

M/S Karnal Distillery Co. Ltd.

Vs

The Union of India

Civil Appeal No. 1678 of 1968

M/S Karnal Distillery Co. Ltd.

Vs

State of Himachal Pradesh

Civil Appeal No. 2124 of 1968

Civil Appeal Nos. 1678 And 2124 of 1968

(H.R. Khanna, P.S. Kailasam JJ)

12.01.1977

JUDGMENT

KAILASAM, J. –

1. In both the appeals the plaintiff is the appellant by virtue of the certificate issued by the High Court of Delhi, Himachal Pradesh Bench, Simla. The question that arises in both the appeals is the same and the learned Counsel are agreed that the disposal of Civil Appeal 1678 of 1968 would dispose of Civil Appeal 2124 of 1968. We will therefore take up the facts in Civil Appeal 1678 of 1968 only.

2. The plaintiff, Karnal Distillery Co. Ltd. filed this suit for recovery of a sum of Rs. 25,270, principal being Rs. 22,264/6/3 and interest at the rate of 6 per cent per annum amounting to Rs. 3005/9/9. The case for the plaintiff/appellant is that on July 20, 1950 the plaintiff and Himachal Pradesh Government entered into an agreement under Ex. P-1 dated July 20, 1950 by which the plaintiff agreed to supply 12,000 L. P. gallons, with 10% variation of quantity on either side, of country liquors to the liquor licensees of Mandi District during the remaining period of 1950-51 commencing from August 1, 1950, at the rates mentioned in the agreement. The plaintiff offered to supply 10,800 L. P. gallons of liquor during the said period. The Himachal Pradesh Government accepted 10580-3 L. P. gallons. While the Government disposed of 7934-5 L. P. gallons, the remaining stock of 2645-8 L. P. gallons was taken over by the Government. For this quantity of liquor the plaintiff submitted a bill for Rs. 22,264/6/3 at the contractual rates and the interest due thereon. The main defence to the action with which we are concerned is that the plaintiff is not entitled to the contractual price of 2645.8 L. P. gallons of country liquor supplied to the defendant according to the rates mentioned in the agreement. The stand that was taken by the Government was that the liquor licences of Mandi to whom the liquor was supplied was necessary party and that the rights of the parties were not governed under agreement Ex. P-1 as the Government was acting as a sovering body under the Punjab Excise Act and rules made thereunder.

3. The trial Court the Senior Sub-Judge, Simla holding that the plaintiff was entitled to contractual price of 2645.8 L. P. gallons decreed the suit as prayed for. The trial Judge observed that the price of the disputed liquor which has been taken by the Government had not been sold by the plaintiff to the retail liquor licences and the liquor whose price is now claimed was admittedly taken over by the defendant Government. The trial Court also negated the plea of the defendant that the plaintiff is entitled only to the price fixed by the Collector under the Excise Act and rules i.e. Rs. 16,333/5/2 as the parties were governed by the terms of bilateral contract Ex. P-1. The terms of which cannot be changed. In this view the trial Court decreed the suit as prayed for, namely for a sum of Rs. 25,270 with costs.

4. The State of Himachal Pradesh took the matter in appeal to the High Court of Delhi, Himachal Pradesh Bench, Simla, against the judgment and decree for recovery of Rs. 25,270 and costs in favour of the plaintiff. A Bench of the High Court modified the decree holding that the plaintiff is entitled to a decree for a sum of Rs. 16,333/5/2 which was realised by the Government from the coming to this conclusion the High Court was of the view that there is nothing in the agreement from which a contract of sale and purchase of goods could be spelt out between the parties. As the agreement does not provide for the supply of liquor by the plaintiff to the Government as such on a consideration of the terms of the agreement Ex. P-1 the High Court came to the conclusion that the plea of the plaintiff that the Government was under an obligation to take over the extra stock of liquor lying at the Mandi warehouse and to pay for it at the contractual rates, was not maintainable. The Court took the view that as the contract having come to an end by efflux of time and as the plaintiff still had 2645.8 L. P. gallons lying undisposed of in the warehouse the plaintiff could have insisted upon his removing the extra stock of liquor to his own distillery or to file a suit against the Government for the damages for wrongful seizure of the property. While conceding the plea of the plaintiff that there was no privity of contract between the plaintiff and the liquor licences and that no suit could be maintained against them it was reluctant to treat the suit as one on the basis of a claim for compensation suffered due to the wrongful seizure of the plaintiff's property by the Government. In the view that as the plaintiff's property by the Government. In the view that as the plaintiff's goods, have been taken over by the Government the plaintiff is entitled to be paid or them the Court fixed the reasonable price as the one that was fixed by the Collector and granted a decree for Rs. 16,333/5/2 modifying the decree of the trial Court.

5. The question that arises for consideration in this appeal is whether in the circumstances of the case the plaintiff is entitled to the contractual price of 2645.8 L. P. gallons of country liquor supplied to the defendant according to the rates mentioned in the agreement. So far as the facts are concerned there is no dispute. It is admitted that according to the contract the plaintiff had supplied 10,800 L. P. gallons of country spirit during the relevant period but the respondent accepted 10,580.3 L. P. gallons only. Out of the quantity supplied the respondent Government disposed of 7934.5 L. P. gallons and the remaining stock of 2645.8 L. P. gallons were taken over by the Government through the Excise Sub-Inspector, incharge of the warehouse. The price at the contractual rate for the quantity of liquor taken is Rs. 22,264/6/3 but the Collector fixed the price of the liquor in exercise of the powers vested in him under the Excise Act and rules at Rs. 16,333/5/2 only.

6. The contract entered into between the parties is Ex. P-1. As the appeal will have to be decided mainly on the construction of the document we set out the relevant parts of the contract :

An agreement between the Karnal Distillery Co. Ltd. Karnal and Himachal Pradesh Government dated July 20, 1950.

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1. The contractors will supply 12,000 L. P. gallons with 10 per cent variation of the quantity on either side, of country spirits to the liquor licences of Mandi district (Himachal Pradesh) during the remaining period of the financial year 1950-51, commencing August 1, 1950.
2. The Government will provide a suitable building to the contractors for a warehouse at Mandi or a rental of Rs. 50 per mensem for the period of contract.
3. The contractors will supply bottled country spirit of 20 U. P. up to the quantity agreed to in clause (1) above, ex-warehouse Mandi at the following rates per dozen bottles :

Plain Ordinary/Spiced Quarts Pints Nips Quarts Pints Nips 11/14/- 6/4/- 3/5/- 12/6/- 6/5/- 3/8/-##

The agreement was signed between the Karnal Distillery Co. Ltd. described as the contractors of the one part and the Himachal Pradesh Government through the Chief Commissioner, Himachal Pradesh Province, called the Government, of the other part. Under Clause 1 the contractors will have to supply 12,000 L. P. gallons to the liquor licences of Mandi district during the remaining period of financial year. Under Clause 2 the Government is to provide a building to the contractors for a warehouse at Mandi at a rent of Rs. 50 per mensem. Clause 3 provides that the contractors will supply bottled country spirit of 20 U. P. up to the quantity agreed to in Clause 1 (i.e. 12,000 L. P. gallons) ex-warehouse Mandi at the rates per dozen bottles, mentioned therein. The undertaking is by the contractors to supply up to the quantity agreed. Clause 1 contemplates the supply to the liquor licences but the two clauses are silent as to from whom the contractors will get payment. As the contracting parties are the plaintiffs and the Government, in the absence of specific provision to the contrary, it is only the contracting party i.e. the Government which will have to pay for the goods supplied at the rate mentioned to the person supplying the goods. The clause does not contemplate that the contractor should look forward to the liquor licences for payment. There is no privity of contract between the contractor and the liquor licences. The construction of the first 3 clauses of the agreement would show that by the terms of the contract the Government had agreed to pay the contractor for the liquor supply. The other clause of the agreement also envisage the right of the Government to terminate the contract without any notice for breach of any of the conditions and for confiscation of the security deposit in the event of the breach of the terms of the contract. It was submitted by Mr. Mahajan, the learned Counsel for the respondents, that Ex. P-1 cannot be construed as an agreement between parties as the Government was acting in exercise of its powers as a sovereign body and as the liquor trade has to be regulated for the benefit of the public, it is incumbent on the Government to lay down rules and to regulate supply. By virtue of this sovereign power the plaintiff was licensed under Ex. P-1 to manufacture and to supply to the liquor licensees the quantity of liquor at the rates specified. As the terms of the contract were regulatory in character on March 31, 1951 when the period expired, the Collector as a sovereign authority had a right to seize the liquor and dispose it of according to the rules without reference to the terms of the contract. In support of his contention the learned Counsel relied on a decision of this Court reported in *Har Shankar v. The Deputy Excise & Taxation Commissioner* (1975) 3 SCR 254 : (1975) 1 SCC 737. The decision is not helpful in deciding the question at issue for there is no dispute that the regulation of production and distribution of liquor is one of sovereign functions and the authorities could act under the several enactments and rules framed for the above purpose. But in the present

case the agreement was entered into purely as a contract between the plaintiff and the Government for the supply of liquor at the particular rate. There is no doubt that a licence from the Government is necessary for the manufacture and the Government had in fact permitted the plaintiff to manufacture and supply the liquor and had contracted for the price to be paid and has also agreed on the price for the liquor supplied. We have also found that under the terms of the contract the Government had agreed to pay the price of the liquor supplied. Therefore the receipt of the supply and payment of the price for it is purely a bilateral contract and does not involve exercise of any sovereign power. The contractor having supplied the quantity is entitled to be paid at the rates specified. If on March 31 the Government wanted to seize or impound the liquor their obligation to pay at the contract rate does not cease.

7. The trial Court was therefore right in holding that Ex. P-1 is a bilateral contract and that its terms cannot be changed according to the will of the defendant. The trial Court is also right in coming to the conclusion that the quantity of the disputed liquor was not sold by the plaintiff to liquor licensees but was taken over by the Government. We are unable to agree with the view taken by the High Court that according to the terms of the contract the liquor was to be paid for by the liquor licensees direct at the price agreed to between the plaintiff and the Government. We are also unable to agree with the High Court's conclusion that the contract came to an end by efflux of time and as the plaintiff still had 264.8 L. P. gallons lying undisposed of the plaintiff is not entitled to be paid according to the contract price. As we have pointed out the contractors have fulfilled their part of the contract by supplying the quantity of liquor agreed upon. In the view that we have taken that the contract was between the plaintiff and the Government and the plaintiff can look to the Government for the value of the liquor supplied it is not necessary for us to consider the question whether the High Court should have permitted to treat the suit as one for award of compensation for the loss suffered by the plaintiff due to the Government's wrongful seizure of the liquor. We are satisfied that on the terms of the contract the Government was bound to pay the price of 2645.8 L. P. gallons at the contracted rate and the plea of the Government that the contract had come to an end by efflux of time and that they could fix the price according to the Excise Rules and Regulations cannot be acceded.

8. The High Court had also declined to award costs to the plaintiff. Mr. S. P. Jaiswal, the party in person, brought to our notice the letter Ex. P-11 dated August 1, 1952 in which he requested that the agreed sum of Rs. 16,333/5/- may be paid to him without prejudice pending a settlement but this request was not granted. We find therefore that the plaintiff is entitled to the interest on the amount due.

9. In the result we confirm the judgment and decree of the trial Court in both the appeals, set aside those of the High Court and allow these appeals with costs.

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