

Chhotu Singh

Vs

State of Maharashtra and Others

Civil Appeals Nos. 2331-32 of 1987

(A. P. Sen, B. C. Ray JJ)

22.09.1987

JUDGMENT

B. C. RAY, J. -

1. Special leave granted. Arguments heard.
2. The subject matter of challenge in this appeal is the order dated April 7, 1986 made by the High Court of Bombay allowing the Writ Petition No. 189 of 1986 quashing the permission granted in favor of the petitioner by the government by its order dated December 24, 1985 permitting the shifting of the country liquor shop from Mouza Sawli to Mouza Narsi Chaurasta as well as the order of the High Court dated July 17, 1986 rejecting the Review Petition No. 837 of 1986. The petitioner's father had a licence to run the country liquor shop in village Narsi in Taluka Biloli, District Nanded, Maharashtra. In 1983 the said licence was transferred in the name of the petitioner (respondent 5 in this appeal). The appellant was granted a licence, commonly known as C.L. III licence for vending country liquor in village Sawli, Taluka Biloli, District Nanded. In November 1984, the appellant was permitted to join one Ataullah as his partner to run the said country liquor shop in village Sawli. The appellant found considerable difficulty in running the shop in village Sawli as there was very little demand for country liquor in the said village having small population of about 1800 and as such the appellant sustained heavy loss. The appellant therefore applied on February 2, 1985 before the District Collector, Nanded for permission to shift his shop from village Sawli to village Narsi Chaurasta situated within the same taluka. The Collector of Nanded after making necessary enquiries in accordance with the guidelines of the circular dated April 27, 1984 regarding the shifting of the shops recommended the transfer of the shop of the appellant from village Sawli to village Narsi Chaurasta. The Government of Maharashtra, however, by order dated July 25, 1985 rejected the application of the appellant for shifting the shop. The appellant again made a representation against the said order of rejection. This representation was duly considered by the government and permission was granted to the appellant to transfer his country liquor shop C.L. III from village Sawli to village Narsi Chaurasta. In accordance with the said permission granted to the appellant, the appellant shifted his shop on February 17, 1986 to village Narsi Chaurasta. Respondent 5 who has got a country liquor shop in that village, questioned the permission granted by the government in favour of the appellant by Writ Petition No. 189 of 1986 and prayed for quashing of the said order granting permission on the ground that there has been a violation of the circular No. CLR-1173(III) Gen/K dated February 27, 1973 inasmuch as the total population of the said village did not exceed 10,000 and as such the permission for shifting the said shop of the appellant to the village Narsi Chaurasta was illegal and bad.
3. The Writ Petition No. 189/86 was heard by the High Court, Bombay and it was allowed by

holding that without duly considering the criteria laid down in the circular dated March 18, 1982 i.e. economic viability of the proposed shop and the likely volume of consumption of country liquor, the purported permission for shifting the shop was granted. Accordingly, the rule was made absolute and the order granting permission by the government was quashed. An application for review of the said order was filed by the appellant and the same was rejected by order dated July 17, 1986 in Review Petition No. 837 of 1986. Aggrieved by the said two orders the special leave petition was filed out of which this appeal has arisen.

4. The only question that falls for consideration in this appeal is whether the permission granted by the State of Maharashtra i.e. respondent 1 for shifting of C.L. III liquor shop of the appellant from village Sawli to village Narsi Chaurasta is in accordance with the guidelines laid down by the latest circular dated April 27, 1984 which is annexed as Annexure P-7 to this appeal. It has been urged on behalf of respondent 5 by drawing the notice of the court to the circular dated February 27, 1973 (Annexure P-2) that the permission that was accorded for shifting of the appellant's shop from Mouza Sawli to Mouza Narsi is in infringement of the aforesaid circular inasmuch as the total population of Mouza Narsi did not exceed 10,000 and as such no additional shop could be permitted in the said Mouza nor any permission could be accorded for shifting of the appellant's liquor shop in the said Mouza. This argument advanced on behalf of respondent 5 is devoid of merit inasmuch as the aforesaid circular was superseded by the guidelines laid down by the government as is evident from the order No. CLR 1480/1101/PR-3 dated October 2, 1980 wherein it has been stated in Clauses 4 and 5 that permission for additional shop can be granted only if it would be economically viable. It is also evident from the circular dated March 18, 1982 that Rules 23 and 24 of the Maharashtra Country Liquor Rules, 1973 were amended by Government Notification dated February 26, 1982 and guidelines have been laid down for grant of a licence for shops for the retail sale of country liquor. One of the guidelines to be considered is that due consideration has to be given to the likely volume of consumption of country liquor and economic viability of the proposed shop before granting any permission for a new shop. This circular was followed by another circular dated September 16, 1983 wherein it has been mentioned that in granting additional licences for country liquor shop, the Collector should use the discretion and propose shops at such places taking into consideration the likely volume of consumption, economic viability, menace of illicit distillation etc. This circular is annexed as Annexure P-5 to the appeal. By the latest circular dated April 27, 1984 the government in supersession of the guidelines in the previous circulars had laid down certain guidelines of which Clause 6 is relevant for our consideration which is to the following effect :

Whether additional shop at the new place would be economically feasible.

5. In the instant case the District Collector of Nanded made due enquiries in accordance with the guidelines contained in circular dated April 27, 1984 (Annexure P-7 to this appeal) with regard to the shifting of country liquor shop of the appellant and recommended the permission for shifting the shop stating that the population of Mouza Narsi is about 3738 and it is a commercial place. There is a lot of crowd of people at this place and as such if the country liquor shop is shifted from Mouza Sawli to Mouza Narsi the financial condition of the licence-holder would improve resulting in his being able to pay the licence fee and incur the other expenses of the shop. It has been further stated that the sale of country liquor at Mouza Narsi is 1300 liters and starting of another shop at this place is feasible. This report was forwarded to the Secretary, Home Department, Government of Maharashtra, a copy of which is annexed as P-1 to this appeal. The Government of Maharashtra had first rejected the application of the appellant for the shifting of the shop on July 25, 1985 and on representation being made by the appellant had reconsidered its earlier decision and accorded

sanction to the proposal of shifting of country liquor shop of the appellant from village Sawli to village Narsi Chaurasta, Taluka Biloli. This order according permission cannot be assailed as arbitrary or in breach of the latest circular issued by the government laying down the guidelines in 1984. The government duly considered the guidelines laid down in the said circular namely the economic viability and also the volume of consumption of liquor in the particular Mouza as is evident from the report of the Collector, Nanded. It is also pertinent to mention in this connection that the State of Maharashtra, respondent 1 filed a return to this appeal wherefrom it is manifest that respondent 1 duly considered the report of the Collector recommending permission to transfer the country liquor shop of the appellant. It has also been stated in the said counter that the guidelines contained in the circular dated February 27, 1973 are in respect of the grant of new country liquor licence. These guidelines cannot be made applicable in respect of the shifting of any country liquor shop existing already in one village to another village. It has further been stated that after the permission was granted the appellant shifted his country liquor shop to village Narsi Chaurasta and he has been running the country liquor shop there since February 1986. The sanction accorded to the shifting of the shop of the appellant is not in breach of the latest circular dated April 27, 1984 annexed as P-7 to this appeal.

6. For the reasons aforesaid there is no merit in the submissions made on behalf of respondent 5 and the same cannot be sustained. The appeals are therefore allowed. The impugned judgment and order passed by the High Court of Bombay dated April 7, 1986 in Writ Petition No. 189/86 as well as the order dated July 17, 1986 made in Review Petition No. 837/86 are quashed and set aside. There will, however, be no orders as to costs.

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