(1977) 01 SC CK 0070

In the Supreme Court Of India

Case No : Civil Appeal No. 2029 of 1968

The State of Punjab APPELLANT

Vs

Balbir Singh and Others RESPONDENT

Date of Decision : 31-01-1977

Acts Referred:

Punjab Excise Act, 1914 — Section 36

Citation : AIR 1977 SC 1717 : (1977) 4 SCC 599(1)

Hon'ble Judges : M.H. Beg, C.J;P.S. Kailasam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.H. Beg, C.J.—This appeal by special leave comes up before us from the judgment and order of the Division Bench of the High Court of Punjab and Haryana dismissing the appeal of the State of Punjab against the judgment and order of the learned single Judge given on 27 March 1967 in Civil Writ Case No. 2021 of 1966. The learned single Judge had allowed the petition of the Respondent M/s. Balbir Singh & Sons, who were the highest bidders at an auction for country liquor vends relating to certain villages in the district of Ferozepore for the year 1965-66. Under the terms of the licence issued to the Respondent on conditions specified before the auction, the auction fee and the security had to be deposited before lifting the minimum quota of liquor fixed under the licence. For reasons not mentioned in the judgment of the High Court, which considered it unnecessary to go into them, the Respondent-firm did not lift the minimum quota of liquor fixed under the licence. It also did not pay the full amount of licence fee as undertaken by it. The Excise authorities of the Appellant-State, therefore, demanded payment of the still-head duty on the entire minimum quantity of liquor which the Respondent-firm was required to lift under the licence. The High Court allowed the petition following an earlier decision of that court merely on the ground that the Respondent-firm had not been given an opportunity of being heard.

2. After the judgment under appeal before us, this Court has clarified the whole position in several decisions, and, in particular, in Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, followed in Sham Lal and Others Vs. State of Punjab, . In Har Shankar's case (supra), Chandrachud J. speaking for the Constitution Bench of this Court said as under:

Those interested in running the country liquor vends offered their bids voluntarily in the auction held for granting licences for the sale of country liquor. The terms and conditions of auctions were announced before the auctions were held and the bidders participated in the auctions without a demur and with full knowledge of the commitments which the bids involved. The announcement of conditions governing the auctions were 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.

3. In the aforementioned case of Har Shankar, all the relevant authorities on the subject were quite exhaustively considered by this Court. Subsequent decisions of this Court have followed the principle laid down in Har Shankar's case learned Counsel for the State also drew our attention to a recent judgment of this Court in State of Punjab and Others Vs. Mulkh Raj and Co. and Others, where this Court held inter alia that considerations governing cancellation of licence u/s 36 of the Punjab Excise Act 1914 are not relevant in considering the question whether the demand was lawful under the terms which became binding on both sides as a result of mutual obligations carried out by following the conditions on which the liquor vends were auctioned. It is the enforcement of the liabilities arising out of mutually agreed conditions of auction, which were sought to be enforced by the demand notice which was quashed by the High Court.

4. Consequently, in consonance with our aforementioned decisions we allow this

appeal, set aside the judgment and orders of the High Court of Punjab and Haryana.

