

**Krishna and ors. Vs. State of U.P. and ors.**

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**Court :** Allahabad

**Decided On :** Dec-04-1978

**Reported in :** AIR1979All43; 1980CriLJ121

**Judge :** N.D. Ojha and ;R.R. Rastogi, JJ.

**Acts :** Uttar Pradesh Excise Rules, 1910 - Rule 373(2); [Constitution of India](#) - Article 226; [Uttar Pradesh Excise Act, 1910](#) - Sections 11(2)

**Appeal No. :** Civil Misc. Writ No. 3904 of 1978

**Appellant :** Krishna and ors.

**Respondent :** State of U.P. and ors.

**Advocate for Def. :** Standing Counsel

**Advocate for Pet/Ap. :** R.H. Zaidi, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**N.D. Ojha, J.**

1. Four country liquor shops in the district of Meerut situate at Anaj Mandi, Delhi Road, Sabun Godam and Mohiuddinpur were auctioned on 29th March, 1978. The petitioners were the highest bidders, their bid being for a sum of Rs. 20,00,000. As

would be shown later the location of the fourth shop was at Rethani and while holding the aforesaid auction it was shifted to Mohiuddinpur. By an order dated 19th April, 1978, a copy whereof has been filed as Annexure 11 to the writ petition, the Excise Commissioner required the District Magistrate, Meerut either to shift the Mohiuddinpur shop to a distance of 8 kms. from the border of Ghaziabad or to auction this group of shops afresh. This order states that the shop located at Rethani had without prior sanction been shifted to Mohiuddinpur and auctioned which was not in accordance with the rules. This could not be done without the concurrence of the District Magistrate of both the districts inasmuch as Mohiuddinpur was situate within 3 kms. of the border of Ghaziabad. It is this order of the Excise Commissioner which is sought to be quashed in the present writ petition.

2. The writ petition has been contested both on behalf of the State of Uttar Pradesh and the Excise Commissioner on the one hand and also on behalf of one Krishan Lal who has been impleaded as respondent No. 6 in the writ petition on an application made by him for this purpose. An application was made on behalf of the State Government and the Excise Commissioner by their standing Counsel for dismissal of the writ petition on the ground that the petitioners had an alternative remedy of filing a revision before the State Government. When that application came up for hearing it was considered expedient to hear the writ petition itself on merits.

3. Having heard counsel for the parties we are of opinion that the writ petition is not maintainable. From Annexure CA 2 to the counter-affidavit of H. C. Dwivedi, Excise Inspector, it appears that the three shops situate at Anajmandi, Delhi Road and Sabun Go-dam were auctioned on 29th March, 1978, for a sum of Rs. 21,40,000/- whereas a fourth shop which was situate at Rethani was auctioned for a sum of Rs. 1,00,000/-. Thus the total auction money for all the four shops came to Rs. 22,40,000/-. From the said annexure it further appears that the petitioner No. 1 Shri Krishna made an application that in case the shop situate at Rethani was shifted to Mohiuddinpur and if the three shops referred to above and the shop so shifted at Mohiuddinpur were auctioned afresh in one group he was prepared to make a higher bid. The District Magistrate on the basis of the said application

decided to shift the Rethani shop to Mohiuddinpur and to auction all the four shops afresh. On these four shops being re-auctioned the petitioners bid for Rs. 26,00,000/-. It is further apparent from the said annexure CA2 that the Collector shifted the shop from Rethani to Mohiuddinpur with the specific condition that the permission of the Excise Commissioner will be taken in this behalf later on. Annexure CA 2 is the copy of a letter dated 10th April, 1978, and it is addressed to the Excise Commissioner. A complaint was also made in this behalf by respondent No. 6 to the Excise Commissioner. It appears that the impugned order was passed by the Excise Commissioner on the basis of letter dated 10th April, 1978, aforesaid and presumably also on the basis of the complaint made by respondent No. 6.

4. By Excise Commissioner's Notification No. 10758 dated March, 10, 1976, Rule 373 of the U. P. Excise Rules has been substituted. Sub-rule (2) of Rule 373 reads:--

'The final acceptance of any bid is subject to the sanction of the Excise Commissioner which in its turn, is subject to decision by the Government in appeal or revision, if any.'

According to the petitioners they were given possession over the four shops after their auction on 29th March, 1978. It is however, not their case that their bid had been accepted by the Excise Commissioner on any date prior to 19th April, 1978, when the impugned order was passed. On the other hand it is the specific case of the respondents that the petitioner's bid had, not been accepted till 19th April, 1978, when the impugned order was passed. It is in this context that we have to consider the grievance made by the petitioners in the present writ petition.

5. For the respondents it has been urged that the writ petition is not maintainable (1) because the petitioners had no legal right on 19th April, 1978, when the impugned order was passed to institute the present writ petition, and (2) at all events, the petitioners had an alternative remedy of filing a revision before the State Government under Section 11 (2) of the U. P. Excise Act read with Rules 138 and 373 (2) of the Rules framed under the said Act. In our opinion both these contentions are well founded. In Civil Misc. Writ Petn. No. 1139 of 1965 Munni Lal

and another v. The Excise Minister and others, decided on 9th Dec., 1965 (All), a Division Bench of this Court held:--

'As the shop must remain open every day the Excise Commissioner empowers the Collectors to issue 'provisional' licences to persons whose bids have been accepted by them, when the acceptance of a bid of the holder of a provisional licence is sanctioned the licence becomes final; otherwise the licence comes to an end. A licence that is called provisional is the only licence that is dealt with in the rules; it is provisional in the sense that without its being cancelled or surrendered it is liable to cease to be operative on the acceptance of the bid not being sanctioned; since it was granted without the sanction and since there cannot be a valid licence without the sanction it is liable to become inoperative on the Excise Commissioner's deciding to withhold the sanction. In the case of a licence granted after the sanction it can cease to be operative only on cancellation or surrender. A licence granted without the sanction is also liable to become inoperative on the sanction being refused and this is the only difference between what is called a provisional licence and a final licence, otherwise a provisional licence is as effective as a final licence. A provisional licence is operative so long as the Excise Commissioner does not decide whether to grant or refuse the sanction, if he grants sanction it remains operative for the rest of the year otherwise it ceases to be operative from the date of the refusal. There are no rules regarding a provisional licence, it is granted only as a matter of favour by the Excise Commissioner and no person whose bid had been accepted by the officer conducting an auction has a right to it. As I said earlier the only right of such a person is to a licence and that only when the acceptance of his bid is sanctioned by the Excise Commissioner. The grant of a provisional licence simply validates the possession and sale of the intoxicant by the person and does not confer any other right upon him. So long as the provisional licence is in operation he can go on possessing and selling the intoxicant but since he has no right to the sanction of the acceptance of his bid he has no right to the continuation of the provisional licence beyond the date for which it is granted. It is granted only for the period during which the question whether the acceptance should be sanctioned or not remains pending with the Excise Commissioner; as soon as he decides it the provisional licence ceases to be operative and what right its holder gets for the

future depends upon what the Excise Commissioner's decision on the question is. So there is no infringement or deprivation of any right of the holder of a provisional licence by the Excise Commissioner's refusing to sanction the acceptance of his bid.'

In *Virendra Kumar v. State* (1978 All LJ 108) another Division Bench of this Court has held (at Pp. 109-10) :--

'Rule 373 (2) provides that the final acceptance of any bid is subject to the sanction of the Excise Commissioner, which in its turn, is subject to decision by the Government, in appeal or revision, if any. The manner in which the settlement is to be made is laid down in Rule 373. The rule, among other things, provides that the treasurer of the district, or one of his recognised assistants, shall be required to attend the sales to receive the advance fees paid by bidders provisionally accepted. Sub-rule (8) states that when a final decision is arrived at, the amounts so held in deposit should be at once credited or refunded, as the case may be. It would thus appear that the mere provisional acceptance of the bid does not confer any right upon the bidder unless the bid is accepted by a recognised authority. Under the rules, no concluded contract between the bidder and the State Government comes into existence.'

It is thus apparent that on 19th April, 1978 when the impugned order was passed the petitioners did not have any enforceable legal right. It was open to the Excise Commissioner either to sanction or not to sanction the acceptance of the petitioner's bid.

6. For the petitioners it was urged that the order dated 19th April 1978, did not amount to refusal of the petitioner's bid, We find it difficult to accept this contention. The contents of the said order have been quoted above and on its perusal we are satisfied that the Excise Commissioner did not sanction the bid of the petitioners finding it to be contrary to rules and asked the Collector either to remove the shop, shifted as aforesaid to Mohiuddinpur, to a distance of eight kms, from Ghaziabad or to auction the group of the four shops afresh. Such a direction does not convey any other meaning except that the petitioner's bid had not been sanctioned,

7. In regard to the submission made by the counsel for the respondents that the petitioners had an alternative remedy of filing a revision before the State Govt., emphasis was placed by counsel for the petitioners on the words 'in any proceedings' occurring between the words 'any order passed' and the words 'under this Act' in Sub-section (2) of Section 11. According to counsel for the petitioners it was not every order against which a revision was maintainable before the State Government but revision was maintainable only against an order which had been passed 'in any proceedings' under the said Act. Relying on Black's Law Dictionary (Revised Fourth Edition) (1968) by Henry Campbell Black p. 1368 and Corpus Juris Secundum, Vol. I page 954, it was urged that a proceeding in a general sense, means the form and manner of conducting judicial business before a court or judicial officer. In our opinion that restricted meaning is not possible to be given to the word 'proceedings' occurring in Section 11 (2) of the U. P, Excise Act inasmuch as it cannot be said that any order passed under the said Act had been passed by a court or judicial officer conducting judicial business. If that meaning is attributed to the word 'proceedings' used in Section 11 (2) the power of revision conferred on the State Government would almost become nugatory.

8. In *Ram Narain v. Director of Consolidation* (AIR 1965 All 172) it was held that the word 'proceedings' is wider than the word 'case'. It may also include administrative proceedings. In *K. J. Lingan v. Joint Commercial Tax Officer* (AIR 1968 Mad 76) it was held that the term 'proceedings' is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning is governed by the statute. Therefore, the meaning to be attributed to the word 'proceeding' would depend upon the scope of the enactment wherein the expression is used and with reference to the particular context wherein it occurs.

9. Keeping in view the nature of the power which is normally exercised by the Collector and the Excise Commissioner under the U. P. Excise Act and the Rules framed there under we are of opinion that the context in which the words 'in any proceedings under this Act' have been used in Sub-section (2) of Section 11 makes it clear that the word 'proceedings' will include an order passed) by the Excise Commissioner, such as the impugned order, in proceedings for conducting auction of country liquor shops. Rule 373 (2) makes it clear that the final

acceptance of any bid is subject to the sanction of the Excise Commissioner which in its turn, is subject to decision by the Government in appeal or revision, if any. The use of the words 'revision, if any' itself makes it clear that a revision is maintainable against an order passed by the Excise Commissioner in the matter of granting sanction to the final acceptance of any bid. The word 'proceedings' in Section 11 (2) has to take its colour from the context and if interpreted in that light we are of opinion that a revision against the impugned order dated 19th April 1978, passed by the Excise Commissioner is maintainable before the State Government under Section 11 (2) of the Act. The petitioners have thus an alternative remedy against the impugned order,

10. Before parting with the case we may point out to another submission made on behalf of the petitioners that the plea of alternative remedy as contemplated by Article 226(3) was available only if a relief was sought either under Clause (b) or Clause (c) of Article 226(1) of the Constitution. In the instant case according to counsel for the petitioners the impugned order infringed the petitioner's fundamental right to carry on any trade or business within the meaning of Article 19(1)(g) of the Constitution, We find no substance in this submission either. It is well settled that there is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants -- its manufacture, storage, export, import, sale and possession. Since rights in regard to intoxicants belong to the State, it is open to the Government to part with these rights for a consideration. (See *Har Shanker v. Deputy Excise and Taxation Commissioner*, AIR 1975 SC 1121). Even if the acceptance of the petitioner's highest bid had been sanctioned by the Commissioner the right which the petitioners could exercise would be only such right which may have been parted with by the State Government for a consideration in favour of the petitioners. Those rights could not be elevated to the position of fundamental rights. In the instant case as already seen above even the acceptance of the bid of the petitioners had not been sanctioned by the Commissioner on the date when the impugned order was passed or even on the date when the writ petition was filed. It is, therefore, not right to say that any of the petitioners' fundamental rights has been infringed by the impugned order,

11. In the result the writ petition fails and is dismissed. The interim order is vacated. There will, however, be no order as to costs.

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