

M/s. Doongaji and Co.

Vs

State of M.P. and others

Writ Petition No. 729 of 1988

(N. M. Kasliwal, K. Ramaswamy JJ)

09.08.1991

JUDGEMENT

K. RAMASWAMY, J.:-

1. In this writ petition under Art. 32 of the Constitution, the petitioner, a partnership firm seeks reliefs of mandamus to direct the State Government and the Commissioner of Excise of M.P. to allow the petitioner to set up a distillery pursuant to the cabinet policy dated December 30, 1984 and to grant D-2 licence; to declare the letter dated February 8, 1982 as unconstitutional, illegal and of no effect in law and to direct the respondents Nos. 1 and 2 to grant a licence to manufacture potable alcohol within the State of Madhya Pradesh and to grant D-1 licence to supply country made liquor, etc. This case has behind it chequered history which is necessary to adumbrate.

2. In the State of M. P. v. Nandlal Jaiswal, (1987) 1 SCR 1 : (AIR 1987 SC 25 1) this court considered the legality of the policy, the subject-matter in the writ petition. It was held therein that nine distilleries in the State of Madhya Pradesh including the one at Ujjain were set up on the lands and buildings belonging to the Government. The plants and machinery therein initially, were of the Government, but in course of time the licensees installed or replaced the plants and machinery and became the owners. The petitioner and its predecessors had licence for the distillery at Ujjain for well over 40 years to manufacture rectified spirit. The last of the licences held by the petitioner was for the years April 1, 1976 to March 31, 1981. The period of licence was at that time for five years. The practice as per the provisions of the M. P. Excise Act 1915 for short 'the Act' and M.P. Distilleries, Breweries and Warehouses Rules for short 'the rules' issued in exercise of the powers under S.62 was to call for the tenders to manufacture and supply the rectified spirit or denatured spirit, spirit (country made) to the retail vendors within the area attached to the distillery. Rajdahani Distillers Corporation, for short 'RDC' became the successful tenderer for the licensing period starting from April 1, 1981 to March 31, 1986. The petitioner challenged in Misc. Petition No. 701 / 81 in the M.P. High Court under Art. 226. Initially stay was granted, but later it was vacated on August 20, 1981. Licence was granted for the period starting from August 25, 1981 to March 31, 1986 to RDC and the distillery, plant and machinery at Ujjain was handed over to RDC on August 28, 1981. Thereafter the petitioner filed another writ petition No. 169/82 on March 16, 1982 for redelivery of the plant and machinery and the warehouses and other consequential reliefs. That writ petition was dismissed by the High Court against which Civil Appeal No. 5483/ 83 was filed, which is just now disposed of. The petitioner had applied for grant of licence on February 19, 1982 and he reiterated his request in number of reminders including one on November 3, 1986. In the interregnum the Govt. changed the policy by a Cabinet Sub-Committee policy decision dated December 30, 1984 under which they decided to grant licence to the existing licensees of the distilleries and that they should construct the factories at their expenses on the land allotted by the

State Govt. or acquired and allotted by the State Govt. and that they shift the business to new factories and the licence would be for a period of five years. Calling in question of that policy several writ petitions including the one by the petitioner were filed in the M.P. High Court. The Division Bench partly allowed the writ petition and quashed part of the policy decision. Against it appeals and special leave petitions were filed by the State and the unsuccessful petitioners including the petitioner. It was disposed of by this court reported in Jaiswal's case (AIR 1987 SC 251). During the hearing of the writ petition, the Attorney General of India conceded that if the petitioner makes any application for grant licence it would be considered by the State Govt. and be disposed of quickly. That concession was noted and the argument was founded thereon to hold that the Govt. did not intend to create any monopoly in favour of the existing licensees. This court upheld the policy of the Govt. and allowed the appeals and dismissed the special leave petitions of the petitioner and other. Pursuant thereto the petitioner made an application on December 25, 1987 followed by several reminders, Ultimately the State Govt. rejected the petition by letter dated February 8, 1988, which is impugned in this writ petition.

3. Under S.13 of the Act, the State Govt. is empowered to grant licence to manufacture, possession and sale of rectified spirit and the liquor in the distilleries or the breweries. Under S.14 and Rule XXII the licensee should also have licence to establish distillery to distil rectified spirit or denatured spirit or liquor and a warehouse wherein any intoxicant be deposited and kept without payment of duty, but subject to payment of the fee to the State Govt. as it may direct. No intoxicant shall be sold by operation of S.17, except under the authority and subject to the terms and conditions of the licence granted in that of behalf Rule XXII provides the method disposal of the licence which reads thus:

"XXII. Disposal of licences - (1) Licence for the manufacture or sale of intoxicants shall be disposed of by tender, auction, fixed licence fee or in such other manner as the State Govt. may, by general or special order, direct.

Except where otherwise prescribed, licence shall be granted by the Collector or by an Officer authorised by him in that behalf."

Rules III to V of the Distillery and Warehouse Rules also made inter alia under subsection 2(h) of S.62 deal with the subject of grant of licence and provide, in the following terms, for different kinds of licences which may be issued, viz., licences in Forms D-1, D- 1(s) and D-2:

"III. Subject to the sanction of the State Government, the Excise Commissioner may grant a licence in Form D-1 and Form D-1(s) for the wholesale supply of country spirit to retail vendors.

IV. The Collector may issue, on payment of a fee of Rs. 1000 a licence in Form D-2 for the construction and working of a distillery to any person to whom a wholesale supply licence has been issued.

V. Subject to sanction of the State Government the Excise Commissioner may issue a licence in Form D-2 for the construction and working of a distillery on payment of a fee of Rs. 1000."

The State Govt. rejected application of the petitioner on three grounds, namely, (1) that the petitioner requested to issue a licence at the old place at Ujjain Distillery which is no longer

available; (2) present policy of the Abate and the Central Govt. was to discourage manufacture of liquor for drinking purpose, except from molasses. (3) However, if it is manufactured from other raw materials other than the Mahua, his application would be considered. If the petitioner makes an application for establishment or manufacturing denatured spirit at other places and if they produce a No Objection Certificate from Central Development and Environmental Department, his application would be considered.

4. The contention of Sri Nariman, the learned counsel for the petitioner, is that the State Govt. having made solemn undertaking before this Court and the arguments were heard in Nandlal Jaiswal's case, (AIR 1987 SC 251) on the basis that the application of the petitioner would be considered and disposed of, it was with an intention to grant licence to the petitioner, but rejection is contrary to the undertaking given to this Court. It was also contended that the petitioner have a long, clean and commendable history of 40 years in manufacturing country made liquor in the distillery and supply thereof within the area attached to Ujjain Distillery. The State Government's non-grant of licence, thereto is only a rouse to defeat the fundamental rights of the petitioner to establish and trade in the manufacture and distribution of the liquor in terms of the provisions of the Act and the rules and the instructions of the Govt. in that regard. Having given the licence to the other distilleries, the petitioner being similarly placed, non-grant thereto is arbitrary, discriminatory and violating Art. 14 of the Constitution. It was also further contended that the petitioner if for any reason cannot be granted D-2 licence at Ujjain, D-2 licence may be granted on Government distillery at Ratlam and supply area attached to it under D- 1(s) so as to do complete justice to the petitioner. It was resisted by Sri Ganpule, learned senior counsel for the State contending that pursuant to the undertaking given to this Court, the application was considered and found not feasible to grant the licence to the petitioner due to grounds stated in the impugned order which are relevant and existent being in conformity with the change of the policy, and so this Court cannot interfere and may not issue the writ as prayed for.

5. Though rule nisi was ordered on March 17, 1989, despite notice of the Registry dated April 24, 1989, neither copies of the writ petition, nor the requisite process fee for service of the rule nisi on the respondents were deposited in the Court. As a result the rule nisi was not issued to the contesting respondents Nos.3 to 10. Along with the connected appeal which is just disposed, Sri Tarkunde the learned senior counsel appearing for RDC which was impleaded as 5th respondent to whom licence was given for Ujjain Distillery, contended that unless there is cut in the supply area of the operation of the existing licences and a separate supply area is carved out no D-2 licence could be issued to the 1986 to petitioner. The licensing period of 1991 had expired by efflux of time. New policy is in vogue for the succeeding licensing period of 1991 to 1993. The licences having been granted to the respective persons, who are not represented in this court, the relief asked for cannot be granted in their absence.

6. In our view there is force in the contentions of the respondents. The only question for consideration is whether it is a fit case for interference by this Court due to the aforesaid sequence of events. Undoubtedly the learned Attorney General assured this court that the application, if filed by the petitioner, would be considered, obviously in accordance with the provisions of the Act and the rules. The policy of 1984 was upheld by this Court under which nine distilleries were granted D-2 licences to manufacture rectified spirit and liquor and to supply to the retailers under D-1 licence within the area attached to each of the distilleries. The petitioner admittedly made application to grant licence to manufacture country made liquor, obviously with Mahua flowers or molasses at Ujjain. The RDC established new distillery at Ujjain in terms of the new policy, at its expense, and is manufacturing and supplying the liquor. It vacated the old distillery at Ujjain which we are

informed that the building is still existing. RDC had manufactured the spirit and country made liquor in terms of D-2 licence and supplied in terms of D-1 licence. The period of the licence also expired by efflux of time. Again there is change in the new policy which is in vogue. The licensing period is for two years commencing from April 1, 1991 to March 31, 1993. Admittedly, the petitioner had not submitted any tender in terms of the new policy for manufacture of rectified spirit or liquor for grant of D-2 and D-1 licences, the licences have already been granted to the, third parties and they are not before this Court. Any direction in this regard would not only interfere with the licences granted to them, but also create a hiatus in operational system. This Court cannot direct the State Govt. to create a new policy of receiving private applications or to direct the Commissioner of Excise to carve out a new supply area and to grant licence to the petitioner. It is not possible to give such a direction for the reasons that the petitioner, admittedly, did not offer himself as a candidate for consideration when tenders were called for licensing period commencing from April 1, 1991. As regards the Govt. Distilleries at Ratlam are concerned for grant of D-1 (S) licence as requested for, we have no sufficient material whether any arrangements have been made to any other parties for supply area in that regard. Under these circumstances, it is extremely difficult to accede to the request made by the counsel for the petitioner. Though the petitioner had established long career in the field to manufacture, supply and distribution of intoxicants in the State of Madhya Pradesh for about 40 years, we cannot issue any direction as asked for.

7. Under these circumstances we are constrained to dismiss the writ petition, but without costs.

Petition dismissed.

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