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STATE OF PUNJAB AND ORS.

v.

AJUDHIA NATH AND ANR.

May 7, 1981

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[D.A. DESAI A.D. KOSHAL AND R.B. MISRA, JJ.]

Punjab Excise Act and Rules made thereunder—Principle of natural justice of giving opportunity to be heard does not come into play when the demand is merely for payment of a sum becoming due under the conditions of the licence.

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Constitution of India, 1950, Entry 51 of List II of Schedule VII read with section 31 of the Punjab Excise Act—Still-head duty is neither a duty of excise nor can be regarded as a tax of any kind whatsoever.

Condition 8 of the licence to run liquor vends in various parts of Punjab during the financial year 1965-66 laid down: (i) the licensee shall lift each month the proportionate quota for the month fixed for his vends or deposit still-head duty realisable thereof (ii) Any deficiency in the amount of still-head duty realisable from the lifting of the full proportionate quota due to the short lifting of the quota by the licensee or non-deposit of the still-head duty may be realised from the amount of security deposited by the licensee at the time of grant of licence; (iii) the resultant deficiency in the amount of security shall be made good by the licensee within seven days of such adjustment and (iv) if there is short lifting of proportionate quota or short deposit of still-head duty continues for two consecutive months or the licensee fails to make up the deficiency in the amount of security within the prescribed period of seven days, his licence may be cancelled in addition to the recovery of still-head duty.

Respondent Ajudhia Nath who was granted the necessary licences under the relevant provisions of the Punjab Excise Act and the Rules framed thereunder, was unable to lift the minimum quota of country liquor and also failed to deposit the still-head duty which became payable by him under condition No. 8. On an application made by him claiming relief in the matter of payment of sums which had fallen due, such relief was granted to him in part by the Excise and Taxation Commissioner, Punjab, on the ground that the liquor trade was badly affected by reason of the movement of population in the border area of Punjab on account of the hostilities which broke out between India and Pakistan in the month of September 1965. Not satisfied with the relief so granted Ajudhia Nath filed two petitions under Article 226 of the Constitution before the High Court of Punjab and Haryana claiming, *inter alia*, that still-head duty was an excise duty which could be levied only on manufacture of goods and which he was not liable to pay by reason of the admitted fact he was not a manufacturer of Liquor and that he was not given the opportunity of being heard in the matter covered by the applications claiming relief. The petitions were allowed and the Letters Patent Appeals preferred by the State were dismissed. Hence the appeals by special leave.

Allowing the appeals, the Court

HELD : 1. The demand for the short-fall in still-head duty was based on the terms of a binding contract and it sought to enforce the liabilities arising out of mutually agreed conditions of auction. Such a demand could not be equated with a notice requiring the liquor vendor to show cause why his licence should not be cancelled. Although an opportunity of being heard has to be given to a liquor vendor when his licence is sought to be cancelled, the same principle of natural justice does not come into play when the demand is merely for payment of a sum becoming due under the conditions subject to which the licence was granted. [691 G-H, 692A, E-F]

Har Shankar and others v. The Dy. Excise & Taxation Commissioner and others [1973] 3 SCR 254; *Shyam Lal v. State of Punjab*, AIR 1976 SC 2045; *State of Punjab v. Mulkh Raj and Co.*, AIR 1977 SC 1550 and *The State of Punjab v. Balbir Singh and others*, AIR 1977 SC 1717, followed.

2 : 1. A combined reading of Entry 51 of List II of Schedule VII to the

Constitution of India and section 31 of the Punjab Excise Act no doubt makes it clear that a duty of excise on alcoholic liquors meant for human consumption cannot be recovered from a person unless any one of the three clauses of section 31 covers his business activities. [693 C-D, 694A]

2 : 2. Still-head duty is not a duty of excise in view of the dicta laid down by the Supreme Court to the effect that the short fall in still-head duty represents nothing but sums recoverable from the licencees under a contract which was entered into by them with their eyes open and that they cannot be allowed to have the best of both the worlds by exploiting the contract so long as it suits them and by repudiating it if and when it does not work to their advantage. [694 B-C]

Har Shankar and others v. The Dy. Excise & Taxation Commissioner and others, [1973] 3 SCR 254; *State of Punjab v. Balbir Singh and others*, AIR 1977 SC 1717, applied.

2 : 3. Condition No. 8 of the licence does not involve the imposition of a duty of excise but makes provision only for recovery of sums becoming due under a contract. The licencees are not connected in any manner whatsoever with the manufacture of alcoholic liquor and there was, therefore, no question at all of levying a duty of excise on their operations which were confined merely to the sale of liquor manufactured by others and which, therefore, commenced only after the process of manufacture was completely over. [696 E-G]

M/s. Bhajan Lal Saran Singh & Co. v. State of Punjab and others, 1967 Current Law Journal (Punjab and Haryana) 450; *State of M.P. v. Firm Goppulal*, [1976] 2 SCR 1041; *Excise Commissioner, U.P., Allahabad and others v. Ram Kumar and others*, [1976] 3 SCC 540, distinguished.

3 : 1. On the facts of this case still-head duty cannot be regarded as a tax of some other kind nor can the question whether it does amount to such a tax

A (for levying which the State lacks authority) be allowed to be raised since it was never raised at any earlier stage and its consideration is bound to work prejudice to the cause of the appellants. Further there is no impediment in the way of the demand being regarded as the enforcement of an obligation arising under the contracts which the licencees had entered into and exploited so long as the same worked to their advantage and which were fully permissible under sub-section (3) of section 34 of the Punjab Excise Act. [696 H, 697 A-B]

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3 : 2. Clause (b) of sub-section (3) of section 34 of the Punjab Excise Act allows impositions of conditions on grant of the licences in addition to the payment of the licence fees which is a matter covered by clause (a). Condition No. 8 is, therefore, fully enforceable and there is no reason why still-head duty should be regarded as a tax of any kind whatsoever. [697 D-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1665 and 1666 of 1970.

From the order dated the 25th July, 1968 of the Punjab and Haryana High Court in LPA Nos. 230 & 240 of 1968.

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M.S. Dhillon for the Appellant in both the appeals.

Tirath Singh Munjral, G.K. Arora, S.S. Munjral and Gautam Bannerjee for the Respondents in both the appeals.

The Judgment of the Court was delivered by

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KOSHAL J. By this judgment we shall dispose of Civil Appeals Nos. 1665 and 1666 of 1970 in which common questions of law have arisen for determination by this Court.

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2. The facts leading to the two appeals are un-disputed and may be briefly stated thus. Licences to run liquor vends in various parts of Punjab during the financial year 1965-66 were sold by public auction shortly before the 1st April, 1965. Auctions were held at numerous places subject to identical conditions which were supplied to the bidders in writing. Condition No. 8 which is material for our purposes is reproduced below:

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"That the licensee shall lift each month the proportionate quota for the month fixed for his vend (s) or deposit still-head duty realisable thereon. In the event of any deficiency in the amount of still-head duty realisable from the lifting of the full proportionate quota due to the short lifting of the quota by the licensee or non-deposit of the amount of the still-head duty, the said deficiency may be realised from the amount of security deposited by

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him at the time of grant of licence. The resulting deficiency in the amount of security shall be made good by the licensee within 7 days of such adjustment. In case the short lifting of proportionate quota or short deposit of still-head duty continues for two consecutive months or the licensee fails to make up the deficiency in the amount of security within the prescribed period of 7 days, his licence may be cancelled in addition to the recovery of deficiency in still-head duty."

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Ajudhia Nath who figures as respondent No. 1 in each of the two appeals and who carries on business of selling country liquor either in his own name or in the name and style of M/s. Ajudhia Nath Bal Mukand (a business concern arrayed as respondent No. 2 in Civil Appeal No. 1665 of 1970) was the highest bidder for the auctions pertaining to 5 villages situated in the district of Amritsar and a couple of villages in Ferozepur district. Accordingly the auctions were sanctioned in his favour and he was granted the necessary licences under the relevant provisions of the Punjab Excise Act (hereinafter referred to as the Act) and the rules framed thereunder.

The licensee started his liquor selling business in the said seven villages on the 1st April, 1965. By the close of the financial year 1965-66, however, he was unable to lift the minimum quota of country liquor and also failed to deposit the still-head duty which became payable by him under condition No. 8 above extracted. He made applications claiming relief in the matter of payment of sums which had fallen due and such relief was granted to him in part by the Excise & Taxation Commissioner, Punjab, on the ground that sales of country liquor had been adversely affected by reason of the movement of population in the border areas of Punjab on account of the hostilities which broke out between India and Pakistan in the month of September 1965. Not satisfied with the relief so granted Ajudhianath filed two petitions under article 226 of the Constitution of India before the High Court of Punjab and Haryana claiming, *inter alia*, that still-head duty was an excise duty which could be levied only on manufacture of goods and which he was not liable to pay by reason of the admitted fact that he was not a manufacturer of liquor. A grouse was also made by him of the fact that the applications claiming relief had been decided without affording to him an opportunity of being heard. One of those petitions (Civil Writ Petition No. 2034 of 1966) related to

A vends functioning in the two villages of Ferozepur District, while the other (Civil Writ Petition Nos 2035 of 1966) covered the 5 vends located in the 5 villages of Amritsar District. The petitions were allowed by a single order dated the 9th May, 1967 passed by D.K. Mahajan, J., on the sole ground that a similar petition (Civil Writ Petition No. 2021 of 1966) had been allowed by Gurdev Singh, J., on the 27th March, 1966. The proceedings for the recovery of the shortfall in the deposit of still-head duty by Ajudhia Nath which had been initiated by the State of Punjab and its concerned officers (appellants Nos. 1 to 4 in each of the appeals before us) were quashed and the Excise and Taxation Commissioner, Punjab (appellant No. 2 in both the appeals) was directed to dispose of the "cases" of the respondents "in accordance with law after hearing the petitioners". D.K. Mahajan, J., adopted all the reasons on which Gurdev Singh, J., had based his order above mentioned.

D Letters Patent Appeals preferred by the 4 appellants to the Division Bench of the High Court were summarily dismissed by Mehar Singh and Tuli, JJ., for the reason that a Letters Patent Appeal against the judgment of Gurdev Singh, J., above mentioned had met the same fate.

E It is against the judgment of the Division Bench (which is dated the 29th August, 1969) that each of the appeals before us has been filed.

F 3. Mr. Dhillon, learned counsel for the appellants had drawn our attention to *The State of Punjab v. Balbir Singh and Others*,⁽¹⁾ which reversed the judgment of Gurdev Singh, J., mentioned above and has contended that the very basis of the impugned judgment has consequently fallen to the ground. The contention is correct. As pointed out in *Balbir Singh's* case (supra) the judgment of Gurdev Singh, J., in Civil Writ Petition No. 2021 of 1966 had proceeded merely on the ground that the petitioner-firm therein had not been given an opportunity of being heard in relation to the demand notice issued to it for payment of the still-head duty on the entire minimum quantity of liquor which that firm was required to lift under the licence. In differing with the view

G ⁽¹⁾ A.I.R. 1977 SC 1717.

expressed by Gurdev Singh, J., this Court made a reference to the following observations of Chandrachud, J., (as he then was) in *Har Shanker and Others v. The Dy. Excise & Taxation Commissioner and Others*⁽¹⁾ which was followed in *Shyam Lal v. State of Punjab*⁽²⁾

“The announcement of conditions governing the auctions was in the nature of an invitation to an offer to those who were interested in the sale of country liquor. The bids given in the auctions were offers made by prospective vendors to the Government. The Government's acceptance of those bids was the acceptance of willing offers made to it. On such acceptance, the contract between the bidders and the Government became concluded and a binding agreement came into existence between them. The successful bidders were then granted licences evidencing the terms of contract between them and the Government, under which they became entitled to sell liquor. The licensees exploited the respective licences for a portion of the period of their currency, presumably in expectation of a profit. Commercial considerations may have revealed an error of judgment in the initial assessment of profitability of the adventure but that is a normal incident of the trading transactions. Those who contract with open eyes must accept the burdens of the contract along with its benefits. The powers of the Financial Commissioner to grant liquor licences by auction and to collect licence fees through the medium of auctions cannot by writ petitions be questioned by those who, had their venture succeeded, would have relied upon those very powers to found a legal claim. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract could ever have a binding force.”

and concluded that the demand for the short-fall in still-head duty was based on the term of a binding contract and that it sought to enforce the liabilities arising out of mutually agreed conditions of auction. Such a demand, in the opinion of this

(1) [1973] 3 SCR 254.

(2) A.I.R. [1976] SC 2045.

A Court, could not be equated with a notice requiring the liquor vendor to show cause why his licence should not be cancelled. In making this distinction this Court further relied upon *State of Punjab v. Mulkh Raj and Co.*⁽¹⁾ wherein it was observed :—

B “It was also held there that a cancellation of the licence under section 36 of the Punjab Excise Act, 1914, had to take place quasi-judicially after due service of the notice on the licensee to show cause why it should not be cancelled. Although, the merits of the last mentioned proposition need not be examined by us as it rests on a sound footing, yet, we find it difficult to uphold the order that the demand for a sum of Rs. 36,636 . On account of short-fall should also be quashed on account of non-compliance with rules of natural justice in cancelling the licence in proceedings under section 36 of the Act. We think that the two liabilities were erroneously considered by the High Court to be inextricably linked up.....

E We do not think that, even if the respondent ought to have been given a hearing before cancelling the licence, this would dispense with his liability to deposit the amount of balance of the licence fee or invalidate the notice of demand for it.”

F Thus, the proposition is by now well-settled that although an opportunity of being heard has to be given to a liquor vendor when his licence is sought to be cancelled, the same principle of natural justice does not come into play when the demand is merely for payment of a sum becoming due under the conditions subject to which the licence was granted, and this proposition fully covers these appeals. The demands for payment of the amount of the still head duty which had become due under the contracts accepted by the respondents and had remained unpaid were demands arising under condition No. 8 above extracted and had, therefore, resulted from the terms of those contracts. No question of effording to the respondents any opportunity of being heard thus arises and the impugned judgment, is, therefore, liable to be reversed.

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(1) A.I.R. 1977 SC 1550.

4. Faced with the above situation, Shri Munjral, learned counsel for the respondents, raised the following two contentions :

- (a) Still-head duty is a duty of excise which could only be levied on a manufacturer and not on a mere vendor of goods manufactured by others.
- (b) If the still-head duty mentioned in condition No. 8 above extracted cannot be regarded as a duty of excise, it nevertheless amounts to a tax of some other kind for levying which the State lacks authority.

5. Reliance in connection with contention (a) is placed on Entry 51 of List II forming part of Schedule VII to the Constitution of India and on section 31 of the Punjab Excise Act. The relevant portions of these provisions state :

Entry 51

“Duties of Excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India :—

- (a) alcoholic liquors for human consumption;
-”

Section 31

“An excise duty or a countervailing duty, as the case may be, at such rate or rates as the State Government shall direct, may be imposed, either generally or for any specified local area, on any excisable article—

- (a) imported, exported or transported in accordance with the provisions of section 16 ; or
- (b) manufactured or cultivated under any licence granted under section 20 ; or
- (c) manufactured in any distillery established, or any distillery or brewery licenced under section 21 ;...

...”

A These provisions leave no room for doubt that a duty of excise on alcoholic liquors meant for human consumption cannot be recovered from the respondents because none of the 3 clauses of section 31 covers their business activities. But then the first part of contention (a) that still-head duty is a duty of excise cannot be accepted in view of the dicta in *Har Shankar and others v. The Dy. Excise & Taxation Commissioner and others* (supra) and *The State of Punjab v. Balbir Singh and others* (supra) to the effect that the shortfall in still-head duty represents nothing but sums recoverable by the appellants under the terms of a contract which was entered into by the respondents with their eyes open and that the latter cannot be allowed to have the best of both the worlds by exploiting the contract so long as it suits them and by repudiating it if and when it does not work to their advantage.

D 6. Shri Munjral has vehemently contended that still-head duty is only another name for excise duty inasmuch as it is nothing more or less than a duty leviable on the manufacture of alcoholic liquor. For this proposition he places reliance on a Division Bench judgment of the High Court of Punjab & Haryana in *M/s. Bhajan Lal Saran Singh & Co. v. The State of Punjab and others* (¹) the approval of that judgment by this Court in Civil Appeals Nos. 1042 and 1043 of 1968 decided on 21st August, 1972, *State of Madhya Pradesh v. Firm Gappulal etc.* (²) and *Excise Commissioner, U.P., Allahabad and others v. Ram Kumar and others* (³). These authorities, however, are of no help to him because, in every one of them, the still-head duty which was mentioned in the condition corresponding to condition No. 8 in the present case was either expressly stated to be an excise duty or was assumed to be a duty of that character. In fact, in the case of *M/s. Bhajan Lal Saran Singh* it was conceded on behalf of the State before the High Court that still-head duty was an excise duty and that is why the nature of the charge as excise duty was taken for granted before the High Court as well as in this Court. No question was either raised or decided as to whether it could at all be regarded as an excise duty. However, in later cases, namely, *Har Shankar and others v. The Dy. Excise & Taxation Commissioner and others*, (supra) and *The State of Punjab v. Balbir Singh and others* (supra) the demand for still-head duty recoverable under condition No. 8 above extracted was specifically

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held to be a demand for money which had become due under an obligation created by terms of the contract. It is too late in the day, therefore, for Shri Munjral to contend that such a demand should be considered as one covering excise duty. He, however, relies on the following passage in *Har Shankar and others v. The Dy. Excise & Taxation Commissioner and others* (supra) :

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"The second decision on which the appellants laid stress was rendered by the High Court of Punjab and Haryana in *Jage Ram v. State of Haryana* (C.W. No. 1376 of 1961 decided on March 12, 1968). The argument is that this decision is based on the earlier decision of the High Court in *Bhajan Lal v. State of Punjab* (C.W. No. 538 of 1966 decided on February 6, 1967), that the decision in *Bhajan Lal's case* was confirmed in appeal by this Court (C.A. Nos. 1042 and 1043 of 1968 decided on August 21, 1972), that there is no material difference between the rules and the procedure adopted in the instant cases and those which were struck down in *Bhajan Lal's case* and therefore, the rules and the procedure followed herein must also be struck down for the same reasons. This argument overlooks the significant difference between the rules struck down in *Bhajan Lal's case* and in *Jagc Ram's case* and the amended Rules now in force. Under the old Rule 36 (23-A) still-head duty which was admittedly in the nature of excise duty was payable by the licensee even on quota not lifted by him. The Rule and Condition No. 8 founded on it were therefore struck down in *Bhajan Lal's case* as being beyond the scope of entry 51 of List II, the taxable event under the impugned Rule being the sale and not the manufacturer of liquor. *Rule 36 was amended on March 31, 1967 in order to meet the Judgment in Bhajan Lal's case but the High Court found in Jagc Ram's case that even under the amended Rule, still-head duty which was in the nature of excise duty was payable on unlifted quota of liquor. The position obtaining under the Rules as amended on March 22, 1968 which are relevant for our purposes is in principle different as the still-head duty is now only 0. 64 paise as against Rs. 17.60 per litre which was in force under the old Rules and excise duty as such is no longer payable on unlifted quota. The principle governing the decisions in Bhajan Lal's*

A *case and Jage Ram's case cannot, therefore, apply any longer".*

(Emphasis supplied)

B Special stress has been laid by Shri Munjral on the underlined portion of the passage above extracted and it is contended by him that the judgments in the cases of *Jage Ram* and *Bhajan Lal* were neither disapproved nor dissented from but were merely distinguished in *Har Shankar's* case, that while pointing out the distinction this Court took it for granted that in those earlier cases the charge of still-head duty amounted to an excise duty and that condition No. 8 as obtaining in the present case being identical with the corresponding condition in those cases, it must be held that *Har Shankar's* case is an authority for the proposition that the said condition No. 8 seeks to levy nothing {but excise duty in the form of still-head duty. A careful perusal of the passage cited (which appears at first sight to lend colour to the contention) leaves no room for doubt, however, that in deciding *Har Shankar's* case this Court was not called upon to adjudicate on the Constitutional propriety of condition No. 8 above extracted, nor with the question as to the nature of the levy covered by that condition. All that the Court said was that the corresponding condition in *Har Shankar's* case was a very different condition which could in no manner be construed to levy an excise duty. Besides, it was pointed out in the passage above quoted that the still-head duty mentioned in the relevant condition in the earlier cases (which was identical with condition No. 8) was *admittedly* a duty of excise—a fact to which we have already adverted while holding that condition No. 8 does not involve the imposition of a duty of excise but makes provision only for recovery of sums becoming due under a contract. We may also point out that the respondents are not connected in any manner whatsoever with the manufacture of alcoholic liquor and there was, therefore, no question at all of levying a duty of excise on their operations which were confined merely to the sale of liquor manufactured by others and which, therefore, commenced only *after* the process of manufacture was completely over. For all these reasons, we repel the contention under examination.

H 7. Contention (b) is also without substance and need not detain us long. For one thing, it was never raised at any earlier stage and its consideration is bound to work prejudice to the cause of the appellants. Secondly, as already pointed out above, there

is no impediment in the way of the demand being regarded as the enforcement of an obligation arising under the contracts which the respondents had entered into and exploited so long as the same worked to their advantage and which were fully permissible under sub-section (3) of section 34 of the Punjab Excise Act. That sub-section states :-

“(3) Every licence, permit or pass granted under this Act shall be granted—

- (a) on payment of such fees, if any,
- (b) subject to such restrictions and on such conditions,
- (c) in such form and containing such particulars,
- (d) for such period,

as the Financial Commissioner may direct”.

According to Shri Munjral the payment of licence fees is provided for in the conditions of auction apart from condition No. 8 and, therefore, the latter cannot be regarded as providing for anything but the levy of a duty of excise or of some other kind. The argument is fallacious in view of the language of clause (b) of the sub-section just above reproduced. That clause allows the imposition of conditions on the grant of a licence, in addition to the payment of the licence fees which is a matter covered by clause (a). Condition No. 8 is, therefore, fully enforceable and there is no reason why still-head duty should be regarded as a tax of any kind whatsoever.

8. For the reasons stated, both the appeals are accepted and the impugned judgment, which cannot be sustained, is reversed so that both the petitions under article 226 of the Constitution of India filed by the respondents before the High Court and accepted by it are dismissed. However, we leave the parties to bear their own costs.

V.D.K.

Appeals allowed.