(2018) 07 DEL CK 0586

In the Delhi High Court

Case No : Regular First Appeal No. 59, 62, 105 Of 2006, Civil Miscellaneous Application No. 2333 Of 2006

Lt. Governor And Ors — APPELLANT

Vs

Shadilal Enterprises Ltd. And Ors. — RESPONDENT

Date of Decision : 27-07-2018

Acts Referred:

Delhi Liquor Licence Rules, 1976 — Rule 33(1)
Code Of Civil Procedure, 1908 — Section 80, 96, Order 11 Rule 2
Indian Contract Act, 1872 — Section 8

Citation : AIR 2019 Delhi 13 : (2018) 7 AD(Delhi) 221 : (2018) 251 DLT 670

Hon'ble Judges : Valmiki J.Mehta, J

Bench : Single Bench

Advocate : Sujata Kashyap

Final Decision : Allowed

Judgement

Valmiki J. Mehta, J

RFA No.59-62/2006

1. These Regular First Appeals No. 59-62/2006 under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant nos. 1 to 3 in the suit impugning the Judgment of the Trial Court dated 1.10.2005 by which the trial court has decreed the suit for recovery of moneys filed by the respondents/ plaintiffs for a sum of Rs.5,51,613/- along with interest at 6% per annum. The suit amount was claimed by the respondent nos. 1 and 2/plaintiffs by pleading that they were entitled to payment of price at Rs.73.25 per dozen quartz of country liquor supplied by the respondent nos. 1 and 2/plaintiffs to the appellant-Government of National Capital Territory of Delhi (GNCTD) and not at the rate of Rs. 72 per dozen quartz paid by GNCTD.

2. The undisputed position is that pursuant to the invitation to the tender issued by GNCTD, the respondent nos. 1 and 2/plaintiffs submitted their tender to the

GNCTD. It is noted that plaintiff no. 1/respondent no. 1 company Shadilal Enterprises Ltd. is a proprietor of the plaintiff no. 2/respondent no. 2 M/s Pilkhani Distillery & Chemical Works i.e. plaintiff no. 2 is only a unit of plaintiff no. 1. The tender floated by GNCTD for supply of country liquor was responded to by the respondent nos. 1 and 2/plaintiffs tendering for supply at Rs.76.92 per dozen quartz in marked bottles and Rs.79.50 per dozen quartz in unmarked bottles. Tenders were also submitted by other persons/entities and ultimately there remained two tenderers whose tenders were considered by GNCTD, one being the respondent nos. 1 and 2/plaintiffs and the others being M/s Co-operative Company Limited who had offered to supply country liquor at Rs.76.87 per dozen quartz in marked bottles and Rs.79.45 per dozen quartz in unmarked bottles. In accordance with the tender conditions the Lieutenant Governor of Delhi constituted the Tender Negotiating Committee and the Tender Negotiating Committee made recommendation for purchasing of the country liquor at Rs.73.25 per dozen quartz. Respondent nos. 1 and 2/plaintiffs claimed that they had been given assurances by the Negotiating Committee that this would be the final rate, however, when the respondent nos. 1 and 2/plaintiffs were issued the Offer Letter dated 1.6.1990/Ex.PW1/D1 by the Commissioner of Excise on behalf of GNCTD, the price per dozen quartz was placed at Rs.72 per dozen quartz and not at Rs.73.25 per dozen quartz, the latter figure being the one recommended by the Negotiating Committee. Respondent nos. 1 and 2/plaintiffs objected to the Letter dated 1.6.1990 by its Letter dated 1.6.1990 stating that the rate of Rs.72 per dozen quartz was that, supply of which would not be in a standard bottle as per Clause 18 of the Contract but that this rate of supply was to be when supply of country liquor would be in old assorted and substandard bottles not conforming to the prescribed specifications of Clause 18 of the Contract. Respondent nos. 1 and 2/plaintiffs however thereafter by its Letter dated 4.6.1990 completed all the formalities required for placing upon it the requisite order, without putting any pre-condition. GNCTD resultantly vide its Letter dated 5.6.1990/Ex.DW1/1 granted L-9 license to the respondent nos. 1 and 2/plaintiffs to manufacture country liquor for being supplied to GNCTD for the year 1990-1991 i.e. from 1.6.1990 to 31.3.1991, at Rs.72 per dozen quartz. Respondent nos. 1 and 2/plaintiffs contend that order of supply placed upon them at Rs.72 per dozen quartz is illegal because of the assurance given by the Negotiating Committee for the supply to be made at Rs.73.25 per dozen quartz. Respondent nos. 1 and 2/plaintiffs pleaded that GNCTD since during the entire period of supply made payment only at 72 per dozen quartz hence the respondent nos. 1 and 2/plaintiffs have become entitled to the differential sum of Rs.5,51,613/-, being the difference of total supplies made which was payable at Rs.73.25 per dozen quartz instead of the payment made at Rs.72 per dozen quartz by GNCTD. An amount of Rs.1,32,387/- was claimed as interest at 18% per annum. By the subject suit therefore a money decree for a sum of Rs.7,06,199.50/-was prayed for being granted to the respondent nos. 1 and 2/ plaintiffs. Interest was also prayed at 18% per annum.

3. Appellants/defendants appeared and contested the suit. The defence of the appellants/defendants firstly was that the Negotiating Committee was not the final authority to specify the rates and which final authority only vested with the Lieutenant Governor and that the Negotiating Committee was only acting for and on behalf of the Lieutenant Governor. Appellants/defendants also contended that no assurance was given by the Negotiating Committee, and nor did the Negotiating Committee have such power, that respondent nos. 1 and 2/plaintiffs will be entitled to payment at Rs.73.25 per dozen quartz of the country liquor supplied. The appellants/defendants contended that since the Lieutenant Governor was the final authority, therefore the decision of the Lieutenant Governor is final and therefore the supply to be made by the respondent nos. 1 and 2/plaintiffs was to be only at Rs.72 per dozen quartz as specifically stated in the Letter of GNCTD (Commissioner of Excise) dated 5.6.1990/Ex.DW1/1. In the written statement the appellants/defendants specifically pleaded that having made the entire supply, the respondent nos. 1 and 2/plaintiffs therefore cannot now claim charges at Rs.73.25 per dozen quartz and the actions of the respondent nos. 1 and 2/plaintiffs in supplying the country liquor throughout the year stops them from contending that they are entitled to price of Rs.73.25 per dozen quartz. In the written statement of the appellants/defendants it was specifically pleaded that if the respondent nos. 1 and 2/plaintiffs were not agreeable for supply at Rs. 72 per dozen quartz then there was no compulsion on them and they would have well refused to supply the country liquor to the appellants/defendants, and that once the supply is made, respondent nos. 1 and 2/plaintiffs could not contend that the contract was not at Rs.72 per dozen quartz but at Rs. 73.25 per dozen quartz. It was also pleaded that every supplier had supplied country liquor at Rs.72 per dozen quartz, which is the uniform rate, and no other licensee or supplier had ever raised objections to supply country liquor at Rs.72 per dozen quartz. It was also the case of the appellants/defendants in the written statement that having completed all the formalities, and as detailed in the Letter dated 4.6.1990 of the respondent nos. 1 and 2/plaintiffs, stating thereafter that the supplies were made by respondent nos. 1 and 2/plaintiffs without prejudice would be of no effect. Suit was therefore prayed to be dismissed.

4. After pleadings were complete, the trial court framed the following issues:-

"1. Whether the plaint has been signed and instituted by an authorised person on behalf of the plaintiff? OPP

2. Whether the recommendation of the Negotiating Committee were binding on the defendant, if yes to what effect? OPP

3. Whether the plaintiff had agreed to supply country liquor at the rate of Rs.72/- per dozen quartz only upon waiver of Clause 18 of the terms and conditions? OPP

4. Whether the plaintiff is entitled to claim the price @ Rs.73.25 per dozen quartz? OPP

5. Whether the suit is not maintainable for want of notice under Section 80 CPC? OPD

6. Whether the suit is barred by order 11 Rule 2 CPC?

7. Whether the plaintiffs are entitled to interest, if so at what rate and for what period and for what amount, if any, the plaintiff is entitled?

8. Relief."

5. The relevant issues which came up for discussion before the trial court were issue nos. 2 to 4 and in this regard trial court has held in favour of the respondent nos. 1 and 2/plaintiffs that the recommendation of the Negotiating Committee was binding on the Lieutenant Governor and that the respondent nos. 1 and 2/plaintiffs were entitled to payment of country liquor supplied at Rs.72 per dozen quartz only if the bottles to be supplied were not as per specifications contained in Clause 18 of the terms and conditions of the supply. Trial court has held that respondent nos. 1 and 2/plaintiffs are entitled to claim and receive the price of Rs.73.25 per dozen quartz. The relevant discussions in this regard are contained in paras 32 to 59 of the impugned judgment and these paras read as under:-

"Issue No.2:- Whether the recommendation of the Negotiating Committee were binding on the defendant, if yes to what effect? OPP

32. It has been stated in para 8 of the plaint that as per the terms and conditions the competent authority, namely, Lt. Governor constituted a committee of 3 senior officers to scrutinize the tenders with a view to conduct negotiations with the tenderers for reduction in rates to a uniform rates acceptable to the tenderer and to recommend distilleries for grant of licence.

33. It has further been stated that the negotiation committee invited the 3 distilleries and after discussion with the negotiation committee the plaintiff agreed to supply at rate of Rs.73.25 per dozen qtz. and made recommendations for the same.

34. The defendants in their written statement admitting that the negotiating committee was constituted which had recommended the rate of Rs.73.25 per dozen qtz. stated that the recommendations of the committee were not accepted by the competent authority and approved the rate of Rs.72/- per dozen qtz. which the plaintiff had offered earlier.

35. The plaintiffs in the replication denying having offered to supply @ Rs.72/- per dozen qtz. stated that the rate of Rs.72/- per dozen qtz. was offered if the condition in clause 18 of the tender is relaxed.

36. Clause 11 (i) of the tender document Ex.PW-1/11 provides for appointment of a committee to negotiate with the tenderers with a view to have uniform lower price.

37. There is nothing in the tender documents nor any clause pointed out in the said tender document Ex.PW-1/11 stating that despite recommendations by the negotiation committee the competent authority may approve the lower rates. The very purpose of constitution of negotiation committee as is clear clause 11(i) is to have negotiations and recommend the uniform lower price.

38. It is the admitted case of the parties that the negotiation committee had recommended uniform price for all the tenderers.

39. Since the negotiation committee is stated to be constituting of 3 senior officers of the defendants the very purpose of constitution of the negotiation committee is frustrated and its whole sanctity lost if its recommendations in contractual matters are not accepted.

40. Further, there is nothing brought on record to show that the recommendations of the negotiation committee were arbitratory and were without any basis or malafide.

41. In view of the matter it cannot be said that the recommendations of the negotiation committee were not binding on the defendants and in the letter and spirit of its constitution its recommendations have to be binding on the defendants.

The issue is accordingly decided in favour of the plaintiff.

Issue No.3:- Whether the plaintiff had agreed to supply country liquor at the rate of Rs.72/- per dozen quartz only upon waiver of Clause 18 of the terms and conditions? OPP

42. It has been stated in para 9 of the plaint that the plaintiff gave in writing to the negotiating committee that the requirement of the clause 18 of the terms and conditions if dispensed with the plaintiff would able to supply country liquor @ Rs.72/- per dozen qtz. It has further been stated that the written offer was expressly made subject to the waiver of condition No.18A.

43. In corresponding para of the written statement, it has been stated that the terms and conditions provided for supply of country liquor in two types of bottles namely bottles with marking or without marking and a such there was no question of considering or relaxing clause 18 of the terms and conditions of the tender.

44. In replication the plaintiff has stated that the offer of the plaintiff to supply country liquor @ Rs.72/- per dozen qtz. was subject to the waiver of condition No.18 which was never accepted by the defendants and the condition No.18 was not waived.

45. Clause 18 in the tender documents Ex.PW-1/11 reads:

(i) The bottles used for the bottling of country liquor for sale in Delhi shall be transparent, uncoloured and pucca glass bottles manufactured on fully automatic machines and shall bear the following markings either embossed or engraved whether by sand blasting or by any other process in such a manner as to be permanent and clearly visible:-

(a) DILLI ABKARI (in Devnagri) or DELHI EXCISE (in English)

(b) BONDED WAREHOUSE; DELHI.

(c) The name and registered monogram of the Factory manufacturing the bottles.

(d) The words 750 ml. , 375 ml. Or 180 ml. As the case may be.

The bottles shall not bear any other visible marking and shall be securely sealed with pilfer proof seals in such a way as to make it impossible to remove the seal without its being cut or brokened.

OR

The bottles shall be transparent, uncoloured and pucca glass bottles manufactured on fully automatic machines, bearing no. marking whatsoever, but securely sealed with pilfer proof seals as above bearing the word ?DELHI EXCISE" in English or DILLI ABKARI" in Devnagri.

(ii) No country liquor in bottles other than the bottles conforming to either of the alternative specifications described above shall be accepted under any circumstances except with the prior permission of the Excise Commissioner and deduction from the Licencee"s bills of such amount as the Excise Commissioner may specify shall be made and decision of the Excise Commissioner in regard to such deduction shall be final and binding on the licencee.

(iii) .....

(iv) .....

46. PW-1 has deposed that the plaintiff had given in writing to the negotiating committee that it would supply country liquor @ Rs.72/- per dozen qtz. if the requirement of clause 18 of the terms and conditions is dispensed with and has further deposed that the plaintiff vide letter dated 23.4.90 Ex.PW-1/2 agreed to supply country liquor @ Rs.72/- per dozen qtz. on the conditions that the liquor be accepted in old bottles and mixed bottles.

47. PW-1 further deposed that after receipt of letter dated 1.6.90 whereby the rate of Rs.72/- per dozen qtz. was approved, the plaintiff immediately wrote to the defendants vide letter Ex.PW-1/3 as regards some mistake as the rates offered by the plaintiff was Rs.73.25 per dozen qtz. whereas the approved rate communicated was Rs.72/- per dozen qtz.

48. He has further deposed that the plaintiff made it clear again that the rate of Rs.72/- per dozen tqz. quoted by the plaintiff, at one stage, was on the condition that the supply would be accepted in bottles not confirming to the prescribed specifications, and wrote letter Ex.PW-1/4.

49. There is nothing in the cross examination of PW-1 suggesting that the plaintiff at any point of time offered to supply country liquor @ Rs.72/- per dozen qtz. in bottles of prescribed specifications as prescribed under clause 18 or that the plaintiff ever withdrew the letters Ex.PW-1/3 and Ex.PW-1/4 and further DW-1 in his examination in chief has admitted that the plaintiff gave letter Ex.PW-1/3 and there is nothing on record to show that the plaintiff has ever withdrawn the conditional offer made in Ex.PW-1/2, and agreed to supply the country liquor @ Rs.72/- per dozen qtz. without waiver of clause 18.

50. In view of the aforesaid it is clear that the plaintiff agreed to supply country made liquor @ Rs.72/- only upon waiver of clause 18 in the terms and conditions.

The issue is accordingly decided in favour of the plaintiff.

Issue No.4: Whether the plaintiff is entitled to claim the price @ Rs.73.25 per dozen quartz? OPP

51. It has been stated in para 6 of the plaint that the plaintiff offered to supply the country liquor @ Rs.76.92 per dozen qtz. for marked bottles and @ Rs.79.50 per dozen qtz. for unmarked bottles and in para 10 of the plaint it has been stated that during discussion with the negotiating committee the plaintiff agreed to supply the liquor @ Rs.73.25 per dozen qtz. in bottles as per the prescribed specification in clause 18 and the negotiating committee also recommended the rate of Rs.73.25 per dozen qtz.

52. This position has been admitted by the defendants in their written statement and in the findings on issue No.3, it has been held that the plaintiff agreed to supply country liquor @ Rs.72/- per dozen qtz. only on waiver of clause 18 of the terms and conditions and it is not the case of the defendant that the condition under clause 18 was ever waived.

53. It is also the admitted case of the parties that the plaintiff also filed a suit No.1903/90 wherein the plaintiff was permitted to raise bills @ Rs.73.25 per dozen qtz. and the defendant permitted to pay @ Rs.72/- per dozen qtz., and the difference shall be subject to the order of the court.

54. It is also not disputed that the plaintiff made the supplies and raised the bills @ Rs.73.25 per dozen qtz. and the defendant made payment @ Rs.72/- per dozen.. and since the plaintiff agreed to supply country liquor @ Rs.72/- per dozen qtz. only on waiver of clause 18 of the tender and clause 18 has not been waived by the defendant as observed while recording findings on issue No.3, the plaintiff is entitled to claim price @ Rs.73.25 per dozen qtz.

55. The difference in the amount on supplies made calculated @ Rs.73.25 per dozen qtz. and calculated @ Rs.72/- per dozen qtz. is stated to be Rs.5,51,613/- which remains to be due from the defendants as stated in para 22 of the plaint.

56. PW-1 in his examination in chief has deposed that the plaintiff raised bills @ Rs.73.25, however, the payments were received @ Rs.72/-in terms of order

Ex.PW-1/5 in suit No.1903/90.

57. PW-1 has further deposed that the plaintiff supplied 441290 dozen and 9 bottles of country liquor to the defendant and the amount payable to the plaintiff is @ Rs.1.25 per dozen qtz. being the difference between the price agreed and the payments made and that comes out to be Rs.5,51,612.50.

58. In his cross examination the PW-1 has stated that the plaintiff has already received the entire payment @ Rs.72/- per dozen qtz. There is nothing in the cross examination of PW-1 to show that the plaintiff did not supply the quantity deposed to have been supplied.

59. Since it held above that the plaintiff is entitled to claim price @ Rs.73.25 per dozen qtz., and the difference has been quantified at Rs.5,51,612.50 the plaintiff is entitled to the amount of Rs.5,51,612.50.

The issue is accordingly decided in favour of the plaintiff."

6. In my opinion, the judgment of the trial court is clearly illegal on all counts and is liable to be set aside and the suit has to be dismissed. The reasons are contained hereinafter.

7. Firstly, the trial court has completely erred in holding that the recommendations of the Negotiating Committee were binding on the Lieutenant Governor. Except making self-serving averments respondent nos. 1 and 2/ plaintiffs could lead no evidence that the Negotiating Committee had assured that the supply was to be made by the suppliers, including the respondent nos. 1 and 2/plaintiffs, at Rs.73.25 per dozen quartz. In fact a reading of the Terms and Conditions shows that Negotiating Committee only acts for and on behalf of the Lieutenant Governor, and therefore it is clear that only the decision of the Lieutenant Governor which will be final and not that of the Negotiating Committee. Any doubt in this regard is completely removed when we refer to Clause 29 of the Terms and Conditions of the tender and which specifies that notwithstanding anything contained in the earlier clauses it is the decision of the Lieutenant Governor which shall be final and binding on the tenderer/licensee. This Clause 29 reads as under:-

"29. Notwithstanding anything contained/provided hereinabove, the Lt. Governor of Delhi, keeping in view the public interest, may give direction or pass an order in connection with any matter pertaining to the terms and conditions, and the direction so given or order so passed in this behalf shall be final and binding on tenderer(s) licensee(s)."

8. In view of the provision of Clause 29 of the Terms and Conditions of the tender, the findings and conclusions of the trial court with respect to issue no.2 are completely illegal, and therefore, findings on issue no.2 are set aside and it is held that Negotiating Committee could not issue binding directions and such binding directions would only have to be issued by the Lieutenant Governor in terms of Clause 29 of the terms and conditions of the tender. Also, respondent

nos. 1 and 2/plaintiffs have miserably failed in proving that the Negotiating Committee gave them any assurance that the supplies were to be at a price of Rs. 73.25 per dozen quartz, inasmuch as oral self-serving statements of the respondent nos. 1 and 2/plaintiffs in this regard would not amount on law to discharge of onus of proof, and which is all the more so when the business in question was the official business of the government because in official business of the Government there does not arise any issue of oral assurances.

9. As regards findings on issue nos. 3 and 4 are concerned, the same are also completely illegal and for this purpose this court would like to set out here the letters dated 1.6.1990 issued by the Commissioner of Excise, GNCTD/ Ex.PW1/ D1, Letter dated 1.6.1990 of the respondent nos. 1 and 2/plaintiffs to Collector of Excise, GNCTD/ Ex.PW1/3, the admitted Letter dated 4.6.1990 sent by the respondent nos. 1 and 2/plaintiffs to Collector of Excise, GNCTD, Letter dated 5.6.1990 of Commissioner of Excise GNCTD to the plaintiffs /Ex.DW1/1 and finally the Letter dated 6.6.1990 of the plaintiffs to Collector of Excise, GNCTD Ex.PW1/4.

1. Ex. PW1/D1:-

"OFFICE OF THE COMMISSIONER OF EXCISE, 2-BATTERY LANE RAJPURA ROAD DELHI.

No. F.2 (4)/Ex.CL./90-91 Dated 1-6-1990

To,

M/s Pilkhani Distillery Chemical Works Ltd.

4A Hamalaya 15, Barakhamba Road,

New Delhi-110001.

Sub:- Offer letter for the grant of L-9/CLW-1 licence for the year 1990-91 (1.6.90 to 31.3.91).

Sir,

I am directed to inform you that the Lt. Governor, Delhi is pleased to approve the offer being made herein to you for the grant of L-9/CLW-1 licence for the year 1990-91 (1.6.90 to 31.3.91 subject to approved terms and conditions for the year 1990-91. The Hon"ble Lt. Governor, Delhi has approved the rates of 50 degree country liquor in the bottles as per the specifications laid down in clause 18 of the terms and conditions for the grant of licence in form L-9 for the year 1990-91 as follows:-

Quartz - Rs.72/- per dozen

Pints - Rs.42.10 per dozen

Nips - Rs.24.20 per dozen

You are required to indicate your acceptance by 4.6.1990 till 4:00 p.m. You will be required to supply 40% of the total requirement of country liquor during the aforesaid licensing period.

In case you accept this offer, you are required to complete the following formalities for the grant of above licence so that the licence in form L-9/CLW-1 may be granted to you.

i. To furnish security deposit of Rs.5.00 lakh in the manner prescribed in rule 33(1) of the Delhi Liquor Licence Rules, 1976;

ii. To execute a personal bond with a surety for a sum of Rs.5.00 lakh to the satisfaction of the Collector of Excise Delhi;

iii. To deposit the licence fee of Rs.1.00 lakh i.e. (Rs.50,000/-for CLW-1 in the name of the Excise Commissioner and Rs.50,000/- for L-9 in the name of Collector of Excise).

iv. To furnish the labels and the name of the brand of 750 ml; 375 ml; add 180 ml; bottles alongwith 3 empty bottles each of quartz, pints, and nips for approval of the Commissioner of Exice;

v. To execute a written agreement at your own cost in the proforma prescribed by the Excise and conditions for grant of licences. The vetting fee of Rs.32/- should be deposited with Law and Judicial Department, Delhi Administration Delhi.

vi. To furnish the specimen of pilfer proof seals for approval of the Commissioner of Excise;

vii. To make your own arrangements for the Bonded Warehouse.

Yours faithfully,

(V.K. JHA)

COLLECTOR OF EXCISE DELHI."

2. Ex.PW1/3

"1.6.1990

The Collector of Excise,

2, Battery Lane, Rajpur Road,

DELHI

Sub : Tenders for wholesale supply of country liquor to Delhi Admn. for the year 1990-91 (1.6.1990 to 31.3.1991)

Sir,

This has reference to your letter No. F2(4) /Ex-CL/90-91/7197 dated 1st June, 1990 conveying the approval of the Lt. Governor for grant of licence to us for 40% supply of country liquor during the year 1990-91 at the following rates

Quartz Rs. 72.00 per doz. bottles

Pints Rs. 42.10 "

Nips Rs. 24.20 "

2. Whereas the rates for pints and nips are the same as were offered by us to the Negotiating Committee the rate for quartz as approved by the Lt. Governor is Rs.72/- as against Rs.73.25 per doz. qts. offered by us. We therefore feel that there is some mistakes apparent from record. You are requested to look into the matter and get the rate of quartz rectified.

3. It is also mentioned that at one stage we had quoted a rate of Rs.72/- per doz. qts. on the condition that supply will be accepted in old assorted and substandard bottles not conforming to the prescribed specifications.

4. Meanwhile we are going ahead with completion of the formalities for grant of licence, subject to our above objection on the supply rates of quartz.

Thanking you,

Yours faithfully,

for PILKHANI DISTELLERY &

CHEMICAL WORKS"

3. Letter dt. 4.6.1990

"Dated 4.6.1990

The Collector of Excise,

2, Battery Lane,

Rajpura Road,

New Delhi.

Dear Sir,

Sub: The grant of L-9/CLW-1 licence for the year 1990-91 (1.6.90 to 31.3.91)

This is with reference to your letter No. F.2 (4/Ex.cl.90-91/7197 dated 1.3.90. As desired we are enclosing herewith the following documents:-

1. A fixed deposit receipt No. 520774 dated 4.6.90 of State Bank of India as security deposit.

2. A personal Bond with a surety for a sum of Rs.5,00,000/- Five Lac furnished by Ms Rupa Lal. The same will, be submitted to you later on.

3. D.D. No. 172522 and 172523 for Rs.50,000/- (Fifty thousand) each favouring commissioner of excise and Collector of excise respectively as licence fee for grant of CLW-1 and L-9.

4. Three labels each of Qts and Pts of our ?APSARA" brand are submitted for your kind approval. The labels for nips will be submitted to you later on.

5. Three empty bottles of Qts, Pts, and Nips size are submitted for your kind approval.

6. The Vetting fee of Rs.32/- will be deposited by us in due course.

7. We are also submitting herewith the specimen of P.P. seals for your kind approval.

8. At present we have temporarily engaged the godown, the address of which is C-15 Okhla Industrial Estate, Phase-1. The said godown is already approved by your goodself for M/s Co-operative Company Ltd., as an additional godown for the year 89-90. In the meantime we will request your goodself to allot us the Government bonded ware-house godown as early as possible for we will be highly obliged.

Thanking you.

Yours faithfully,

For Pilkhani Distillery & Chemical

Works,

(A.K. Puri)

Attorney."

4. Letter dated 5.6.1990

"OFFICE OF THE COMMISSIONER OF EXCISE 2-BATTERY LANE RAJPURA ROAD DELHI.

No. F.2(3)/Ex.CL/90-91 Dated 5.6.1990

To,

The Pilkhani Distillery & Chemical Works,

Saharanpur-U.P.

Sub:- Grant of licence in form L-9/CLW-1 for wholesale supply of 50 degree country liquor during the year 1990-91 (1.6.90 to 31.3.91)

Sir,

With reference to our offer letter No. 7197 dt. 1.6.90 and in view of steps taken by you in response the reto as mentioned in your letter No. nil dated 1.6.90 and

4.6.90, undersigned is pleased to grant licence in form L-9, and licence in form CLW-1 with the prior approval of the Excise Commissioner, subject to the terms and conditions approved for the year 1990-91 for wholesale supply of 50 degree country liquor to the extent of 40% of the total monthly requirement during the year 1990-91 on the following rates approved by the Lt. Governor, Delhi.

Quartz Rs. 72.00 per dozens.

Pints Rs. 42.10 " "

Nips Rs. 24.20 " "

Supplies of country liquor are to be made in the bottles conforming to the specifications given in Clause 18 of the terms and conditions for the grant of L-9 licence for the year 1990-91.

You are requested to obtain import permits after executing bonds immediately.

Yours faithfully,

(V.K. JHA)

COLLECTOR OF EXCISE DELHI

Encl: Licence in form L-9 and CLW-1 in original.

5. Letter dated 6.6.1990 Ex.PW1/4

"6.6.90

The Collector of Excise

2, Battery Lane, Rajpur Road,

DELHI

SUB: GRANT OF LICENCE IN FORM L-9/CLW-1 FOR WHOLESALE SUPPLY OF 50 COUNTRY LIQUOR DURING THE YEAR 1990-91 (1.6.90 TO 31.3.1991)

Sir,

We have to acknowledge receipt of your letter No. F.2(3)/Ex/CL/90-94/7263 dated 5.6.90, on the above subject. You have referred to only the second of our letters dated June 1, 1990 therein. The said letter was subject to our earlier letter of that date wherein we had made it clear that we would be completing all the formalities for grant of the licence reserving one right to have rectification of the rate to Rs.73.25 per doz. qts. detailed therein. The rate for supplies accordingly to tender conditions was never reduced by us below the same.

It was only after delivery of our said letter to you on 1800 hrs. on 1, June 1990 that we agreed to and completed all the requisite formalities. The necessary formalities have also been completed vide our letter dated 4.6.90. It is, therefore, requested that necessary orders of the appropriate authorities may kindly be obtained for making payments to us for the supply of country liquor during the year 1990-91 on the lowest rate at which we had agreed to make supplies before the Negotiating Committee i.e. Rs.73.25 per doz. qts. on and in accordance with the conditions of the tender. As already explained and as clear on your record, the offer of Rs.72/- per doz. qts was for supply of country liquor without following condition No. 18(i) of the conditions of tender. Such conditional offer of ours has not been accepted.

Since your letter of date clarifies that our tender has been accepted "subject to the terms and conditions" the question of accepting our tender at Rs.72/- per doz. qts. neither arises nor can arise.

This is being submitted by way of immediate clarifications to avoid any subsequent misunderstanding or misgiving.

Thanking you,

Yours faithfully,

For PILKHANI DISTILLERY & CHEMICAL WORKS.

K.B. LAL

Sr. Ex. Director."

(emphasis is mine)

10. It is also relevant in order to appreciate these letters to refer to the provision of Section 8 of the Indian Contract Act, 1872, and which section provides that performing of the conditions of a contract would amount to acceptance of a proposal and entering into a contract. Section 8 of the Indian Contract Act reads as under:-

"8. Acceptance by performing conditions, or receiving consideration.- Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal."

11. I have already held with respect to issue no.2 that Negotiating Committee did not give any assurance, and nor could have given, especially in view of the categorical language of Clause 29 of the Terms and Conditions, that the respondent nos. 1 and 2/plaintiffs were entitled to have the price of Rs.73.25/- per dozen quartz and not the price of Rs.72/- per dozen quartz. Even assuming that the respondent nos. 1 and 2/plaintiffs did not accept the conditions in the Letter dated 1.6.1990 of Government of NCT of Delhi/Commissioner of Excise/ Ex.PW1/D1 inasmuch as respondent nos. 1 and 2/plaintiffs contend acceptance as per objections in terms of their letter dated 1.6.1990/Ex.PW1/3, however when we refer to the admitted Letter dated 4.6.1990 of the respondent nos. 1 and 2/plaintiffs which has been sent to the Collector of Excise, it is clear that this letter was a completely unconditional letter completing all formalities for placing

upon them the order. As rightly contended by the appellants/defendants in their written statement that respondent nos. 1 and 2/plaintiffs could well have refused to supply or refused to act upon the letter of the appellants/defendants dated 1.6.1990 but the respondent nos. 1 and 2/plaintiffs did supply, and that the Letter dated 4.6.1990 of the respondent nos. 1 and 2/plaintiffs removes any doubt whatsoever because this letter complies with the Terms and Conditions of the tender supply and this is not a letter which is at all written without prejudice or written being subject to any pre-condition.

12. In any case, in issues of acceptance of a tender/offer, there cannot be any issue of prejudice because either an offer is accepted unconditionally or not. In the present case, respondent nos. 1 and 2/plaintiffs after unconditionally complying with the terms of the tender by giving the necessary security deposit etc by its Letter dated 4.6.1990, thereafter they could not have backed out by writing their Letter dated 6.6.1990/Ex.PW1/4 that there was no contract at Rs.72/-per dozen quartz. Such convenient action of the respondent nos. 1 and 2/ plaintiffs has no value in the eyes of law especially when supply is made throughout the entire period from 1.6.1990 to 31.3.1991 and receipt of payment at Rs. 72/-, and if the rate of Rs.72/- per dozen quartz was not acceptable to the respondent nos. 1 and 2/plaintiffs, then obviously they need not have supplied and acted under the Contract. Once this is so, in view of the provision of Section 8 of the Indian Contract Act, there remains no doubt that respondent nos. 1 and 2/plaintiffs having acted upon the contract cannot now conveniently claim that they are entitled to rate of supply Rs.73.25 per dozen quartz and not at Rs.72/- per dozen quartz, and this is all the more so in view of the fact that respondent nos. 1 and 2/plaintiffs have failed to prove any assurance given by the Negotiating Committee with the extremely important aspect of the decision of the Lieutenant Governor only being final as clearly/categorically stated in Clause 29 of the Terms and Conditions with the fact that the Letter dated 1.6.1990 issued by the GNCTD/Ex.PW1/D1 was specifically for supply at Rs.72/- per dozen quartz. It is therefore held that the trial court has respondent nos. 1 and 2/ plaintiffs are only entitled to the payment at Rs.72/- per dozen quartz and not at Rs.73.25/- per dozen quartz.

13. In view of the aforesaid discussion, this appeal is allowed.Impugned judgment of the Trial Court dated 1.10.2005 is set aside. Parties to bear their own costs. Decree sheet be prepared. Any amount which is deposited by the appellant in RFA No.105/2006 in this Court be released to the said appellant-Delhi Tourism and Transportation Development Corporation Ltd along with the accrued interest, within a period of six weeks from today.

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committed a grave illegality and perversity in giving findings on issue nos.3 and 4 in favour of the respondent nos. 1 and 2/plaintiffs, and such findings are therefore set aside, and it is held that

14. Since this appeal is effectively in support of the appeal being RFA No.59-62/2006 inasmuch as Delhi Tourism and Transportation Development Corporation Ltd. was also one of the defendants in the suit against whom the suit for recovery of monies came to be decreed, but since RFA No.59-62/2006 has been allowed, effectively by the judgment passed in RFA No.59-62/2006, even this RFA would stand allowed by setting aside the self-same impugned judgment dated 1.10.2005 as against Delhi Tourism and Transportation Development Corporation Limited.

