(1954) 12 MP CK 0017

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Case No. 10 of 1954

Sundarlal Baijnath Jaiswal APPELLANT

Vs

State of Madhya Bharat and others RESPONDENT

Date of Decision : 19-12-1954

Acts Referred:
Constitution of India, 1950 — Article 14, 19(1)(g), 19(6), 226, 227

Citation : AIR 1955 MP 161

Hon'ble Judges : Samvatsar, J;Nevaskar, J

Bench : Division Bench

Advocate : H.C. Dhanda and S.L. Garg, for the Appellant; K.A. Chitale, Advocate-General (for Opponent No. 1), M.B. Rege, (for Opponent No. 2) and S.D. Sanghi (for Opponent Nos. 3 to 7), for the Respondent

Final Decision : Dismissed

Judgement

Nevaskar, J.—This is a petition by Sunderlal s/o Baijnath Jaiswal an excise contractor residing at Indore under Arts. 226 and 227 of the Constitution for issue of a writ of mandamus or certiorari or any other suitable direction or order against Excise Commissioner and Collector of Indore. Prayer made in the petition is that the auction sale held on 16-2-1954 by the Excise Commissioner Madhya Bharat for vend licence with respect to liquor-shops situated in the city of Indore in favour of opponent No. 2, (Baijanji Shapurji Debu) being illegal and void be quashed and a suitable direction be given.

2. He has impleaded in the petition the State of Madhya Bharat and auction-purchaser Baijanji. He has further joined other Contractors having interest similar to his as pro forma opponents.

3. The petition was submitted on 31-3-1954. It was admitted and notice was issued to the opponents to file their returns. During the vacation which intervened, the counsel for the petitioner had to go out and the case was to be heard in July. But on 21-7-1954 a serious riot resulting in burning of the records

of this Court and those of lower Courts took place at Indore and this record was destroyed. It was ordered to be reconstructed and the petitioner submitted copies of the papers which formed part of the burnt record on 30-9-1954.

Notices were, thereupon, again issued to the opponents by an order dated 6-10-1954 for hearing on 2-11-1954. It was accordingly heard on 2nd and 4th of November 1954.

4. The petitioner stated that on 16-2-1954 Excise Commissioner of Madhya Bharat held a public auction at Indore with respect to liquor shops situated in the city of Indore. At the auction the Excise Commissioner first invited tentative offers (Do Boli) for each individual shop. The total offers for all the 11 shops amounted to Rs. 2,65,000/-. It is further alleged that at this stage without calling for tentative offer (Do Boli) for all the shops together which according to the petitioner is ''the normal, correct and fair practice'' he again called for tentative offers a second time reminding all present that better offers should be given otherwise he might have to resort a sale by auction of all the shops together.

During the second stage the contractors including petitioner and opponents Nos. 2 to 8 improved on the first total by Rs. 20,000/-. Not satisfied with these offers the Commissioner switched off to holding an auction for all the shops together. Opponent No. 2 Baijanji thereupon offered Rs. 3,75,000/-. It was then not disclosed whether the offers which were being called were tentative (Do Boli) or final (Tin Boli) and that when one Durga Prasad asked the Commissioner to clarify this he was asked to sit down. It is alleged that Durgaprasad and other contractors were then completely non-plussed and were prevented from taking part in the bidding.

The Commissioner then asked opponent No. 2 to raise the bid to Rs. 4,00,000/-. This he did and the bid was knocked in his favour.

5. The petitioner and the other Excise Contractors opponents Nos. 3 to 8 then preferred an appeal to the Revenue Board Madhya Bharat which was rejected.

6. The principal grounds set forth by the petitioner for his petition are that the auction sale in question is void and affected a valuable right of the petitioner firstly because it contravened the provisions of Rule 25 of the Rules for the Distribution of Shops and Grant of Licences Samvat 2009 made by the Madhya Bharat Government in exercise of powers under S. 68(2) (e), (f), (h) & (i) of the Madhya Bharat Excise Act; and that Rule 27 had no application and cannot supersede Rule 25.

Secondly because the auction-sale in question could be held under the rules only by the Collector and not by the Commissioner and lastly that in the auction sale thus held the petitioner and opponents Nos. 3 to 8 were discriminated against without any justification and in a manner which did not appear to be bona fide. It was pointed out by the petitioner that he has exhausted all other remedies open to him. In the final appeal before the Revenue Board no adequate hearing was given to him.

7. He therefore prays for quashing the auction sale held contrary to the provisions by the Excise Commissioner and for a further direction for holding an auction sale afresh by the Collector according to law.

8. In the return submitted on behalf of the State it was asserted that in the auction sale held at Indore on the date mentioned in the petition Collector was present and Commissioner presided over the Auction Committee; bids were called for initially for the individual shops and aggregate of the amount of the bids was Rs. 2,51,000/- and not Rs. 2,65,000/-; the Excise Commissioner then said, that the bids were too low and called for further bids in respect of individual shops once again. They brought the total amount of bids aggregating to Rs. 2,71,000/-.

Excise Commissioner then warned that unless adequate bids were offered in thus holding the auction in respect of individual shops he would call for collective bids. This was not responded to favourably and it was declared that the collective bids were being called. On this one Laxminarain Jaiswal offered Rs. 3,00,000/- & thereafter Baijanji raised it to Rs. 3,75,000/-. Commissioner was reluctant to knock the bid at this and the opponent Baijanji raised it to Rs. 4.00,000/-. Other offers were invited to bid higher than this. As nobody responded, the sale was knocked down.

9. It is further asserted that the auction sale by the Commissioner is under S. 26 of the Excise Act, that the Commissioner acts in such a case under powers of the Government delegated to him by the Government and further that the Collector was a member of the Committee concerned with the licensing of shops by auction and that the over all jurisdiction is that of the Commissioner.

It was finally asserted that the petitioner is not entitled to the relief asked for by the issue of any writ or direction.

10. In the affidavit submitted by Babulal Joshi, Collector of Indore it was asserted that the auction sale was conducted in his presence and with his concurrence and authority and that he had sanctioned holding of collective auction.

11. Return filed by Baijanji is practically similar to the return filed on behalf of the State.

12. On these respective submissions on either side four questions prominently arise for consideration:

1. Has the petitioner sufficient interest to present this petition?

2. Are the proceedings of auction sale with respect to city liquor shops of Indore City contrary to the provisions of the Excise Act and Rules made thereunder as the same is held practically by the Commissioner and not by the Collector?.

3. Are the proceedings of auction sale vitiated by reason of contravention of the letter and spirit of Rule No. 25 of the Rules framed by the Government under S. 68(2) (e), (f), (h) & (i) of the Excise Act for ''the Distribution of Shops and Grant of Licenses, Samvat 2009''?.

4. Are the proceedings of auction sale vitiated by reason of the fact that the same were not conducted bona fide?.

13. Mr. Dhanda who appeared for the applicant vigorously contended that the proceedings of auction sale in this case are vitiated on account of the grounds involved in each of the questions aforesaid.

14. He first brought to our notice various provisions of the Excise Act & Rules framed thereunder by the Government in exercise of powers conferred upon them under S. 68 of that Act and submitted that the Act and the Rules made thereunder assign various duties to different Excise Officers, Commissioner and Chief Revenue Authority and that the duty of conducting an auction sale is exclusively that of the Collector or of those working under him who possess delegated powers for the purpose and not that of the Commissioner. Commissioner according to him has merely the power to hear appeals against the order of the Collector.

He in this connection referred to Rules Nos. 11, 12, 14, and 15. It was further urged by the learned counsel that the existence of power to hear appeal cannot justify the Commissioner to do what Rules did not authorise him to do.

15. It was next contended that the auction-sale though it was apparently begun in compliance with Rule 25 of the Rules for the ''Distribution of Shops and Grant of Licences, Samvat 2009'' yet the principle underlying that rule was soon departed from and opponent No. 2 Baijanji was granted licences in respect of all the city shops together thus enabling him to create a practical monopoly in that trade at an important industrial centre like the City of Indore. The counsel further urged that although apparent less of Government revenue might be put forward as a ground for this course deeper consideration would indicate that there is no real loss to the Government by following the principle underlying Rule 25 by giving one shop to one person and that the rule itself warns against the danger of falling prey to a consideration regarding apparent loss of revenue and provides that this should not deter Collector from breaking up all combinations and monopolies. The Rule, according to the learned counsel, is imperative and is not inconsistent with and controlled by R. 27(d).

He relied in this connection upon -- ''Shiv Bahadur Singh v. State of Vindhva Pradesh'', AIR 1053 S. C. 394 (Pr. 5) (A); -- Sridhar Mahadeo v. Mannalal Chabilchand'', AIR 1951 MP. 39 (B); -- Mohanlal Chhotalal Vs. Commissioner of Income Tax, Bombay North, in support of the contention that as far as possible different provisions of the same Act or Rules should be so construed as to avoid conflict or inconsistency.

16. In another strain of his argument the counsel referred to the actual proceedings of sale. He pointed out that although the auction sale began with the bidding in respect of individual shop it was merely Do Boli bid which fetched an aggregate offer of Rs. 2,65,000/- or Rs. 2,71,000/- and ''that had it been three Boli bid the aggregate would have swollen to a considerably higher figure; that instead of thus pursuing separate bidding in respect of an individual shop the Commissioner at once switched off to collective bidding; that in thus changing the mode of bidding the bidders other than opponent No. 2 were at a disadvantage as they were unaware as to whether this collective bidding was tentative (two boli bid) or final (three boll bid).

An attempt to obtain an information in this respect met with a frown from the Commissioner. Opponent No. 2 Baijanji being aware of the fact that it was three boli bid and being certain of his position raised the bid to Rs. 3,75,000/- and further to Rs. 4,00,000/- and before the bidders could recover from a feeling of dismay at this procedure the bid was knocked down. The auction sale thus held it is submitted, could not be said to be bona tide and violated the letter and spirit of Art. 14 of the Constitution as invidious discrimination was made between opponent No. 2 and other bidders in the administration of the Rules and exercise of powers under the Act and the Rules made thereunder.

17. Lastly it was urged that under Art. 19(1) (g) of the Constitution every citizen of India has his right to carry on any occupation, trade or business, guaranteed subject to the provisions of Art. 19(6) regarding placing of, what may be called, reasonable restrictions in the public interest. The Rules indicate the limits of such reasonable restrictions and where the Rules are violated fundamental right guaranteed under Art. 19(1) (g) of the Constitution is affected. The counsel in this connection relied upon the decision reported in -- Emperor Vs. Jeshingbhai Ishwarlal,).

18. The petitioner in support of his right to apply under Art. 226 of the Constitution relied upon he decisions reported in -- Rambharosa Singh Vs. The Govt. of the State of Bihar and Others, , Ind -- Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, .

19. On the other hand Mr. Rege who appeared for opponent No. 2 and the Advocate General for the State contended that the petitioner cannot claim any right much less a fundamental right. No personal right of the petitioner violated as according to them all that he or any (sic) can claim is a right to be permitted to take art in an auction sale and to bid therein.

It is not claimed by the petitioner that he was of allowed to take part in the auction. Reliance this connection was placed upon the observations Fiel J. in -- ''Crowley v. Christensen'', (1890) 4 Law Ed. 620 (G), quoted with approval by their Lordships of the Supreme Court in AIR 1954 C 220 at p. 223 (F), indicating that there is no inherent right in a citizen to sell intoxicating (sic) by retail.

20. Both the learned counsel next referred be various provisions of Madhya

Bharat Excise Act, Samvat 2009 and Rules made thereunder and contended that the Rules in question are more in their nature recommendatory than imperative or mandatory. The Collector is, no doubt, considered to be an appropriate authority for holding all important auction sales but power of Commissioner not excluded. In fact, it is urged, Rule No. 33 Rules for Distribution of Shops and Grant of licences, Samvat 2009 clearly points out that it competent for the Excise Commissioner to in (sic) and require that sale of any shop or class shops should not be confirmed without his previous sanction.

21. The auction sale therefore held in this se in the presence of the Collector and the commissioner is not contrary to law.

22. Reading Rules Nos. 14 and 33 of the Rules aforesaid together all that can reasonably be urged is that except where the Excise Commissioner intervenes ail important auction sales under the Act should ordinarily be held by the Collector. But they do not exclude the power of the Commissioner to intervene and require that particular sales cannot be finalised without his sanction. In fact Rule No, 33 preserves and emphasises this power.

23. Regarding alleged violation of Rule No. 25 of the Rules aforesaid it is urged that this rule too is not imperative in its character but is more or less directory or recommendatory. A certain amount of discretion is left to the selling authority either to sell in accordance with the principle indicated in the rule or to depart from it. In tact Rule No. 27 (d) which is mentioned as the rule regarding vend monopolies does not indicate that even a Collector can sanction the departure from the strict compliance of this Rule No. 25.

The language of Rule No. 25 is elastic and phrase such as ''as far as possible'' does indicate that departure from the principle is permissible even where Collector conducts the auction. It was further urged that the Rules themselves provided for a remedy by way of appeal and owing to elastic nature of the provisions of discretionary nature of the power exercisable under the same and when that remedy was availed of and when the appellate authority under the Act and the Rules has confirmed the correctness of the exercise of the power by the authorities concerned the matter, should rest there. Correction of exercise of discretionary power is not intended to be controlled by the power of the High Court under the Art. 226 of the Constitution. For in so doing it would practically be exercising appellate jurisdiction.

24. Reliance in this connection was placed upon the decision reported in -- K.N. Guruswamy Vs. The State of Mysore and Others, , which distinguished the case of -- Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , and took the view that where an authority nested with a discretionary power under a statute to do a certain act exercises that power a little irregularity would not call for an interference by the High Court under Art. 226 of the Constitution. Reference was made to -- State of Bombay Vs. Laxmidas Ranchhoddas and Another, , in this connection.

25. It was urged by the learned Advocate General relying upon ''Habib Dada v. Custodian", MB LR 1953 (Civil) 62 (K), that where the question is whether the lower tribunal or authority has acted with jurisdiction or without it and the matter is taken in appeal and the appellate authority confirms the act or decision of the lower authority then the matter cannot be interfered with in these proceedings.

26. In further elucidation of the point the learned Advocate General submitted that Excise Commissioner had power to sanction or refuse to sanction any sale. Excise Commissioner instead of exercising that power even without being present on the spot where the auction sale took place, exercised the same by remaining present there. This may not be in the strict compliance with the Rule. But the matter was examined by the Court of appeal (Revenue Board) and confirmed. In this state of things the sale cannot be considered to be illegal or void.

27. In his reply Mr. Dhanda besides attempting to meet the points raised by the counsel appearing on behalf of the opponents argued that Rule No. 33 of the Rules aforesaid has no application where the auction- sale takes place under unrestricted bidding.

28. In view of these submissions I propose to examine the material points raised as indicated earlier.

29. As regards the first point there is no doubt that the petitioner being one of the bidders present and interested in bidding at the auction sale which took place on 16-2-1954 with respect to Indore city shops has a sufficient interest to challenge the same if the authorities thus conducting the same have failed to act within the bounds of their authority.

30. In Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, his Lordship Mahajan C. J. remarked as follows:

It is open to the petitioner under Art. 226 to approach the High Court for a ''mandamus'' if the officers concerned have conducted themselves not in accordance with law or if they have acted in excess of their jurisdiction.

These remarks clearly point out that a petition under Art. 226 is competent where the complaint is that officers conducting the sale have acted not in accordance with law or acted in excess of their jurisdiction and further that a bidder at such an auction has a sufficient legal interest to move the High Court under Art. 226 of the Constitution.

31. The same view appears to have been taken in a later case of the Supreme Court reported in K.N. Guruswamy Vs. The State of Mysore and Others, . That was an appeal against the decision of the High Court in a petition under Art. 226. The petition was moved by a bidder at an auction sale in respect of a liquor contract for the City and Taluk of Banglore. The Excise Commissioner who was the final revising authority cancelled the auction sale knocked down in favour of the petitioner on receipt of a higher offer.

Later the Deputy Commissioner accepted the higher offer of the opponent without strictly complying with the Rules. The Supreme Court held that although the order of cancellation, though a bit irregular could not be interfered with under Art. 228 but that the acceptance of the offer in the manner it was done was contrary to law and the Deputy Commissioner and the Excise Commissioner in so doing had acted contrary to law and the petitioner though his bid was cancelled by an order which could not be set aside under Art. 226 had sufficient interest to challenge the propriety of the second order.

32. Both these cases clearly point to the fact that the petitioner has a sufficient legal right to present this petition.

33. Coming to the second question let us see whether the auction sale held by the Commissioner in the presence of the Collector is bad in law being without jurisdiction.

34. As regards this question I think the contention raised by the opponent ought to prevail.

35. It appears from the facts appearing on record that the auction sale of the liquor shops in the City of Indore was considered to be an important one. Both the Commissioner and the Collector were present at the auction sale though the Commissioner took a leading part therein. The question is whether the auction sale thus held was contrary to the Rules for the Distribution of Shops and Grant of Licences, Samvat 2009.

36. In order to arrive at our conclusion on this point we have to first ascertain what are the powers and duties of Excise Commissioner and whether the aforesaid auction proceedings fell beyond his powers so as to render them invalid by reason of his intervention.

37. Under S. 6(a), the Excise Commissioner is authorised the administration of Excise Department and collection of excise revenue (Sic).

Section 6(e) authorises the Government to delegate its powers, except those under S. 68 of making Rules, to Excise Commissioner.

38. In pursuance of the powers vested in the Government under S. 68(e), (f), (h) and (i) with respect to grant of vend licences rules have been framed. These rules are framed by the Government.

Under Rule 7 of these Rules Licences for the sale of excisable article are to be disposed of by tender, auction or in such manner as the Government may by general or special order direct.

Under Rule 8 Licences for retail sale of excisable article are ordinarily to be granted for a period of one year i. e. from 1st April to 31st March.

Under Rule 9 the Licences for retail sale of country liquor are as a rule to be fixed by public auction held annually in each District.

The rule further provides that if due to combination of bidders or some other reason a shop it offered for sale but not sold at general auction and it Collector is satisfied that a reasonable price would not be obtained if it is re-auctioned as provided in Rule 34 the Collector can invite tenders by fixed date.

Rule No. 11 is as follows:

The Collector is required to adhere to the published dates; the postponement of the sales unless fully and widely notified, is likely to result in a poor attendance, and the revenue will suffer from the lack of competition. If it is necessary for some unavoidable reason, to postpone the auctions to a subsequent date, immediate intimation thereof should be given to the Excise Commissioner, with a brief explanation of the reason and a statement of the new dates fixed. In no case should a date be fixed which will not permit of the report of the sales reaching the Excise Commissioner by the 15th February at the latest.

The Collector will be responsible for the notification of the dates of postponed sales, both his own and in neighbouring Districts.

Rule No. 14 is worded thus:

The Government regards the holding of excise sales as an important part of the Collector duties and desires that unless a Collector is actual called out of headquarters, he should make ever effort to hold the sales personally and should, unless unavoidably prevented, sell all shops to which any particular importance attaches. Such shop are the town shops and those round about, from which there might be smuggling or other (sic) transfer and shops which have, for some particular reasons, got a doubtful history.

If a Collector anticipates that he may be unable to sell all shops personally he should stud the list and make a careful selection of those for which he will be present. In special circumstance which should be placed on record, District Excise Officer may sell unimportant shops in the (sic) under the Collector''s general supervision, but no case is the Collector freed from full responsibility in the matter. If for any unavoidable reason the Collector is unable to sell any shop in person a report of the reason should be made to the Excise Commissioner specifying what shops we sold by him and what shops were sold by his assistant.

Where auctions are held at outlying Tehsil the Collector may delegate to an Assistant the duty of holding the auctions. When privilege have to be resolved for default or for some simile reason, the Collector may delegate the power of resale to an officer of rank not lower than that of an Inspector. In either case the sales will not be considered finally completed until confirmed by the Collector.

Rule No. 25 is as follows:

The instructions of the Government on the subject of vend monopolies are given in Rule 27(d). The principle of "one man and one shop" should be strictly adhered to as far as possible and no vested interest should be allowed to be created. The Rule will ordinarily have less urgency in proportion to the distance between the shops but two or more adjoining shops of a tract, which are likely to create a practical monopoly in a considerable area, should not be allowed to fall in the same hands. Apparent loss of revenue should not, therefore, deter Collector from breaking up all combinations and monopolies.

Rule 27(d) provides as follows:

Without the sanction of the Collector no person shall hold or possess any interest in two or more adjoining shops for the retail sale of the same intoxicant in the same town or village area

and lastly Rule 33 which deals with those cases where a sanction of the Excise Commissioner is necessary in particular classes of cases, saves the residuary power of the Commissioner in these terms:

This rule, however, will not limit powers of the Excise Commissioner to require that the sale of any particular shop or class of shops shall not be confirmed without his previous sanction.

38a. Thus considering the entire scheme of the Act and the Rules made thereunder it appears that although the holding of auction sales in respect of vend licences of liquor shops is considered to be primarily the duty of the Collector, the ultimate power of the Excise Commissioner to supervise, direct and control such auction sales is at the same time saved.

39. Rules Nos. 11, 14 and 15 which take the shape more or less of departmental instructions no doubt indicate that ordinarily the Collector is to look after the actual holding of auction sales but it also appears from Rule No. 10 that the programme regarding the dates and places where the auction sale is to take place is fixed by the Excise Commissioner. Excise Commissioner under Rule 12 is authorised to direct the holding of auction sales at places other than the headquarters of the District.

Rules Nos. 15 and 19 indicate that it is the Commissioner who sanctions the documents such as the memorandum and licence conditions. Under Rule 27 it is the Commissioner who can sanction the holding of licence by the same person at two places in which different rates of Excise duty are leviable and last but not the least is the provision contained in Rule No. 33 which preserves and emphasises the power of Excise Commissioner to require that the auction sale of particular shop or class of shops shall not be confirmed without his previous sanction.

No doubt this rule does not require the presence of the Commissioner on the spot. But the Rule does not prohibit his being there and in fact where he does decide to exercise control over sales of particular shop or shops his presence at the spot will enable him to exercise the desired control with greater efficacy. The rule also indicates that in such auction sales the ultimate authority to accept the offers or the bids is the Excise Commissioner and the position of the Collector becomes more or less of secondary importance.

40. From the foregoing discussion it follows that where the Excise Commissioner so decides his presence at the auction sale in respect of particular shops and his conducting the auction sale in respect of them with the aid of the Collector is not only not illegal; but sometimes desirable.

41. I therefore feel that the auction sale held or conducted by the Excise Commissioner on 16-2-1954 in the presence of the Collector is not illegal on the ground that it ought to have been held by the latter.

42. We now come to the second important point, viz., whether the auction sale is bad by reason of violation of letter and spirit of Rule No. 25(d). The wording of this rule no doubt indicates that the principle of one man one shop is recommended but the phrase ''as far as possible'' and a suggestion that ''the Rule will ordinarily have less urgency in proportion to the distance between the shops'' in this Rule do indicate that the Rule is not mandatory and departure is not absolutely prohibited.

In fact provision contained in Rule 27(d) enabling Collector to sanction the holding of licences in respect of two or more adjoining shops for the retail sale of the same intoxicant indicates that all that is emphasised is that holding of such licences by the same person without the knowledge and express sanction of the Collector is prohibited. Moreover by Rule No. 27(e) a person is not allowed to hold licences for two different shops where different rates prevail within a radius of 20 miles without the sanction of the Excise Commissioner.

43. Thus a discretionary power is conferred upon the Collector and in important matters upon the Excise Commissioner to permit departure from Rule 25.

44. In the present case the auction sale no doubt commenced with a view to follow the letter and spirit of Rule No. 25 but when it was reasonably suspected that thus following the Rule will enable the bidders to create conditions of practical monopoly and cause considerable loss to Government both the Collector and the Commissioner decided to hold the auction sale with a view to call for offers for collective bidding.

45. This under the circumstances cannot be held to be bad in law or illegal. It cannot be said that they were absolutely debarred from exercising their discretion or that they failed to exercise any discretion whatever or that in exercising that discretion they or for the matter of that the Excise Commissioner acted mala fide or capriciously.

46. Mr. Dhanda for the petitioner urged that the phrase ''as far as possible'' and the sentence ''Apparent loss of revenue should not, therefore, deter the Collector from breaking up all combinations and monopolies'', in Rule 25 do indicate that the apparent loss of revenue should not induce the Collector or the Commissioner to depart from the Rule regarding one man one shop.

47. To my mind the wordings in the Rules Nos. 25 and 27 leave a certain amount of discretion in the Collector and the Commissioner either to strictly follow the

rule or to depart from it. Requirement of specific sanction of the Collector and in certain cases of Commissioner indicates the absence of imperative character of the provision. The discretionary power which is thus conferred under the rules does not appear to have been capriciously used.

48. As regards the last question regarding bona tide character of the auction sale all I need say is that on the materials appearing before us it is not possible to hold that the proceedings began with bidding for individual shops. The bidders raised the bids only upto Rs. 2,51,000/- or Rs. 2,65,000/- and then stopped. The Excise Commissioner and the Collector believed that this was due to some understanding amongst the bidders and collective bidding was resorted to to break such an understanding.

The bidders other than opponent No. 2 had equal opportunity to bid at the collective auction. They desisted from bidding either because the bid was too high for them or for some other reason. If it was as much open for the other bidders to bid bow can we assume absence of bona fides in the auctioning authority? The contention that they were unaware whether it was two Boli or three Boli and that one person was asked to produce his ''Hesiatnama'' are indications of absence of bona fide has no force. In asking for ''Hesiatnama'' the authorities did what Rules permitted them to do. It was essential for the bidders to keep these documents with them at the time of bidding.

Want of knowledge that it was two Boli or three Boli bidding too cannot carry much weight because they could as well have offered their bid even assuming that they thought it was two Boli bid. Nor does the contention that they were nonplussed by the attitude of the Commissioner holds much water. If they were non-plussed they were themselves to blame.

49. But apart from all this the question of absence of bona fides involves a question of fact and what appears in the proceedings is not the only material and I will not be justified in forming an opinion on that matter purely on these allegations and submissions.

50. Lastly the contention that the petitioner was discriminated in the exercise of his right to obtain a licence cannot have much force in view of the decision in Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, . As regards his right to bid at the auction he was in the same position as the opponent No. 2.

51. On the whole there is, in my opinion, no ground to issue a writ of mandamus or any other writ on the grounds put forward.

52. The petition is accordingly dismissed.

53. Petitioner will pay Rs. 100/- as costs to each of the opponents.

Samvatsar, J.:

54. I agree.

