
(1989) 09 MP CK 0037
In the Madhya Pradesh High Court
Case No : M.P. No. 446 of 1988

Agrawal Breweries Private Ltd.	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 05-09-1989

Acts Referred:

Industries (Development and Regulation) Act, 1951 — Section 11, 3

Citation : AIR 1990 MP 100 : (1991) 70 CompCas 450 : (1990) 35 MPLJ 308 : (1990) MPLJ 308

Hon'ble Judges : V.D. Gyani, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : V.S. Kokje, for the Appellant; S.R. Joshi, Dy. A.Y. and N.K. Dave, for the Respondent

Final Decision : Allowed

Judgement

A.G. Qureshi, J.

The petitioner is a Company registered under the Companies Act, 1956, having its registered office at Indore. The Company carries on business of manufacturing Indian made Foreign Liquor at Sabalpur. Kutkut Road, Badwaha in Khargone District. The site for the manufacturing unit was selected by the Company in the backward area of M. P. in view of the various advantages which were assured by the State of M. P. to the Units established in the backward areas. The provisional registration was granted to the petitioner-Company by the District Industries Centre, vide Annexure-D. During the period of one year of the provisional registration, the petitioner-Company completed the construction of the factory and commenced bottling of Indian made Foreign Liquor. On 11-9-1987 the Company informed the District Industries Centre, Khargone, that production had already started in the factory and the other formalities having been completed, a permanent registration as an SSI Unit be granted. The letter in Annexure-E. The request was turned down by the District Industries Centre on the ground that the manufacture of the hem is banned by the Government of

India and, therefore, it was not possible to grant permanent registration to the petitioner's unit and it was also informed that the petitioner's registration is also cancelled. The letter of the District Industries Centre dated 20-10-1987 is Annexure-F. According to the petitioner-company they were shocked to receive this letter because acting on the provisional registration they completed all the formalities and had established the Unit by investing lacs of rupees. At no time the petitioner-company was ever intimated that the Government of India or the State Government had banned the production of Indian made Foreign Liquor. Cancellation of provisional registration was also never communicated to the petitioner before that date. After receiving the aforesaid letter, the Company protested against the (of cancellation) the provisional registration and refusal to grant permanent registration. It was pointed out that the Government itself had given the petitioner-company a letter of intent and the Unit was also granted a D-2 license by the Excise Department of the State for starting production. The representation is Annexure-G.

Thereafter on 1st December, 1987 the Excise Commissioner of M. P. wrote to the petitioner-Company to obtain a no objection certificate from the M. P. Pradushan Nivaran Mandal (hereinafter called the Mandal). According to the petitioner, the petitioner-company had already applied for a no-objection certificate, which was rejected by the Mandal on 25th February, 1988 on the ground that a the valid license from DGTD was not produced. The letter of the Mandal is Annexure-J. Thereafter on 26th Feb., 1988, the petitioner-company wrote to the Mandal pointing out that the DGTD registration was not necessary for Small Scale Industrial Unit and SSI registration had been applied for. The letter sent by the Company is Annexure-K. On 27th February, 1988 the District Industries Centre, Khargone wrote to the Company informing that the application for permanent registration was filed because the Government had absolutely banned Unit a manufacturing Alcohol. The letter is Annexure-L. Thereupon the respondent No. 4 Mandal wrote to the petitioner informing that the petitioner's case would be placed before the State Level Environment Committee and that Committee will take decision in the matter. Therefore, the petitioner was advised to apply through the Commissioner of Industries. On 18-7-1988 the Director of Industries. M. P. wrote to the petitioner informing that for establishment of a Unit for manufacturing Indian made Foreign Liquor, it is necessary to obtain Industrial Licence from the Government of India under Industries (Development and Regulation) Act (hereinafter called the Central Act). The petitioner was also advised to send a copy of the Industrial Licence on receiving which further action for clearance spot was promised to be taken. A copy of the letter is Annexure N. Thereupon the Company again wrote to the Industries Commissioner that the Industrial License from the Government of India was not necessary as the Unit employed less than 49 workers.

The grievance of the petitioner is that since only less than 49 workers are employed in the Unit it was not necessary to obtain the license of the Government of India under the Central Act. The condition imposed by the

respondent is, therefore, illegal and without authority of law. The refusal of the respondent to grant permanent registration as SSI Unit to the Company is causing irreparable loss to the petitioner-company. For want of registration the application for grant of no objection certificate under the Pollution Control Act is also not being decided. Various other departments of the Government are also not extending the facility for want of permanent registration. The State Government has framed no Rules or guidelines for the grant of registration as a SSI Unit and no guidelines or Rules have been published for the information of the public. However, it is an established practice of the Government that when a provisional registration is granted to the proposed Unit and when the Unit goes into production, the provisional registration is converted into a permanent registration automatically. Thus the entire enquiry about the eligibility for registration as SSI Unit takes place before the provisional registration is granted and at the time of grant of permanent registration to a Unit which holds a provisional registration the only thing enquired into is whether the Unit has gone into production or not. After the end of the period of provisional registration the progress in the establishment of the Unit is assessed and if the authorities are satisfied with the progress in pursuance of the provisional registration, a permanent registration is granted, otherwise the period of provisional registration is extended. Therefore, the provisional registration is a final registration in respect of the Units which have already gone into production. Therefore, in view of the fact that the petitioner-company has gone into production before the expiry of the period of provisional registration, the provisional registration of the petitioner's Company has to be deemed to have been converted into a permanent registration automatically. Even otherwise the Government is estopped from refusing to grant permanent registration on the principles of promissory estoppel as the petitioner-company has already altered its position irretrievably by putting up the Unit on the assurance that it will be granted permanent registration. The petitioner-company has invested lacs of rupees and has established the Unit complying with all the requirements of law. Now they are told to close the shop on a specious plea that the Government has banned registration of such Units.

It has further been averred that even this plea of the Government that the registration of the Units has been banned is also doubtful in view of the fact that several other Units in M. P. have been given licenses, letters of intent, excise license and such Units have gone into production. The respondents have put the petitioner-Company in an impossible situation from which it cannot extricate itself. Had the provisional registration and the letter of intent been not granted, the petitioner-Company would not have invested huge amounts of time, money and energy in establishing the Unit at Khargone. The petitioner, therefore, cannot be refused a permanent registration as SSI Unit. The Company has, therefore, prayed for issuance of an appropriate writ, direction or order quashing the orders of the Authorities of the State refusing the grant of permanent registration to the petitioner-Company with a direction to the respondents to grant permanent

registration as SSI Unit (to.) petitioner's Unit.

The respondents Nos. 1 to 3 have filed a joint return opposing the petition of the petitioner. It has been pleaded that although it is admitted that the Govt. of M. P. in the Separate Revenue Department had issued letter of intent for grant of license in form-D2, under the M. P. Excise Act and the Rules made thereunder for establishing a plant for manufacture and bottling of Indian made Foreign Liquor in Khargone District, but a specific condition was inserted in the letter of intent for issuance of license as under :--

"It will be your sole responsibility to obtain any other licences required for your project under the Act, Rules, Regulations and Orders of the Government of Madhya Pradesh as well as of the Government of India."

While granting the license also a specific condition was inserted that before commencement of the production the N.O.C. form of the M. P. Pollution Board will have to be obtained. The petitioner has not obtained license from the Government of India under the Central Act and the petitioner also failed to obtain clearance of site from the environmental angle from the Competent Authority as was specified in the Press Notes issued by the Govt. of India. Only because the petitioner has obtained a license in Form D-2 under the provisions of the M. P. Excise Act, read with Rule 19 framed thereunder, it cannot be allowed to contend that no other license was necessary. The license alone does not entitle the petitioner to start manufacturing liquor.

While admitting that the District Industries Centre Khargone had granted a provisional registration certificate for the small scale industry of the petitioner, it has been averred that the aforesaid provisional registration certificate was taken back from the petitioner and cancelled in view of the fact that this being a banned item and required Government of India's permission in the form of Industrial License. Subsequently the petitioner applied on 30-9-1986 for allotment of land in Industrial Area, Barwaha. The petitioner was thereupon informed on 13-11-1986 that land cannot be allotted this being a banned item and information to all concerned were also sent that the construction by the petitioner was unauthorised. Since the petitioner's registration was itself cancelled, the question of permanent registration does not arise.

As regards the representation to the Industries Commissioner, it is pleaded that the petitioner was informed, vide letter dated 28-3-88 in reply to the letter dated 12-11-1987 that permanent registration cannot be granted without the N.O.C. from the Pollution Board and without obtaining the license from the Govt. of India and without getting the necessary diversion of the land. It has been denied that the District Industries Centre on 27-2-1988 informed the Company that the application of the petitioner was filed as the proposed production of alcohol was banned. As regards the application Annexure-L, it is averred that this annexure has nothing to do with the previous application of the petitioner for manufacture of Indian made Foreign Liquor. It has again been reiterated that in view of the

provisions of the Central Act, the permanent registration could not be granted without the petitioner obtaining a license from the Ministry of Industrial Development, Government of India. The petitioner has misled the District Industries Centre, Khargone by stating that the M. P. Government issued a license in favour of the petitioner for manufacture of Indian made Foreign Liquor, in fact the Government of M. P. in Separate Revenue Department, has very clearly stipulated that the petitioner shall be responsible for obtaining all necessary licenses from all other Departments and the Government of India.

By way of rejoinder the petitioner has averred that the petitioner had a composite Unit in which a distillery and bottling plant were to be established. So far as the distillery is concerned it falls under the fermentation industry and, therefore, clearance from the Pollution Control Authority may be required. So far as bottling is concerned, it does not come under the purview of the fermentation industry and, therefore, even under the notification relied upon by the respondents it cannot be said to be an Industry falling in the Schedule of highly polluting industries referred to by the respondents. The petitioner has obtained D-2 license for the bottling plant and actually bottling of Indian made Foreign Liquor is only being done in the petitioner's factory at present. Therefore, there is no question of starting production without taking pollution clearance. As regards the establishment of distillery, the petitioner had applied in the month of July 1987 to the Environment Board and on 12-9-1987 an Inspector of Pollution Control Board had inspected the spot. His inspection report is with the Pollution Control Board. The report was written in the presence of the officers of the petitioner-company in which the Inspector had clearly written that the site was suitable for industry. The petitioner has called upon respondents No. 4 and No. 5 to produce before the Court the aforesaid inspection report. The petitioner has also averred about the events after June, 1988 i.e. after the filing of the return. These letters are, according to the petitioner, against the defence taken by the respondents Nos. 4 and 5 that no application is pending before the Board. The earlier application were rejected not because of the reasons stated in the reply. The petitioner has reiterated that the Industry of the petitioner is not governed by the Central Act and, therefore, the petitioner is being wrongly refused with the registration on the ground. It has also been averred that the rejection of the prayer of the petitioner for land is also misleading because in view of the nature of the Industry, the petitioner has taken a land which is duly diverted.

The respondents Nos. 4 and 5 have filed reply to the rejoinder, wherein it has been stated that the pollution clearance has to be obtained for every type of industry and, therefore, it is wrong to say that for the bottling plant no pollution clearance is necessary. The starting of production by the petitioner is against the law. The Pollution Board has also admitted the fact in regard to the inspection of the site, but the consent was refused because the petitioner did not produce the license from the D.G.T.D. as required by the Central Act. It was again reiterated that no application by the petitioner for pollution clearance is pending with them. It has also been averred that in the application the petitioner has initially

indicated that the number of workers will be about 100, that is why also the central license was necessary. As regards Annexure-M to the petition dated 15-7-88 it has been stated that it was issued to the petitioner in response to the letter of the petitioner dated 20-5-1988 and that letter cannot be made the basis.

To make the position further clear the petitioner has filed an affidavit stating therein that by inadvertence the strength of workers has been shown as 100, but immediately the mistake was corrected by the petitioner, It has also been stated that the respondents. Nos. 4 and 5 had advised the petitioner to route their application through the EPCO Cell of the Director of Industries, M. P. Therefore, the petitioner applied through the EPCO Cell of the Director of Industries but the application has been withheld by the Director of Industries on the ground that the Industry proposed to be set up by the petitioner is banned by the Government of India, vide its press note. The petitioner has also referred to the Circular of the M. P. Govt. dated 20th May, 1987 in which it has been clearly stated that pollution clearance is not necessary for a bottling industry. The circular is also filed along with the reply.

In view of the aforesaid pleadings of the parties, it is manifest that the application seeking the pollution clearance from the Pollution Board is pending with the EPCO Cell of the Director of Industries which has not been forwarded by the Director of Industries in view of the fact that the petitioner is not entitled to establish the Industry unless it obtains a license from the Government of India under the Central Act on account of the fact that the Industry proposed to be established by the petitioner is an industry covered by the Central Act and the orders issued by the Government of India in that behalf. For the same reasons permanent registration is being refused to the petitioner.

Shri Chaphekar, learned counsel for the petitioner, has in support of his arguments, drawn our attention to the fact that the Supreme Court and this Court have held that for grant of a permanent registration of the Industry in question, a license under the Central Act of 1951 is not necessary. According to Shri Chaphekar the same question as has been raised by the Government was raised before the Supreme Court in the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, wherein it has been held that the provisions of the Central Act of 1951 do not apply to the industries producing alcohol when the number of the employees employed by the industry is less than fifty. The Supreme Court judgment was also followed by this Court in M.P. No. 28 of 88 (Kedia Leather and Liquor Pvt. Ltd. v. State of M.P.) decided on 20-4-89.

On the other hand the learned Government Advocate appearing on behalf of the State and Shri N. K. Dave, appearing on behalf of the M. P. Pollution Board argued that the Industry in question is clearly covered by the Notification issued by the Government of India under the Central Act of 1951, as such license from the Government of India is necessary before a permanent registration can be granted to the petitioner or an N.O.C. by the Pollution Board may be granted.

In State of M. P. v. Nandlal Jaiswal (supra) before the Supreme Court a similar question as has been raised before us was raised. In that case the Government of M. P. had granted licenses on permanent basis to the Distilling Units at different places. The grant of license was challenged before the Supreme Court inter alia on the ground that the Industries in question being scheduled industries, a permanent license could not have been granted to these units by the State of M.P. without a license u/s 11 of the Central Act having been granted to them by the Government of India. The Supreme Court considered the arguments advanced by the appellants in that case and has in para 30 of the judgment held as under :

"The learned counsel appearing on behalf of M/s. Doongaji and Co. also raised another contention based on the provisions of the Industries (Development and Regulation) Act, 1951. The argument of the learned counsel was that respondents Nos. 5-11 were not entitled to set up new distilleries at the new sites without obtaining a licence from the Central Government u/s 11 of this Act and since there was nothing to show that they had obtained such licence before setting up the new distilleries was illegal and could not give rise to any rights in their favour. But this contention is also unsustainable. In the first place, no such contention was raised in the writ petitions and neither the State Government nor respondent Nos. 5-11 had any opportunity of answering such contention. This contention is based on facts and we cannot permit the petitioners to raise it for the first time in the present appeals. The foundation for this contention should have been laid in the writ petitions and the necessary facts should have been pleaded in support of it. No such plea having been raised and no such facts having been pleaded in the writ petitions, we cannot allow this contention to be raised before us. Moreover, it is obvious from Section 11 read with the definitions of "factory" and "industrial undertaking" contained in Sub-sections (c) and (d) of Section 3 of this Act that licence from the Central Government for setting up new distilleries would be necessary only if 50 or more workers would be working in such distilleries and here in the present writ petitions, there is nothing to show that 50 or more workers were going to be employed in the new distilleries. We were told at the Bar that in fact old distilleries were also working without any licence from the Central Government, presumably because less than 50 workers were employed in such distilleries. This contention of the learned counsel on behalf of M/s. Doonganji and Co. must also, therefore, be rejected."

In the light of the aforesaid judgment of the Supreme Court it is clear that if Section 1 of the Central Act, 1951 read with the definitions of "factory" and "industrial undertaking" contained in Sub-sections (c) and (d) of Section 3 of the Act is taken into consideration then it would lead only to this interpretation that the license from the Government of India shall be necessary only if 50 or more workers would be working in such distilleries. This Court had also considered a similar question in Kedia Leather and Liquor Pvt. Ltd. v. State of M. P. (1989 MPLJ 538) (supra) and following the Supreme Court dictum on this point has held that a license from the Government of India under the Central Act of 1951 is

not necessary for setting up of new distilleries if the number of workers employed in the industrial unit are less than fifty. In the instant case the petitioners have pleaded that the number of workers in the industry would be less than 50 and it is not the case of the respondents that the number of workers in the industrial undertaking of the petitioner would not be less than fifty. The stand taken by the respondents all through is that in view of the Notification of the Government of India the Industry being a scheduled industry, license from the Government of India is necessary. In our opinion, this plea of the respondents cannot be allowed to stand in view of the aforesaid decision of the Supreme Court in the State of M.P. and Others Vs. Nandlal Jaiswal and Others, wherein it has been held that a license from the Government of India under the Central Act, 1951 is not necessary for the distilling industry provided the number of workers in the industry is less than fifty.

In the light of the aforesaid pleadings, it is not in dispute that the application for grant of no objection certificate from the Pollution Board is pending with the Government in the Office of the Director of Industries EPOO Cell and that application has been filed on the advise of the respondents Nos. 4 and 5 by the petitioner. It appears that this application is not being forwarded by the Director of Industries to the Pollution Board in view of the fact that the petitioner has not obtained a license from the Government of India under the Central Act of 1982 and for the same reasons the permanent registration is also not being granted to the petitioner. In view of the aforesaid discussion the Government cannot refuse to grant the permanent registration to the petitioner and despite the inspection by the Inspector of the Pollution Board the N.O.C. cannot be withheld by the Pollution Board only on the ground that since the petitioner has not obtained the license from the Central Government the application has not been forwarded by the Industries Commissioner to them and, therefore, it is not pending with them.

In the result the petition of the petitioner is allowed. The State Government is directed to forward the application of the petitioner for clearance to the Pollution Board within a month from the date of this order and the Pollution Board is directed to decide the application of the petitioner within a month thereafter. The State Government is also directed to decide the grant of permanent registration to the petitioner in the light of the observations made above and in view of the fact that the main objection of the State Government refusing permanent registration to the petitioner i.e. obtaining of the licence under the Central Act does not survive, within three months from the date of this order. In the circumstances, the parties shall bear their own cost as incurred. The amount of security deposit after verification, shall be returned to the petitioner.