

(1975) 12 MP CK 0012

In the Madhya Pradesh High Court

Case No : First Appeal No's. 31 to 35 and 36 of 1972

The State of Madhya Pradesh

APPELLANT

Vs

Sunder Lal Jaiswal

RESPONDENT

Date of Decision : 16-12-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 21
Madhya Pradesh Excise Act, 1915 — Section 63, 64, 68
Madhya Pradesh Land Revenue Code, 1959 — Section 150, 257

Citation : AIR 1976 MP 175 : (1976) JLJ 323 : (1976) 21 MPLJ 254

Hon'ble Judges : M.L. Malik, J;G.P. Singh, J

Bench : Division Bench

Advocate : M.V. Tamaskar, for the Appellant; R.N. Rai and R.P. Agarwal, for the Respondent

Judgement

Singh, J.

This judgment shall also govern the disposal of First Appeals Nos. 31, 32, 33, 34 and 35 all of 1972. All these appeals have been preferred by the State of Madhya Pradesh and they arise out of six suits filed against the State by six excise contractors for damages for non-supply of country liquor.

The plaintiffs in these suits were granted licences for the retail sale of country liquor under the supply system for shops in Balaghat District for the year 1967-68. The grant of licences was preceded by auction and the plaintiffs were the successful bidders as a result of which they received the licences. The plaintiffs were to pay the licence fee mentioned in the licences. The plaintiffs were to receive supply of liquor from the Government Warehouse on payment of price at issue rates mentioned in the licences and they were required to sell the same at the selling rates also mentioned in the licences. The case of the plaintiffs was that because of shortage of liquor in the warehouse, they could not get adequate supplies and they had to close their shops for a number of days causing loss in business. All the plaintiffs except the plaintiff in Civil Suit No. 2-B

of 1970 (F-A No. 35 of 1972) had default in payment of licence fee. The unpaid amounts of the licence fee were adjusted, against the compensation claimed by the plaintiffs in these suits and decrees were claimed for the balance amounts of compensation. In Civil Suit No. 2-B of 1970 (F-A. No. 35 of 1972) there was no question of adjustment of any part of the licence fee as the entire amount of fee had been paid to the Government and the relief in the suit was for recovery of the whole of the compensation claimed by the plaintiff. All these suits were consolidated and decided by a common judgment by the Additional District Judge, Chhindwara. It would be convenient first to take up the common questions involved in these cases and then to deal with them separately with reference to their special facts.

The first question that has been argued by the learned Government Advocate is that the Additional District Judge was in error in striking off the defence of the State in five suits. Except in Civil Suit No. 2-B of 1970 (F.A. No. 35 of 1972) the defence of the State was struck off in all the suits by order of the Additional District Judge passed on 15th November 1971 for failure to answer interrogatories. Leave to deliver interrogatories under Order 11, Rule 1 of the CPC was granted in these five suits on 29th July 1971. No affidavit answering the interrogatories or taking objections to them was filed by the State. Thereafter, applications were made under Order 11, Rule 11, for an order requiring the State to answer the interrogatories. These applications were allowed on 12th August 1971 and the State was ordered to answer the interrogatories. In spite of this order, no affidavit in reply was filed by the State. The plaintiffs then applied on 15th November 1971 under Order 11, Rule 21 praying that the defence of the State be struck off. At the time of hearing of this application, the Additional Government pleader who appeared for the State was unable to state any satisfactory reason for not answering the interrogatories. He also did not apply for grant of further time to answer the interrogatories. The Additional District Judge held that there was gross negligence on the part of the State in not answering the interrogatories. He, therefore, ordered that the defence in the five suits be struck off. The learned Government Advocate has submitted before us that there was no wilful default on the part of the State in its failure to answer the interrogatories. Reliance has been placed on *Jawand Singh v. Krishna Kumar*, AIR 1950 Nag 8 which lays down that defence should not be struck off under Order 11, Rule 21 unless the default is wilful. In our opinion, the argument cannot be accepted. The learned Government Advocate has not been able to explain why the interrogatories were not answered. If for any reason it was not possible to answer the interrogatories within the time allowed by the Court, the Government pleader should have applied for more time in the trial Court for answering the interrogatories. It appears that there was no intention on the part of the State to give answers to the interrogatories and it was for the reason that no application for grant of time was made. No oral assurance was also given that the State intended to answer the interrogatories if time was allowed. In the circumstances, the default was clearly wilful. The State must

have also known that for wilful default the defence was likely to be struck off. The Additional District Judge was, therefore, justified in striking off the defence. However, we do not think that any serious prejudice was caused to the State because of this order. We have earlier said that all the six suits were consolidated for purposes of recording evidence. One of such suits was Civil Suit No. 2-B of 1970 in which the defence was not struck off and as the questions of fact and law involved were common, the State was free to lead all the evidence that it wanted to lead in that suit on all the questions in dispute.

The next contention of the learned Government Advocate is that the suits were barred by limitation u/s 68 of the Madhya Pradesh Excise Act, 1915. This section reads as follows:--

"68. Limitation of suits.-- No suit shall lie against the Government or against any Excise, Police or Land Revenue Officer in respect of anything done or alleged to have been done, in pursuance of this Act, unless the suit is instituted within six months from the date of the act complained of."

The special limitation of six months prescribed by Section 68 relates to suits "in respect of anything done or alleged to have been done in pursuance of this Act". The excise licences to vend country liquor in retail were no doubt granted to the plaintiffs under the Excise Act and the rules made thereunder. But the plaintiffs do not complain of any act of the State done or omitted to be done in pursuance of the Act. Their grievance is of non-supply of liquor in contravention of the terms of the contracts incorporated in the licences. The suits filed by the plaintiffs are thus for recovery of damages for breach of contract and not for anything done or alleged to have been done in pursuance of the Excise Act. The language of Section 68 is inappropriate for embracing a suit for breach of contract. In *Bombay Housing Board (now the Maharashtra Housing Board) Vs. Karbhase Naik and Co., Sholapur*, the Supreme Court construed Section 64 of the Bombay Housing Board Act, 1948, which prescribes special period of limitation for a "suit for anything done or purporting to have been done in pursuance of that Act. The Supreme Court held that Section 64 did not cover a suit for breach of contract. The decision of the Supreme Court in the aforesaid case fully supports our conclusion that Section 68 of the Excise Act does not govern the limitation of suits filed by the plaintiffs.

It is then contended by the learned Government Advocate that the plaintiffs were not entitled to deduct the unpaid licence fee from the amount of compensation and to sue for the balance. It was submitted that the suits were not maintainable to the extent the plaintiffs claimed adjustment of the arrears of the licence fee. Reference in this connection was made to Sections 150 and 257 (h) of the Madhya Pradesh Land Revenue Code. Reliance was also placed on the decision of learned Single Judge in *Pritam Singh v. State of M.P.*, C. R. No. 579 of 1974, D/- 24-3-1975 (Madh. Pra.).

It is not disputed that a suit for damages for breach of an excise contract against

the State is maintainable in civil Court and is not barred by any of the provisions of the Land Revenue Code. The only objection is that the plaintiffs are not entitled to adjust the arrears of licence fee from the amount of compensation and to have this adjustment adjudicated upon by the civil Court. In this connection it is pertinent to notice Clause 2-E of the licence which reads as follows:

"At the close of the period of the licence, final adjustments regarding the amount payable to the State Government under this agreement shall be made."

The right of adjustment of the amount payable to the State Government thus arises under the terms of the contract. Thus, if the plaintiff has to recover say a sum of Rs. 10,000 against the State under the contract and the balance of the amount payable to the State under the contract is say Rs. 5,000, the amount payable to the State gets automatically adjusted under the terms of the contract and the plaintiff can sue only for the excess amount of Rs. 5,000. In suing the State for compensation the plaintiffs were thus bound to give adjustment of the amounts payable to the State.

The arrears of licence fee payable to the State under an excise licence can be recovered as arrears of land revenue u/s 64 (1) (c) of the Excise Act. The procedure provided for realisation of land revenue in Chapter XI of the Land Revenue Code can, therefore, be utilised by the State for recovering licence fee due under an excise contract. If proceedings are taken for recovery under this chapter, the person against whom recovery is sought can pay the amount claimed under protest before his property is knocked out at a sale. He can then object to the Sub-Divisional Officer that no amount was due or that the amount due was less than the amount for which the recovery proceedings were started. If the Sub-Divisional Officer overrules the objection so raised, the person aggrieved can institute a civil suit. This procedure is prescribed in Section 150 of the Land Revenue Code. Section 257 of the Code in so far as relevant reads as follows:

"257. Except as otherwise provided in this Code or in any other enactment for the time being in force, no civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board of Revenue, or any Revenue Officer is, by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters:--

..... (h) any claim against the State Government connected with or arising out of, the collection of land revenue or the recovery of any sum which is recoverable as land revenue under this Code or any other enactment."

It is a settled principle of law that the exclusion of jurisdiction of Civil Courts is not to be readily inferred and such exclusion must either be explicitly expressed or clearly implied. The House of Lords and the Supreme Court have both

emphasised the importance of this principle and have observed that "it is a principle by no means to be whittled down" [See *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government* (1959) 3 All ER 1 at p. 6 (HL); *London Borough of Ealing v. Race Relations Board* (1972) 1 All ER 105 at p. 108 (HL); *The Pabbojan Tea Co. Ltd., etc. Vs. The Deputy Commissioner, Lakhimpur, etc., and H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another*,], As a necessary corollary of this principle, provisions excluding jurisdiction of Civil Courts and provisions conferring jurisdiction on authorities and tribunals other than Civil Courts are strictly construed. This principle has to be borne in mind while construing Section 257 of the Land Revenue Code. The question to be considered is as to what is the meaning of the words "any claim against the State Government connected with or arising out of the collection of Land Revenue or the recovery of any sum which is recoverable as land revenue under this Code or any other enactment" which occur in Clause (h) of Section 257. The words employed in this clause are no doubt general. But it would be seen from Clauses (d), (e) and (i) that certain matters which in a general sense may be said to be connected with or arising out of the collection of land revenue are expressly provided for in these clauses. Clauses (d), (e) and (i) make provision for exclusion of jurisdiction of Civil Courts inter alia on the following matters : (1) Any claim against the State Government to hold land free of land revenue or at less than the fair assessment of land revenue; (2) the amount of land revenue assessed or re-assessed; and (3) Any claim against the State for remission or suspension of land revenue. Had the words "any claim" in Clause (h) been intended to be given a wide construction as embracing every question connected with or arising out of the collection of land revenue, the matters covered by Clauses (d), (e) and (i) would not have been separately provided for as they would then be redundant. Clauses (d), (e) and (i), therefore, show that the words "any claim" in Clause (h) have a limited meaning. Further, Section 150 of the Code permits a suit for recovery of the amount deposited in protest towards payment of land revenue. Such a suit envisages that the Civil Court will have jurisdiction to decide that the amount recovered as land revenue was not actually payable. Again, Rule 45 (2) contained in Schedule I of the Code also provides for a suit to set aside a revenue sale on the ground of fraud or on the ground that the arrears for which the property was sold were not due. The suits contemplated by Section 150 and Rule 45 (2) in a broad sense relate to questions connected with or arising out of the collection of land revenue. These provisions thus show that the bar of jurisdiction enacted in Section 257 (h) does not exclude claims against the State Government for adjudication that no arrears were due or that the arrears due were less than the amount claimed by the State. In our opinion, the words "any claim against the State Government connected with or arising out of the collection of land revenue or the recovery of any sum which is recoverable as land revenue" as they occur in Clause (h) of Section 257 relates to a claim for compensation or damages on account of loss suffered by a person in the process of collection of land revenue or the recovery of any sum which is recoverable as land revenue. For example, if

A's property is sold for certain alleged arrears which are not really due, A cannot sue the State for compensation for loss of property and he can only claim the amount realised by the State towards the arrears. Again, if B's property is wrongly sold in proceedings for recovery of arrears against A, B will have no claim against the State for injury done to him and he can only pursue his remedies against A or the auction purchaser. We have mentioned these examples, which are not exhaustive to illustrate the nature of claims which will be hit by Clause (h) of Section 257. In our opinion, the suits with which we are concerned in these appeals do not fall under that clause. But then it is submitted that the plaintiffs after depositing under protest the arrears of licence fee in recovery proceedings u/s 150 could have applied to the Sub-Divisional Officer for adjudication that the arrears were not due as they stood adjusted against the amount of compensation payable to them. It is further argued that the remedy of suit could be resorted to by the plaintiffs only after following this procedure and after rejection of their claims of adjustment by the Sub-divisional Officer. In our opinion, Section 150 is not open to any such construction. All that the section means is that if the defaulter wants to have first a summary decision of the Sub-Divisional Officer, which is open to challenge in a civil suit, he should deposit the amount of arrears claimed by the State under protest before the sale of his property is knocked down. If Section 150 is construed as laying down the exclusive procedure for approaching the Civil Court, most illogical result will follow. For example, if the person proceeded against is not in a position to raise money for making deposit before his property is knocked down, he will have no remedy anywhere to challenge the quantum of arrears and to save his property. So an indignant person proceeded against must beg, borrow or steal for making deposit of the alleged arrears to save his property and to claim adjudication. Section 150 was not intended to give rise to these consequences. The object of the "section is to provide an alternative summary remedy before the Sub-Divisional Officer and to lay down conditions for its enforcement and the section is not designed to bar the normal jurisdiction of Civil Courts.

In our opinion, neither Section 150 nor Section 257 of the Code prevents a plaintiff in adjusting the amount of arrears of licence fee against the compensation payable to him for breach of contract by the Government and in suing for the balance amount of compensation. By giving adjustment in the plaint of the arrears due, the plaintiff admits the claim of the State to that extent. The Civil Court trying the suit is not to adjudicate upon the arrears of licence fee because that is admitted by the parties. The Court only determines the amount of compensation payable to the plaintiff for breach of contract and if the amount of compensation is more than the amount due to the State on account of licence fee, a decree for the balance is passed in favour of the plaintiff. A claim of this nature cannot be adjudicated upon by any Revenue Officer. No Revenue Officer is empowered to determine and decree the amount of compensation payable for breach of contract, which is the only question to be determined in a suit of this nature. The State is in no way prevented by

institution of such suits in recovering the amount of arrears which it claims. It is pertinent to note that reliefs for injunction which were in the beginning claimed by the plaintiffs were later given up by amendment of the plaints and no injunction has been granted by the Court below. It is true that after the Court has adjudicated the amount of compensation payable to the plaintiffs and after it is found that the arrears of licence fee are partly or wholly adjusted against the amounts of compensation payable to the plaintiffs, the State will not be in a position to recover the licence fee to the extent it is found to be adjusted. But from this consequence it cannot be said that the suits instituted by the plaintiffs were a device for stopping recovery without payment. The learned Government Advocate has placed strong reliance on the following observations in Pritam Singh's case, C.R. No. 579 of 1974, D/- 24-3-1975 (Madh. Pra.).

"I have no doubt that this contention cannot be accepted. It is only another form of stopping recovery. To accept the contention will be to recognize a device by which every recovery proceedings can always be stopped by a civil suit. This can be demonstrated thus. If there is a proceeding against you for recovery of Rs. 5,000, you bring a suit for Rs. 10 against the Government by raising a claim of Rs. 5,010 in your own favour and giving adjustment of Rs. 5,000 you will then argue "my claim is independent of the recovery. I have to recover Rs. 5,010 and I have already given adjustment of Rupees 5,000/-. Thus by creating a claim in one's favour and giving adjustment of the amount for which recovery proceedings have been initiated, such proceedings will be defeated or at least delayed until the disposal of the suit. This will be repugnant to the letter and spirit of Sections 150 and 257 of the Land Revenue Code."

For the reasons earlier given by us, we do not agree with the view taken in Pritam Singh's case that Sections 150 and 257 bar the jurisdiction of Civil Courts in adjudicating upon a question that arrears sought to be recovered by the State as land revenue have been paid or adjusted and are not really due. Moreover, the observations quoted above from Pritam Singh's case wrongly assume that the moment a suit of the nature envisaged in the said observations is filed, the Civil Court will grant an injunction as a matter of course preventing the State in proceeding to recover the arrears which it claims against the plaintiff. A grant of injunction by a Civil Court is not automatic. Injunctions are granted on settled principles after judicial determination that the plaintiff has a strong prima facie case and the balance of convenience lies in granting the injunction. Further, before granting an injunction the Court has to keep in mind Section 41(h) of the Specific Relief Act, 1963, which provides that no injunction can be granted "when equally efficacious relief can certainly be obtained by any other usual mode of proceeding". In this context the Court will consider whether on the facts of the particular case the remedy provided in Section 150 of the Code can be obtained by the plaintiff and whether that remedy would be equally efficacious. However, that question does not arise in the cases before us. The plaintiffs in these suits only sued for compensation. They were bound to give adjustment of any amount due from them to the State under the terms of the contract. Their suits are not

hit by any of the provisions of the Land Revenue Code.

The next point argued by the learned Government Advocate is that there was no obligation on the part of the State to supply any liquor to the plaintiffs. It is argued that it was no doubt expected that the liquor would be supplied to the licensees from the warehouse, but there was no obligation to supply any particular quantity. The plaintiffs on the other hand contend that under the terms of the licences the Government was bound to supply such quantity of liquor as may be demanded by them for the purpose of selling in the shops covered by the licences.

To appreciate the rival contentions it is necessary to have a look at the terms and conditions of the licences issued to the plaintiffs. All these licences were in Form O.S. 2 prescribed by the rules made under the Excise Act, The important conditions are contained in Clauses 1-A, 2-A, 2-B, 2-C and 2-D, which read as follows:

"1-A. You shall get supply of country spirit of the following description at the rates mentioned against each and shall sell the same at the rates specified in the last column thereof:--

Description

Kind

Strength

Issue rates

Selling rates

1

2

3

4

5

(i) Flavoured

Orange

25 u. p.

—

—

liquor

Masala

25 u. p.

—

—

(ii) Plain

Dubara

45 u. p.

—

—

spirit

Rasi

60 u. p.

—

—

2-A, Under the cover of this licence you will not possess at any place other than the licensed premises, country spirit beyond the limit of individual possession without a permit or pass prescribed under the rules or sell any spirit at any such place.

2-B. If country spirit issued to the licensed shop is found to have been misused, the Collector shall be competent to fix a quota for such shop.

2-C. The minimum quantity for taking issues from the warehouse for sale is fixed at..... proof litres spirit and..... proof litres plain spirit. On your failure to taking in any month the monthly average of the total minimum quantity, you shall be liable to pay compensation to the State Government at the rate of Rs..... per proof litre spiced spirit and Rs..... per proof litre plain spirit falling short of such monthly minimum average and such compensation shall be paid by the 10th of the month next following month of which such shortfall relates.

2-D. You shall be bound to sell the minimum quantity of issues taken from the warehouse. On your failure to sell the minimum quantity of issue taken, you shall be liable to pay to the State Government compensation at the rate of Rs. per P. litre spiced spirit and Rs.... per P. litre plain spirit on the issues remaining unsold during the period of contract to which the licence relates."

A perusal of the conditions contained in the clauses will show that although there is an express obligation placed on the licensee to obtain supplies from the warehouse, there is no express obligation on the Government that supplies will be made from the warehouse to the licensee. Clause 2-C requires the licensee to purchase at least minimum quantity of liquor mentioned in that clause. On failure

to purchase the specified minimum quantity, the licensee is liable to pay compensation to the Government. This clause does not expressly provide that the Government is bound to sell the specified quantity to the licensee. The question for consideration therefore, is whether a necessarily implied obligation to sell liquor from the warehouse can be inferred. The rule of construction applicable in such a situation was laid down with great clarity in *Churchward v. The Queen* (1865) 1 QB 173 which may be usefully quoted:

"Although a contract may appear on the face of it to bind and be obligatory only upon one party, yet there are occasions on which you must imply--although the contract may be silent--corresponding and correlative obligations on the part of the other party in whose favour alone the contract may appear to be drawn up. Where the act to be done by the party binding himself can only be done upon something of a corresponding character being done by the opposite party, you would there imply a corresponding obligation to do the things necessary for the completion of the contract. As in the case cited by Sir Hugh Cairns-- if A covenants or engages by contract to buy an estate of B, at a given price, although that contract may be silent as to any obligation on the part of B to sell, yet as A cannot buy without B selling, the law will imply a corresponding obligation on the part of B to sell. So, if a man engages to work, and renders services which necessitate great outlay of money, time and trouble, and he is only to be paid by the measure of the work he has performed, the contract necessarily presupposes and implies on the part of the person who engages him an obligation to supply the work. So, where there is an engagement to manufacture some article, a corresponding obligation on the other party is implied to take it, for otherwise it would be impossible that the party bestowing his services could claim any remuneration. Numerous other cases might be put of the same kind, but in all these instances, where a contract is silent, the court or jury who are called upon to imply an obligation on the other side which does not appear in the terms of the contract, must take great care that they do not make the contract speak where it was intentionally silent; and, above all, that they do not make it speak entirely contrary to what, as may be gathered from the whole terms and tenor of the contract, was the intention of the parties."

It will be seen that the licensee binds himself to take supplies of the specified minimum quantity of liquor from the Government warehouse and, in case of his failure, he is made liable for payment of compensation. Now this obligation, which is laid upon the licensee, cannot be performed unless there is a corresponding obligation upon the State to supply liquor at least upto the minimum quantity to the licensee. In our opinion, such an obligation must, therefore, be inferred as a matter of necessary implication from the terms and conditions of the licence which we have earlier quoted. The obligations upon the licensee to purchase minimum quantity of liquor as specified in the licence and in default to pay compensation is not a condition for payment of duty- on liquor or excise duty and validity of such a condition is now beyond doubt [see *Pannalal v. State of Rajasthan* : (1975) 2 SCC 633 : (AIR 1975 SC 2008) *Bimal Chandra*

Banerjee Vs. State of Madhya Pradesh etc.,]. A licensee takes the licence at the auction on the assurance that he will get supplies of liquor from the State and on the expectation that he will be in a position to pay the licence fee from the profits that he will make by sale of liquor. The amount of licence fee bid at the auction by the licensee is naturally correlated to the supply of liquor which he expects to get from the State, The licence amounts to contract between the parties as held in Pannalal's case (supra). We find no difficulty in holding that the implied obligation on the State to supply liquor upto the minimum quantity was binding and enforceable. However, we do not think that there was any obligation on the part of the State to supply more than the specified minimum quantity of liquor. It is no doubt true that even for supplies beyond the minimum quantity the licensee had to apply to the Government warehouse and the warehouse could make supplies. But there was no obligation on the State to meet the requirement of the licensee beyond the minimum quantity just as the licensee was not bound to purchase beyond the minimum quantity from the State.

The learned Government Advocate has submitted that it was open to the Excise Commissioner to close a warehouse for such periods as he deemed proper and no compensation could be claimed by the licensee on that account In this connection, the learned Government Advocate has referred to Clause 1 of the licence. This clause authorises the Excise Commissioner to close a warehouse either wholly or for such period "as the absence of demand in the locality may justify". It is further provided that in such cases no compensation will be given on account of such closure. The closure referred to in Clause 1 is the closure ordered by the Excise Commissioner on the ground of absence of demand in the locality. Now, in the Instant case the failure to supply liquor to the plaintiffs, as is alleged by them, was not because there was absence of demand in the locality but because there was shortage of liquor in the Government warehouse. Clause 1, therefore, is not attracted. We may, however, mention that the language of Clause 1 impliedly shows that in case of closure of warehouse for reason not covered by this clause, the State may be liable to pay compensation to the licensee.

It was then submitted that the plaintiffs who had not paid the full amount of licence fee were not entitled to this supply of liquor even upto the minimum quantity and they were not entitled to compensation for non-supply of liquor. Rule II of the rules relating to General Licence Conditions deals with payment of fee. The licence fee for country liquor is paid in 12 equal monthly instalments. Clause (4) of Rule 11 provides that if the licence fee of any shop is in arrear, the Collector may, at his discretion, prohibit the supply of intoxicant to that shop or order the supply to the defaulter at the selling price. It will thus be seen that in case of non-payment of licence fee the Collector can prohibit the supply or may order the supply at the selling price. Unless the Collector in his discretion passes an order under Clause (4) of Rule II, the licensee is entitled to have the supply on payment of issue price as provided in Clause 2 of the licence, even though he may have committed default in payment of licence fee. In these cases the

Collector did not pass any order under Clause (4) of Rule II prohibiting the supply of liquor to the plaintiffs or directing supply to them at the selling price on account of non-payment of licence fee. It cannot, therefore, be said that the obligation of the State to supply liquor in accordance with the terms and conditions of the licence had ceased as the plaintiffs had committed default in payment of licence fee.

The next question is whether there was default in supply of liquor to the plaintiffs from the warehouse. The plaintiffs have all examined themselves and have stated that there was no adequate stock of liquor in the warehouse and they were refused supplies. The learned Additional District Judge in para. 36 of his judgment has referred to a number of orders passed by the District Excise Officer on the applications of the plaintiffs. The plaintiffs in their applications wanted a larger quantity of liquor but the District Excise Officer issued orders for supply of less quantity. Ex. P-61 is an order of the Collector passed on 26th October 1967. By this order, the Collector decided that "looking to the pouring demand of the contractors it will be a fair decision if the contractors are issued liquor by quota on the basis of the licence fee of the shop". This order shows that the warehouse was not able to meet the demand of the plaintiffs for supply of liquor. A copy of this order was forwarded by the District Excise Officer to the Warehouse Officer, Chhindwara for information and strict compliance as is proved by the endorsement on Ex. P-61. Ex. P-62 is an order of the District Excise Officer passed on 15th November 1967. This order is issued to the Warehouse Officer, Chhindwara, again instructing him to issue supplies of liquor according to the quota fixed by the Collector. Ex. P-2 is the memorandum issued by the Excise Commissioner on 15th November 1967, in this memorandum it is acknowledged that in 1967-68 the supply of country liquor was not adequate. It is further recited therein that the question of paying compensation to those licensees who suffered loss because of non-supply would be taken up after the expiry of the contract period. Some relief to the licensees was proposed by staying the recovery of licence fee. Further orders were issued by the Excise Commissioner on the same matter on 3rd December 1967 (Ex. P-3). It has been stressed by the Excise Commissioner in Ex. P-3 that if the licensees defaulted in paying licence fee because of failure to supply liquor to them, further supply of liquor should not be stopped. It was further ordered that if it was not possible to supply liquor in accordance with the demand quota should be fixed in proportion to the minimum guarantee; and in cases where there was no minimum guarantee, quota should be fixed in proportion to the licence fee. Ex. P-4 is another memorandum of the Commissioner dated 5th February 1968. This memorandum also acknowledges that the supply of liquor was not in accordance with the demand of the licensees and their shops had to remain closed for non-supply. This order mentions certain principles which were accepted by the Government on the question of grant of compensation to the licensees. To assure the licensees that they will have good supply of liquor during the year 1968-69, a public notice was issued by the Commissioner on 8th November 1967. This

notice recites that adequate arrangements had been made for maintenance of supply of liquor for the year 1968-69. It is also recited in the notice that the contractors who did not get supplies in 1967-68 should apply for compensation to the Collector through the District Excise Officer. All these documents strongly support the evidence of the plaintiffs that there was default on the part of the State in making supplies to the plaintiffs of country liquor from the Government Warehouse and even the minimum quantity specified in the licences was not supplied.

It will now be convenient to take up each case separately for determining what amount of compensation should be decreed in favour of the plaintiffs.

First Appeal No. 31 of 1972 (Civil Suit No. 11-A of 1970).

The plaintiff in this case is Nandlal Jaiswal who was a licensee for Parasia shop. The licence fee agreed was Rs. 1,11,000. The licensee had paid Rupees 71,336 towards licence fee and the balance due from him in favour of the Government was Rs. 44,665. The minimum quantity of liquor which the licensee had agreed to purchase was 33,804 proof litres. The actual supply to the licensee was of 21,791 proof litres. The case of the plaintiff was that he required supply of 40,564 proof litres and thus the Government did not supply him 18,733 proof litres and he was entitled to the loss of profits for non-supply of this quantity of liquor. After giving adjustment for the amount of unpaid licence fee, the plaintiff sued for Rs. 14,000. The trial Court has granted a decree for the whole of this amount. On the finding reached by us earlier that there was no obligation on the State to supply more than the minimum quantity agreed in Clause 2-C of the licence, the claim of the plaintiff that he ought to have been supplied 40,564 proof litres cannot be sustained. He can claim compensation on the basis that he ought to have been supplied 33,804 proof litres which was the minimum quantity fixed under Clause 2-C. The difference between the minimum quantity which ought to have been supplied and the actual supply works out to 12,013 proof litres. The average difference in rate between the selling price and issue price fixed under the licence is Rs. 3.30 per proof litre. Because of the breach committed by the State in not supplying 12,013 proof litres, the plaintiff suffered a loss of Rs. 39,642.90. As against this the plaintiff has to pay the licence fee amounting to Rs. 44,665. Making an adjustment of this amount, the plaintiff is still liable to pay Rs. 5,022.10 to the State on account of balance of licence fee and the is not entitled to get any decree against the State. First Appeal No. 31 of 1972 will, therefore, be allowed and the suit dismissed. The parties will bear their own costs throughout.

First Appeal No. 32 of 1975 (Civil Suit No. 13-A of 1970).

The plaintiff in this case is Ganga Prasad. He obtained the licence for Damua shop. The licence fee agreed for this shop was Rs. 37,100. The plaintiff paid Rs. 29,900 towards licence fee. The balance amount of licence fee on account of Damua shop is Rs. 7,200. The minimum quantity of liquor agreed to be

purchased under the licence for Damua shop was 10,227 proof litres out of which 6,381 proof litres were supplied. The balance of minimum quantity which was not supplied comes to 3,846 proof litres. Ganga Prasad had also obtained a licence for Katangi shop. The licence fee for this shop was Rs. 5,100 out of which Rs. 4,600 were paid. The balance of licence fee on account of Katangi shop is Rs. 500. The minimum quantity of liquor which was to be purchased under the licence for Katangi shop was 2,089 proof litres out of which only 920 proof litres were supplied. Thus on account of Katangi shop there was non-supply of 1169 proof litres. Calculating the loss of profits on the basis of the difference between the sale price and issue price, the compensation payable to the plaintiff works out to Rupees 28,062.04. After adjusting the balance of licence fee, the amount of compensation payable to the plaintiff comes to Rupees 20,363.04. The plaintiff restricted his claim to Rs. 12,000 which was decreed by the trial Court. The learned Government Advocate pointed out that the plaintiff had included in his claim damages for non-supply of Masala liquor and that there was no obligation to supply Masala liquor because no minimum quantity for supply of this variety of liquor was agreed in the licence. It is true that there is no minimum quantity fixed for Masala liquor in the licence; but the claim on account of Masala liquor in this case is negligible and as the plaintiff has already reduced his claim from Rs. 20,363 to Rs. 12,000, there is no room for further reducing the claim of the plaintiff. This appeal is, therefore, dismissed with costs and the decree of the trial Court is affirmed.

First Appeal No. 33 of 1972 (Civil Suit No. 1-A of 1971).

Abdul Azim, the plaintiff, in this suit was granted the licence for Umreth shop on a licence fee of Rs. 20,500. The plaintiff paid Rs. 16,414 towards the licence fee. The balance amount of licence fee in this case is Rs. 4,086. The minimum quantity of liquor which the plaintiff agreed to purchase is 4,092 proof litres. The liquor that was supplied to him was 2,450 proof litres, leaving a difference of 1,642 proof litres. The plaintiff claimed that he needed 4,588 proof litres of liquor and that the State failed to issue that quantity of liquor to him. On this basis the plaintiff claimed a decree for Rupees 12,700 after giving adjustment for the balance of the licence fee and after giving up about Rs. 7,000 from profits. The trial Court decreed the claim for Rupees 9,695.22 only. We have already held that the State was not bound to supply more than the minimum quantity of liquor specified in the licence. It has also been stated that there was no minimum quantity fixed for Masala liquor. The average profit rate of Dubara and Rasi liquors as mentioned in the licence comes to Rupees 10.72 per proof litre. The plaintiff in this case was supplied 1642 proof litres, less than the minimum quantity. He, therefore, suffered loss of profits amounting to Rs. 17,602.24. Adjusting from it the balance amount of licence fee, i.e. Rs. 4,086, the plaintiff could claim from the State Rs. 13,516.24. The amount decreed against the State is considerably less. This appeal, therefore, must fail. It is accordingly dismissed with costs.

First Appeal No. 34 of 1972 (Civil Suit No. 10-A of 1970).

In this case the plaintiff Vijay Kumar Jaiswal took a group of six shops known as Diwanchipura shops on a licence fee of Rs. 4,13,000. The plaintiff paid Rs. 3,09,752 towards the licence fee leaving a balance of Rs. 1,03,248. The plaintiff also took a contract for Lawaghori shop for Rs. 8,175. Out of which Rs. 6813 were paid towards the licence fee leaving a balance of Rs. 1,362. The plaintiff also took another contract of Ubhegaon for Rs. 9,300. Rs. 6,975 were paid as licence fee towards this shop leaving a balance of Rs. 2,325. The total minimum quantity of liquor which was to be supplied under all these licences is 46,631 proof litres. The plaintiff was supplied only 35,459 proof litres. Thus 11,172 proof litres is the difference between the minimum quantity which was to be supplied and the quantity actually supplied. According to the plaintiff's case, he suffered a loss of Rs. 1,30,405.20 on account of non-supply of the minimum quantity of liquor. The total amount of licence fee remaining unpaid under these licences comes to Rupees 1,06,935. Giving adjustment of this amount, the plaintiff claimed that he was entitled to get Rs. 23,470.20 from the State. But further reducing his claim, the plaintiff sued only for Rs. 13,000. The learned Government Advocate submitted that in calculating Rs. 23,470.20 as the loss of profits, the plaintiff had included Rs. 4,809.37 as loss for non-supply of Masala liquor. It is argued that as there was no minimum quantity fixed for Masala liquor, the plaintiff was not entitled to claim any loss of profits on that account. It is true that there was no quantity fixed for supply of Masala liquor and, therefore, the plaintiff is not entitled to claim any loss of profits on that account. The plaintiff, however, has already reduced his claim from Rs. 23,470 to Rs. 13,000. There is, therefore, no room left for further reducing the claim on account of Masala liquor. This appeal must, therefore, fail. It is accordingly dismissed with costs.

First Appeal No. 35 of 1972 (Civil Suit No. 28 of 1970).

Somti Bai, who is the plaintiff in this suit, obtained the licence for the Batariya Bazar shop for Rs. 1,38,100. The entire amount of licence fee was paid. The minimum quantity of liquor which was to be supplied under this licence is 27,111 proof litres. Only 12,358 proof litres were supplied to the plaintiff. The plaintiff, therefore, claimed loss of profits with reference to 9,753 proof litres (17,112 litres) at the average rate of Rs. 1.44 per litre. The suit was filed for Rs. 27,000. The suit has been decreed for Rs. 24,666.28 by the trial Court. There is no room for any interference in the decree. The appeal fails and is dismissed with costs.

First Appeal No. 36 of 1972 (Civil Suit No. 10-A of 1970).

Sunderlal Jaiswal, who is the plaintiff in this case, obtained the licence for Dighwari shop for Rs. 39,000. He paid Rs. 26,000 towards the licence fee of this shop. Rs. 13,000 is the amount of licence fee which remained due. The plaintiff was to be supplied 8,369 proof litres as the minimum quantity of liquor under this licence. As against this, the plaintiff was supplied only 5,089 proof litres,

leaving a difference of 3,282 proof litres. The plaintiff obtained another licence for Pagara shop for Rs. 10,850. He paid Rs. 7,234 towards the licence fee. The balance of licence fee in respect of this licence is 3,616. The minimum quantity of liquor to be supplied under this licence was 3,257 proof litres out of which 1,842 proof litres were supplied, leaving a balance of 1,395 proof litres. The plaintiff claimed that he ought to have been supplied 11,717 proof litres in respect of Dighwari shop. Similarly, he claimed that he should have been supplied 4,046 proof litres in respect of Pagara shop. On this basis and after giving adjustment for the balance of licence fee of Rs. 16,616 due under the two licences, the plaintiff claimed a decree for Rs. 11,000. The suit has been decreed by the trial Court for Rs. 4,720. We have earlier stated that there was no obligation on the State to supply more than the minimum quantity of liquor mentioned in the licences. The plaintiff, therefore, is not entitled to get damages in respect of non-supply of liquor over the minimum quantity. The average profits in respect of Rasi and Dubara liquors is Rs. 3.30 per proof litres. The plaintiff was not supplied 3,282 proof litres out of the minimum quantity agreed in respect of Dighwari shop. The loss of profits on account of Dighwari shop, therefore, comes to Rs. 10,830.60. In respect of Pagara shop, the plaintiff was not supplied 1,395 proof litres out of the minimum quantity of liquor agreed for this shop. The loss of profit at the average rate of Rs. 3.30 per proof litre for Rasi and Dubara in respect of this shop, therefore, works out to Rs. 4,603.50. The total loss on account of both these contracts thus comes to Rupees 15,434.10. The balance of licence fee due under these licences, as earlier as stated, is Rs. 16,616. After giving an adjustment of the balance of licence fee, the plaintiff has still to pay Rs. 1,182 to the State. The plaintiff is, therefore, not entitled to any decree. It may further be mentioned that the plaintiff had included in his claim loss of profit on account of non-supply of Masala liquor. We have earlier stated that there being no specification of minimum quantity of Masala liquor under the licence, there was no obligation on the State to supply Masala liquor. The loss of profit on account of non-supply of Masala liquor, therefore, cannot be claimed. This appeal has to be allowed. The decree of the trial Court is set aside and the suit of the plaintiff is dismissed. Both the parties will bear their costs throughout.

In the result, First Appeals Nos. 31 and 36 of 1972 are allowed and the suits giving rise to these appeals are dismissed, but the parties will bear their own costs throughout. First Appeals Nos. 32, 33, 34 and 35 all of 1972 are dismissed with costs.