

(1995) 05 SC CK 0064

In the Supreme Court Of India

Case No : Civil Appeal No's. 5568 with 5571 of 1995

M/s. Ramnarayan Satyanarayan Agrawal Distilleries Pvt. Ltd.	APPELLANT
Vs	
Associated Alcohols and Breweries Limited and Others	RESPONDENT

Date of Decision : 10-05-1995

Acts Referred:

Industries (Development and Regulation) Act, 1951 — Section 10, 11, 2, 3, 30

Citation : AIR 1995 SC 1686 : (1995) JLJ 599 : (1995) LabIC 2080 : (1995) 3 SCALE 710 : (1995) 4 SCC 563 : (1995) 1 SCR 330 Supp : (1995) 2 UJ 365

Hon'ble Judges : A. M. Ahmadi, C.J.;S. P. Bharucha, J;S. C. Sen, J

Bench : Full Bench

Advocate : P.P. Rao, Naramimha P.S. and V.G. Pragasam, for the Appellant;
Guntur Prabhakar, for the Respondent

Final Decision : Disposed Of

Judgement

Suhas C. Sen, J.—Leave granted.

2. The appellant, Ramnarayan Satyanarayan Agrawal Distilleries Pvt. Ltd., and Associated Alcohols & Breweries Ltd., the respondent No. 1 are both manufactures of potable alcohol. The respondent No. 1 belongs to Kedia Group of Distilleries Companies and enjoys a virtual monopoly in the manufacture of potable alcohol in the State of Madhya Pradesh along with two other business houses. According to the appellant, this monopoly continued until the judgment of this Court in the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, , in which the policy decision of the State Government to grant licence to set up new distilleries at new sites was upheld.

3. On 26th April, 1993, the Under Secretary, Government of Madhya Pradesh, Commercial Taxation Department, issued an order to the Excise Commissioner. By this order, this State Government granted permission to give licence in favour of the appellant to manufacture potable alcohol in the interest of more competition. The order was to the following effect :-

GOVERNMENT OF MADHYA PRADESH COMMERCIAL TAXATION DEPARTMENT

No. B-1-64/85/VA.KAR/5

Bhopal dated 26th April, 1993

To

The Excise Commissioner, M.P. Gwalior.

Subject : Regarding grant of DI licence to Messers Ramnarayan Satyanarayan Agrawal, Bilaspur for manufacture of industrial alcohol.

Reference : Your memo No. 3/2/670 dated 20.4.93.

The State Government grants permission for manufacture of potable alcohol in order to encourage greater competition for issuance of licence to Messres Ramnarayan Satyanarayan Agrawal Distilleries Pvt. Ltd., Chherka Bench, Bilaspur, which produces industrial alcohol.

2. In accordance with earlier cases the distiller would be responsible for the other license/permissible which they may be required to obtain from Government of India and other departments of the State Government for the manufacture of potable alcohol.

By order and in name of the Governor of Madhya Pradesh

(R.S. DUBEY) Government of Madhya Pradesh Commercial Taxation Department.

This was followed up by another order, issued by the Additional Excise Commissioner on 29th April, 1993 which was as under :-

OFFICE OF THE EXCISE COMMISSIONER MADHYA PRADESH, MOTI MAHAL, GWALIOR.

No. 3/2/19-83/920 Gwalior dated 29.4.93. To

M/s. Ramanarayan Satyanarayan Agrawal Distilleries Pvt. Ltd. Chherpha Bandha, Bilaspur, Madhya Pradesh. Subject : Regarding grant of licence DI to M/s. Ramanarayan Satyanarayan Agrawal, Bilaspur for manufacture of industrial alcohol.

Reference : The previous memo No. B-I-64/85/Va. Kar 5 dated 26.4.93 of the State Government, Commercial Taxation Department.

With reference to the aforesaid government order, permission is granted to you to manufacture potable alcohol under the DI licence granted to you on the condition that you would be responsible for obtaining the necessary licence/permission from the Government of India and other departments of the State Government according to rules applicable thereto and further that you would be required to follow all the necessary terms and conditions under the Excise Act.

Sd/- Additional Excise Commissioner Madhya Pradesh.

4. The aforesaid two orders were passed in pursuance to the appellant's application for permission to manufacture potable alcohol. The appellant has claimed that the order dated 26.4.93 clearly states that it shall be the responsibility of the appellant to obtain such license/permissible, as necessary, from any other department of the Central Government and the State Government. All other distilleries in Madhya Pradesh are being run on similar terms and conditions. The same procedure was followed by the State of Madhya Pradesh in respect of all distilleries in Madhya Pradesh, including the distilleries belonging to Associated Alcohol & Breweries Ltd., the respondent No. 1 and Anand Kumar Kedia, the respondent No.2.

5. According to the appellant, the trouble started in this case when the Excise Commissioner issued a notice dated 8.7.1993 inviting tenders for supply of country liquor in 19 supply areas of the State of Madhya Pradesh. The respondent Nos. 1 and 2 did not directly submit any tender, but another concern of the Kedia Group i.e. Castle Douglas Industries Limited, submitted its tender. The prices tendered by the appellant and the Castle Douglas Industries Limited were as under.

Price tendered by the appellant Bilaspur Raipur Rs. 5.21 Rs. 5.71 Price tendered by Castle Douglas Industries Ltd. Bilaspur Raipur Rs. 14.71 Rs. 14.71 6. The tender of the appellant was much lower than the tender of Castle Douglas Industries Limited. There was no other contender. The tender of Castle Douglas Industries Limited was almost three times the appellant's tender. If the tender of Castle Douglas Industries Limited were accepted, the Exchequer would have suffered huge loss.

7. Having failed in open competition the respondent Nos. 1 and 2 are now trying to perpetuate their monopoly by legal process.

8. Initially, a writ petition was moved in the name Arvind Kashiv on 3.5.1993 (M.P.No. 1035/1993). Arvind Kashiv claimed to be a journalist interested in public causes. Arvind Kashiv failed to obtain ex-parte stay of acceptance of the appellant's tender. Thereafter, the respondent Nos. 1 and 2 came out in the open and filed a writ petition (M.P. No. 1320/1993) out of which this appeal by special leave arises. In the writ petition, they questioned the right of the appellant to make its tender on the following grounds:-

- (a) That the appellant only holds an authorisation from the State Government;
- (b) that the State Government had no power, authority or jurisdiction in the matter of licensing the manufacture of potable alcohol;
- (c) that only the Central Government possesses such licensing authority; and
- (d) that the appellant did not hold any licence from the Central Government.

9. It was held in that case by a Division Bench of Madhya Pradesh High Court that the alcohol industry can be set up only after obtaining a licence from the Government of India and thereafter the State shall have the control of the

industry in terms of Entry 8 of list II of the Constitution which gives power to the State to legislate in respect of intoxicating liquor i.e. to say the production, manufacture, possession and transport. Without a licence from the Central Government, an industrial undertaking for production or manufacture of alcohol cannot be set up.

10. As regards the individual cases of respondents Nos. 4 and 5, in that writ petition, it was held that the respondent No. 4 shall be entitled to continue its business as before but respondent no. 5 (the appellant herein) had to obtain a licence from the Central Government for setting up of an industry for manufacture of potable alcohol. The Court held :

We have already held above that licences for setting up of industries for manufacture of potable alcohol and industrial alcohol has to be obtained separately and it cannot be treated as one and the same product. Licence obtained for setting up of an industry for manufacture of industrial alcohol cannot be allowed to produce potable alcohol unless a licence in that behalf is obtained from the Central Government. Therefore, whenever a unit obtains a licence from the Government of India, for setting up a plant for producing industrial alcohol, it cannot without obtaining a licence from the Government of India, convert that licence for producing potable alcohol, by obtaining the permission or licence issued by the State Government.

11. M/s. Ramnarayan Satyanarayan Agrawal Distilleries Pvt. Ltd. has now come up in appeal by special leave before this Court.

12. The case of the appellant is that the provisions of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as 'the Act') does not apply to an industrial unit in which less than fifty persons are employed. This contention must be upheld. 'Factory' has been defined in Section 3(c) of the Act as under :

3 (c). 'Factory' means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on

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(i) With the aid of power, provided that fifty or more workers are working or were working thereon on any day of the preceding twelve months; or

(ii) without the aid of power, provided that one hundred or one workers are working or were working thereon on any day of the preceding twelve months and provided further that in no part of such premises any manufacturing process is being carried on with the aid of power.

13. The manufacturing process of appellant's business establishment is being carried out by only 22 workers. Consequently, the appellant's business undertaking cannot be treated as a factory nor an 'industrial undertaking' as defined u/s 3(d) of the Act.

3 (d). 'industrial undertaking' means any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government.

14. The requirement to obtain a licence in Section 11 is in respect of 'any new industrial undertaking'. If the manufacturing establishment of the appellant is not a factory and consequently not an industrial undertaking as defined in the Act, the appellant cannot be compelled to obtain a licence u/s 11 which is as under:-

11. Licensing of new industrial undertakings-

(1) No person or authority other than the Central Government, shall, after the commencement of this Act, establish any new industrial undertaking, except under and in accordance with a licence issued in that behalf by the Central Government:

Provided that a Government other than the Central Government, may with the previous permission of the Central Government, establish a new industrial undertaking.

(2) A licence or permission under Sub-section (1) may contain such conditions including, in particular, conditions as to the location of the undertaking and the minimum standards in respect of size to be provided therein as the Central Government may deem fit to impose in accordance with rules, if any, made u/s 30.

15. By the Industries (Development and Regulation) Act, 1951, by virtue and provision of Section 2, the industries specified in the First Schedule of the Act, have been brought under the control of the Union. Item 26 of the First Schedule refers to Fermentation Industries and is as under :

26. FERMENTATION INDUSTRIES :

(1) Alcohol.

(2) other products of fermentation industries.

16. Chapter III of the Industries Act deals with 'REGULATION OF SCHEDULED INDUSTRIES'. Under this Chapter, it has been laid down in Section 10 that existing industrial undertaking will have to be registered in the prescribed manner. Section 11 lays down that no person or authority shall, after the commencement of the Act, establish any new industrial undertaking without a licence issued in that behalf by the Central Government.

17. Neither the appellant nor the Castle Douglas Industries Limited has been registered as an existing industrial undertaking u/s 10 of the Act, nor any licence has been issued to either of these undertakings u/s 11 of the Act. If the contention of the respondent No. 1 is to be accepted, then the distilleries run by them will have to be closed down, as they have no right to manufacture industrial or potable alcohol.

18. It has been contended on behalf of the respondents that even though they have not obtained a licence u/s 11 of the Act, they have applied for permission to carry on business (COB) to Government of India and their application has been registered. That, however, is not the same thing as having a licence u/s 11 of the Act. If the provisions of the Act are strictly enforced, the respondents will have no right to carry on business of manufacturing liquor.

19. So far as the appellant is concerned, it has been stated in the appeal before this Court as well as in the affidavit filed in the court below, that they employ not more than 22 persons in their factory. Section 10 of the Act requires the owner of every existing industrial undertaking to get the undertaking registered in the prescribed manner. Similarly, Section 11 of the Act lays down that no person or authority other than the Central Government shall establish any new industrial undertaking, except under and in accordance with a licence issued in that behalf by the Central Government. The question is whether the appellant is an 'industrial undertaking' as defined in the Act. If at any premises fifty or more workers are working with the aid of power or one hundred or more workers are working without the aid of power, then that place will be treated as a 'factory'. In order to be an 'industrial undertaking', as defined in the Act, it must be an undertaking carried on in 'one or more factories'.

20. In the instant case, since the appellant does not employ more than 22 persons, its place of manufacture cannot be regarded as a 'factory'. Consequently, his business organisation cannot be treated as an 'industrial undertaking', as defined in the Act. The appellant's undertaking does not come within the mischief of the Act and the appellant cannot be required to obtain a licence in order to carry on business of manufacturing potable alcohol.

21. An argument was advanced on behalf of the respondent that potable alcohol cannot be made without manufacturing industrial alcohol in the first place. Industrial alcohol has to be the base for manufacture of potable alcohol. Entry 8, List II relates to 'intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors'. It is clear from this Entry that the production and manufacture of intoxicating liquors will fall within the jurisdiction of the State. Every step that is necessary to be taken for production or manufacture of intoxicating liquor falling within Entry 8, List II can be taken by the appellant with the permission of the State Government. The appellant is not an 'industrial undertaking', as defined in Section 3(d) of the Industries (Development and Regulation) Act. No special licence from the Central Government is necessary for the appellant for this purpose. In course of the argument apart from Section 11, nothing could be shown by the respondents which requires the appellant to obtain a licence from the Central Government for manufacturing potable alcohol.

22. We are fortified in the view we have taken by a judgment of this Court in the case of *State of Madhya Pradesh v. Nandlal Jaiswal* (supra). In that case, an argument was advanced that the respondents were not entitled to set up new

distilleries without obtaining a licence from the Central Government u/s 11 of the Act. Since there was nothing to show that they had obtained such a licence before setting up the new distilleries, their action in setting up the new distilleries was illegal. This contention was repelled by this Court on the ground that no such plea had been raised in the court below.

23. It was held by P.N. Bhagwati, C.J.:-

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 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. Doongaji & Co. must also, therefore, be rejected.

24. On behalf of the respondents, it was contended that this judgment cannot be treated as good law any more, in view of the decision of this Court in the case of Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, . In that case the question was whether vend fee in respect of industrial alcohol levied by different State Legislatures was valid. The question, whether a 'factory' employing less than 50 workers can be treated as an 'industrial undertaking' under the Industries (Development and Regulation) Act, did not come up for consideration in that case at all. The Act has imposed restrictions and framed regulations in respect of industrial undertakings, as defied by that Act. The undertaking of the appellant does not come within the ambit of that definition. It cannot be said that the appellant cannot operate its distillery without acquiring a licence as laid down by Section 11 of the Act.

25. In that view of the matter, it is held that the appellant does not require a licence u/s 11 of the Industries (Development and Regulation) Act to manufacture potable alcohol. Their bid pursuant to the tender floated by the State Government to manufacture potable alcohol will have to be considered in accordance with law.

The appeal, therefore, must succeed.

26. We have noted earlier in the judgment the wide disparity in price in the tender made by the appellant and Castle Douglas Industries Limited. Having failed in open competition, the respondents Nos. 1 and 2 invoked the writ jurisdiction first indirectly, and thereafter directly, to frustrate the appellant's bid to secure the contract. They have successfully frustrated the effort of the appellant to obtain the contract by this process so far. Their attempt has now failed. Costs must follow the event. Having regard to the facts, we have decided to award exemplary costs in this case.

27. The appeal is allowed. The respondents Nos. 1 and 2 will pay costs assessed at Rs. 20,000 (Rupees twenty thousand only) to the appellant.

I.A.No. 5 of 1995 in SLP (C) No. 3725 of 1994

The above LA. is also disposed of accordingly.

Civil Appeal No. 5527 of 1995

(Arising out of SLP (C) No. 13534 of 1994)

28. Leave granted.

29. In view of our judgment in Civil Appeal No. 5526 of 1995 (arising out of SLP (C) No. 3725 of 1994), no further order need to be passed in the above case.