

SUPREME COURT OF INDIA

Gwalior Distilleries Pvt. Ltd.

Vs.

State of Madhya Pradesh

C.A.No.1701 of 2019

(L.Nageswara Rao and M.R.Shah,JJ.,)

15.02.2019

JUDGMENT

L.Nageswara Rao,J.,

SLP(Civil)No.30428 of 2018

1. Leave granted.

2. The Appellant is a manufacturer of spirits and holds a licence in the form of D-1 granted in the year 2017. A tender notice was issued for supply of country spirit in sealed bottles, in the State of Madhya Pradesh for the year 2018-2019. The condition imposed for participating in the „ , N(U .tender was that the tenderer must have a licence for manufacturing, bottling and wholesale supply of country spirit in the State of Madhya Pradesh, issued in the form of CS-1 licence. Clause 2(i) of the tender notice dated 03.02.2018 was challenged by the Appellant on the ground that the stipulation pertaining to possession of CS-1 licence was contrary to Rule 3 of the Madhya Pradesh Country Spirit Rules, 1995 (hereinafter referred to as 'the Rules') since such licence could not be granted unless the distiller has participated in the tender process. That according to Rule 3, a successful tenderer is granted an area for supply of country spirit which would enable him to claim a CS-1 licence and CS-1-1B licence. The Writ Petition filed by the Appellant was dismissed. However, the High Court observed that the contention of the Appellant that he could not be granted a licence under the Rules unless an area was allotted to him was not borne out from Section 18 of the Excise Act, 1915 (hereinafter referred to as 'the Act) or the Rules.

3. Thereafter, the Appellant submitted an application for grant of CS-1 licence on 09.04.2018. By an order dated 26.07.2018, the application filed by the Appellant for grant of CS-1 licence was rejected. Aggrieved by the said rejection, the Appellant filed a Writ Petition which was dismissed by the High Court. Hence, this appeal.

4. The order by which the request for issuance of CS-1 licence was rejected by the Respondent No.2 was challenged by the Appellant as being in violation of Articles 14 and

19 (1) (g) of the Constitution of India. The Appellant alleged discrimination since eight other distillers in the State of Madhya Pradesh who were similarly situated to the Appellant, not possessing CS-1 and CS-1-1B licence were allowed to participate in the tender process. The Appellant relied upon the observations of the High Court in its judgment dated 21.03.2018, in Writ Petition No.6525 of 2018 filed by the Appellant, that neither the Act nor the Rules made thereunder required allotment of an area for grant of CS-1 licence.

5. The High Court dismissed the Writ Petition by observing that allotment of an area was an imperative pre-condition for grant of CS-1 licence. The High Court further held that there was no fundamental right to trade in liquor and opined that the Appellant was not entitled to any relief. Clause 2 (i) of the tender notice dated 03.02.2018 issued by the Respondents provides that a distiller having a proper licence for manufacturing, bottling and wholesale supply of country spirit shall be eligible to participate in the tender process. The validity of the said condition was challenged by the Appellant in Writ Petition No.6525 of 2018 in the High Court of Madhya Pradesh. The Appellant contended in said Writ Petition that according to the scheme of the Rules, a CS-1 licence will not be granted unless the area is allotted. A Division Bench of the High Court dismissed the Writ Petition finding no substance in the challenge to Clause 2 (i) of the tender notice. While dismissing the Writ Petition, the High Court observed that the allotment of an area was not a pre-requisite for grant of CS-1 licence. Subsequently, the Appellant submitted an application to the Excise Commissioner, Gwalior on 09.04.2018, requesting issuance of a CS-1 licence. The application for granting CS-1 licence was rejected on 26.07.2018 on the ground that the Appellant did not participate in the tender process, published on 20.02.2018 for the year 2018-19. There is no doubt that the Appellant has a D-1 licence. A perusal of Rule 3 would show that manufacturing, bottling and wholesale supply of country spirit can be only undertaken by persons who possess a CS-1 licence. CS-1 licence is granted by the Excise Commissioner after the approval of the State Government. A CS-1 licensee shall operate in such area or areas as may be determined by the Excise Commissioner from time to time. The apprehension of the Appellant that a CS-1 licence would not be granted unless an area was allotted pursuant to a tender process was addressed by the High Court in the earlier round of litigation. The High Court held that the Act and the Rules do not provide for allotment of an area as a condition for issuance of CS-1 licence. The application filed by the Appellant for issuance of CS-1 licence was rejected by the Respondents on the ground that the Appellant did not participate in the tender process.

5. Section 18 of the Act which confers power on the State Government to grant lease of right to manufacture, etc. and Rule 3 of the Rules read as follows:

“18. Power to grant lease of right to manufacture, etc. — (1) The State Government may lease to any person, on such conditions and for such period as it may think fit, the right—

(a) of manufacturing, or of supplying by wholesale or of both; or

(b) of selling by wholesale or by retail; or

(c) of manufacturing or of supplying by wholesale, or of both, and selling by retail; and liquor or intoxicating within any specified area." "3. Grant of Licence. - (1) (a) A licence in Form C.S.1 for manufacture, bottling and wholesale supply of country spirit may be granted by the Excise Commissioner after approval of the State Government. It shall commence on such date as may be specified therein and be in force for such period as the State Government may decide and shall be for such area or areas as may be determined by the Excise Commissioner from time to time.

(b) [Licence in Form C.S. 1 shall be granted by the Excise Commissioner as aforesaid on payment of fee in advance at the rate of one lakh rupees for a period of one year's licence or such proportional amount of fees for the period of licence to be granted.] The licensee shall be required to deposit additional amount of Rs.5 lacs as security in cash or in any other form as may be directed by the Excise Commissioner for the due observance of conditions of licence, provisions of the Act and the rules made thereunder and orders issued by State Government or Excise Commissioner. The Excise Commissioner may ask for additional sum as security amount not exceeding Rs.10 lacs as and when he deems it necessary in circumstances of repeated breaches of conditions of increase in area of supply and the licensee shall comply with such order within 15 days of its communication to him."

6. There is no condition either in Section 18 or Rule 3 that CS-1 licence will be granted only to a person who participated in the tender process. The order passed by the Respondent No.2 is arbitrary and contrary to Section 18 of the Act and Rule 3 of the Rules. By the impugned judgment the High Court held that allotment of an area is a pre-condition for issuance of the CS-1 licence without examining the judgment in Writ Petition No.6525 of 2018. Reference made to Writ Petition No. 6525 of 2018 was restricted to recording a finding that the said Writ Petition was dismissed and the contentions raised by the Appellant in the said Writ Petition were negated. To our understanding, Rule 3 (1) provides for allotment of an area to a person who is given a CS-1 licence. Participation in the process of tender as a condition for applying for a CS-1 licence is not found in the Rules. The High Court dismissed the Writ Petition by holding that there is no fundamental right to trade of liquor. However, the other contention raised by the Appellant that there is hostile discrimination against the Appellant as other similarly situated distillers were permitted to participate in the tender, has not been dealt with by the High Court. This Court in *State of M.P. & others v. Nandlal Jaiswai & others*¹ has held that no one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. The Appellant's request for grant of a CS-1 license requires to be considered strictly in accordance with law.

7. The Respondents are directed to consider the application of the Appellant for issuance

of CS-1 licence in accordance with the Act and the Rules made thereunder. It is needless to mention that the Respondents should not insist on the condition that the Appellant should have participated in a tender and should have been allotted an area of operation.

8. For the aforementioned reasons, the judgment of the High Court is set aside and the appeal is allowed.

Judgment Referred.

¹(1986) 4 SCC 0566