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effect to the provisions of the Orissa Estates Abolition Act of 1951 and not to take possession of the several estates of the three petitioners under that Act.

The costs of the petitions here and in the High Court should, in our opinion, be paid by the State of Orissa.

Appeals Nos. 167 *and* 168 *allowed*

Appeal No. 169 *dismissed.*

Agent for the appellants: *B. P. Maheshwari.*

Agent for the respondents: *G. H. Rajadhyaksha.*

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January 13

COOVERJEE B. BHARUCHA

v.

THE EXCISE COMMISSIONER AND THE CHIEF COMMISSIONER, AJMER, AND OTHERS.

[MEHR CHAND MAHAJAN. C.J., MUKHERJEA, VIVIAN BOSE, GHULAM HASAN and JAGANNADHADAS JJ.]

Constitution of India, art. 19 (1) (g)—Excise Regulation I of 1915—Whether ultra vires *art. 19 (1) (g)—Reasonable restrictions under art. 19 (6)—Charge of fee—Whether in the nature of tax.*

Held, (i) that with reference to Excise Regulation I of 1915 for the purpose of determining reasonable restrictions within the meaning of art. 19 (6) of the Constitution, on the right given under cl. 19 (1) (g) regard must be had to the nature of the business and the conditions prevailing in a particular trade and no hard and fast rules concerning all trades can be laid down. The State has the power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public. There is no inherent right in a citizen to sell intoxicating liquors by retail and therefore the provisions of the Excise Regulation I of 1915 purporting to regulate trade in liquor in all its different spheres are not invalid;

(ii) charge of licence fee by public auction is more in the nature of a tax than a licence fee though it is described as a licence fee. One of the purposes of the Regulation is to raise revenue. Revenue is collected by the grant of contracts to carry on trade in liquors and these contracts are sold by auction. The grantee

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is given a licence on payment of the auction price. The Regulation specially authorises this. It is not a fee levied without authority of law.

(i) *Crowley* v. *Christensen* (34 Law, Ed. 620, 623)

(ii) *Commonwealth of Australia* v. *Bank of New South Wales* ([1950] A.C. 235)

(iii) *Rashid Ahmed* v. *Municipal Board of Kairana* ([1950] S.C.J. 324) (distinguished) referred to.

ORIGINAL JURISDICTION : *Petition* (No. 232 of 1953) under art. 32 of the Constitution of India.

B. D. Sharma for the petitioner.

M. C. Setalvad, Attorney-General for India (*Porus A Mehta,* with him) for the respondent.

1954. January 13. The Judgement of the Court was delivered by

MAHAJAN C. J.—This petition under article 32 of the Constitution of India arises in the following circumstances.

The Collector of Excise, Ajmer, respondent No. 3, on the 16th March, 1953, held an auction sale of "Chang Gate country liquor shop, Beawar," for the year 1953-54 pursuant to the rules framed under Excise Regulation I of 1915. The petitioner and respondent No. 5, Chhoga Lal, offered bids at the auction sale. Chhoga Lal, whose bid was in the sum of Rs. 57,000, was declared the highest bidder and the petitioner who was the former licensee was thus unsuccessful in obtaining the contract to run this liquor shop as hereinbefore. Half of the auction price was payable immediately on the provisional acceptance of the bid. Chhoga Lal, however, deposited Rs. 16,500 on the 16th March, 1953, and the balance of Rs. 12,000 on the 18th March, 1953, *i.e.,* two days after the due date, contrary to the provisions of sub-rule 8(a) of rule 6 of the auction rules. In spite of this the sale was eventually confirmed in his favour by the Minister of Excise.

The petitioner, when apprised of this irregularity, sent a telegram to the Collector of Excise stating that

the sale should not be confirmed in favour of Chhoga Lal as he had failed in paying the price according to the rules and expressing his willingness to take the licence on the price fetched at that auction sale. He also preferred an appeal to the Chief Commissioner against the order of the Collector allowing the deposit of Rs. 12,000 after the due date and in not ordering a resale. His appeal and representation both were unsuccessful. He claims redress for both these grievances by means of this petition.

The petition is founded on the following allegations:

(1) That the petitioner's fundamental right to carry on trade or business in liquor under article 19(1)(g) had been infringed by the act of the Collector of Excise, in condoning the failure of the respondent in depositing the whole of the security deposit required under sub-rule 8(a) of rule 6 of the auction rules within the prescribed time and in not reauctioning the licence under sub-rule 9 of rule 6.

(2) That in allowing Chhoga Lal to make the deposit after the expiry of the prescribed time the Collector had discriminated between him and Chhoga Lal and had thus abridged the petitioner's fundamental right under article 14. It is alleged that if the petitioner had known that the Collector would enlarge the time for the security deposit be would have offered a higher bid.

(3) That the Hon. Minister for Excise, respondent No. 2, had no authority under the regulation to confirm the auction sale held by the Collector.

(4) That the summary rejection of his appeal without hearing was not justified and has resulted in the abridgement of his right to carry on his trade.

(5) That the provisions of the Excise Regulation and the auction rules made thereunder were *ultra vires* as the same purport to grant monopoly of trade to a few persons and are thus inconsistent with article 19 (1) (g) of the Constitution and that the provisions of the regulation regarding levy of licence fee with the avowed object of raising a big source of revenue also

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seriously affected the fundamental rights of the petitioner under article 19(1) (g) of the Constitution. On these allegations the petitioner prayed for a writ of *mandamus* or a writ in the nature thereof or a direction or order on respondents Nos. 1 to 4 directing them,

(a) not to levy any duty or fee for the purpose of raising revenues for the benefit of the State by holding auction sales,

(b) not to grant monopoly in the trade to a selected few individuals, but to grant licences freely on application, and

(c) to grant a licence to the petitioner to deal in country liquor with his place of business at or near Chang Gate, Beawar.

In the alternative a *mandamus* was asked directing the officer concerned either to confirm the next lower bid of the petitioner and to grant the licence for Chang Gate liquor shop, Beawar, in his favour or to hold a reauction in accordance with the auction rules and to cancel the licence of respondent No. 5.

Some of the points raised are clearly outside the ambit of the constitutional remedy provided under article 32 of the Constitution and will be considered hereinafter. The main contention which needs consideration in the case is regarding the constitutional validity of the Excise Regulation I of 1915. It was contended that the petitioner, a citizen of free India, had an unfettered right to carry on trade and business in liquor and this right had been guaranteed to him under article 19 (1) (g) of the Constitution, and that being so, the provisions of the regulation which confer discretion on the Excise Commissioner to restrict the number of liquor shops, and to license them by auction to the highest bidder amount to creation of a monopoly in liquor trade and are void. The excessive licence fee recovered by public auction was attacked on the ground that it was not in the nature of a licence fee but was in the nature of a tax and this could not be

recovered by having resort to the powers of legislation saved by article 19 (6) of the Constitution.

In order to determine the validity of these contentions, it is necessary to refer to the relevant provisions of the regulation which consolidates and amends the law relating to import, export, transport, manufacture, sale and possession of intoxicating liquors and of intoxicating drugs, in the Provinces of Ajmer-Merwara. It has been enacted in exercise of the legislative power conferred by the Government of India Act 1935 Seventh Schedule, List II, "For making laws regarding intoxicating liquors, *i.e.*, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors", and under power conferred for raising "duties of excise on alcoholic liquors for human consumption." The pith and substance of the regulation is that it raises excise revenue by imposing duties on liquor and intoxicating drugs by different methods and it also regulates the import, export, transport, manufacture, sale and possession of intoxicating liquors. Section 13 enacts that no excisable article shall be manufactured or collected except under the authority and subject to the terms and conditions of a licence granted in that behalf. Section 14 provides that the excise commissioner may (a) establish a distillery in which spirit may be manufactured under a licence granted under section 13 on such conditions as the Chief Commissioner may impose; (b) discontinue any such distillery; (c) license, on such conditions as the Chief Commissioner may impose, the construction and working of a distillery or brewery; (d) establish or license a warehouse wherein any excisable article may be deposited and kept without payment of duty; and (e) discontinue any such warehouse. Section 15 provides that without the sanction of the Chief Commissioner no excisable article shall be removed from any distillery, brewery, warehouse or other place of storage. Section 18 says that the Chief Commissioner may lease to any person, on such conditions and for such period as he may think fit, the right of manufacturing or of supplying by wholesale, or of both, or

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of selling by wholesale or by retail, or of manufacturing or of supplying by whole, or of both and of selling by retail any country liquor or intoxicating drug within any specified area. Restrictions regarding the manufacture and sale of liquors in cantonments and other places are found in some other provisions of the regulation. The employment of children and women is prohibited in this business and provision is made authorising the District Magistrate for closing shops for the sake of maintenance of public peace. Section 24 authorises the Chief Commissioner to impose a duty at such rate or rates as he thinks fit on any excisable article imported, exported, transported or manufactured, cultivated or collected under any licence granted under section 13. Section 27 deals with grant of licences, permits and passes. It provides that a licence shall be granted on payment of such fees, if any, for such period and subject to such restrictions and on such conditions and shall be in such form and contain such particulars as the Chief Commissioner may direct either generally or in any particular instance. Power is then given by section 30 for cancellation or suspension of the licence. Sections 31 and 32 provide for the withdrawal and surrender of licence. Chapter VII of the regulation deals with offences and penalties. Chapter VIII deals with detection, investigation and trial of offences under the regulation. Section 62 provides, *inter alia,* that the Chief Commissioner has power to make rules prescribing the scale of fees and the manner of fixing the fees payable in respect of any privilege, licence, permit or pass or the storing of any excisable article. Section 64 says that the following moneys, namely, all excise revenue, any loss that may accrue when in consequence of default a grant has been taken under management by the Collector or has been resold by him, and all amounts due to the Government by any person on account of any contract relating to the excise revenue, may be recovered from the person primarily liable to pay the same, or from his surety (if any), by distress and sale of his movable property or by any other process for the recovery of land

revenue due from landholders or from farmers of land or their sureties.

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 clause (6) of the 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. 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 they 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. These propositions were not disputed, but it was urged that there was something wrong in principle and objectionable in similar restrictions being applied to the business of selling by retail, in small quantities, spirituous and intoxicating liquors. It was urged that their sale should be without restriction, that every person has a right which inheres in him, *i.e.*, a natural

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right to carry on trade in intoxicating liquors and that the State had no right to create a monopoly in them. This contention stands answered by what Field J. said in *Crowley* v. *Christensen*(1):

"There is in this position an assumption of a fact which does not exist, that when the liquors are taken in excess the injuries are confined to the party offending. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which it creates. But as it leads to neglect of business and waste of property and general demoralisation, it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source. The sale of such liquors in this way has therefore, been, at all times, by the courts of every State, considered as the proper subject of legislative regulation. Not only may a licence be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours of the day, and the days of the week on which the saloons may be opened. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality, and not of federal law. 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

(1) 34 Law. Ed. 620, 623.

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."

These observations have our entire concurrence and they completely negative the contention raised on behalf of the petitioner. The provisions of the regulation purport to regulate trade in liquor in all its different spheres and are valid.

The contention that the effect of some of these provisions is to enable Government to confer monopoly rights on one or more persons to the exclusion of others and that creation of such monopoly rights could not be sustained under article 19 (6) is again without force. Reliance was placed on the decision in *Rashid Ahmad* v. *Municipal Board of Kairana*(1). That decision is no authority for the proposition contended for. Elimination and exclusion from business is inherent in the nature of liquor business and it will hardly be proper to apply to such a business principles applicable to trades which all could carry. The provisions of the regulation cannot be attacked merely on the ground that they create a monopoly. Properly speaking, there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public. Such, however, is not the case with the business of liquor. Reference in this connection may be made to the observations of Lord Porter in *Commonwealth of Australia* v. *Bank of New South Wales*( ). This is what his Lordship said:

"Yet about this as about every other proposition in this field a reservation must be made. For their Lordships do not intend to lay it down that in no circumstances would exclusion of competition so as to

(1) (1950) S.C.J. 324. (2) [1950] A.C. 235.

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create a monopoly either in a State or Commonwealth agency or in some other body be justified. Every case must be judged on its own facts and in its own setting of time."

Further it seems to us that this argument suffers from a fallacy. Under the rules every member of the public who wishes to carry on trade in liquor is invited to make bids. This is the only method by which carrying on of liquor trade can be regulated. When the contract is thrown open to public auction, it cannot be said that there is exclusion of competition and thereby a monopoly is created. For all these reasons we are of opinion that the contention that the provisions of the regulation are unconstitutional as they abridge the rights of the petitioner to carry on liquor trade freely cannot be sustained.

The next contention that the charge of fee by public auction is excessive and is not in the nature of a fee but a tax ignores the fact that that licence fee described as a licence fee is more in the nature of a tax than a licence fee. One of the purposes of the regulation is to raise revenue. By the provisions of section 24, duties can be imposed on the manufacture, import, export and transport of liquor and other excisable articles. Revenue is also collected by the grant of contracts to carry on trade in liquors and these contracts are sold by auction. The grantee is given a licence on payment of the auction price. The regulation specifically authorises this. It is not a fee levied without authority of law as was the situation in *Rashid Ahmad's* case([1]).

As regards the other contentions of the learned counsel, it is sufficient to say that if there has been any breach of the rules framed under the regulation by the officers concerned, the remedy for such breaches is provided for in the regulation itself. Mere irregularities committed in conducting an auction sale connot be said to have abridged the petitioners's fundamental rights and so article 32 is not attracted. It is open to the petitioner under article 226 to approach the High Court for a *mandamus* if the officers concerned have

(1) [1950] S.C.J. 324.

conducted themselves not in accordance with law or if they have acted in excess of their jurisdiction. The same is the answer to the petitioner's next contention that the sale could not be confirmed by the Minister and that under the rules it was only the Chief Commissioner who was authorised to confirm it. The point of discrimination was not seriously argued before us.

For the reasons given above we see no validity in this application and we accordingly dismiss it with costs.

Petition dismissed.

Agent for the petitioner: *S. D. Sekhri.*
Agent for the respondent: *G. H. Rajadhyaksha.*

THE VICE-CHANCELLOR, UTKAL UNIVERSITY AND OTHERS
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S. K. GHOSH AND OTHERS.

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January 15.

[MEHR CHAND MAHAJAN. C.J., MUKHERJEA, S. R. DAS, VIVIAN BOSE and GHULAM HASAN JJ.]

Constitution of India, art. 226—Mandamus *petition—High Court—Whether can constitute itself as court of appeal—Resolutions passed by University Syndicate—Validity of—Notice of meeting issued to all—Want of due notice waived—Substantial compliance with spirit of law.*

In the present case there were two meetings of the University Syndicate, consisting of twelve members. Proper notices of both meetings were issued to *all* the members but one member did not attend one meeting and another member did not attend the other meeting. The defect was that the subject matter of the present case was not included in the agenda of either meeting but one of the items in the agenda of both the notices was "other matters, if any." The subject matter consisted of leakage of examination papers and the cancellation of results. Those present passed the resolution on both occasions unanimously. The High Court held that want of notice in the two cases invalidated the resolutions