PETITIONER:
STATE OF MAHARASHTRA & ANR.

Vs.

RESPONDENT:
POOJA BREW-CHEM INDUSTRIES P. LTD. & ANR.

DATE OF JUDGMENT15/09/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 219 1995 SCC Supl. (4) 179
JT 1995 (7) 39 1995 SCALE (5)537

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

The appeal by special leave arises from the order dated January 31, 1995 of the Division Bench of the Bombay High Court. The High Court in the impugned order granted relief as under:

> "5. For the reasons aforesaid, the Writ Petition succeeds and is allowed. Rule is made absolute in terms of prayer clause (a). The annual alcohol quota of 14.40 lakh bulk litres be released to the 1st petitioner, on compliance of the statutory provisions, within two weeks."

The prayer in clause (a) read thus:

> "This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents to forthwith issue to the 1st petitioner the requisite D.S.V. licence under Rule 26 of the Bombay Denatured Spirit Rules, 1959 as also to forthwith release 14.40 lakh bulk litres of alcohol/specially denatured spirit annually to the 2nd petitioner."

In order to appreciate whether or not the relief granted would be justified, it is necessary to notice a few relevant facts.

M/s. Pooja Brew-chem Industries Ltd., Bombay [hereinafter referred to as 'the appellant'] had applied to the Commissioner, Prohibition and Excise for grant of a permit to manufacture Ethyl Acetate falling under products covered in Schedule I issued by the Government of India.

Referring to the said application, the office of Director of Industries in its letter dated July 31, 1990 addressed to the Commissioner, Prohibition and Excise, stated that for that purpose a licence from the Central Government was compulsory and it was difficult to obtain it unless it complied with certain requirements enumerated in the enclosed letter. It was also stated that after taking review of the progress made by the respondent-Company the office was recommending to accord sanction to the respondent-Company to utilise assured annual quota of 14.40 lakh bulk litres of alcohol for producing two products, viz., Deithyl Phthalage and Diethyl Oxalate. On April 4, 1991, a reply was given by the Home Department to the respondent-Company thus:

> "Now the said unit is going to manufacture two products, i.e., Deithyl Oxalate and Diethyl Phthalate instead of Ethyl Acetate and for that purpose, the alcohol quota of 14.4.0 lac bulk litres which is sanctioned for manufacture of Ethyl Acetate will remain valid and the Government grants permission to continue this assurance itself. The period of assurance shall be for one year; and if the unit does not start manufacturing the aforesaid products by overcoming all difficulties during this period, it may be considered that assurance for alcohol quota is cancelled."

Thereafter, the company had written a letter on April 1, 1992 to the Commissioner intimating that they had completed their project to manufacture the products in the factory located at the stated place and that they were ready to start the production. They requested in the letter to issue the licence required under Rule 26 of the Bombay Denataured Spirit Rules, 1959 [for short, 'the Rules']. It appears that the matter was considered at different stages. It was asserted by the respondent-Company in the writ petition that ultimately the Minister had recommended the grant of licence and also allocation of the required quota of 14.40 lakh bluk litres of rectified spirit for manufacture of the aforesaid two products. Since licence was not being granted, the respondent-Company approached the High Court which gave the above stated directions.

It is contended by Shri Dholakia, learned senior counsel appearing for the State, that though at one stage the Government had decided to grant D.S.V licence, subsequently it had come to the notice of the Government that certain sensitive materials were required to be examined. Accordingly, they examined the matter before taking any decision but in the meantime the High Court moved under Article 226 of the Constitution, had issued the directions, as stated earlier. It is contended that on June 21, 1993, decontrol of allocation and supply from the Government sources of the rectified spirit was made. In consequence, the Government had lost control over the allotment. Thereafter, an industry was free to approach the appropriate authority for supply of alcohol for manufacture of any of their products as a raw material and that, therefore, the direction issued by the High Court to supply 14.4.0 lakh bulk litres of alcohol in terms of the compromise is clearly unsustainable. It is also contended that so long as the licence is not issued under Rule 26 of the Rules in D.S.V Form, the respondent-Company is not entitled even to start manufacturing thereof. Therefore, the High Court was clearly in error in issuing the above

directions.

Shri A.M. Singhvi, leaned counsel for respondent No.1, contended that in view of the various letters referred to hereinbefore, a compromise was made by the Government for the establishment of the factory. On the basis of the said compromise, the respondents had established the factory at a huge expenditure and that, therefore, the appellants were estopped from going behind the compromise to grant the licence. He agrees that after the decontrol of allotment of alcohol, the requirement was that the licensing authority, viz., the Superintendent, was to specify the quantum required by the respondent-company to manufacture the specified items. Unless the specification of the requirement was made, it was difficult for the respondent-company to procure alcohol in the open market and keep the same in store for manufacture of the products. The appellant-authorities were not justified in not granting the same.

Having regard to the respective contentions, the question is whether the order passed by the High Court is sustainable in law. The essential question would, therefore, be whether the respondent can have a licence under Rule 26. Admittedly, till date no licence is issued. It is true, as contended by Shri Singhvi, that required quantum for the manufacture of the products is to be specified in the licence, as is evident from similar licences issued to other companies. But after June 21, 1993, the Government has no obligation to make any allotment of alcohol and supply the same to any manufacturer since after the decontrol, it is free for all to purchase alcohol wherever it is available. But, as stated earlier, issuance of the licence under Form D.S.V. being a condition precedent, the respondent-company could not start manufacturing the aforesaid two items unless licence was issued to it. The question, therefore, is whether the Government would be justified in not issuing licence. It is submitted that a citizen is entitled to set up a factory and, as required by certain statutory provisions, the authorities exercising the power are expected to issue the licence subject to the conditions prescribed thereunder. It is stated in paragraph 8 of the rejoinder filed in this Court that certain material as regards the desirability to grant the licence to the respondent-company, appears to have been covered by the subordinates of the Government. If that is so, then necessarily the concerned authority has to put on notice as to what material adverse to the appellants is in its possession and it has to supply necessary copies thereof and also their prima facie views on that material so that the respondent-Company would have an opportunity to place all the material to justify its seeking for the licence. Thereafter, it is open to the appropriate authority to consider and refuse or grant the licence for the reasons to be mentioned in the order. Since this exercise had not been performed, the High Court was not justified in directing the appellants to issue the licence. Accordingly, we set aside the directions issued by the High Court. Instead, the State is directed to issue notice to the respondent-Company on grounds on which they propose to take action in case they feel that it is not feasible to issue the licence to the respondent-Company, together with the material in their custody on the basis of which they formed that opinion. This should be done within a period of one month from the date of the receipt of this order. On receipt thereof, it would be open to the respondent-Company to submits its response and any other material in supports of its claim. On receipt thereof, the licensing authority would consider the case and

pass appropriate order and communicate the same within a period of two months therefrom to the respondent-Company by registered post with acknowledgement due.

Our setting aside the order of the High Court may not be construed to mean that exercise of the statutory power of the licensing authority is fettered in any way.

Shri Dholakia brought to our notice that some material appears to be confidential and, therefore, it is not advisable in the expediency of public administration to disclose the same by supplying copies thereof. If that is so, the competent authority is at liberty to allow inspection of such material by the counsel for the respondent-Company and on inspection thereof, it would be open to them to submit their response.

The appeal is accordingly allowed. No costs.