

STATE OF MADHYA PRADESH AND ORS

A

v.

M/S. M.V. VYAVSAYA AND CO.

NOVEMBER 28, 1996

[B.P. JEEVAN REDDY AND S.C. SEN, JJ.]

B

Constitution of India, 1950 :

Article 226 :

Writ Petition—Case, involving disputed questions of fact—Interim orders resulting in heavy loss to the revenue of the State—Held, the orders are outcome of total disregard of the norms of the writ jurisdiction.

C

Power under—Of High Court—Is a supervisory power and not akin to appellate power.

D

Jurisdiction under—Case involving questions of fact—High Court normally does not go into and adjudicate upon disputed questions of fact.

Relief under—Resort to the Article in order to wriggle out of the contract entered into—Held, not permissible, except where there is statutory violation.

E

Duty of the Court—In passing interim orders—Cases pertaining to excise contract—Held, the Court should not take up the responsibility of staying the recovery of amounts due to the State unless a clear case of illegality is made out and the balance of convenience is duly considered.

Irreparable loss to the state because of interim order passed by Court—Held; No one should be allowed to suffer account of the act (s) of the Court. It is duty of the Court to repair damages to the extent possible.

F

Respondent firm who was highest bidder in public auction for grant of licences for country liquor and Indian made foreign liquor, failed to fulfil certain conditions and therefore notice was given to it for cancellation of the licences and for re-auction.

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Respondent filed writ petition under Article 226 of the Constitution in High Court seeking directions not to withhold the permit, to issue forms and to ensure the supply of liquor as per the terms and conditions of the

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A licence. At the inception of the writ petition itself, it was brought to the notice of the Court that the case involved disputed questions of fact. The High Court passed repeated interim orders permitting the supply of liquor to the writ petitioner under the supervision of the authorities, partial deposits of the amounts with the authorities and release of the balance to the writ petitioners, on the basis of undertaking that he would meet all the financial commitments which he would ultimately be found liable for.

The High Court also appointed a Commissioner to act as a conduit between both the parties and another commission was appointed to decide the disputes between the parties. Due to the interim orders, the State incurred heavy loss.

In appeal against the above mentioned interim orders, the respondent firm did not appear before the Court.

Allowing the appeal, this Court

HELD : 1.1. All the impugned orders are the outcome of total disregard of the norms governing the writ jurisdiction. Such orders could never have been passed by the High Court-at any rate, without safeguarding the interests of the State. The proper course for the High Court was to dismiss the writ petition at the very inception when it was brought to their notice that it involved disputed questions of fact. The orders of the High Court have resulted in substantial loss of revenue to the State - to the people. [330-E-H]

1.2. The power of the High Court under Article 226 of the Constitution is not akin to appellate power. It is supervisory power. While exercising this power, the court does not go into the merits of the decision taken by the authorities concerned but only ensures that decision is arrived at in accordance with the procedure prescribed by law and in accordance with the principles of Natural Justice wherever applicable. Further, where there are disputed questions of fact, the High Court does not normally go and adjudicate upon the disputed questions of fact. [328-H; 329-A-B]

Chief Constable of the North Wales Police v. Evans, (1983) 3 All. Eng. Reports 141, relied on.

1.3. A person who solemnly enters into a contract cannot be

allowed to wriggle out of it by resorting to Article 226 of the Constitution. Where there is statutory violation, interference would be permissible even in the case of a contract but not where the relevant facts are disputed which dispute calls for an elaborate enquiry which cannot be conveniently done by the High Court in a writ petition. [330-A-B]

Har Shankar & Others v. The Deputy Excise and Taxation Commissioner & Others, [1975] 1 SCC 737, relied on.

1.4. It is inadvisable to pass interim orders which have the effect of depriving the State (the people of the State) of the revenues legitimately due to it. The Court should not take upon itself the responsibility of staying the recovery of amounts due to State unless a clear case of illegality is made out and the balance of convenience is duly considered. Otherwise, the odium of unlawfully depriving the State/the people, of the monies lawfully due to it/them would lie upon the court. Particularly in the case of excise contracts, generally speaking, is well nigh impossible to recover any arrears after the event. It is for this reason that the rules of all the States insist upon adequate and securities beforehand to be adjusted toward the last months of the year. These provisions and the spirit underlying them cannot be ignored or violated. [329-B-D]

2. No one should be allowed to suffer on account of the act(s) of the Court. It is duty of the Court to try to repair the damage to the extent possible. [331-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 14921-26 of 1996.

From the Judgment and Order dated 25.8.95, 30.8.95, 4.9.95, 11.9.95 and 19.9.95 of the Madhya Pradesh High Court in M.C.C. No. 330/95 in W.P. No. 711 of 1995.

Satish K. Agnihotri for the Appellants.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. The several orders made by a learned Single Judge of the Madhya Pradesh High Court in a writ petition, impugned herein, made in total disregard of the basic norms governing the

- A exercise of of writ jurisdiction by the High Court, disclose a disturbing state of affairs affecting public finances. The facts stated hereinafter speak for themselves.

B For the year 1995-96 (commencing on April 1, 1995 and ending with June 30, 1996), public auctions were held for grant of licences for country liquor as well as Indian made foreign liquor (IMFL) in Madhya Pradesh, sometime in the months of February-March 1995. The respondent-firm was the highest bidder in respect of Gwalior Township Group No. 2, comprising twelve shops of country liquor and seven shops of IMFL, in a sum of Rs. 8.52 crores. Its bid was accepted. The appellants say that according to

C the rules and the conditions specified in the auction notification, any person desiring to participate in the auction shall have to pay an amount equivalent to twenty percent of the amount of the licence fee of the preceding excise year. If his bid is accepted, he has to deposit an amount equivalent to 1/6th of the total bid in cash or by bank draft soon after the

D auction, which amount shall be adjusted against the licence fee payable for the last two months of the excise year. In addition thereto, the successful bidder, the appellants say, has to furnish a bank guarantee or a bank draft or a banker's cheque/order for an amount equal to 1/12th of the total bid amount within seven days of the auction, to be adjusted during the course of the excise year. The appellants say that the respondent-firm deposited

E 1/6th of the bid amount, i.e., Rs. 1,42,00,000 and took out the licences but failed to furnish the bank guarantee to the extent of 1/12th of the bid amount as required by rules/conditions of auction. The appellants say further that the respondent has also subsequently failed to pay the monthly rental for the month of May 1995. For the aforesaid defaults, they say,

F notices were given proposing cancellation of licence granted to it. Under this show cause notice, the respondent was called upon to explain by May 19, 1995 why its licences should not be cancelled and the group be re-auctioned. [These facts are taken from the counter-affidavit filed by the District Excise Officer in the High Court.]

G On May 17, 1995, the respondent filed Writ Petition No. 711 of 1995 in the Madhya Pradesh High Court (Gwalior Bench) complaining that though he has complied with all the conditions of auction and rules, the authorities are not issuing the permits and other forms on account of which their shops are facing closure. The respondent also complained that while

H not issuing the permits and other forms, the authorities are proposing to

cancel the writ petitioner's licences, which was characterised as unjust and illegal. It prayed for the issuance of a writ "directing the respondents (State of Madhya Pradesh and the Excise authorities) not to withhold the permits and issue forms of the petitioner and to ensure that the supply of liquor is made to the petitioner as per the terms and conditions of the licence". Interim relief was also asked for in the same terms.

The writ petition came up before the Vacation Judge who directed notice to the respondents in the writ petition. On May 22, 1995, a learned Single Judge heard both the parties and passed orders directing the authorities, "*not to re-auction the liquor shops which are subject-matter of Writ Petition No. 602/1995 and Writ Petition No. 711/1995. The requisite supply would also be made to the petitioner.*" The petitioner in both the petitions, i.e., W.P. No. 602 of 1995 and W.P. No. 711 of 1995 *has given an undertaking to this Court that all financial commitments to which he may ultimately be found liable would be met by him*". (Emphasis supplied). This order was passed after noticing the case of both the writ petitioner and the authorities. It is significant to notice the purport of the order: the authorities were restrained from conducting a re-auction; they were also directed to make the requisite supplies - all on a mere 'undertaking' of the firm (licencee) to pay amounts which may *ultimately* be found payable.

The matters came up before the learned Single Judge again on August 11, 1995. The order on this day refers to two other writ petitions filed by the respondent-firm, viz., Writ Petition Nos. 955 of 1995 and Writ Petition Nos. 1060 of 1995. The last para of the order, which is the only material para, reads : "The learned counsel for the petitioner has pointed out that in the letter dated 3rd of August, 1995 *some* sale price has been mentioned. According to him, such course was never adopted earlier. It may be seen that the petitioner is not to deposit any amount now. As such, this amount would also be dealt with at the time when the judgment is pronounced. So far as seized liquor is concerned, if the petitioner deposit the requisite *duty*, it would be entitled to have the same. This would be again subject to the final decision." Not only it was observed, without giving any reasons, that the licensee-firm "is not to deposit any amount now", the authorities were directed to release the seized liquor on payment of 'duty' alone. No reference to nor any direction to the licensee to pay the arrears of licence fee and other amounts due was made.

A On August 25, 1995, the matter was taken up again in the forenoon. It was ordered that the matter will be taken up after lunch and that till then no further action be taken. After lunch, the learned Judge noticed the contentions of the parties and posted the matter to August 28, 1995. Till then, it was directed that no further action be taken. The matter appears to have been taken up again on August 30, 1995. The second para of the order passed on that day, which alone is relevant, reads : "The State is agreeable to hand over 1/4 of the liquor which was taken possession of on 22nd of August, 1995. The petitioner is permitted to sell the same. This is, however, subject to the condition that the entire sale proceeds of this liquor and also other sales made on 30th of August, 1995 and 31st of August, 1995 are deposited with the State authorities".

D On September 4, 1995, two different orders were passed. The first order refers to an earlier order dated August 31, 1995 whereunder the statement of the writ petitioner that he would deposit a sum of Rupees five lakhs on September 1, 1995 was recorded. The order says that the petitioner has since deposited the said amount and then says, "the State is agreeable to release the remaining seized stock. This is, however, subject to certain riders. These riders are that the sales be made at one or two shops only. The further rider is that these sales have (to be) made under the supervision of the officials of Excise Department. Accordingly, the Excise Department would release the seized stock and permit the sale at two retail outlets. The functionaries of the Excise Department would not interfere with the sale process. Whatever sale amount is received, it would be handed over to the office after obtaining the receipt at the end of the closure of the business that day. The interim order passed on 25th of August, 1995 shall continue". The second order passed on that day disposes of Writ Petition No. 711 of 1995 as having become infructuous. It reads :

G "1. The prayer made in this petition is more or less rendered infructuous. The grievance of the petitioner was that permits are not being issued to it even though the requisite amount is being deposited in the treasury. The challans on the basis of which supply of liquor was being claimed stands exhausted. The requisite supply has been made. The grievance of the petitioner does not survive.

H 2. This petition is disposed of accordingly."

Though Writ Petition No. 711 of 1995 was disposed of as stated above on September 4, 1995, the matter came up again before the learned Judge on September 11, 1995. The learned Judge ordered, "...Some challans have been placed on record. *The State will take notice of the same and release the liquor.* This is, however, subject to the condition that the entire sale proceeds would be deposited with the State. The State would be at liberty to supervise the source from which the liquor is purchased and also supervise the shops from where liquor is to be sold. Seizure of this liquor would not be effected". The learned Judge made a further curious direction to the following effect : "As there is a constant dispute, Shri H.D. Gupta, Advocate, is appointed as Commissioner. In future any grievance of this nature be brought to his notice and he would act as *conduit* between the State and the petitioner. The State would release liquor on the same terms as being done in the month of April 1995." The aforesaid Commissioner was to get a fee of Rs. 250 for every grievance on any single day.

The matter was again taken up on September 14, 1995. The learned Judge refers to a statement of the petitioner's counsel that the petitioner "would be depositing a sum of Rs. lac for the purposes of purchasing the liquor" and notes his request that he should be given back some amount for re-investment. The learned Judge accordingly directed that "the petitioner be given liquor on the day the challan is filled up. *75% of the sale proceeds would be deposited with the State and 25% be kept by the contractor for reinvestment.*"

On September 19, 1995, matter was taken up again. The learned Judge noticed the grievance of the State that the petitioner is not depositing the licence fees and also noted the contention of the writ petitioner that it is not doubt in arrears but these arrears have mounted only because of non-supply of liquor from time to time. The learned Judge also noted the grievance of the writ petitioner that its employees were threatened with arrest also. On the basis of the said representation and in view of the alleged constant disputes between the parties, the learned Judge made yet another curious direction to the following effect : "The petitioner to give requisite facts and figures before the *commission*. The commission to furnish its report by 25 of September 1995. The commission would consist of Shri R.A. Roman and Shri H.D. Gupta, Advocates. They would be paid a fee of Rs. 2500 each". The learned Judge then referred to the statement of the writ petitioner that it had deposited a sum of Rs. 82,000 and stated

A that on such deposit, liquor would be supplied at the rates at which supplies were made in April, 1995. The learned Judge also made certain further directions with respect to part deposit of sale proceeds and part release in favour of the writ petitioner.

B We may mention that though we called for the records of the writ petition, the records sent to us do not contain orders dated August 25, 1995, August 30, 1995, September 4, 1995 (first order, as we have called it), September 11, 1995 September 14, 1995 and September 19, 1995. These orders have, of course, been supplied by the State in the material paper book filed by it and are taken from the said material paper book.

C The State has preferred the present Special Leave Petition against the aforesaid orders. This court entertained the same and passed an order on December 8, 1995 staying the operation of the orders impugned in the Special Leave Petition. The Court further directed that "the respondent (writ petitioner) shall not be entitled to lift any supplies unless he pays up all the arrears due". It is brought to our notice that pursuant to the said order, the Commissioner of Excise has stopped all supplies of liquor to the respondent from the date of receipt of a copy of the order and that all the concerned shops were taken possession of by the department on December 12, 1995 and re-auctioned on December 23, 1995. It is further stated in the letter dated 18th March, 1996 from the Excise Officer, Gwalior to the Deputy Commissioner (Excise), Gwalior Division - a copy of which has been placed before us by the learned counsel for the State-appellant - that as on the date of re-auction, the total amount due from the respondent - firm was in a sum of Rs. 2,88,54,431.

F Though the respondent is served, it has neither appeared nor is it represented by counsel. After hearing the learned counsel for the petitioner-State, we called upon the Madhya Pradesh High Court (Gwalior Bench) to send to this Court the entire records of this writ petition (No. 711 of 1995) which have accordingly been sent. We have perused the same.

G Leave granted.

It has been repeatedly held by this Court that the power of the High Court under Article 226 of the Constitution is not akin to appellate power. It is a supervisory power. While exercising this power, the court does not go into the merits of the decision taken by the authorities concerned but

only ensures that the decision is arrived at in accordance with the procedure prescribed by law and in accordance with the principles of natural justice wherever applicable. Further, where there are disputed questions of fact, the High Court does not normally go into or adjudicate upon the disputed questions of facts. Yet another principle which has been repeatedly affirmed by this Court is that a person who solemnly enters into a contract cannot be allowed to wiggle out of it by resorting to Article 226 of the Constitution. This Court has also repeatedly emphasised the inadvisability of making interim orders which have the effect of depriving the State (the people of the State) of the revenues legitimately due to it. The court should not take upon itself the responsibility of staying the recovery of amounts due to State unless a clear case of illegality is made out and the balance of convenience is duly considered. Otherwise, the odium of unlawfully depriving the State/the people of the monies lawfully due to it/them would lie upon the court. Particularly in the case of excise contracts, generally speaking, it is well nigh impossible to recover any arrears after the event. It is for this reason that the rules of all the State insist upon adequate deposits and securities beforehand to be adjusted towards the last months of the year. These provisions and the spirit underlying them cannot be ignored or violated. Now, in the case of this contract, the loss to the State is the whopping sum of Rs. 2,88,54,431. How much of this loss is attributable to the impugned orders is difficult to assess but it can be said with certainty that but for these orders, the State would have conducted the re-auction in the month of May 1995 itself in which event the loss to the State would have been for less. The respondent-firm carried on till December, 1995 without properly and fully paying the amounts due under the orders of the court. A very, very sad tale.

In *Chief Constable of the North Wales Police v. Evans*, (1983) 3 All. Eng. Reports 141, the House of Lords has observed that "the purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the court". This principle has been referred to with approval in innumerable decisions of this Court. This decision clearly sets out the limits of the supervisory power under Article 226 of the Constitution and emphasises that the jurisdiction under the said Article is neither unlimited nor unrestrained, much less unguided.

A Constitution Bench of this Court held in *Har Shankar & Ors. v.*

- A *The Deputy Excise and Taxation Commissioner & Ors.*, [1975] 1 S.C.C. 737 that "the writ jurisdiction of High Courts under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred". Of course, where there is a statutory violation, interference would be permissible even in the case of a contract but not where the relevant facts are disputed and which dispute calls for an elaborate enquiry which cannot be conveniently done by the High Court in a writ petition.

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A perusal of the orders extracted hereinabove show that the learned Single Judge - it appears that almost all the orders are made by the same learned Judge (T.S. Doabia, J.) - has not kept in view any of the norms governing the exercise of writ jurisdiction of the High Court. The relevant facts were seriously disputed before him, each party alleging that the other has violated the terms and conditions of licence and the rules. The repeated interim orders passed permitting the supply of liquor to the writ petitioner, sale of liquor by the writ petitioner under the supervision of the authorities, partial deposits of the amounts with the authorities and release of the balance of the amounts to the writ petitioner, appointment of an advocate commissioner to act as a "conduit" between the State and the writ petitioner and appointing a "commission" comprising of two advocates to look into and decide the daily disputes arising between the parties - are all the outcome of a total disregard of the norms governing the writ jurisdiction. We are surprised that such orders could never have been passed by the High Court - at any rate, without safeguarding the interests of the State. The proper course for the High Court was to dismiss the writ petition at the very inception when it was brought to their notice that it involved disputed questions of fact. It is equally relevant to notice that in none of the orders mentioned hereinabove has the learned Judge recorded any finding that the State or its authorities have acted in contravention of the law or that they have failed to perform any of their duties enjoined by any of the relevant statutory provisions. Similarly, no finding is recorded that the licensee (respondent herein) has done what all it had to do under the terms of the contract and the law. Indeed, at one stage, the respondent-firm admitted that it is in arrears of excise revenue but it blamed it on the alleged wrongful acts of the authorities. Yet the learned Judge went on supervising the case on an almost day-to-day basis. This was certainly no part of the High Court's function. It has also resulted in substantial loss of revenue to the State - to the people.

H For the above reasons, the appeals are allowed and the orders

impugned herein are set aside. The writ petition No. 711 of 1995 is dismissed. The question then arises - what should happen to the huge arrears due from the respondent. The order dated May 22, 1995 records an "undertaking" given by the licensee-firm to the High Court to the effect that "all financial commitments to which he may ultimately be found liable would be met by him". The writ petitions filed by the respondent-firm have been dismissed. His licences have been cancelled, re-auction conducted and loss due to the State - to the people - has been ascertained. The High Court ought to enforce the undertaking now by proceeding against the respondent-firm (licensee) and all its partners. The violation of the undertaking, it needs to be mentioned, amounts to contempt of court. It is the duty of the court to try to repair the damage to the extent possible. No one should be allowed to suffer on account of the act(s) of the court. We, therefore, request the High Court to initiate appropriate proceedings for enforcing the "undertaking" aforesaid. Even otherwise, the interim orders passed are always subject to the final orders in the matter. The interim orders can always be corrected or revised at the final stage.

Since the respondent is not represented before us, we are desisting from imposing penal costs which we would have imposed otherwise.

K.K.T.

Appeal allowed.