(1984) 08 MAD CK 0025

In the Madras High Court

Case No : W.A. No''s. 759 and 781 of 1984

K.A. Kuddoos APPELLANT

Vs

Commissioner of Prohibition and Excise, Madras and Others RESPONDENT

Date of Decision : 27-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Madras Prohibition Act, 1937 — Section 54
Tamil Nadu Toddy and Arrack Shops (Disposal in Auction) Rules, 1981 — Rule 20, 20(I)

Citation : AIR 1986 Mad 49

Hon'ble Judges : M.N. Chandurkar, C.J;Sathiadev, J

Bench : Division Bench

Advocate : G. Ramaswami, for the Appellant; Govt. Pleader, for the Respondent

Judgement

1. The Chief Justice (W.A. 759 of 1984) : - The appellant had filed a writ petition challenging the order of the Commissioner of Prohibition and

Excise directing re auction of arrack shop No. 4, in Hasthampatti village, Salem Taluk, which having been dismissed by the learned single Judge he

has filed this appeal.

2. Briefly the facts which are relevant for the purpose of deciding this appeal are that the auction of arrack shop No. 4 referred to above was

notified in the Government Gazette as well as in the newspapers as far back as on 28-4-1984 and 12-5-1984, respectively. The auction took

place on 26-5-1984, the appellant being the successful bidder for Rs. 50,111/per month. This auction in favour of the appellant was confirmed by

the Collector of Salem on 30-5-1984. By his order, he directed that the appellant should remit the balance advance rental (equivalent to 21/2

times the monthly rentals) as required under-R. 16 of the Tamil Nadu Toddy and

Arrack Shops (Disposal in Auction) Rules 1981 (hereinafter

referred to as the ''Rules'') and that he shall select an unobjectionable site for the location of the shop in conformity with Rules and apply for licence

in Form 2 within seven days from the date of receipt of the order of the Collector.

3. Under R. 20 of the Rules, the order of the Collector can be subjected to scrutiny by the Commissioner. Normally, the period of limitation for

filing the revision petition is 15 days which, in the instant case, expired on 14-6-1984. The fifth respondent filed a revision petition before the

Commissioner on 25-6-1984. This revision petition filed on 25-6-1984, was clearly delayed and in a separate letter addressed to the

Commissioner, the fifth respondent prayed for condonation of delay on the ground ""since I was taking treatment for ulcer, I could not participate in

the auction or through tender"". He further stated ""....... because of my health I could not file the revision to the Commissioner before 15-6-1984....

This letter does not have any date on it, but it appears that it was accompanied by another letter addressed to the Commissioner, Prohibition and

Excise, Madras, which substantially was a revision petition dt. 25-61984. In this revision petition, the fifth respondent again restated that he was

undergoing treatment for ulcer from 23-5-1984 and he returned home only on 7-6-1984, and, therefore, could not participate in the auction or in

the tender for the arrack shop held on 26-5-1984. He stated that he was under medical advice to take rest from 7-6-1984, and could not,

therefore, go to the Collector''s Office for filing the revision. He expressed his intention to take the said shop on a monthly rent of Rs.75,200/-, and

enclosed three separate chalans of the same date towards three months'' deposit and security deposit. He also enclosed a medical certificate issued

by one Dr. Panneerselvam of Shabmugha Nursing Home.

4. The Commissioner, observing that the fifth respondent was since admitted in the Nursing Home as an inpatient, condoned the delay. He further

observed that the medical certificate produced by him was adequate proof of his inability to participate in person in the auction and, therefore,

failure to participate in the tender cannot be held against him. Thus holding that as there is valid reason for his (revision petitioner) inability to

participate in the auction and as the provisions of R. 20(l) of the Rules are satisfied, the Commissioner set aside the confirmation of the auction made by the Collector in his, order dt. 30-5-1984.

5. This order was challenged by the present appellant by a writ petition. The learned Judge declined to interfere with the order and he accepted the

fact that the fifth respondent had to be under rest and as per the advice of the doctor and that was why he could not file the revision petition before

25-6-1984. Finding that there was no error in the order of the Commissioner in exercising his discretion in condoning the delay, the learned Judge

dismissed the petition. This appeal is now directed against that order.

6. Mr. Ramaswami appearing on behalf of the appellant has invited our attention to the proviso which has been newly added to R. 20(l) of the

Tamil Nadu Toddy and Arrack Shops (Disposal in Auction) Rules and according to the learned counsel the power of the Commissioner to

condone the delay can be exercised only for valid reasons and further that, such condonation can be only in respect of a period not exceeding

fifteen days. The learned counsel, therefore, contended that there is no material whatsoever to explain why the fifth respondent could not file a

revision petition between 7-6-1984 and 25-61984, that is, from the date on which he was discharged from the hospital and the date on which he

had actually filed the revision petition. In the absence of any such material, the learned counsel contended that there was no valid reasons within the

meaning of the proviso to R. 20 on which the Commissioner could validly exercise his discretion in the matter of condonation of delay in filing the

revision petition by the fifth respondent.

7. Mr. Chidarnbaram appearing on behalf of the fifth respondent, has strenuously urged that the object of the power given to the Commissioner to

interfere with the order confirming an auction made by the Collector is to maximise public revenue and if now it has been found that on a reauction

the yield to the State has considerably increased, this Court in the exercise of its discretion under Art. 226 of the Constitution should not interfere

with the order of the Commissioner. This argument is based on the fact that after the writ appeal was admitted and a conditional stay order was

made by us that any auction held hereafter would be subject to the result of this appeal, the fifth respondent was the successful bider, as a result of

which his bid for Rs. 1,80,000 per month was the one in the field.

8. It is not necessary for us to reproduce R. 20 of the Rules in extenso but it is

sufficient to point out that that rule enables any person who for valid

reasons fails to bid in the auction and who desires to take the privilege of selling arrack or toddy in retail at a higher amount than the amount

actually fetched at the time of auction sale to apply to the Collector before confirmation of the auction sale of the shop in favour of the successful

auction purchaser. Under the same Rule, if an auction sale has already been confirmed by the Collector then such person who for valid, reasons

fails to bid in the auction and desires to take the privilege of selling arrack at a higher amount than the amount actually fetched, can make an

application to the Commissioner. A condition precedent which has to be satisfied before making the application is that he has to remit three

months'' rental offered by him. Such offer has to be more than, 25 per cent of the highest bid already fetched at the auction sale or Rs. 250

whichever is higher in the case of toddy shops and more than 25 per cent of the highest bid already fetched or R. 500 whichever is higher, in the

case of arrack shops. If the application is made to the Collector, there is discretion to the Collector to refuse to confirm the highest bid and direct

the resale of the shop from the point at which a higher amount is offered by the person who failed to bid in the auction ''for valid reasons. In case

the application is made to the Commissioner, the Commissioner has to issue a show cause notice to the person affected and the Commissioner

after considering his representations if any, to be recorded by him and direct him to conduct a resale of the shop from the point at which a higher

amount is offered by the person who failed to bid in the auction for ''valid reasons''. The power which is vested with the Collector and the

Commissioner under the main part of R. 20 can be exercised by them only if a person is able to show that he failed to bid in the auction for valid

reasons. On given facts and circumstances, before the Commissioner, it will be a question to be determined whether valid reasons are made out for

interfering with the confirmation of the auction by the Collector; and in the case of the Collector, for not confirming the auction. There is then the

proviso to R. 20 which reads as follows-

Provided that, any application to the Commissioner should be made within 15 days from the date of confirmation of the sale by the Collector and

that it shall be open to the Commissioner for valid reasons to condone the delay for a period not exceeding fifteen days.

This provision which is undoubtedly in the form of a proviso is substantially an independent provision providing for limitation. The limitation for the

revision application to the Commissioner is fifteen days from the date of confirmation and the discretion to condone the delay is limited by this

provision only to the extent of a further period of fifteen days, provided of course, if the Commissioner is able to satisfy himself that there were

valid reasons for not approaching him within the earlier prescribed period of fifteen days. So far as the main part of R. 20 is concerned, the scope

thereof relates to determination of a valid reason for not being able to bid in the auction. So far as the proviso is concerned, the valid reason is with

regard to the inability to file the revision application within the prescribed period of fifteen days. In a case where the revision application is filed

within a period of fifteen days, there is no occasion for the latter part of the proviso to come into operation, and the matter will have to be decided

exclusively with reference to the validity of the reason alleged for failure to bid in the auction when the auction took place. However, in a case

where the revision petition is filed beyond the period of fifteen days, before the Commissioner is called upon to exercise his power under the main

part of R. 20, the revision petitioner must cross the first hurdle of satisfying the Commissioner that there w as a valid reason for his not filing the

revision petition within the prescribed period of fifteen days. If a valid reason is not made out justifying condonation of delay in filing the review

application, then there is no occasion for the Commissioner to exercise his powers under the substantive and main part of R. 20.

8(a). Under R. 20, an auction is not liable to cancellation in every case, whenever the auction bid is inadequate. Such an auction can be cancelled

at the instance of the person concerned who approaches either the Collector before the confirmation of the auction sale or the Commissioner after

the confirmation of the auction, only if such person is able to satisfy the Collector or the Commissioner, as the case may be, that there was a valid

reason for his failure to bid in the auction.

9. In the instant case, Mr. Ramaswarni has laid great emphasis on the contention that the fifth respondent has not been able to make out any valid

reason to condone the delay when he filed the revision on 25-6-1984. The learned counsel has pointed out that in the matter of condonation of

delay, it is an established position that every day''s delay has to be explained and a person who seeks the exercise of the discretion to condone the

delay in his favour cannot run away by making a general statement that he was disabled from filing a revision petition because of the doctor having

advised him to take rest. Reference was made to the decision of the Supreme Court on Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., .

10. We have to remember that the rules with which we are dealing are statutory rules, which have been made by the Government of Tamil Nadu in

exercise of the powers conferred by S. 54 of the Tamil Nadu Prohibition Act 1937. When the statutory rules have prescribed a limitation for

taking recourse to a remedy by way of a revision petition to the Commissioner and the same rules providing specifically for a power to condone

the delay the Commissioner entertaining the revision petition is really a statutory authority and the power to condone the delay is really a statutory

power. When the proviso to R. 20 refers to valid reasons'' to condone the delay, all that was intended was that there must be reasons which must

appear sufficient to the authority on the facts and circumstances of the given case to satisfy the authority that the person concerned could mot have

taken recourse to the remedy of filing the revision petition, even if he had wanted to, during the prescribed period of limitation. We have no doubt

that the concept of ''valid reasons'' in these rules in'' ''so far as the condonation of delay is concerned, the same as contemplated by S. 5 of the

Limitation Act, which refers to a ''sufficient'' cause, because if a reason is valid, it would also be sufficient for condonation for delay; conversely, if a

reason is insufficient to satisfy an authority that it should exercise his power for condonation of delay the reason will also not be a valid reason. The

observations of the Supreme Court in Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., would, therefore, be of significance because,

though those observations are made with reference to the provisions of S. 5 of the Limitation Act, having regard to what we have stated earlier,

those observations will also apply with equal force to a matter like the present one. In that, decision, in para 8 the Supreme Court has observed as

follows-

.... In other words, in all cases falling under S. 5 what the party has to show is why he did not file an appeal on the last day of limitation

prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain

the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party maybe called upon to explain

for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed.

Since R. 20 is a statutory Rule and the Commissioner is a statutory authority and R. 20 provides for a statutory remedy, the proviso to R. 20 must

be complied with in case the revision petitioner, seeks condonation of delay and he is, therefore, bound to explain the delay between 14-6-1984

and 25-6-1984. If there is no proper explanation for this period, the mere fact that on a subsequent reauction, the shop has fetched a large price,

which is almost the double of the original price fetched, will be of no consequence especially when working out the statutory rights of the auction

purchaser in whose favour an auction has been confirmed as provided by the Rules. Undoubtedly, auction of an arrack shop is selling of a

privilege, but once that privilege has been sold governed by rules and the sale thereof has been confirmed by the Collector, then that privilege can

be interfered with or taken away only in the m manner prescribed by the statute and rules. In a case where the revision petition is filed beyond the

period of limitation pre scribed by the proviso to the R. 20, the privilege cannot be disturbed unless the revision petitioner is able to satisfy the

revisional authority that there was a valid ground for not filing the revision petition within the prescribed period of limitation. In the matter of

condonation of delay, the circumstances that in the sale of the arrack shop the reauction is likely to fetch more, is of no relevance. The scope of the

proviso must be restricted by the words of the proviso and circumstances which are relevant for condonation of delay in filing the revision petition

can alone be taken into account for the purpose of the proviso. If that be the true scope of the proviso, then we fail to see how the fifth respondent

can be said to have made out a case, for condonation of delay. Assuming in favour of the fifth respondent that he was undergoing treatment for

ulcer and that he was admitted in the Nursing Home and was discharged on 7-6-1984, there is nothing to show as to why he could not have filed the revision petition immediately thereafter. Before the revisional authority a certificate dt. 20-6-1984, has been produced. That certificate merely

states that the fifth respondent was admitted on 25-3-1984, for a cute exaggeration of peptic ulcer and advised rest from 7-6-1984 and

discharged on the same day. There is nothing in the revision petition or in the letter addressed by the fifth respondent to the Commissioner to show

that the revision petitioner was immobilised from 7-6-1984, and for how long he was advised rest. We do not know whether the fifth respondent

himself had gone to fetch a certificate dt. 20-6-1984. As already pointed out, the revision petition was filed on 25-61984. The revision petition,

which has been filed, is really in the form of a letter. In the letter accompanying the revision petition he only says ""on account of my health I could

not file the revision to the Commissioner before 15-6-1984."" In the revision petition he says Further I was on medical advice to take rest from 7-

6-1984. Therefore I could not go to the Collector''s office for filing the revision."" A person who is merely advised rest is not disabled from taking

steps to see that a revision petition is filed within time. The Commissioner, in paragraph 8 of his order, seems to proceed on the footing that

throughout the period in respect of which condonation has been asked, the fifth respondent was admitted into the Nursing Home as an inpatient.

This is clear from the observations in para 8 which are as follows: ""The reason for the delay that has been adduced is that the revision petitioner

was sick and admitted into the Nursing Home as inpatient."" He does not seem to have applied his mind to the question as to the delay between 7-

6-1984 and 25-6-1984. There is, therefore, clearly an error apparent in the order of the Commissioner and as the Commissioner has exercised his

discretion in condoning the delay without applying his mind to the crucial point that there was no explanation for the delay, we fail to see why that

order was not amenable in the jurisdiction of this Court-under Art. 226 of the Constitution of India. The learned Judge has read the order of the

Commissioner as one which takes into consideration the fact that the fifth respondent had to be under rest as per the advice of the doctor and the

learned Judge felt that there was an adequate explanation given for the failure of fifth respondent to file the revision before 25-6-1984. As we have

already pointed out, there is no satisfactory explanation for the delay and the Commissioner seems to have proceeded on the footing that the fifth respondent was an inpatient for a very long period.

11. As we have already pointed out, if the terms of the proviso and the condition therein are not satisfied, inasmuch as there is no valid reason

made out for condonation of delay, the argument that these privileges are sold by auction to maximise public revenue and therefore, be interfered

with, is not of much assistance. We are dealing with privileges which are governed by statute and such privileges could be taken away only in the

manner prescribed by the statute. In any case, once the auction has been confirmed, there are certain rights of the auction purchaser which came

into being, and notwithstanding the fact that these rights are founded on a privilege, these rights cannot be interfered with except in the manner

prescribed by the statute. Therefore, the reference to the Supreme Court decisions made by Mr. Chidambarain is not of much relevance. The first

decision referred to by Mr. Chidambarain is Excise Commissioner of U.P. and Others Vs. Manminder Singh and Others, , dealing with U.P.

Excise Act and U.P. Excise Rules and it was held that the Excise Commissioner can order reauction in the interest of the revenue or the State. That

was a case in which the auction had to be confirmed by the Excise Commissioner and before the auction was confirmed, reauction of liquor shops

was ordered and it was held that the reauction of the liquor shops by the order of the Excise Commissioner could not be said to be illegal. The

Supreme Court pointed out in that case that the circumstance that the Excise Commissioner had earlier declined to interfere at the instance of a

private party did not preclude the Excise Commissioner from considering the matter from the viewpoint of the interest of the revenue on the basis

of further and fuller information and if he had not confirmed the auction, it was still open to him to make an order of reauction.

12. Now undoubtedly, the viewpoint of revenue is one of the grounds which is relevant for the exercise of the power under R. 20, but it is also true

that at the same time, the other parts of R. 20 cannot be ignored and when we consider the matter, it has to be considered with reference to the

state of affairs as on 14-6-1984. It is true that it is our own order permitting a reauction of the shop subject to the result of this appeal that has

given an opportunity to the fifth respondent to make an argument that a large amount is now being fetched by the reauction and the revenue would be put to great loss; but this, in our view, should not affect our judgment in regard to the situation as it was on 1-6-1984, especially when there is

an express provision in R. 20 with regard to limitation. The other decision referred to by Mr. Chidambarain is in State of Orissa and Others Vs.

Harinarayan Jaiswal and Others, in which it was pointed out that the power to accept the bid or reject it was of the Government under the Bihar

and Orissa Excise Act. There was a special procedure prescribed under the Bihar and Orissa Excise Act to deal with such auction sales and on

the relevant provisions, the Supreme Court found that the real opinion formed by the Government was that the price fetched was not adequate. At

page 1820, in para 9(vi), the procedure prescribed contemplated that no sale shall be deemed to be final unless confirmed by the State

Government who shall be at liberty to accept or reject any bid without assigning any reasons therefore. It was this power which was upheld and in

para 17, while referring to the Government being the guardian of the finances of the State, it was observed as follows-

...........It is expected to protect the financial interest, of the State. Hence quite naturally, the Legislature has empowered the Government to see

that there is no leakage in its revenue. It is for the Government to decide whether the price offered in an auction sale is adequate ....

13. We must not forget that we are dealing with specific Rules dealing with auction of arrack shops under the Tamil Nadu Act and though it may

be true as a general proposition of law that the Government has to see that there is no leakage in its revenue, in so far as auction of arrack shops

are concerned, they will have to be regulated strictly in accordance with the provisions of the relevant rules. The authorities who function under

these rules are bound by these rules and before they interfere with an auction which has been confirmed or accepted by the Collector, they must

satisfy the pre-requisites set down by the relevant statutory authority.

14. Reference was made to a judgment of the Division Bench in R. Perumal v. State of Tamil Nadu W. A. 983 of 1983: (reported in 1984 TLNJ

327) on behalf of the contesting respondent. That judgment will show that the scope of the proviso did not fall for consideration before the Davison

Bench. The Division Bench in that case has undoubtedly held that on facts there were valid reasons for setting aside the confirmation by the

Collector and further ordering of reauction. The other decision in Paramasiva Gounder v. Commissioner of Prohibition and Excise W. A. 760 of

1982 dt. On 16-2-1983 refers to the purposes of the auction taken by the Commissioner of Prohibition and Excise in that case, when he directed

re-auction, and it was pointed out that the main purpose of canceling the auction held in favour of the appellant therein and to direct reauction to

get more money to the State by way of such auction and the primary concern as far as such sale of narcotic drinks are concerned was to get

utmost profit for the State coffers. That decision also says that R. 20 gives ample power to the Commissioner of Prohibition and Excise to set aside

any auction even if the Collector had issued the licence for special reasons. Whether on facts found in a particular case, the power under R. 20

could be exercised or not, is a matter which will depend on the facts of that particular case. No two cases are identical. In the instant case, the

learned counsel for the appellant has laid more emphasis on the proviso to R. 20 and it is that argument which we have accepted. We may also

mention that the learned Government Pleader has tried to justify the order of the Commissioner, but for reasons which we have already given, we

need not deal with those arguments separately. Having regard to the view which we have taken, we must hold that the order of the learned single

Judge dismissing the writ petition is liable to be set aside and the order of the Commissioner of Prohibition and Excise dt. 9-7-1984 setting aside

the auction in favour of the present appellant is quashed.

15. This appeal is thus allowed. The fifth respondent shall pay the costs of this appeal which are computed at Rs. 500.

16. W. A. 781 of 1984: Learned counsel for the fourth respondent who was also the fifth respondent in W. A. 759 of 1984 which has been

disposed of by us agrees that this appeal will also be governed by the order which we have passed in W. A. 759 of 1984. No separate arguments

are necessary in this appeal because the certificate filed by the fourth respondent before the Commissioner is the same as the one which we have

considered in W. A. 759 of 1984. The facts in this appeal are identical to the facts in W. A. 759 of 1984. Consequently, this appeal will also have

to be allowed and the order of the learned Judge dismissing the writ petition is set aside and the order of the Commissioner of Prohibition and

Excise dt. 9-7-1984 is quashed, with the result that the auction in favour of present appellant must be treated as confirmed. There will be no costs

in this appeal.

17. Appeals allowed.

