

(2000) 11 SC CK 0041

In the Supreme Court Of India

Case No : C.A. No. 6290 of 2000 (Arising out of S.L.P. (C) No. 11244 of 2000) ,
C.A. No. 6291 of 2000 (Arising out of S.L.P. (C) No. 12108 of 2000)
and C.A. No. 6292 of 2000 (Arising out of S.L.P. (C) No. 17240 of
2000)

Crag Martin Distillery Pvt. Ltd.

APPELLANT

Vs

Kerala State Beverages (Manufacturing and Marketing)
Corporation Ltd.

RESPONDENT

Date of Decision : 07-11-2000

Acts Referred:

Constitution of India, 1950 — Article 301, 303

Citation : (2000) 7 SCALE 623

Hon'ble Judges : Doraiswamy Raju, J;Brijesh Kumar, J;B. N. Kirpal, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. Special leave granted.
2. The respondent-Corporation was established by the Government of Kerala and was granted the exclusive privilege of supplying, by wholesale, foreign liquor to retail outlets in the State. The respondent has the sole distribution agency of foreign liquor.
3. The respondent invites offers every year from suppliers and enters into rate contracts. Manufacturers with different brands of liquor give their offers and if successful they are placed on the rate contracts.
4. On 7th February, 2000, the respondent notified the terms and conditions for registration of suppliers and for entering into rate contract for the supply of Indian Made Foreign Liquor (IMFL) and Beer to the respondent-Corporation. A number of conditions were stated therein including conditions Nos. 8, 9 and 10 which read as follows:
 8. This being a rate contract, the Corporation will be under no obligation to

purchase any specified minimum quantity of any brands of IMFL and Beer during the period of currency of the contract. The quantity to be purchased shall depend upon the demand for the product from the licensees.

9(a). On receipt of the offers and their scrutiny by the Corporation, it shall be open to the Corporation to enter into negotiation with the offerers and the

9(b). Chief executive of the offeror Company shall represent the firm at the negotiations.

10. Any offer which does not satisfy the conditions or is received without true and correct information either in terms, documents or in the data sheet and schedules shall be rejected.

In addition thereto, condition No. 11(a) gave the power to the Board of Directors of the Corporation to have a final say in accepting or rejecting any or all of the offers without assigning any reason.

5. The last date for applying for entering into a rate Contract was 28th February, 2000. The appellant M/s. Crag Martin Distillery Pvt. Ltd. in its offer agreed to supply one brand of liquor at Rs. 230/- per case of 750 ml. and another brand for Rs. 215/- per case of 750 ml.

6. On 29th March, 2000, the respondent issued a public notice. This notice stated that four norms and guidelines had been stipulated for suppliers for the year 2000-2001 and norm No. 3 with which we are concerned in these cases was as follows:

The prices of all products quoted and accepted during the previous year 1999-2000 will not be allowed to be changed (increased or reduced) during this year. All the new products where the price quoted for 750 ml. Pack size is less than 235/- will be rejected altogether for all pack sizes.

7. Inasmuch as the offer of the appellants of both the brands was less than Rs. 235/- per case, the question of the appellants being placed on the rate contract did not arise. They, accordingly, filed writ petitions in the High Court of Kerala at Ernakulam before which it was, inter alia, contended that a new condition could not have been inserted after the last date by which the offers had to be made and, therefore, the aforesaid norm No. 3 should be quashed. It was also the case of the appellants that as one of the brands was being supplied by the appellants at Rs. 230/-per case during the year 1999-2000, then on a correct interpretation of the said norm No. 3, the requirement of the minimum price being Rs. 235/- did not apply to that brand.

8. The High Court held in the impugned judgment that in so far as the brand which was agreed to be supplied at Rs. 230/- was concerned, as the same was being supplied in the previous year 1999-2000 at that rate, the said norm No. 3 did not prohibit the appellants' said brand being placed on the rate contract. However, in so far as the other brand which was agreed to be supplied at Rs.

215/- per case was concerned, the High Court did not accept the contention of the appellants and consequently the writ petitions were dismissed.

9. We have heard the learned Counsel for the parties and it appears to us that without going into any other question, this is a case where, as observed by this Court in *Dutta Associates Pvt. Ltd. Vs. Indo Merchants Pvt. Ltd. and Others*, , the rules of the game have been changed after the game has started. It may have been possible for the respondent to have incorporated in the notice dated 7th February, 2000 that one of the terms of registration would be that the minimum price would have to be Rs. 235/- per case in order to be eligible to be considered for being placed on the rate contract. This is subject to and without prejudice to the contention of the appellants that fixing such a floor price would, on the facts of the present cases, be violative of Articles 301 and 303 of the Constitution, a question which does not arise for consideration in these cases as it has not been so raised before the High Court. What is contended is that the condition of a floor price of Rs. 235/- not being there in the said notice of 7th February 2000, the said condition could not be imposed subsequently.

10. In our opinion, the said contention merits acceptance. A somewhat similar question had arisen before this Court in the aforesaid case of *Dutta Associates* and applying the ratio of the said decision it would clearly appear that a new condition has been inserted after the last date of submitting the quotations and no opportunity has been granted to the applicants like the appellants to apply afresh. If the respondent had thought it necessary to have a floor price and as a result thereof had issued the notice dated 29th March, 2000, then in all fairness suppliers should have had an opportunity of submitting their offers afresh keeping in view the revised norms/guidelines. Had this condition of the floor price of Rs. 235/- been there in the initial notice of 7th February, 2000, it is possible that the appellants may have given a quotation in respect of their cheaper brand at the price of Rs. 235/- or more. Not being aware that such a condition would be imposed, the appellants offered to supply that particular brand at Rs. 215/- per case. The effect of imposing the said condition by notice dated 29th March, 2000 is to make the appellants ineligible for even being considered for being put on the rate contract qua that brand. This is the 'rule of the game' which was changed which is impermissible.

11. For the aforesaid reasons, we are of the opinion that the exercise of the respondent-Corporation in accepting offers and placing them under the rate contract stands vitiated. The respondent will be at liberty to invite fresh offers and pending the same the status quo as of today would continue. The effect of this would be that those parties and brands which are on the rate contracts for the year 2000-2001 would continue by way of a temporary measure pending finalisation of fresh contracts. The appellants will not ipso facto, by reason of this decision, be entitled to be placed on the rate contract, but would be eligible and entitled to apply afresh pursuant to fresh tenders being invited. If fresh tenders are not invited within one month from today by the respondent, then the

appellants will be placed on the rate contract in respect of the brand in question.

12. The appeals are disposed of in the aforesaid terms. No costs.