

(SUPREME COURT OF INDIA)

Secretary, Department of Excise & Commercial Taxes and Others

Vs

Sun Bright Marketing Private Limited Chhattisgarh and Another

HON'BLE JUSTICE V. N. KHARE (CJI), HON'BLE JUSTICE S. B. SINHA AND

12/02/2004

Civil Appeal No. 6425 of 2002

JUDGMENT

S.B.

SINHA,

J.

The judgment of the Chhattisgarh High Court dated 4.4.2001 passed in Writ Petition No. 6021 of 2000 granting exemption from payment of licence fee is in question before us in this appeal.

2. The respondent herein was awarded a contract for running Indian Made Foreign Liquor shops in the district of Raipur for the period commencing 1.4.2000 to 31.3.2001. Although the contract was to commence from 1.4.2000, he had been handed over the licence on 3.4.2000.

3. The respondent claimed deduction by way of remission and/or compensation from the amount of licence fee payable by him for three periods for different reasons which are:

(i) For closure of shop due to holding of municipal election at several places wherefor the liquor shops situated within a radius of 25 kilometers from the Municipal Corporation of Durg and Bhilai were directed to be closed.

(ii) For closure of shop for five days consisting of - three days due to agitation on account of constitution of Chhattisgarh State, one day owing to strike with regard to constitution of High Court Bench at Raipur and one day on account of strike on Kargil issue.

(iii) For non-grant of the licence from 1st April, 2000 to 3rd April, 2000.

4. The High Court in its judgment held that the respondent was entitled for compensation and/or exemption from payment of licence fee for three days when the liquor shops remained closed due to political agitation and demonstration. He was also found to be entitled for compensation and/or exemption from payment of licence fee for a period of three days for the period when the shops were directed to be closed for municipal election. The High Court further held that the respondent was also entitled to exemption from payment of licence fee for three days, i.e., for the period from 1st April, 2000 to 3rd April, 2000 on account of delay in handing over the licence.

5. Mr. Prakash Shrivastava, learned counsel appearing on behalf of the State would urge that the respondent herein was not entitled to any compensation and/or remission in licence fee for closure of his shops owing to holding of election of municipal corporation at Raipur in view of the provisions contained in Sub-Section (1) of Section 24 of the Madhya Pradesh Excise Act, 1915 (for short "the Act") as in terms thereof the District Collector is empowered to direct closure of such shops for maintenance of public peace.

6. The learned counsel would argue that closure of shops due to political agitation and demonstration cannot give rise to any claim for compensation in view of condition No. 18 of the Sale Memo as also General Condition No. 8.

7. So far as the judgment of the High Court directing payment of compensation for the period 1st April, 2000 to 3rd April, 2000 is concerned, Mr. Shrivastava would argue that the same is impermissible under the provisions of the Act.

8. Mr. P.N. Mishra, learned counsel appearing on behalf of the respondent, on the other hand, would urge that from a perusal of the note appended to Clause (V) of the conditions laid down in Schedule-4 of the Sale Memo, it would be evident that there was no embargo for claiming payment of compensation as in terms thereof only those shops, which fall within the area of the local bodies, where election was to be held, were required to be compulsorily closed.

9. Mr. Mishra would further submit that having regard to the proviso appended to sub-section (2) of Section 24 of the Act, a statutory duty was cast upon the licensee to close down his shop in the event of any riot or unlawful assembly takes place and in that view of the matter, the licensee was entitled therefor to claim exemption and/or remission from payment of licence fee.

10. The learned counsel would submit that Rule VIII (3) of the General Licence Conditions whereupon the learned counsel for the appellant has relied upon will have no application in the instant case. He would urge that Rule VIII of the General Licence Conditions will have no application in a case where closure is forced upon the shop by reason of a political agitation which would be apparent from the fact that a similar embargo contained in Condition No. 42 of the Sale Memo had been deleted. Mr. Mishra would, therefore, submit that the finding of the High Court cannot, thus, be faulted as while granting relief to the respondents herein all the relevant provisions of the Act, the General Licence Conditions and the conditions laid down in Sales Memo had been taken into consideration.

11. Mr. Mishra would further contend that as the respondent was not legally entitled to run thr shop for the period 1st April, 2000 to 3rd April, 2000, as no licence was granted to him, it must be held that the licence remained suspended for the said period and in that view of the matter the High

Court must be held to have correctly arrived at the conclusion that the respondent was entitled to grant of remission in payment of licence fee for the said period.

Statutory

Provisions:

12. Section 24 of the Act reads as under :

"24. Closing of shops for the sake of public peace - (1) The District Magistrate, by notice in writing to the licensee, by may require, that any shops in which any intoxicant is sold shall be closed at such times or for such period as he may think necessary for the preservation of the public peace.

(2) If a riot or unlawful assembly is apprehended or occurs in the vicinity of any shop, a Magistrate of any class, who is resent, any require such shop to be kept closed for such period as he may think necessary:

Provided that, when any such riot or unlawful assembly occurs a licensee shall, in the absence of the Magistrate, close his shop without any order.

(3) when any Magistrate issues an order under sub-section (20, he shall forthwith inform the Collector of his action and his reasons thereof."

\*

13. Rules II and VIII of the General Licence Conditions read as under:

"II. Payment of fees - (1) the licence fees for all intoxicant shall be payable at the treasury or, in outlying tahsils, at the sub-treasury, on or before the first working day of each month.

(2) The licence fees for intoxicating drugs and country liquor shall be paid in twelve monthly instalments. If a licence fee be not exactly divisible by 12, the remainder left over after division by 12 shall be paid with the first instalment.

(3) No remission or abatement shall be claimable except in accordance with the provisions of Section 32 of the Act, or or rule VIII below. An advance deposited as security shall be credit to fees due in the closing months of the year." \*

"VIII. Shops to be kept open and adequately stocked. - (1) Shops shall be kept open every day throughout the year unless their temporary or permanent closure has been authorised by the Collector. Such supply of liquor or intoxicating drugs as the Collector may consider sufficient to meet the local requirement shall be maintained. Subject to the provisions of section 38 of the Act, and to the exceptions specified in rule XIV, sales be made to all comers on payment at the current rate of sale. Shops for the sale of tari may be closed during the rains, i.e. from 1st June to the 14th October.

(2) Shops shall remain closed for the whole day on such days as the Collector may announce at the time of auctions:

Provided that the Collector, or District Excise Officer, or in their absence a Deputy Collector, duly

authorised by the Collector, may require foreign liquor licensees holding licenses in Forms F.L. 1 and F.L. 2 to open the shops on such days for sale of foreign liquor to bona fide foreign visitors.

(3) Shops shall also remain closed in any area or areas for such period as the State Government may in public interest deem necessary so to do. An intimation to the effect shall be given to the licensee through the Collector of the district well in advance as far as possible:

Provided that, when a shop is closed under this rule, the Collector may, with the previous sanction of the Excise Commissioner, award compensation to the licensee for loss of profits."

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14. The relevant clauses of Schedule-4 appended to Sale Memo are as under:

"(IV) In addition to this, the Collector shall have power in administrative and public interest to issue orders for closure of any one of more shops of any place or all the shops of Tehsil or Distt. for additional 3 days and the shops shall remain closed accordingly.

(V) During Lok Sabha and Assembly General Elections/by elections, the shop shall remain closed for 48 hours before the time fixed for closure of election/voting i.e. on the date of election and one day before the date of election and so far the question of declaring the days as dry days after the election and counting days is concerned, the concerned Collector shall be empowered to take decision in view of local circumstances as to whether there is a need from administrative point of view or not to declare dry days after the election and counting days. Similarly, shops shall also remain closed during i.e. for general/by elections of local bodies. \*

Note : The local bodies includes Municipal Corporation, Municipal Committee, Nagar Panchayat and Distt. Panchayat. During after elections, shops of only those areas will remain closed where elections are being held.

\*VI) In addition to above festivals/occasions, every Collector shall decide and fix the boundaries of the industrial area situated within their district separately for each area and the shops shall remain closed for two days, i.e., days for disbursement of salary and expenses of workers/labourers, which shops are situated within the boundary so fixed by them. The Collector shall fix/decide these days in such a manner that these days are same for all the mills and industrial establishments of one Town.

(VII) For the dry days as mentioned in the above para (I) to (VI), the concerned contractors shall not be allowed any rebate/concession whatsoever in the auction money for those days and nor they will be entitled to any compensation whatsoever.

(VIII) If in addition to the abovesaid fixed dry days, shops are remained closed on the written order of Collector, then in case of closure of such shops, the Contractor shall be entitled to proportionate rebate/ concession in auction money as prescribed for the concerned shop." \*

15. The Act is a self-contained code.

16. The licensees indisputable are bound by the provisions of the said Act, the general conditions framed thereunder as also the terms and conditions of the sale memo. It is also in dispute that

remission in licence fee would be permissible provided the claim of the licensee is covered by one or the other provisions contained therein.

17. The scheme of the Act, the General Licence Conditions and the conditions contained in the Sale Memo postulate that, in the event, the licensee is required to close a shop in terms of an order passed by the statutory authority or otherwise, he would be entitled to claim remission in licence fee unless the same is expressly barred.

18. Section 24 of the Act is in two parts. Sub-section (1) of Section 24 empowers the District Magistrate to direct closure of any shop in which any intoxicant is sold for such time or for such period as he may think necessary for preservation of the public peace. Sub-section (2) of Section 24, however, deals with a specific situation in terms whereof in the event of apprehension or occurrence of a riot or unlawful assembly in the vicinity of a shop, a Magistrate of any class may require such shops to keep closed for such period as he may think necessary. In the event, however, no magistrate is available, the proviso appended thereto mandates that the licensee shall close the said shop without any order.

**19. A bare perusal of the provisions contained in Sub-section (2) of Section 24 read with the proviso appended thereto makes the legal position absolutely clear that closure of a shop in the event of occurrence of a riot or unlawful assembly is mandatory whether at the instance of a Magistrate or at the instance of a licensee himself; the only difference being that the Magistrate can pass an order where a riot or unlawful assembly is apprehended, the licensee is enjoined with a duty to close his shop whence a riot or unlawful assembly occurs.**

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20. It is not disputed that the shops of the respondent remained closed for three days owing to agitations as regard creation of State of Chhattisgarh etc.

**21. In terms of Clause (3) of Rule II of the General Licence Conditions, a remission or abatement in the licence fee cannot be claimed save and except in the cases which would come within the purview of Section 32 of the Act or Rule VIII of the General Licence Conditions. It is also not in dispute that Section 32 of the Act has no application in the instant case. #**

22. Rule VIII aforementioned mandates the licensee to keep his shop open everyday throughout the year. Such a statutory obligation on the part of the licensee, however, is subject to temporary or permanent closure which is authorised by the Collector. Clause (2) of Rule VIII states that the shops would remain closed for the whole day on such days as the Collector may announce at the time of auctions. Clause (3) of Rule VIII, however, authorises the State Government to direct closure of any shop in public interest, intimation wherefore is required to be given to the licensee through the Collector of the district well in advance as far as possible. The proviso appended to Rule VIII, however, empowers the Collector to award compensation to the licensee for loss of profits.

23. The provisions of the sale memo, so far as they are not inconsistent with the provisions of the Act or the Rules also provide for closure of the shop on one ground or the other.

24. Condition No. 18 contains the liquor prohibition policy which as has been noted by the High Court reads as under:

"(18) Liquor Prohibition Policy and closure of shops due to natural calamities:-

As a result of Liquor Prohibition Policy of any neighbouring State or of the State, any shop/shops are closed, than no compensation on this account shall be payable by the State to the contractor. Similarly, due to Liquor Prohibition in neighbouring State or for any other reason, if the decision to re-auction any shop of the States is taken or in case State consider it necessary to open any shop during the year 2000-2001, then the Excise Commission shall have power to do so and no objection whatsoever from the contractor shall be entertained and accepted and no compensation whatsoever or any rebate/concession whatsoever shall be payable objector. If during the period of contract, contractor suffers from any loss or damage whatsoever as a result of natural calamity, celestial problem or political demonstrations, public demonstration, movements, law and order problems, the contractor shall not be entitled to any compensation whatsoever. All the licenses shall be subject to the Madhya Pradesh Excise Act, 1915 and Rules framed thereunder and rules as amended from time to time and orders/instructions passed and issued by the State Government, Excise Commissioner, Collector from time to time. \*

**25. The said provision does not put an embargo on remission in payment of licence fees in the event the closure of shop due to any reason authorised by law. The said provision furthermore cannot restrict the operation of the provisions of the Act. As would appear from what has been stated hereinbefore, the provision contained in Clause 42 of the Sale Memo in this behalf had been stood deleted. #**

26. Schedule-4 appended to the Sale Memo provides for the proposed dry days for 2000-2001.

27. Clause (IV) of the Sale Memo empowers the Collector to direct closure of anyone or more shops for three days in addition to the days which have been noticed in Clause (I) of the Schedule-4 in administrative and public interest. Clause (V) provides for closure of shops for 48 hours during the time fixed for holding of election. The provisions contained in Clause (V) also applies in case of general/by elections of local bodies. The note appended to the same, however, provides that during holding of election inter alia of local authorities, shops of only those areas would remain closed where election is held. It is, however, not in dispute that the Collector or Raipur district had issued an order purported to be in terms of Sub-Section (1) or Section 24 for keeping the shops closed for 48 hours which would fall within a radius of 25 kilometers from the boundary of Municipal Council, Bhilai-III of Charoda Nagar. Such an order, therefore, was outside the purview of Clause (V).

28. Clause (VI) of the said Memo provide for closure of the shop in addition to the days specified in Clauses (I) to (V) for two days within or near about the industrial area.

29. In terms of Clause (VII) of the Sale Memo aforementioned, the licensees are not entitled to any rebate/concession for the days of closure of such shops in terms of Clauses (I) to (VI) aforementioned. Clause (VII), therefore, does not prohibit remission in licence fee and/or grant of compensation if the closure is directed for any reason other than those mentioned in Clauses (I) to (VI) of the said Sale Memo.

30. It is also not in dispute that the power of the Collector to direct closure of any shop may emanate from a direction by a Competent Authority in terms of the provisions of the other statutes.

31. Sub Para 3 of Chapter 13 of the Handbook to the Returning Officers issued by the State Election Commission provides:

"3. Ban on sale of liquor :- (a) During public election in every Municipal Corporation area and within the radius of 25 kilometers of its limit all the liquor shops will be closed from 48 hours before closing of the voting and during this period the sale and purchase of liquor will be totally prohibited." \*

32. The power, in terms of Sub-Section (1) of Section 24 of the Act, was, therefore, exercised by the Collector, Raipur having regard to the aforementioned provision and not in terms of Clause (V) of the Sale Memo.

33. Condition No. 42 of the Sale Memo which stood deleted read thus:

"(42) Loss arising from celestial / natural calamities and for other reasons: - No contractor shall be entitled to get compensation whatsoever from the State for the loss suffered as a result of loss in contract business, damages to crop or political movements, transfer of markets or natural calamities." \*

34. Keeping in view the aforementioned provisions, the correctness of the impugned judgment would have to be considered.

35. Section 24 of the Act does not militate against the claim of remission in the licence fee, in the event a closure is effected thereunder.

**36. It is a well-settled principle of law that a subordinate legislation either by way of rules framed in terms of the provisions of the Act or the General Conditions issued by the Excise Commission in exercise of its Statutory power or the conditions of Sale Memo framed would be subject to the provisions of the Act. For proper interpretation of the statutory provisions, the Act and the Rules are required to be harmoniously read. Political agitation resulting in unlawful assembly would clearly attract the proviso appended to Sub-section (2) of Section 24. As noticed hereinbefore, in case of a riot or unlawful assembly, a licensee is statutorily enjoined to close his shop. The proviso appended to Sub-Section (2) of Section 24 is mandatory in nature. #**

**37. Rule VIII of the General Licence Conditions also enjoins upon the licensee to keep the shop open everyday throughout the year unless their temporary or permanent closure has been authorised by the Collector. Rules VIII Aforementioned also in our considered opinion contemplates a situation where Sub-Section (2) of Section 24 would be attracted. The proviso appended to Sub-Section (2) of Section 24 will have to be read as a part of the main enactment and not an exception thereto. Sub-sections (1) and (2) of Section 24 as also the proviso appended thereto refer to the closure of shop for the reasons stated therein. Whereas in terms of Sub-Section (1) of Section 24 the Collector may pass an order, in a case falling within the purview of Sub-Section (2) thereof, even a Magistrate can pass such an order. Thus, Rule VIII of the General Conditions also refers to a temporary or permanent closure, as has been authorised by the Collector and, thus, the same having regard to the principles of purposive construction would include an order passed by a Magistrate in terms of Sub-Section (2) of**

**Section 24. In that view of the matter, if a Magistrate is not available when a riot or unlawful assembly occurs, the licensee having a statutory duty to close the shop; the same shall stand at par in view of the fact that in both the situations maintenance of public peace is mandatory. #**

38. Clause (3) of Rule VIII stands on a different footing. Proviso appended to Clause (3) of Rule VIII refers to closure under the said rule, viz., Rule VIII. The said proviso does not cover clause (3) of Rule VIII alone but also brings within its fold a case falling under Clause (1) aforementioned.

39. Therefore, in a situation of this nature, the licensee is entitled to claim remission in licence fee and/or damages.

40. Furthermore, it has rightly been opined by the High Court that having regard to the fact that Condition No. 42 of the Sale Memo stood deleted, a mischief covered thereby was sought to be removed. To that extent Clause 18 of the purported excise policy has not been given effect to, presumably because the same may be held to be violative of Section 24 of the Act.

41. To us it appears that such a decision was taken consciously. in a case of occurrence of natural calamity, riot or unlawful assembly, the licensee cannot discharge his obligation to keep his shop open. A riot or an unlawful assembly may take place for any reason including political agitation.

42. If an unlawful assembly takes place in course of a political movement, having regard to Section 24 of the Act, it might not even be possible to sustain the validity of Condition No. 42. Unlawful assembly owing to political movement was within the purview of Condition No. 42 of the Sale Memo having regard to Clause 18 of the excise policy. By deleting the said condition, a mischief is sought to be remedied thereby. (See Ameer Trading Corporation Ltd. Vs. Shapoorji Data Processing Ltd., JT 3003 (8) SC 109 , Ashok Leyland Ltd. Vs. State of Tamil Nadu & Anr., 2004 (1) SCALE 224 and Reema Aggarwal Vs. Anupam & Ors., 2004 (1) Supreme 355 ).

**43. So far as the closure of the shop in terms of the direction of the Collector dated 21.6.2000 is concerned, the same is not in dispute. The validity of the order of the Collector is not in question. Schedule-4 specifies the dry days and also specifies the date on which the shop are required to remain closed. The note appended to Clause (V) specifically directs closure of shops of only those areas falling within the area where elections are being held. The area refers to the cases in respect thereof the election is being held and not which is outside the said area. #**

44. In terms of Schedule-4, a remission in licence fee is impermissible if the closure occurs for a reason mentioned in any of the clauses referred to therein. The shops which are situated outside the area where election is being held would not, therefore, come within the purview of Clause (V) and, thus, would attract Clause (VIII) aforementioned, in terms whereof, the Contractor becomes entitled to grant proportionate rebate/concession in auction money as prescribed for the concerned shop.

45. The above view also find supports from the fact that clause (VII) excludes those contractors who had to keep their shops closed owing to the declaration of dry day as provided for in Clauses (I) to (VI). If a shop falling outside the area has to be kept closed in terms of an order passed under Sub-Section (1) of Section 24 of the Act, Clause (VIII) of the Sale Memo shall be attracted.

46. We may notice that recently in State of U.P. Vs. Jagjeet Singh : ] a 3 Judge Bench of this

Court [in which one of us (the Chief Justice of India) is a party] on interpreting Section 59 of the U.P. Excise Act which is in pari materia with Section 24 of the said Act held:

"Section 59 empowers the district magistrate to close any liquor shop at such time or for such period which he may consider necessary for preservation of peace. In cases where some riot or unlawful assembly is apprehended in vicinity of such a shop a magistrate or any police officer above the rank of constable, who is present my order for closure of the shop. The proviso to Section 59 casts a duty on the licensee to close the shop without any order by any authority, where a riot or unlawful assembly occurs at the place where the shop is situated. Apart from providing for closure of the shop to maintain peace, Section 59 does not provide for anything either way for awarding compensation or remission on account of such a closure." \*

47. In that case it was inferred that if awarding of compensation is not specifically barred, the same may be granted.

48. While interpreting Rule 34 (ii) of the U.P. Excise Licenses (Tender-cum-Auction) Rules, 1991, it was further observed:

"The position which finally emerges out is that an application for remission/damages for closure of shops in entirely auctioned in a group as is the case in the appeals in hand would be maintainable. But it is for the authorities concerned to consider the merit of the claim for remission/damages and pass any appropriate order looking to the facts and circumstances of the case in accordance with law. It would be the position as it relates to cases prior to the amendment of Rule 34 in 1998." \*

**49. However, so far as the claim of the respondent for the period 1st April, 2000 to 3rd April, 2000 for non-grant of licence is concerned, in our opinion, the same does not come within the purview of the Act, the General Conditions or the conditions of Sale Memo. The respondent for the aforementioned purpose must avail other remedies, if any, in relation thereto. We, therefore, are of the opinion that the judgment of the High Court to that extent cannot be sustained.** #

50. Ordinarily, we could have referred the matter back to the appropriate authority for passing an appropriate order in accordance with law but herein we find that the respondents had filed representations which had been rejected. The period of licence is also long over. Furthermore, the licence had been granted by the State of Madhya Pradesh. The writ petition filed by the respondent, however, on creation of the High Court at Chhattisgarh, was heard by it.

51. We, therefore, do not intend to interfere with that part of the judgment of the High Court wherein, having regard to the interpretation of the provisions of the Act, general conditions and the conditions of Sale memo, a part of its claim has been allowed.

52. For the reasons aforementioned, the appeal is allowed in part and to the extent mentioned hereinbefore. However, in the facts and circumstances of this case, there shall be no order as to costs.