
(1993) 03 DEL CK 0032

In the Delhi High Court

Case No : Civil Writ Appeal No. 3209 of 1992

Som Distillery Pvt. Ltd.

APPELLANT

Vs

Lt. Governor, Delhi and Others

RESPONDENT

Date of Decision : 12-03-1993

Acts Referred:

Citation : (1993) 25 DRJ 503

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Advocate : R.K. Jain, J.S. Arora, S.K. Mahajan, V.P. Singh and D.S. Narula, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) On 18th April 1992 Commissioner of Excise, Delhi, invited tenders for grant of two or more licenses in Form L-9 from the licensed manufacturing units (Distilleries including their bottling plants) for supply of country liquor in Union Territory of Delhi during the year 1992-93 (1st May 1992 to 31st March 1993). The Petitioner and Respondent No.5 were amongst the tenderers. Some of the other tenderers were Central Distillery and Breweries Ltd, Bazpur Distillery, Sir Shadilal Distillery, Modi Distillery, Rampur Distillery and Pikhani Distillery. These tenderers, petitioner and respondent No.5 were called for negotiation of rates by a Committee appointed by the Lt.Governor to obtain country liquor at the lowest possible price. Out of the tenderers invited for negotiation the lowest rates were tendered by Central Distillery; Second lowest rates were of Bazpur Distillery; Respondent No.5- M/s.Cooperative Company Ltd was third lowest; the rates quoted by Sir Shadilal Distillery were fourth lowest. The petitioner was 7th in the ascending order. As required by the terms and conditions for the grant of the license the petitioners deposited an amount of Rs.5 lakhs by way of earnest money with Commissioner of Excise. During negotiations with the Negotiating Committee, the tenderers including the petitioner agreed to reduce the rates. By letter dated 13th May 1992 the Collector of Excise informed the petitioner that

Lt. Governor of Delhi had accepted its tender for the grant of L-9/CLW-1 license for the supply of country liquor for the year 1992-93 to the extent and at the rates mentioned in that letter. The petitioner was asked to supply 5% of the total supply of the country liquor. The offer for grant of the license was made to the petitioner subject to the terms and conditions for grant of license for the year 1992-93. The petitioner was asked to complete the formalities mentioned in that letter by 14th May 1992. On 13th May 1992 itself petitioner replied stating that the limitation of quantum of 5% was far short of economic scale of operation which stood at 10%. The petitioner urged upon the Commissioner of Excise to consider granting 14% of the quantum of the total supply to it and also stated that in case the same is not acceptable the petitioner will agree if 10% of the total supply is allocated to it. The petitioner further stated that if Commissioner, Excise finds it difficult to enhance the quantum it would be unable to accept the offer of 5%. On refusal of the petitioner to accept the offer of 5%, on 13th May 1992 itself, the Commissioner of Excise allocated the said 5% quantity to Sir Shadilal Distillery. The rest of the quantity allocated by the Commissioner of Excise on 13th May 1992 was as under:-

1. Central Distillery and Breweries Ltd. 40%
2. Cooperative Co. Ltd Saharanpur 40%
3. Bajpur Distillery 15%

After aforesaid allocation had been made the petitioner by letter dated 16th May 1992 informed the Commissioner of Excise that it had reconsidered the offer and was agreeable to accept the offer of supply of 5%.

(2) In early June, 1992 the Central Distillery expressed its inability to supply 40% of the quantity allocated to it and obtained reduction of its allocation from 40% to 20%. Out of the 20% surrendered by the Central Distillery, 15% was allocated to respondent No.5 and 5% to Sir Shadilal Distillery. The re-allocation was made on 13th June, 1992 and thus the revised allocation of Cooperative Company became 55% and that of Sir Shadilal Distillery became 10%. By letter dated 27th June, 1992 the Collector of Excise informed the petitioner that the earnest money of Rs.5 lakhs deposited by it with the tender has been forfeited by the competent authority.

(3) Before filing the petition the petitioner did not write any letter to the respondent authorities either objecting to the forfeiture of the earnest amount or to the allocation or re-allocation of the quantity of the country liquor to be supplied to the Delhi Administration. On 14th September 1992 the present petition was filed seeking these reliefs:-

(A) quashing of the order forfeiting the earnest money of Rs.5 lakhs; (b) Directing the respondent authorities to allocate 14% or such other percentage of total supply of country liquor to be made in Union Territory of Delhi for the licencing period 1992-93 to which the petitioner may found entitled; (c) quashing

the order of respondent authorities allocating 55% of the supply to Co-operative Company.

(4) Mr. R.K. Jain, learned counsel for the petitioner contends that the forfeiture of the earnest amount by the respondent authorities is illegal and amounts to penalty and is in excess of the statutory authority conferred by clause (ii) of sub rule (10) of Rule 32 by Delhi Liquor license Rules, 1976. It would be useful to reproduce relevant rules. Sub rule (9) and (10) of Rule 32 of the Delhi Liquor license Rules, 1976(for short "The Liquor license Rules") and Rule 4 (b) of the Delhi Country Liquor Bonded Warehouse Rules, 1976 read as under:-

"32. In case the license is decided to be granted by tender, the following procedure shall be followed: (9) (i) Where tenders have been invited for license fee, the successful tenderer whose tender has been accepted by the Excise Commissioner, shall pay one fourth of the amount quoted by him plus an amount equal to six months estimated assessed fee in case of licenses for foreign liquor within such time as may be fixed by the Excise Commissioner while communicating the decision about the acceptance of the tender to him. The earnest money desolated by him shall be adjusted towards the satisfaction of dues payable by him as aforesaid or as security amount wherever such security is provided. (ii) Any person whose tender is accepted, whether for license fee or for rates, shall take all requisite action to complete all formalities required for grant of a license within seven days from the date of communication of acceptance of his tender and if he does not do so, all deposits made by him shall stand forfeited to the Government and, while the license play be retendered or granted in any other manner, he shall not be entitled to any compensation. "10 (i) If any person, whose tender has been accepted, fails to make the deposits of one fourth of annual fee (plus an amount equal to six months estimated assessed fee in case of licenses for foreign liquor) or if he refuses to accept the license, the Excise Commissioner may call for fresh tenders, and any deficiency in fee arising as a result thereof together with all expenses incurred in inviting tenders shall be recoverable from the defaulting tenderer in the manner laid down in section 60 of the Punjab Excise Act, 1914, as in force in the Union Territory of Delhi, (ii) It shall also be lawful for the Excise Commissioner to forfeit the earnest money of the defaulting tenderer either in part or in full, deposited by the said tenderer."

"RULE4 Security- (a) (b) In case any person to whom decision regarding the grant of license in form L-9 CLW-1 has been communicated, does not execute bond and deposit security and furnish suitable surety as provided in rule4(a) within a period of 15 days or such other period as may be specified by the Excise Commissioner, the offer of grant of licenses made to him shall be withdrawn. In case the licenses are granted by tender, in addition to the withdrawal of the offer, the earnest money deposited by the defaulter may be forfeited and he may be black listed.

(5) Mr. Jain contends that as provided in clause (ii) of sub rule (9) of Rule 32, the

respondent authorities were required to grant to the petitioner seven days time from the date of the communication of acceptance of its tender and as the petitioner was not granted the same the order of forfeiture is per se illegal. When the letter dated 13th May 1992 was sent to the petitioner intimating about acceptance of its tender by the Lt. Governor and asking the petitioner to complete the formalities by 14th May 1992, the petitioner did not make a grievance that the time granted for completing the formalities was too short or that the petitioner is entitled to 7 days time to complete the formalities. The petitioner instead wrote a letter on the same date, inter-alia, informing the Commissioner of Excise that it was not economically viable for it to supply only 5% of the total supply of the country liquor. Thus, I do not find any merit in the contention of learned counsel.

(6) Next it was contended that no concluded contract came into existence between the parties and in absence thereof the respondent authorities had no right to forfeit the earnest amount. On the other hand, Mr. Mahajan, learned counsel appearing for the respondent authorities contends that the Rules clearly empower the authorities to order forfeiture in case breach is committed by tenderer on receipt of communication of the decision to grant license. It is urged by Mr. Mahajan that the decision regarding the grant of license in Form L-9 and CLW1 had been communicated to the petitioner and thereafter the petitioner failed to execute the documents and had declined to accept the decision and had thus committed breach and the earnest amount was rightly ordered to be forfeited. Mr. Mahajan contends that by letter dated 13th May 1992 the decision to grant license was communicated to the petitioner and a concluded contract had come into existence for breach of which the authorities rightly ordered the forfeiture of the earnest amount.

(7) The question as to whether a concluded contract has come into existence or not depends upon facts of each case. The question would be whether the parties were ad idem on the material terms or not. The law as to when a concluded contract comes into existence was summarised in Subodh Chandra Nandy and Ors Vs. Himanshu Bala Bose and ors. Vol. Lx, Calcutta Weekly Notes 423 in the following words:-

"WHETHER or not there was a concluded contract depends upon the true construction of what the parties said or did or wrote at the time when the contract is said to have been concluded. If it appears that all the material terms were agreed to at the time or were capable of being ascertained without further agreement between the parties, a concluded contract must be held to have resulted. But if it appears that only some of the terms were agreed to, while other material terms remained still to be negotiated, no completed contract can be found. So also where it appears that although terms and conditions relating to all material matters were broadly referred to by the parties, the exact form of all or some of them had still to be negotiated and agreed to, it is not possible to find any precise contractual intention and it must be held that the contract had not

been concluded. Again, if it appears that the agreement was only a conditional one, the acceptance being subject to certain conditions specified at the time or to be specified, and it is found that those conditions have not been fulfilled no concluded contract can be said to have come into existence. On the other hand, if it appears that there was a mutual assent which, as to its nature, was unqualified and, as to its extent, covered all the terms under negotiation which included all material terms, then it must be held that there was a concluded contract and in such a case subsequent negotiations will not detract from its binding character. If, however, the subsequent negotiation show that the original negotiations did not cover certain material terms or that although such terms were mentioned no agreement as to them was reached, then again it must be held that there was no complete and concluded contract. In all cases where no party seeks to hold another to a contract which the party charged says is not a binding or conducted contract, the enquiry must be as to whether a final agreement was reached. or the parties were still in negotiation. So long as the parties are in negotiation, either party may retract, but once there is a final agreement, the contract cannot be avoided except by the consent of both parties."

(8) One of the material term in the present case would be the rates at which the country liquor was to be supplied. The petitioner though in the tender had quoted higher rates but during negotiations petitioner agreed to supply the country liquor at the rates mentioned in the letter dated 13th May 1992 sent by Collector to the petitioner intimating it the decision of the Lt.Governor to accept the tender of the petitioner. The petitioner does not dispute that during negotiations consent was given to supply country liquor at the rates mentioned in the letter dated 13th May 1992. Thus, there is no difficulty in concluding that the parties were ad idem on the rates at which the country liquor was to be supplied. The petitioner has pleaded that it agreed to supply the country liquor at the rate mentioned in the letter dated 13th May 1992 provided the petitioner is allocated atleast 10% of the total supply. The respondent authorities have denied this averment. The respondent authorities, as per terms and conditions, can give preference up to 60% of the total requirements to the lowest tenderer. The rates quoted by the petitioner were not lowest. The petitioner was 7th lowest in the ascending order. In the tender application no limitation on quantity to be supplied has been mentioned by the petitioner. The record also does not show that during negotiations the petitioner had agreed to supply country liquor at Rs.89.75 per case of 9 bulk liters conditional on allocation of atleast 10% of the total supply. The petitioner even in its letter dated 13th May 1992, while expressing its inability to accept the quantity of 5%, did not write that during negotiations it had given consent to reduce rates provided atleast 10% of the total supply is allocated to it. The petitioner only stated that the quantum of 5% is not economically viable scale of operation. It may further be noticed that the two tenderers, namely. Modi Distillery and Rampur Distillery who had put conditions on supply of certain minimum quantity, were not considered for grant of license.

As the petitioner had not put any such condition the Lt.Governor accepted the tender of the petitioner. It may also be noticed that the rates tendered by Modi Distillery were less than the rates tendered by the petitioner. It is also not possible to accept the plea that the parties were not ad idem on the quantity of the supply to be made. The terms and conditions place a limit on the maximum allocation which can be made in favor of the lowest tenderer but there is no limitation on the minimum allocation to be made in favor of a tenderer. The terms and conditions do not show that allocation of less than 5% in favor of a licensee cannot be made. From Condition No.13(c) which states that a licensee shall make a security deposit of Rs.2,50,000.00 for every 10% of the total country liquor supplies for which the contract is awarded to him it cannot be said that allocation of less than 10% in favor of a licensee cannot be made. The petitioner was given allocation of 5% and was asked to furnish security deposit of Rs.1.25 lakhs in the manner prescribed in Rule 33(1) of Delhi Liquor license Rules,1976. The petitioner did not say in response thereof that under the Rules and terms and conditions allocation of less than 10% cannot be made. As noticed earlier ,on refusal of the petitioner to accept the allocation of 5% the license for supply of country liquor to that extent was given to Sir Shadilal Distillery.

(9) Rule 32 starts with the words "in case the license is decided to be granted by the tenderer the following procedure shall be followed" and thereafter the procedure is set out. Under Rule 32(9)(ii), and 32(10)(ii) of Liquor license Rules read with Rule4(b) of Delhi Country Liquor Bonded Warehouse Rules, 1976, on failure of a licensee to execute bond and deposit security etc on communication of decision regarding the grant of license in Form L-9/CLW 1, in addition to the withdrawal of the offer, the earnest money deposited by the defaulter can be forfeited and the defaulter can be black-listed. The petitioner, on communication of the acceptance of his tender, was bound by the statutory duties and liabilities arising out of such communication and those liabilities can be enforced in accordance with the terms and conditions of the tender and the statutory provisions as contained in the Liquor license Rules and Delhi Country Liquor Bonded Warehouse Rules. These provision permit forfeiture of earnest money. The words "this offer for the grant of L-9/CLW-1 license is accordingly made to you....." and the words " in case this offer is acceptable you are requested to complete the following formalities....." in letter dated 13th May 1992 sent by respondent authorities to the petitioner have to be read with the opening words of the letter stating that "I am directed to inform you that Lt.Governor, Delhi, has been pleased to accept your tender for grant of L-9/CLW-1 licenses for the supply of country liquor for the year 1992-93.....". From the use of the word "offer" in this letter it does not follow that it was a counter offer. As noticed hereinbefore, the petitioner had admittedly, during negotiations, agreed to the rates without placing any condition about supply of minimum 5% and thus it cannot be held that all material terms were not agreed or were not capable of being ascertained without further agreement between the parties. There is no illegality in the order passed by the respondent authorities forfeiting the earnest money.

(10) The next contention of Dr.Jain is that no legal basis has been shown for making allocation of only 5% quantum of country liquor in favor of the petitioner. It follows from this contention that fault has to be found with the allocation of remaining 95% out of which 40% each was allocated to Cooperative Company and Central Distillery and the balance 15% was allocated to Bazpur Distillery. The petitioner has not imp ledged Central Distillery or Bazpur Distillery as parties. The petitioner also did not write to the respondent authorities complaining about allocation of 95% to the said three distilleries but only made a grievance p73 that 5% quantum is not economically viable to be supplied by it. It is not disputed that the rates tendered by Central Distillery, Bazpur Distillery and Cooperative Company were less than the rates tendered by the petitioner. The terms and conditions stipulate the appointment of a Committee to negotiate with the tenderers to obtain country liquor at the lowest possible price. The Committee is required to negotiate with the tenderers in ascending order of rates and may, subject to verification of the capacity to supply the country liquor and the past performance or/and fulfillment of supply orders placed by the Excise Department during the previous licencing periods, give preference up to 60% for the total requirement of country liquor to the lowest tenderer. The Condition 11(i) (ii) and (iii) which are relevant on the question read as under:

"11(I): The Lt.Governor of the Union Territory of Delhi may appoint a Committee to negotiate with the tenderers with a view to obtain country liquor at the lowest possible price. The Committee shall negotiate with the tenderers in the ascending order of rates but no tenderer shall have any inherent right to be called for negotiations. The Committee may, subject to the verification of the capacity to supply the country liquor and the past performance or/and fulfillment of supply orders placed by the Excise Department during the previous licensing period(s) give preference up to 60% for the total requirements of country liquor to the lowest tenderer. (ii) For the remaining supply, the Committee shall negotiate with the other tenderers in the ascending order with a view to obtain a uniform lower price. The orders for the supply will be given depending upon the capacity of the concerned tenderers(s) to supply and/or his past performance. iii) In case, any of the tenderers, whose tender is accepted for a specific proportion of the total supply required, is not in a position to supply the entire portion of the supplies allotted to him for any reason whatsoever, then the Lt.Governor of the Union territory of Delhi in the interest of maintenance of supplies may vary the proportion of allotment made to the other supplier with the consent of such other supplier to the extent of 20% of the total requirements."

(11) The first three lowest tenderers were Central Distillery, Bazpur Distillery and Cooperative Company. The Committee did not allocate 60% to the lowest tenderers but decided to allocate 40% each to Central Distillery and Cooperative Company and 15% to Bazpur Distillery. There would be no difficulty in appreciating the rational behind making allocation if aforesaid conditions are kept in mind. Mr. Mahajan submits that considering the factors of past performance and fulfillment of the supply orders placed during the previous licencing periods,

the Committee in its wisdom recommended the allocations noticed above and that was accepted by the Lt. Governor. These factors, learned counsel submits, are implicit in the decision to make allocations although it has not been so stated in so many words in the counter affidavit. In face of the aforequoted terms and conditions & particularly Condition 11 (i) it is not possible to accept the contention, of the petitioner that when all tenderers agreed to reduce their rates they became equal and the fact that one tenderer had tendered higher rates was wholly irrelevant and redundant. Under Condition No. 11 (i) preference up to 60% allocation can be given to the lowest tenderer. It appears that the respondent authorities instead of making allocations of 60% of total supply made allocation of 40% each to Central and Cooperative Company so that some allocation, though small, may be made in favor of the petitioner in order to give it a chance to start dealings with the respondent authorities. I do not find any merit in the contention that there was no legal basis for making allocation of the quantum by the respondent authorities.

(12) Learned counsel for the petitioner further contends that, in any case, the respondent authorities did not act fairly while re-allocating 20% quantum surrendered by Central Distillery by allocating 15% out of it in favor of Cooperative Company and 5% in favor of Sir Shadilal Distillery. Sir Shadilal Distillery, as already noticed above, is not a party in this petition. There is also no prayer for cancellation of the allocation or re-allocation made in favor of Sir Shadilal Distillery. Dr. Jain contends that the petitioner is not praying for cancellation of allocation or re-allocation made in favor of Sir Shadilal Distillery and is only praying for cancellation of allocation and reallocation made in favor of Cooperative Company. In support of the contention that the respondent authorities are required to act fairly learned counsel for the petitioner placed reliance upon *K.I. Shephard and Others Vs. Union of India (UOI) and Others*, *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, *Ram and Shyam Company Vs. State of Haryana and Others*, and *United India Periodicals Pvt. Ltd Vs. M/s M & N Publications Ltd & Ors.*, jt 1993 1 188. There is no difficulty in accepting the proposition that then in these matters relating to grant of licenses the authorities are required to act fairly and cannot act arbitrarily. The respondent authorities cannot grant license to any person it likes at its sweet will. In reply to the contention of the petitioner that, on surrender of 20% quantum by Central Distillery the respondent authorities in all fairness ought to have allocated the said quantity to the petitioner particularly when the petitioner on reconsideration of the matter had agreed to supply even 5% quantity as stated in its letter dated 16th May 1992, Mr. Mahajan relying on Condition 11 (iii) contends, that the quantity surrendered has to be offered to other existing licensees and submits that if re-allocation had not been made to the existing licensees it would have been in contravention of Condition 11(iii) and would have been open to challenge. Mr. Mahajan further contends that in view of initial reluctance of the petitioner to accept the quantity allocated to it coupled with the provision of Condition 11(iii) it cannot be said that the respondent

authorities acted unfairly and arbitrarily in not allocating any part of surrendered quantity in favor of the petitioner. The contention is that reallocation was made in accordance with the Rules and the terms and conditions of the tender. In my opinion, there is considerable force in the contention of learned counsel for the respondent authorities. Assuming Condition 11 (iii) to be only enabling and not being an absolute rule, as contended by Dr.Jain, it cannot be held that the respondent authorities acted unfairly and arbitrarily in making re-allocation as permitted by condition No. 11(iii). Further the fact that the respondent authorities granted a temporary license to the petitioner to supply 1,50,000 cases of country liquor shows that the authorities were not economically disposed towards the petitioner and were rather try ing to help the petitioner. It is a different matter that the order for supply of 1,50,000 cases on the basis of the temporary license was challenged by Pilkhani Distillery and an order of injunction was issued by Civil Court restraining the petitioner to supply the said quantity of country liquor. The order of injunction, it was not disputed by counsel for the parties, was challenged but was upheld up to Supreme Court of India. It was further not disputed that before the order of injunction could be obtained the petitioner out of 1,50,000 cases had already supplied 42,000 cases of country liquor. All this happened before filing of the present writ petition and for reasons best known the petitioner did not mention these facts in the writ petition. These facts were placed on record by the Co-operative Company.

(13) Lastly, it was contended that Cooperative Company was not eligible for grant of license as it did not fulfill the condition precedent of having a working distillery. Relying upon the tender notice and condition No.6 it was contended on behalf of the petitioner that availability of working distillery is a condition precedent for grant of license in Form L-9 and CLW-1. Condition No. 6 reads as under:-

"ELIGIBILITY TO Hold license: 6. A license in Form L-9 and CLW-1 shall be granted to a manufacturer including its bottling unit duly licensed by the Central or State Government"

(14) The tenders were invited from the licensed manufacturing units (Distilleries including their bottling plants). Some of the documents required to annexe with the tender are: (1) attested copies of the Distillery license issued by the competent authority; (2) documents to show the permitted installed capacity for the manufacture of country liquor; (3) statement indicating the actual production and supply of country liquor during the last five years duly authenticated by the concerned Excise Commissioner of the State in which the distillery is situated; (4) no dues and creditability certificate regarding past performance of production and supply from the Excise Commissioner of the State in which the distillery/ bottling unit is situated; and (5) consent of the Excise Commissioner of the State in which the distillery/bottling unit is situated for the supply of the spirit from their State to Delhi in which the capacity of the distillery should be clearly mentioned. The respondent authorities did not dispute that as per terms &

conditions the declared policy of the Delhi Administration is that the license should be granted to manufacturer having working distillery and having bottling plant so that there is no interruption in the supply of the country liquor by the licensee in Delhi. The plea of the Cooperative Company, however, is that there is no requirement that licensee must have a working distillery. Learned counsel for the Cooperative Company contends that even bottling plant without working distillery can be granted a license in Form L-9 and CLW-1. The tender notice and the terms and conditions in particular Condition No.6 clearly show that the license can be granted only to the manufacturer which means Distilleries including their bottling units. The bottling of the liquor may be a part of manufacturing process of liquor but the thrust of the terms and conditions and the license Rules is on supply of liquor manufactured in the Distillery of the licensee. The object is to keep a control on the quality of the liquor to be supplied. The documents required to be annexed to the tender and reading of Rules make the Scheme amply clear that Excise Department has to be satisfied about the manufacture of liquor in the Distillery, and not only about a part of manufacturing process, namely, bottling of liquor. The intention clearly is that licensee must have a "Working distillery" and not only a distillery on paper alone and this is a mandatory requirement. The Excise Department has rightly stated that its declared policy is that the license should be granted to a manufacturer having working distillery and bottling plant. There is no substance in the plea of the Co-operative Company that there is no requirement of having a working distillery.

(15) In the tender application while giving the name of the Distillery/unit owned by the tenderer from where country liquor will be manufactured/bottled and brought to bonded warehouse in Delhi, the Co-operative Company gave the particulars of its distillery at Saharanpur, U.P. and bottling unit at Sahibabad, Ghaziabad, Up and also of a bottling unit at Chandigarh. Mr.V.P. Singh, learned counsel, appearing for the Cooperative Company did not dispute that under the Excise laws it was not possible to take liquor manufactured and distilled at Saharanpur to the bottling unit at Chandigarh. It was also admitted that the liquor bottled at Chandigarh was being procured by -Cooperative Company from other sources. It was further not disputed that substantial part of liquor bottled at bottling unit at Shahabad was also not manufactured at the distillery of the company at Saharanpur but was procured, from other sources. Mr.Mahajan and Mr.V. P. Singh, submit that it is not necessary that the entire liquor to be supplied should be manufactured in the distillery of the licensee. Mr. Mahajan contends that if only 10% of the total supply is manufactured in the distillery of the licensee and the remaining is procured from outside sources and bottled in the bottling unit of the licensee that would be permissible and in conformity with the terms and conditions of the license and the policy of the Delhi Administration. Mr.Mahajan could not explain the rational behind this stand of the Excise Department. The Excise Department has been writing to State Governments to make allocation of liquor to the bottling units of the Cooperative

Company at Chandigarh and Sahibabad .The Excise Department seems to have been acting under a erroneous belief that it was permissible for a licensee to supply only a small proportion of entire supply out of the liquor manufactured at the distillery of the licensee, and thus made the declared policy of the Administration that manufacturer must have a working distillery almost an idle formality which is not the intention of the Policy emanating from the terms and conditions and the Rules. If the intention of Excise Department was that only a small part of supply of country liquor can come from the working distillery, it should have been clearly spelt out in terms and conditions. As the terms and conditions state the supply had to be taken out of the country liquor manufactured in the working distillery of the licensee. There is also a serious doubt as to whether the Cooperative Company has a working distillery or not. The Excise Department may have acted on the basis of documents produced before it by the Cooperative Company to form an opinion that it has a working distillery and is thus eligible for grant of license but it was expected of the Excise Department to probe into the matter when it came to its notice, that the Cooperative Company had stated before the Supreme Court on 12th February 1992 that it had closed down its distillery in April 1990. The Excise department did nothing in the matter. A factual statement is incorporated in the order of the Supreme Court dated 12th February 1992 that the Cooperative Company had closed its distillery since 3rd April, 1990. The Excise Department, instead of probing the matter further on coming to know of the factual statement incorporated in the order of the Supreme Court about the closing of the distillery of the Cooperative Company simply chose to state in its affidavit that "to the best of knowledge of the respondents, M/s. Cooperative Company Ltd. has working distillery at Saharanpur." In these proceedings also there was serious dispute between the petitioner and Cooperative Company as to whether the distillery of the Cooperative Company at Saharanpur had been closed or not. Both these parties have filed documents in support of their respective stands. According to petitioner the distillery of Cooperative Company at Saharanpur is not working. According to Company its distillery is working. Considering the fact that the license period is going to end very soon it would not be expedient to direct the Excise department to now probe this question. Mr.Mahajan strongly pleaded that if at this stage there is disruption in supply of country liquor it would put the Excise Department into serious practical difficulties in procuring the required quantity from other sources and it would adversely and seriously affect the demand of country liquor for Delhi.

(16) It is the bounden duty of the Excise Department to exercise proper check on the quality of the liquor to be supplied and also ensure observance of terms and conditions of tender and the rules but having regard to the facts noticed above, it would be inexpedient at this late stage to quash the allocations made in favor of Cooperative Company or to disturb the existing arrangement of supply of liquor or to direct allocation being made in favor of the petitioner who even otherwise, on the terms and conditions on which the tenders were invited, had no legal right

to get any allocation on surrender of some quantity by an existing licensee as the petitioner is not a existing licensee. Further the petitioner also cannot be absolved of delay and laches in approaching this court. The question of delay and laches is to be considered on facts and circumstances of each case. In the present case the petitioner knew on 16th May 1992 that no allocation has been made to it. It did not come to court immediately thereafter and waited till September 1992. It seems that earlier the petitioner was satisfied particularly when the temporary license for supply of 1,50,000 cases of country liquor was granted to it but when it could not fully materialise because of the order of injunction made by civil court which was confirmed up to the Supreme Court, the petitioner thought of filing this petition.

(17) The Supreme Court in Ramanna Shetty's case, had declined to set aside the decision of authorities in accepting the tender in question, in view of the peculiar facts and circumstances of that case including the fact that the writ petition was filed after lapse of five months and not immediately after the acceptance of the tender. The position is no better in the present case. The license to Cooperative Company was granted in May, 1992 and this petition was filed in September, 1992. At first instance petitioner seems to have been satisfied particularly when temporary license, as noticed in earlier part of the judgment, was granted to it but when supplies could not materialise because of orders of Civil Court, this petition was filed. Be fort approaching this court the petitioner did not bother to approach the authorities seeking redressal of its grievances. Approaching the authorities before invoking the writ jurisdiction may not have any effect on the power of the court to issue writ of mandamus but it is a salutary rule that the aggrieved party should first demand justice from the authorities. Having regard to the totality of the circumstances, the impugned allocations cannot be ordered to be quashed at this late stage.

(18) Lastly Mr. Mahajan relying upon the decision of this court in Embassy Restaurant and Others Vs. Delhi Administration and Others, and M/s. Jagatjit Industries Ltd and others Vs. Lt. Governor & Ors, 1992 (1) Del law 58 contends that the petitioner cannot urge application and violation of Article 14 in the present case as it relates to liquor trade. For the view 1 & 3 have taken above it is not necessary to decide this contention.

(19) For the foregoing reasons I would dismiss the writ petition leaving the parties to bear their own costs.