pay the difference between the amount which they were liable to pay and the amount realised by resale of the vends, filed writ petitions in the High Court of Punjab and Haryana contending that the State Government had no power to demand the various amounts which they had allegedly defaulted in paying. The High Court accepted that contention, holding that the State Government had no authority to demand the amounts for failure to pay which, the vends were put to resale. As a necessary consequence of that finding, the fresh grants made by reauction or private treaty were held invalid. The result of this was that the writ-petitioners stood relieved of their obligation to make good the shortfall. This is the broad history of these appeals.

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We will take up Civil Appeal No. 1507 of 1969 for consideration first. The facts of that case and the events leading to the present proceedings are mentioned in a judgment of this Court reported in *State of Haryana v. Jage Ram*⁽¹⁾. In this case, an auction was held on March 27, 1967 for the grant of a retail vend known as Biswan Meel, Sonapat, for the year 1967-68. The respondents Jage Ram and others offered the highest bid in that auction. Under Condition 14 (iii) of the auction, respondents became liable to pay an amount calculated at the rate of Rs. 17.60 per litre, which came to Rs. 10,92,960.00. They paid a security deposit for the due performance of the terms of the auction but they committed default in payment of instalments which fell due on April 10 and April 25, 1967. On May 17, 1967 the Excise authorities cancelled the licence of the respondents and informed them that the vend will be resold on May 23, 1967 at the risk of the respondents. In pursuance of the order dated May, 17, the Biswan Meel vend was reaucted on May 23, the highest bid offered being in the sum of Rs. 2,46,000.00. On July 11, respondents were called upon by a notice to pay a sum of

(1) [1980] 3 S.C.R. 746.

Rs. 7, 41,577.40, being the difference between the amount which they were liable to pay under the terms of the original auction and the amount fetched in the reauction. Thereupon, respondents filed a writ petition in the High Court challenging the legality of that notice. The High Court allowed the writ petition, quashed the order cancelling the respondents' licence as also the notice calling upon them to make good the shortfall of seven lakhruppes and odd. The High Court gave to the State of Punjab a certificate to appeal to this Court.

The appeal came up for hearing before a three-Judge Bench which by its aforesaid Judgment dated April 21, 1980 held that the writ jurisdiction of the High Court under Article 226 cannot be used for avoiding contractual obligations. On merits, it was held by this Court following a Constitution Bench decision in *Har Shankar v. The Deputy Excise and Taxation Commissioner*,⁽¹⁾ that since rights in regard to the manufacture and sale of intoxicants are vested in the State, it is open to the State to part with these rights, which are in the nature of a privilege, for consideration. The Court further held that the amounts which the State Government had charged to the respondents were neither in the nature of a tax nor in the nature of an excise duty but were in the nature of a price which the State Government was entitled to charge as consideration for parting with its privilege in favour of the licensees.

After setting aside the judgment of the High Court and upholding the demand made by the State Government upon the respondents, the question naturally arose whether the respondents could be held liable for the shortfall between the bid offered by them and the amount realised in the reauction. It was urged by the respondents that the reauction which was held on May 23, 1967 was not in accordance with the relevant Rules and therefore, they could not be called upon to pay the difference between the amount which they were originally liable to pay and the amount which was fetched in the reauction of the vend. To be more specific, it was contended on behalf of the respondents that no notice of the intended resale was given as required by Rule 36 (3) of the Punjab Liquor Licence Rules, 1956, that no notice was published or affixed at any conspicuous public place notifying the proposed resale, nor indeed was the resale announced by the beat of drums. According to the respondents, one

(1) [1975] 3 S.C.R. 254.

A Lal Chand went to the office of the Excise and Taxation Officer, Rohtak, and managed to have his bid accepted in the resale of the vend. Respondents further urged that through the resale of the vend was to be effective for a period of about 10 months out of the 12 months for which the vend was originally auctioned, there was a large shortfall of over Rs. 7 lakhs on account of the fact that due
B publicity was not given to the resale.

C By the aforesaid judgment dated April 21, 1980 this Court remanded the matter to the High Court and called for its findings on two questions : (1) Whether it was necessary according to the Rules which were in force at the relevant time to give publicity to the reaction, and (2) if so, whether such publicity was in fact given to the reaction.

D The High Court has transmitted its findings to this Court, which are against the respondents. The High Court has held by its order dated September 29, 1980 that the Rules relied upon by the respondents by which publicity is required to be given to the resale are directory and not mandatory and that these rules were substantially complied with. These findings are assailed by the respondents who, by reason of the findings of the High Court, are virtually in the position of appellants now.

E The finding of the High Court that the rules were substantially complied with is based on an affidavit filed by Shri N.S. Bedi, Deputy Excise and Taxation Commissioner, Sonapat, in which he has stated that 'all possible steps were taken in connection with the
F publicity done for the reauction of the vend'. The affidavit says that telegrams were issued on May 19, 1967 by the Excise and Taxation Officer, Rothak to the Excise and Taxation Officers of Hissar, Karnal, Gurgaon, Mohindergarh, Ambala and Jind informing them that the
G reauction will be held on May 23, 1967 at 10.00 a.m. and asking them to give due publicity to the reauction. The affidavit further says that letters were also written on May 20, 1967 to the 'important licensees of the State' informing them of the date and time of the reauction and requesting them to attend it. The affidavit asserts that 40 bids were recorded in the reauction and the 40th bid, being the
H highest, was accepted.

It seems to us impossible to accept the findings of the High Court. We will not enter into the controversy whether the rules

governing reauction of vends, of which respondents allege breach, are directory or mandatory in character. Even assuming for the purpose of argument that they are directory, we are unable to hold that they have been substantially complied with. Rule 36 (24) of the Punjab Liquor Licence Rules, 1956 as amended by the Notification dated March 31, 1967 says that when [a licence is cancelled, it may be resold by public auction or by private contract in accordance with the procedure laid down in the other clauses of Rule 36. Clause (3) of Rule 36 runs thus :

“36(3)—The Collector will give timely notice of the date and place of the auction :

- (a) the condition to which the auction will be subject ;
- (b) the number and situation of the shops to be licensed for the sale of (country liquor) ;
- (c) the prices, if any, fixed for the retail vend of country spirit or ;
- (d) the occasions, if any, on which the shops will be closed ; and
- (e) any other information which may be of use to intending bidders.”

No notice as required by this sub-rule was given to the public at all. Neither the time nor the date of the reauction, nor the location or description of the vend which was to be put to reauction, nor the conditions of the reauction were ever published by the Excise authorities prior to the reauction. What was done by the concerned authorities was to send telegrams to Excise Officers of five districts with a request that they should give publicity to the reauction. The officers of those five districts seem to have sat cool over those telegrams because there is no evidence showing that they took any steps for publishing the reauction. A curious feature of this case is that the Excise authorities claim to have sent letters to five private licensees informing them that the reauction was fixed for the 23rd of May 1967 at 10.00 a.m. These letters are at Annexure R-8 and are dated May 20, 1967. 20th May fell on a Saturday and the reauction was fixed for 23rd May which was the following Tuesday.

A In the normal course, these letters would have been received by the addressees on Monday, that is, a day or less prior to the date of the reauction which was to be held the next morning at 10 O'clock. In these circumstances, it is difficult to hold that any publicity as such was given to the reauction. When a 'rule requires 'publicity' to be given to an auction-sale, what is necessarily implied is that due steps must be taken to give sufficiently advance intimation of the intended sale and its material terms to the members of the public or, at least, to that section of the public which normally engages in the kind of business which is the subject-matter of the auction-sale. Even the five special invitees would have found it difficult to come prepared to take part in resale which was held on 23rd May. They were not invited to a wedding feast. They were invited to attend the resale of a liquor vend and it is well-known that a certain amount has to be paid by the successful bidder on the fall of the hammer. We are also unable to appreciate that the Excise authorities of the Government of Haryana should have picked and chosen some five particular persons as recipients of the notice of reauction. How their names transpired and what is their particular status, respectability and standing in the liquor trade, are matters on which no light is thrown. There is no material before us on which to doubt the integrity of the authorities who were connected with the reauction. But their conduct must be above suspicion.

E The bid-sheet shows that only six persons offered bids in the reauction and none of the five invitees was amongst those six. It appears that a small, closely-knit group participated in the reauction, successfully keeping out others who might have offered adequate bids in the reauction, were they to have notice thereof. Indeed, the amount which was fetched in the reauction itself furnishes *prima facie* evidence that all was not well with the reauction. The respondents had given their original bid in the sum of Rs. 10,92,960.00 which covered a period of one year from April 1, 1967 to March 31, 1968. The reauction was held on May 23, 1967 for a licence which was to be effective for the little over 10 months. It is surprising that the reauction should have fetched a bid of as small an amount as Rs. 2,46,000.

H Since the reauction was not held in accordance with the rules, either in their letter or in their spirit, and since, especially, due publicity was not given to the reauction, it is impossible to uphold reauction and mulct the respondents in the resultant shortfall. We

are of the opinion that rule 36(3) of the Rules was not even substantially complied with. It is reasonable to assume that since due publicity was not given to the reauction, adequate bids were not received, resulting in prejudice to the respondents. A

Accordingly, we set aside the finding of the High Court that the relevant rules governing reauction of vends were complied with substantially. Since the reauction did not conform to the rules and the respondents were prejudice thereby, they cannot be held liable to make good the difference between the amount which was payable by them and the amount which was fetched at the reauction. B

The result is that the appeal filed by the State of Haryana is dismissed, though for different reasons, and the respondents absolved from their liability to pay the amount which is demanded of them by the notice dated May 7, 1967 issued by the Collector and Deputy Excise and Taxation Commissioner, Haryana. C

That disposes of Civil Appeal No. 1507 of 1969. D

We will now take up for consideration two other groups of appeals, viz, Civil Appeals 1202 to 1220 of 1970 and Civil Appeals 743 to 794 of 1974. No question of reauction arises in these groups of appeals except in Civil Appeals Nos. 1204, 1205 and 1206 of 1970. We shall deal with those three appeals separately a little later. The question which arises in the remaining appeals in these two groups, as regards the power of the State Government to charge the particular amount to the licensees is concluded by the judgments of this Court in *Har Shunkar v. The Deputy Excise and Taxation Commissioner, State of Haryana v. Jage Ram (supra)* and *State of Punjab v. Ajudhia Nath*⁽¹⁾. It was held in those decisions that the State Government has the power to charge the particular amounts to the licensees. The judgments of the High Court denying to the State Government that power must therefore be set aside and to that extent the appeals filed by the State of Haryana allowed. E F G

The appeals which now remain for consideration are Civil Appeals 1204 to 1206 of 1970 and Civil Appeals 1564 to 1567 of 1970. In these cases also, as in all other cases which are being disposed of by this judgment, the power of the State Government to H

(1) [1981] 3 S.C.R. 686.

A levy the particular charge must be upheld in view of the aforesaid three judgments. The judgment of the High Court in these cases shall therefore have to be set aside to the extent to which the High Court had denied that power to the State Government. But the further question which arises in these appeals is whether the respondents can be called upon to pay the difference between the amounts which they were liable to pay under the terms of the original auction in their favour and the amounts which were fetched in the resale of the vends. The facts of these groups of cases are even more peculiar than the facts of Civil Appeal No. 1507 of 1969 with which we have dealt at the outset of this judgment. In these cases, it was originally intended to reauction the vends in respect of which the respondents had committed default and some publicity, not due or adequate by any standard, was given to the reauction. The reauctions commenced as scheduled but the Excise authorities changed their mind in midstream and decided, without any rhyme or reason, to withdraw the reauctions and to grant fresh licences by private negotiations on the spot.

We agree fully with the very careful judgment of Justice Bal Raj Tuli that due publicity was not given to the reauction. It is stated in the affidavit filed on behalf of the State Government in the High Court that, directions were given to the Excise and Taxation Officer, Gurgaon by a circular letter that he should give wide publicity to the reauction due to be held on July 24, 1968. The circular letter was not placed on the record, nor was the High Court apprised as to how the Excise and Taxation Officers of the Governments of Haryana and Punjab gave publicity in their respective districts to the proposed reauctions. It is significant that the respondents wrote letters to the Excise and Taxation Officer, Gurgaon on July 20, 1968 complaining that due publicity was not being given to the reauctions and that the Rules required such publicity to be given. In spite of this, no steps were taken to comply with the requirement of the rules, even though the cost of publicity would have been required to be borne by the respondents themselves.

H It was urged that Hindi handbills were distributed in Delhi advertising the auction. Even those handbills do not contain the requisite information which is required to be published under rule 36(3). Tuli, J. was therefore right in not treating the handbills as constituting due publicity to the reauctions.

If the reauctions cannot be upheld since due publicity was not given to them, the grant of licences by private negotiations during the course of reauctions would also have to be set aside. Assuming that there were valid reasons for revoking the decision to hold the reauctions, like the paucity of adequate bids at the reauctions, the reauctions should have been postponed and due publicity given to the decision to grant licences by private negotiations. By rule 36(24), power has been conferred to resell a vend by public auction or by private contract. But this latter power has to be exercised with great care and circumspection. Public auction has to be the normal mode of selling public property. It is open to public gaze and eschews many temptations to which private contracts are subject. It is only when at public auction is not feasible or has failed to attract bidders after due publicity, that a private contract can be negotiated for disposing of public property or rights in such property. Not only is no reason forthcoming why the intention to hold a public auction was abandoned after the auction had commenced but the proceedings were not adjourned even for a few days in order to publicise the intention to resell the vends by private contract. The Excise authorities could not have abruptly decided to jettison the original intention of holding a public auction and grant licences by private negotiations on the spur of the moment, that very day and at that very hour. The decision smacks of arbitrariness, is unfair and unreasonable, and cannot be allowed to stand.

For these reasons, respondents in Civil Appeals 1204 to 1206 of 1970 and Civil Appeals 1564 to 1567 of 1970, are not liable to pay the difference between the amounts which they were liable to pay under the original auctions and the amounts which they were liable to pay under the original auctions and the amounts which were fetched by the re-grant of licences by private contracts.

The aforesaid discussion will show that the appeals filed by the State of Haryana succeed to the extent that the State Government has the power to levy the charge which it demanded of the respondents. The finding of the High Court that the State Government has no such power is incorrect and must be set aside. The findings called for by us from the High Court on the question whether due publicity was given to the reauctions are set aside. We hold that due and adequate publicity was not given to the reauctions. We also hold that the regrant of licences by private negotiations is not in conformity with the Rules and must be struck down in the circumstances of the case. As a result of the infirmities from which the reauctions and the re-grant of licences by private

A contract suffer, respondents in whose cases fresh licences were granted either in reauctions or by private contract will not be liable to make good the shortfall. The reauctions were necessitated on account of the default committed by the respondents, but the reason of the shortfall is the laxity and arbitrariness with which the resale of the vends was held or fresh licences granted by private contract.

B There will be no order as to costs in any of these appeals.

Order accordingly.

H.L.C. *Dismissing the appeals in which liquor vends was resold and allowing the appeals in which liquor vends was not resold.*