

K.P. PERIANNAN
v.
GOVERNMENT OF TAMIL NADU AND ORS.

APRIL 20, 1990

[S. RATNAVEL PANDIAN AND K. JAYACHANDRA
REDDY, JJ.]

Tamil Nadu Toddy and Arrack Shops (Disposals in Auction Rules, 1981: Rules 3-6, 8, 10, 12, 14-16, 20 and 21. Auction of Arrack shop—Successful bid found inadequate and not confirmed—Shop re-auctioned and bid provisionally confirmed but bidder failed to comply with requirements—Shop again re-auctioned—Notional loss between original sale and resale—Held not recoverable from original successful bidder.

The appellant gave the highest bid at the auction of an arrack shop but his bid was considered inadequate. The shop was re-auctioned and the bid of 'C' was provisionally accepted. 'C' failed to comply with certain requirements and the shop was again re-auctioned in which the bid offered was lower than that offered by the appellant in the original sale. The respondent sought recovery of the difference between the original sale amount and the resale amount from the appellant, under Rule 21 of the Tamil Nadu Toddy and Arrack Shops (Disposal in Auction) Rules, 1981. The appellant challenged the recovery by filing a writ petition in the High Court which was dismissed by a Single Judge and the decision was confirmed by a Division Bench on appeal.

In the appeal to this Court it was contended on behalf of the appellant that since his bid was not confirmed under the rules, no recovery can be made from him and that 'C', whose bid was provisionally accepted, was liable for the notional loss. The respondent however contended that since 'C' failed to comply with Rule 15, his bid was not provisionally accepted and hence he was not liable for the resultant loss.

Allowing the appeal, this Court,

HELD: 1. Normally it may be correct to say that the sale officer under Rule 16 accepts provisionally the bid after there is compliance of Rule 15; but in the instant case, the Court is concerned with the re-auction and about the liability of the original highest bidder in the light of Rule 20(4). [616D-E]

A 2. In view of the document dated 19th June, 1981 it must be held that the bid of 'C' was accepted provisionally by the Sale Officer and by virtue of Rule 20 sub-Rule (4) when once the bid of 'C' was accepted provisionally as the highest bid, the bid with which the sale began namely the bid of the appellant, got lapsed and consequently the appellant cannot be held liable for the resultant loss. [616C-D]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1932 of 1990.

From the Judgment and Order dated 4.7.1989 of the Madras High Court in Writ Appeal No. 1153 of 1983.

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R. Mohan and R. Ayyamperumal for the Appellant.

V. Krishnamurthy for the Respondents.

The Judgment of the Court was delivered by

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K. JAYACHANDRA REDDY, J. Leave granted. Heard both the sides.

E The right to conduct arrack sale in Tamil Nadu was auctioned on 28.5.1981 for the excise year 1981-82. Shop No. 49 in Koneripatti village in Sankari Taluk District Salem was auctioned for the excise year 1981-82. In respect of the auction of this shop, the appellant was the successful bidder and the bid amount was Rs.6550 per month. As per the terms, the appellant paid the caution deposit of Rs. 1000 and a half month's rent on the same day.

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Since the bid amount was found to be inadequate there was a re-auction on 11.6.1981 but there was no bidder on that day. Therefore again on 19.6.1981 the same shop was re-auctioned and one Mr. Chelamuthu was successful bidder at Rs.6575 per month but he failed to comply with certain requirements. Therefore it was re-auctioned on 27.6.81 but there were no bidders and the shop was re-auctioned again on 17.8.1981 when the bid was only Rs.3000 by one Doraisamy. The appellant was called upon by way of a communication dated 17.4.82 to pay the notional loss. It was claimed by the department that the bid of the appellant was confirmed on 28.6.81 but the appellant refused to receive the confirmed order and consequently the shop was re-auctioned for Rs.3,000 only and therefore the difference amount is recoverable from the appellant. This impugned order was questioned

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and the learned Single Judge of the High Court dismissed the writ petition. It was observed by the learned Judge that records produced before him were perused and they show that the bid by the appellant was confirmed on 28.6.81 and the appellant can not seek any relief in the writ petition having bidden the auction under certain conditions. In the writ appeal filed against the order of the Single Judge, the Division Bench agreed with the learned Single Judge. It was also contended before the Division Bench that his bid was never confirmed validly and that auction in favour of Doraisamy alone was the valid auction.

Learned counsel for the appellant contended before us that the bid by the appellant was not accepted as per the rules and it was not confirmed by the Collector and the very fact that there was subsequent two re-auctions obviously on the ground that the bid by the appellant was inadequate, itself shows that the bid was not confirmed as per the rules and therefore the question of recovery of resultant loss from the appellant does not arise. It is also submitted that Chellamuthu who was successful bidder in the auction that was held on 19.6.81 should be held responsible for the resultant loss, if any, since he was the highest bidder because his bid was higher than that of the appellant. To appreciate these contentions, it becomes necessary to refer to the relevant rules. Some of the relevant rules of the Tamil Nadu Toddy and Arrack Shops (Disposals in Auction) Rules, 1981 were framed under the powers conferred by Section 4 of the Tamil Nadu Prohibition Act. Rule 3 lays down that the privilege of selling liquor by retail shall be granted to any person by auction and the period shall be one excise year. Under Rule 5, a notice has to be given mentioning particulars as required under Rule 6. The tenders also will be received an hour before the commencement of the auction. Under Rule 8 every person desiring to bid in such open auction shall deposit a sum of Rs. 1,000 as earnest money and only the bidders who have deposited the earnest money deposit shall be admitted into the place of auction. Rule 10 provides for refund of such a deposit to the unsuccessful bidders. Rule 12 lays down that the Sale Officer can refuse to accept the bid under any one of the conditions specified therein. Rule 14 similarly lays down that highest of the bid shall be taken into consideration for acceptance. As per Rule 15 every auction purchaser shall immediately after the announcement or atleast before the close of the day's sale, deposit half a month's rental with the Sale Officer. If he does not do so, the earnest money deposit made by him under Rule 8 shall be forfeited to the State Government. For the purpose of this case Rule 16 is important and it is in the following terms:

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A “Deposit of advance—The Sale Officer, *if he accepts provisionally* the bid of an auction purchaser, shall issue a notice to the auction purchaser to pay as advance, in any case within seven days from the date of the sale, an amount equal to three months rental in addition to the earnest money deposit already made under rule 8 but inclusive of the half a month’s rental paid at the close of the sale under rule 15.”

(emphasis supplied)

We will consider the scope of this rule in a detailed manner at a later stage. Rule 17 lays down that the auction-purchaser shall produce a solvency certificate issued by the Tehsildar for the purpose of creating encumbrances and should also execute a mortgage deed and if does not own any properties he should deposit additional amount towards three months’ rental or should furnish bank guarantee. Under Rule 18, the Collector should refund the deposits made by the auction-purchaser in case he refuses to confirm the acceptance of the bid. Rule 20 is another important rule and it is necessary that it should be fully extracted:

E “20. Confirmation of sale by the Collector—(1) Every bid provisionally accepted by the Sale Officer shall be subject to confirmation by the Collector and on such confirmation the orders of the Collector shall be final, unless it is revised by the Commissioner for special reasons to be recorded in writing. The Commissioner may on appeal or revision or *suo motu*, revise any order of the Collector confirming a bid provisionally accepted by the Sale Officer, after issuing a show cause notice to the person affected and considering his representations, if any. Any order of the Collector confirming the sale of a shop in favour of a person may be cancelled by the Commissioner even subsequent to the grant of a licence to him for reasons to be recorded by him and after giving an opportunity to all persons concerned.

G (2) On receipt of the order of confirmation and on receipt of an application in Form No. 2 the Excise Officer shall subject to the provisions in rule 17, issue a licence in Form No. 3 under Section 17-C(2) of the Act.

H (3) If the Collector considers any bid to be inadequate, he may refuse to confirm the provisional acceptance of the

bid, and immediately direct the resale of the shop from the point at which it was last left on such date and at such time and place as may be fixed by him. The conditions of sale shall remain unaltered unless otherwise directed by the Collector. Any order passed by the Collector for resale shall be given adequate publicity and shall also be notified at the Taluk Office.

(4) Any resale ordered to be made under sub-rule (3) shall begin with the *bid provisionally accepted* by the sale officer at the original sale and in the name of the individual who offered it. If at such sale a higher bid is offered and is *provisionally accepted by the Sale Officer*, the bid with which *such sale began shall lapse*. But if no higher bid is accepted by the Sale Officer, the matter shall be reported to the Collector who may pass orders confirming the bid provisionally accepted at the original sale or may again direct that the sale be continued from the point at which it was left at the original sale, and the order of the Collector shall be final unless it is revised by the Commissioner on appeal or revision.

(5) The provision of sub-rule (4) shall apply to any sale the re-opening of which is directed under that sub-rule.

(6) No bid which has been provisionally accepted by the Sale Officer shall be withdrawn before it lapses under sub-rule (4) or before orders are passed confirming or refusing to confirm it, and if the bidder commits any breach of this condition, he shall be liable to make good the difference between his bid and any lower bid which may be finally accepted,"

(emphasis supplied)

Rule 21 lays down that on the failure of any person to make a deposit or to comply with any requisition or to comply with any formality like executing bond etc. the shop may be resold under the orders of the Collector on a report from the Assistant Commissioner and the same shall be resold under this rule. It shall be at the risk of the defaulting bidder who shall forfeit all gain, if any, that may secure by the resale in the event of a loss by resale, the defaulting bidder shall be required to make good the deficiency between the total amount payable for the whole period under the terms of the original sale and by the total

A amount payable by the successful bidder at the resale and the deposit already made by the defaulting bidder shall be forfeited.

B As already mentioned it is under this last rule the action is taken against the appellant. At this stage it would be useful to refer to some of the averments in the affidavit and the counter-affidavit putting forward the rival. The appellant in his affidavit has stated that his bid was never confirmed and that he has not received any notice and that on the other hand there was a re-auction and there was a higher bid in the re-auction, but the said bidder defaulted. Therefore there was again another re-auction but on that day there were no bidders but ultimately during the final re-auction on 27.6.1981 the bid was only Rs.3,000 by one Doraisamy and that was confirmed. The plea of the appellant has been that his bid was not confirmed by the Collector as required under Rule 20 and repeated re-auctions would itself go to show that the bid of the appellant was not confirmed. In the counter-affidavit filed on behalf of the Government, it is admitted that the petitioner was the highest bidder on 28.5.1981 but the Collector ordered resale as already mentioned and one Chellamuthu was the highest bidder offering Rs.6575 but he failed to comply with the conditions. It is averred that the said Chellamuthu though was the highest bidder in the said re-auction but did not comply with the conditions under Rule 15 inasmuch as he failed to deposit half a month's rental and therefore his bid was not accepted. Therefore subsequent bids were held. It is further averred by the Government that the bid offered by the appellant was confirmed by the Collector as per the proceedings of the Collector dated 28.6.81 but the appellant refused to receive the order of confirmation and therefore he has to make good the resultant loss.

F Learned counsel for the appellant submits that Chellamuthu was the highest bidder and he should be held to be a defaulter and consequently be liable for the resultant loss.

G In order to see whether the appellant's liability in any manner continued consequently making him liable for the resultant loss, we have to examine Rules 20(3) and 20(4) carefully, in the context of the facts of this case. As extracted above Rule 20(3) states that if the Collector considers any bid to be inadequate, he may refuse to confirm the *provisional acceptance of the bid* and immediately direct the resale of the shop from the point it was last left. As per sub-Rule 4 any resale ordered to be made under sub-rule (3) shall begin with the bid provisionally accepted by the Sale Officer at the original sale and if at such

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sale a higher bid is offered and is *provisionally accepted by the Sale Officer*, the bid with which such sale began shall lapse. *This part of the rule is very significant.* If the record shows that the bid offered by Chellamuthu has been provisionally accepted by the Sale Officer, the bid with which the sale began, i.e. the bid offered by the appellant lapses but if, on the other hand, such a bid during the re-auction is not accepted by the Sale Officer then the subsequent steps for further re-auction or for confirmation of the original bid i.e. that of the appellant would take place. In this context it is once again necessary to note that as per the Department, bid of Chellamuthu was not even provisionally accepted. As laid down in Rule 16 if the record shows that his bid has been provisionally accepted by the Sale Officer then as provided under Rule 20(4) the bid of the appellant gets automatically lapsed. For our own satisfaction we called for the record and perused the file concerning the auction. So far as the bid made by Chellamuthu is concerned, we find a document in the record which authentically shows that his bid being highest was provisionally accepted and announced by the Sale Officer. This document reads as under:

“Second resale of toddy/arrack shops in Sankari Taluk.

(1.7.1981 to 30.6.1982)

Shop No. 49

Place : Koneripatti

Name and full address of
the tenderer.

Tender amount

Nil

Highest tender amount Rs. nil by Thiru

Highest bid amount Rs.6575 by Thiru

The highest of these two, that is Rs.6575 (Rupees Six Thousand five hundred seventy five only) by Thiru Sellamuthu s/o Nachimuthu of Kumarnpalayn Village the highest bidder/tenderer is provisionally accepted and announced.

Sd/-19/6/81

Sale Officer

&

Sub Collector/Sankari.”

- A As per Rule 16 when there is such provisional acceptance then the Sale Officer issues a notice to the highest bidder to pay as advance three months rental. But according to the respondents namely the Department, the said Chellamuthu though was the highest bidder, did not deposit half a month's rental as required under Rule 15, therefore the question of accepting his bid did not arise even provisionally.
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- Consequently the highest bid of the appellant was subsequently confirmed. Since we find a genuine doubt about the liability of the appellant, we went through the rest of the file also. No doubt there is a note here and there to the effect that Chellamuthu did not deposit the 15 days rental on that day. But in view of the document mentioned
- C above it must be deemed that the Chellamuthu's bid was accepted provisionally by the Sale Officer and by virtue of Rule 20, sub-rule (4) when once the bid of Chellamuthu was accepted provisionally as the highest bid, the bid with which such sale began namely the bid of the appellant, got lapsed. We do not want to go into the question whether
- D under Rule 16 the provisional acceptance of the bid by the Sale Officer should necessarily be preceded by the fulfilment of the condition of deposit of half a month's rental by the auction-purchaser under Rule 15. Perhaps normally it may be correct to say that the Sale Officer under Rule 16 accepts provisionally the bid after there is compliance of
- E Rule 15; but in the instant case we are concerned with the re-auction and about the liability of the original highest bidder in the light of Rule 20(4). The document mentioned above clearly shows that the Chellamuthu's bid was provisionally accepted and therefore Sub-Rule (4) of Rule 20 comes into force and consequently the bid of the appellant lapsed. At any rate after a due consideration of the contents of the declaration issued by the Sale Officer accepting the bid of Chellamuthu provisionally, a genuine doubt arises about the liability of the
- F appellant. Having given our earnest consideration, we are of the view that the bid by the appellant got lapsed by virtue of the acceptance of the bid by Chellamuthu provisionally by the Sale Officer and consequently the appellant cannot be held liable for the resultant loss. The appeal is accordingly allowed.

T.N.A.

Appeal allowed.