

basis of some qualification not recognized by the University, it cannot, on that account, be cancelled, if at that stage, it would be inequitable to the candidate, like where he would for no fault of his, thereby lose a year. This view is also clearly in accord with binding precedents on this Court."

It may be mentioned here that in the review application filed by the petitioner, reference had been made to two writ petitions where, according to the petitioner, this Court had upheld the Matriculation Certificate issued in June 1990 by the Varansi Sanskrit Vishwavidyalaya, Varanasi. These being Civil Writ Petition 1345 of 1990 (*Smt. Raj Bala v. State of Haryana and others*) decided on February 13, 1991 and Civil Writ Petition 5704 of 1991 (*Gian Chand v. State of Haryana and others*). This is, however, not borne out by a reading of the orders passed in these writ petitions. There, in fact, no question was raised with regard to the validity of these certificates. They cannot thus be taken to advance the case of the petitioner.

It would thus be seen that all the judicial precedents that the petitioner sought to rely upon where no fraud, concealment or misrepresentation of facts had taken place, unlike the present where the admission was founded upon fraud sought to be committed by the petitioner upon the college.

No occasion thus arises to grant the petitioner relief claimed. This Review Application is consequently hereby dismissed with Rs. 500 as costs.

J.S.T.

Before Hon'ble A. L. Bahri and N. K. Kapoor, JJ.

**M/S DIWAN SINGH AND COMPANY AND
ANOTHER,—Petitioners.**

versus

STATE OF PUNJAB AND OTHERS.—Respondents.

Civil Writ Petition No. 8186 of 1993.

November 10, 1993.

Constitution of India, 1950—Art. 226—Auction of liquor vends—Non-deposit of licence fee on the day of auction due to bank strike—Judicial review—Auction cannot be set aside on the ground of non-deposit as per terms of auction—Petitioner not the highest bidder

cannot question the auction as no legal right has been violated—State not suffering any loss from auction—Auction cannot be assailed in writ jurisdiction—Petitioners assertion that licence granted to a particular firm who did not participate in the bid raises a disputed question of fact, which cannot go into under Art. 226 of the Constitution—Writ petition liable to be dismissed.

Held, that this Court cannot go into the disputed questions of fact as to whether the stand taken up by the petitioner is correct or not that respondent No. 5 never participated in the bid. Without recording evidence or without affording opportunity of leading evidence such a question cannot be determined. If this process of recording evidence is started, sufficient time will be consumed and the period of the licence granted in favour of respondents Nos. 5 to 7 would expire. As already stated above, the petitioner approached this Court on July 30, 1993 i.e. after 4 months of the period of the licence had already expired. Thus this exercise is not being held. Even otherwise as already stated such disputed questions of fact cannot be gone into under Article 226 of the constitution.

(Para 4)

Held, that the petitioner has no legal right which can be enforced in this petition filed under Article 226 of the Constitution. According to his own case he was not the highest bidder at the auction held. What he claims in this petition is that after setting aside the auction in favour of respondents Nos. 5 to 7 the licence of the vends in dispute should be given to M/s Varinder Kumar and Company, the highest bidders. It is only, if it is found that such licence cannot be given to M/s Varinder Kumar and Company that the petitioner claims that the same be granted to him. Thus, in the circumstances stated above no legal right of the petitioner has been violated that the provisions of Article 226 be invoked in his favour.

(Para 7)

Held, that the writ petition filed by M/s Varinder Kumar and Company challenging the action of the respondents granting licence to respondents Nos. 5 to 7 already stood dismissed. Even if the facts stated in the petition are taken to be correct, it was not expected of the official respondents like granted licence to respondents Nos. 5 to 7 to invite other bidders for affording opportunity to raise their bids. When the auction took place the petitioner had an opportunity of raising the bid over and above the bid of M/s Varinder Kumar and Company. It appears that the present case has been fought on behalf of M/s Varinder Kumar and Company as the draft of the prayer itself indicated that the petitioner has no legal right which can be enforced in this petition, personally or individually much less fundamental. As a matter of fact even if the bid of the highest bidder had been rejected the same would not infringe Article 19(g) of the Constitution and in such circumstances grant of licence to others could not be subject matter of review.

(Para 8)

Held, that in the case of auction of liquor vends, the state was within its rights even not to accept highest bid and could otherwise by negotiations allot the licence with the object of getting enhanced revenue. Rather it is the case of the State that the amount of auction in the present case is about 64 per cent over and above the amount of auction held in the previous year. In this manner the State has not suffered any loss. The object of auctioning the vend is to collect the maximum amount of the revenue. Sufficient cause existed, as stated above, for depositing requisite amount on the following day. The entire amount having already been deposited before the end of March 1993, a valid contract came into existence between the State and the respondents Nos. 5 to 7. The contention of the learned counsel for the petitioners that the vends should have been re-auctioned if highest bid was not to be accepted, cannot be accepted in the facts of the present case.

(Para 11)

Mohan Jain Advocate with Sandeep Suri, Advocate, *for the Petitioners.*

G. K. Chatrath, A.G., Punjab with R. K. Joshi, Addl. A.G., Punjab and Anu Chatrath, Advocate, *for respondents Nos. 1 to 4.*

H. L. Sibal, Sr. Advocate with Swaranjit Kaur, Advocate, *for respondent Nos. 5 to 7.*

JUDGMENT

A. L. Bahri, J.

(1) This writ petition has been filed by M/s Diwan Singh and Company as well as its partner Diwan Singh under Articles 226 and 227 of the Constitution for quashing auction of liquor vend of Group No. 1, additional vends of L-2 and Group Nos. II and III of Baret District Mansa, in favour of respondents Nos. 5 to 7 Sukhpal Singh Gurinder Singh and Company and others. Further direction is sought that the aforesaid vends should be allotted to the highest bidder M/s Varinder Kumar and Company, Mansa, and if that is not possible then to the petitioner who was the second highest bidder. Further prayer has been made that in the alternative the liquor vends should be re-auctioned. The petitioner was ready to deposit a sum of Rs. 20,000,00 as security and his first bid should be taken as of Rs. 10,000,00 more than the bid amount for the licence fee on which licences have been granted to respondents Nos. 5 to 7.

(2) The auction took place in the Hall of Sukhraj Cinema, Bathinda on March 18, 1993, as conducted by the official respondents,

officers of the Excise and Taxation Department. The terms and conditions of the auction have been given in the writ petition. Some amount was required to be deposited on the spot and the remaining within seven days or before March 31, 1993. The auction was for the year 1993-94 commencing from April 1, 1993. Group No. 1 of Bareta was to be auctioned and thereafter Licence L-2 at Bareta Mandi was to be given to the same licensee on a fixed fee of Rs. 5.10 lacs. The attached vends Nos. II and III were also to be given at the fixed incidence of Rs. 55.90. The Petitioner is alleged to have given the bid of Rs. 1.24 Crores whereas M/s Varinder Kumar and Company gave the highest bid of Rs. 1.25 Crores. In spite of the highest bid given by M/s Varinder Kumar and Company the vend was not given to them but the same was given to respondent No. 5 M/s Sukhpal Singh, Gurinder Singh and Company for *mala fide* and extraneous considerations with respect to respondents Nos. 6 and 7. It was stated that they were not eligible to give the auction. They had not deposited the requisite fee for taking part in the auction. Respondent No. 5 did not deposit the amount of auction money on the day of the auction. He is alleged to have deposited the same on the following day, whereas respondents Nos. 6 and 7 deposited such amount much after i.e. on March 24, 1993. From these facts it is asserted on behalf of the petitioners that in fact respondent No. 5 never participated in the bid and a fraud was played upon the State to allot the vend to him subsequent to the auction.

(3) On notice of motion having been issued written statements have been filed by the official respondents as well as by respondents Nos. 5 to 7. The facts alleged in the writ petition have been controverted. According to them respondent No. 5 gave the highest bid of Rs. 1.15 crores which was accepted. Since on the day of the auction there was strike of the bank employees of the Nationalised Banks, the requisite amount of auction money was deposited on the following day. They have also demonstrated that on the day of the auction they had sufficient money which was shown on the spot for payment to cover the auction money. Raising preliminary objections it has been alleged that no legal right of the petitioner has been violated to enable him to invoke jurisdiction of this Court under Article 226 of the Constitution. The writ petition also deserves to be dismissed on the ground of delay. Gurinder Singh is stated to be a partner in all the three firms of respondents Nos. 5 to 7 and under the terms and conditions of the auction at the finalisation of the auction he could join with him other partners. Even if there was some delay in depositing the auction money, though the entire amount required

to be deposited, was in fact deposited before March 31, 1993, the grant of licence issued in favour of the replying respondents could not be questioned. Similar pleas have been taken by respondents Nos. 5 to 7 in their written statements.

(4) At the outset it may be stated that this Court cannot go into the disputed questions of fact as to whether the stand taken up by the petitioner is correct or not that respondent No. 5 never participated in the bid. Without recording evidence or without affording opportunity of leading evidence such a question cannot be determined. If this process of recording evidence is started, sufficient time will be consumed and the period of the licence granted in favour of respondents Nos. 5 to 7 would expire. As already stated above, the petitioner approached this Court on July 30, 1993 i.e. after 4 months of the period of the licence had already expired. Thus this exercise is not being held. Even otherwise as already stated above such disputed questions of fact cannot be gone into under Article 226 of the Constitution.

Learned counsel for the petitioners has vehemently argued that in view of the admitted facts the auction in favour of respondent No. 5 and grant of licence to him and other respondents cannot be sustained in law. The grounds asserted being that on the day of the auction respondent No. 5 did not deposit the licence fee as per terms and conditions of the auction. The additional licences were to be given only to respondent No. 5 if he was to be treated as the highest bidder and not to strangers and thirdly respondents Nos. 6 and 7 also deposited the licence fee much late i.e. March 24, 1993. Before this aspect is considered, it is necessary to refer to the preliminary objections raised on behalf of the respondents. The trade in liquor is not a fundamental right of any citizen. It is a privilege which is granted by the State on the licensee, otherwise the trade in liquor is entirely controlled by the State. This position has been well recognised by several judicial pronouncements of the Supreme Court. In *Cooverjee B. Bharucha v. Excise Commissioner and the Chief Commissioner, Ajmer and others* (1). In para 7 of the judgment while commenting upon the provisions of Article 19 (1) (g) of the Constitution it was observed as under :—

“Article 19 (1) (g) of the Constitution guarantees that all citizens have the right to practise any profession or to carry on any occupation or trade or business, and Cl. (6) of the

(1) A.I.R. 1954 S.C. 220.

article authorises legislation which imposes reasonable restrictions on this right in the interests of the general public. It was not disputed that in order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in that trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. It can also not be denied that the State has the power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public."

With respect to the liquor trade and rights of the citizens *qua* the same it was observed as under :—

"Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the business is, therefore, an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community. Some occupations by the noise made in their pursuit, some by the odours then engender, and some by the dangers accompanying them, require regulations as to the locality in which they may be conducted. Some by the dangerous character of the articles used, manufactured or sold, require also special qualifications in the parties permitted to use, manufacture or sell them."

The following observations made in *Crowley v. Christensen* (2), were approved :—

"The police power of the State is fully competent to regulate the business—to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it

may, as already said, be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licences for that purpose. It is a matter of legislative will only."

(5) The position of law as aforesaid was again recognised by the Supreme Court in *Har Shankar and others v. The Deputy Excise and Taxation Commissioner and others etc.* (3).

After making reference to several earlier decisions of the Supreme Court on the subject it was observed in para 53 of the judgement as under :—

"There is no fundamental right to do trade or business in intoxicants—its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants."

(6) The matter was considered by this Court also in 1956 in *Messrs Ghaio Mall & Sons v. The State of Delhi and others* (4), wherein it was held that even though no person has any inherent right to sell liquor, still it is open to the petitioner under Article 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.

(7) The petitioner as a matter of fact has no legal right which can be enforced in this petition filed under Article 226 of the Constitution. According to his own case he was not the highest bidder at the auction held. What he claims in this petition is that after setting aside the auction in favour of respondents Nos. 5 to 7 the licence of the vends in dispute should be given to M/s. Varinder Kumar and Company, the highest bidders. It is only, if it is found that such licence cannot be given to M/s Varinder Kumar and Company that the petitioner claims that the same be granted to him. Thus, in the

(3) A.I.R. 1975 S.C. 1121.

(4) A.I.R. 1956 Punjab 97.

circumstances stated above no legal right to the petitioner has been violated that the provisions of Article 226 be invoked in his favour. In *Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal and others* (5), while dealing with the scope of Article 226, it was observed in para 3 of the judgment as under :—

“Article 226 in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The existence of the right is the foundation of the exercise of jurisdiction of the High Court under Art. 226. The legal right that can be enforced under Art. 226, like Art. 32, must ordinarily be the right of the petitioner who complains of infraction of such right and approaches the Court for relief. The right that can be enforced under Art. 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or *quo warranto* this rule may have to be relaxed or modified.”

Again in *State of Orissa v. Ram Chandra Dev* (6), it was observed as under :—

“Though the jurisdiction of the High Court under Art. 226 is wide in that sense, the concluding words of the Article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Art. 226.”

(8) Learned counsel for the petitioner referred to the decision of the Supreme Court in *Ram and Shyam Company v. State of Haryana and others* (7), wherein the action of the State ignoring the highest bidder and granting licence of mines and minerals to another person recommended by the Chief Minister was quashed at the instance of the highest bidder holding the action to be arbitrary as no

(5) A.I.R. 1962 S.C. 1044.

(6) A.I.R. 1964 S.C. 685.

(7) A.I.R. 1985 S.C. 1147.

opportunity was given to the highest bidder to further increase his bid. The decision aforesaid cannot be applied to the facts of the present case. The writ petition filed by M/s Varinder Kumar and Company challenging the action of the respondents granting licence to respondents Nos. 5 to 7 already stood dismissed. Even if the facts stated in the petition are taken to be correct, it was not expected of the official respondents like granting licence to respondents Nos. 5 to 7 to invite other bidders for affording opportunity to raise their bids. When the auction took place the petitioner had an opportunity of raising the bid over and above the bid of M/s Varinder Kumar & Company. It appears that the present case has been fought on behalf of M/s Varinder Kumar and Company as the draft of the prayer itself indicates that the petitioner has no legal right which can be enforced in this petition, personally or individually much less fundamental. As a matter of fact even if the bid of the highest bidder had been rejected the same would not infringe Article 19 (g) of the Constitution and in such circumstances grant of licence to others could not be subject matter of review. It was so held by the Supreme Court as early as 1972 in *State of Orissa and others v. Harinarayan Jaiswal and others* (8). That was also a case of auction of liquor vend. *Cooverjee B. Bharucha's case* (supra) was relied upon. In para 17 of the judgment it was observed as under :—

“By merely giving bids, the bidders had not acquired any vested rights. The fact that the Government was the seller does not change the legal position once its exclusive right to deal with those privileges is conceded. If the Government is the exclusive owner of those privileges, reliance on Article 19 (1) (g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government—nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights.”

(9) The auction took place at Bhatinda with respect to a liquor vend of village Baretta situated in district Mansa. The auction money was required to be deposited as per terms and conditions of the auction at the fall of the hammer in the Treasury at Mansa. On an objection having been raised with respect to the financial capability of respondent No. 5 to increase the bid, a report was subsequently made on such objections that on the spot it was verified that respondent

(8) A.I.R. 1972 S.C. 1816.

No. 5 had the financial capability of making bid. Such report is Annexure R. 1 dated March 26, 1993 which is supported by the details of the bank drafts already obtained by respondent No. 5 prior to March 18, 1993, total amount by such draft being Rs. 7,80,000. The other amount, respondent No. 5 had in cash available. At this stage it may further be observed that a complaint was filed by M/s Varinder Kumar and Company which was filed holding that such Company did not give the bid of Rs. 1.25 Crores. That report is Annexure R. 4.

(10) Since the amount was to be deposited in the Treasury there being strike by the employees of the Nationalised Banks the amount could not be deposited on that very day at Mansa. The necessary amount was deposited on the following day i.e. March 19, 1993. The question for consideration is whether on that account the auction is to fail. Learned counsel for the petitioner referred to the decision of the Supreme Court in *Har Shankar and others etc. etc. v. The Deputy Excise and Taxation Commissioner and others etc.* (9). In para 22 of the judgment it was observed that :—

“The writ jurisdiction of High Courts under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred. That, however, will not estop the appellants from contending that the amended Rules are not applicable as their licences were renewed before the amendments were made.”

(11) The petitioners in the present case cannot get any assistance from the aforesaid decision. Present is not a case where the petitioner wanted to avoid any such contract or its obligation. In the case of auction of liquor vendis, as already discussed above, the State was within its rights even not to accept its highest bid and could otherwise by negotiations allot the licence with the object of getting enhanced revenue. Rather it is the case of the State that the amount of auction in the present case is about 64 per cent over and above the amount of auction held in the previous year. In this manner the State has not suffered any loss. The object of auctioning the vendis is to collect the maximum amount of the revenue. Sufficient cause existed, as stated above, for depositing requisite amount on the following day. The entire amount having already been deposited before the end of March 1993, a valid contract came into existence between the State and respondents Nos. 5 to 7. The contention of the learned

counsel for the petitioners that the vendors should have been re-auctioned if highest bid was not to be accepted, cannot be accepted in the facts of the present case.

(12) The other question pressed into service on behalf of the petitioners is that respondents Nos. 6 and 7 were strangers and the additional licence on fixed terms could not be granted to them. They could also be granted to respondent No. 5, who in fact was the highest bidder as per stand of the State. This contention again cannot be accepted. Gurinder Singh was the bidder. From the documents produced and which were concluded at the time of the auction indicate the aforesaid person as partner in the three firms-respondents Nos. 5 to 7. It is not disputed that on conclusion of the auction the names of the partners could be disclosed. They were in fact disclosed. Annexure R, 5—Form M, 14 prepared on the spot on March 18, 1993 indicate Gurinder Singh as one of the partners of the three firms aforesaid. Thus contention of learned counsel for the petitioners that respondents Nos. 6 and 7 are strangers cannot be accepted. Finding No merit in this petition, the same is dismissed.

R.N.R.

Before Hon'ble J. L. Gupta, J.

MISS SHALU GUPTA,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 9889 of 1993

December 2, 1993.

Constitution of India, 1950—Art. 14, 226/227—Admission against 2 per cent reserved seats in MBBS—BDS, BAMS (Ayurvedacharya) for sports persons—Criterion challenged that interse merit of sportsman/sportswomen shall be judged on basis of +2 result only—Whether action of respondents in grading sportsman for admission to medical courses only on the basis of performance in +2 courses violative of article 14—Held that classification is not violative of Art. 14.

Held. that normally, there is a presumption in favour of constitutionality. If the appropriate authority on the basis of its experience finds that admission to the medical colleges should be made