

PETITIONER:
CHHOTU SINGH

Vs.

RESPONDENT:
STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT 22/09/1987

BENCH:
RAY, B.C. (J)
BENCH:
RAY, B.C. (J)
SEN, A.P. (J)

CITATION:
1987 AIR 2200 1988 SCR (1) 303
1987 SCC (4) 533 JT 1987 (3) 661
1987 SCALE (2) 653

ACT:

Permission granted by State Government for shifting country liquor shop from the village to another-Whether arbitrary or in breach of guidelines contained in Government Circulars on the subject-High Court quashed the Government order granting permission.

HEADNOTE:

The appellant Chhotu Singh, who had been granted C.L. III licence for vending country liquor in Village Sawli, applied for permission to shift his liquor shop from Village Sawli to Village Narsi Chaurasta as there was very little demand for country liquor in Sawli with a small population. The Collector recommended the transfer of the shop of the appellant after making due enquiries contemplated in the guidelines laid down in the government circular dated April 27, 1984 for shifting shops. The State Government granted the permission applied for by the appellant.

Upon the appellant's shop being shifted to Narsi Chaurasta, the respondent No. S in the appeals, who already had a liquor shop in Narsi Chaurasta, challenged by a Writ Petition the permission granted by the Government to the appellant to shift his liquor shop to Narsi Chaurasta. The High Court allowed the Writ Petition, quashing the order of the Government granting permission for shifting the liquor shop, on the ground that the said permission had been granted without the criteria laid down in the Government circular dated March 18, 1982 being duly considered. A review petition against the order of the High Court, allowing the Writ Petition, was dismissed.

The appellant Chhotu Singh has moved the Court by special leave against the orders of the High Court, allowing the Writ Petition and dismissing the review application, and the only question for consideration in the matter is whether the permission granted by the State Government for shifting the appellant's C.L. III liquor shop from Village Sawli to Village Narsi Chaurasta is supported by the guidelines laid down in the latest government circular dated April 27, 1984, which has superseded all the previous such circulars.

Allowing the appeals, the Court,

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HELD: The Collector had recommended permission for shifting the liquor shop of the appellant from Village Sawli to Village Narsi Chaurasta after making due enquiries, with regard to the shifting of the said shop, in accordance with the guidelines contained in the latest government circular on the subject, dated April 27, 1984, which had superseded the guidelines in the previous such circulars. The sanction accorded to the shifting of the appellant's shop is not in breach of the said latest circular dated April 27, 1984 and it cannot be assailed as arbitrary. [306G, B; 307E, B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2331 32 of 1987.

From the Judgment and order dated, .4.1986 of the Bombay High Court in Review Petition No. 837 of 1986.

Dr. Y.S. Chitale and Ranjit Kumar for the Appellant.

T.S. Krishnamoorthy Iyer, D.M. Nargolkar, A.M. Khanwilkar and A.S. Bhasme for the Respondents.

The Judgment of the Court was delivered by

B.C. RAY, J. Special leave granted. Arguments heard.

The subject matter of challenge in this appeal is the order dated 7th April, 1986 made by the High Court of Bombay allowing the writ petition No. 189 of 1986 quashing the permission granted in favour of the petitioner by the Government by its order dated 24.12.1985 permitting the shifting of the country liquor shop from Mouza Sawli to Mouza Narsi Chaurasta as well as the order of the High Court dated 17.7.1986 rejecting the review petition No. 837 of 1986. The petitioner's father had a licence to run the country liquor shop in village Narsi in Taluka Biloli, District Nanded, Maharashtra. In 1983 the said licence was transferred in the name of the petitioner (respondent No. 5 in this appeal). The appellant was granted a licence, commonly known as C.L. III licence for vending country liquor in village, Sawli, Taluka Biloli, District Nanded. In November, 1984, the appellant was permitted to join one Ataullah as his partner to run the said country liquor shop in village Sawli. The appellant found considerable difficulty in running the shop in village Sawli as there was very little demand for country liquor in the said village having small population of about 1800 and as such the appellant sustained heavy loss. The appellant therefore

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applied on 2.2.1985 before the District Collector, Nanded for permission to shift his shop from village Sawli to village Narsi Chaurasta situated within the same Taluka. The Collector of Nanded after making necessary enquiries in accordance with the guidelines of the circular dated 27.4.1984 regarding the shifting of the shops, recommended the transfer of the shop of the appellant from village Sawli to village Narsi Chaurasta. The Government of Maharashtra, however, by order dated 25.7.1985 rejected the application of the appellant for shifting the shop. The appellant again made a representation against the said order of rejection. This representation was duly considered by the Government and permission was granted to the appellant to transfer his country liquor shop C.L. III from village Sawli to village Narsi Chaurasta. In accordance with the said permission granted to the appellant, the appellant shifted his shop on 17.2.1986 to village Narsi Chaurasta. The respondent No. 5 who has got a country liquor shop in that village,

questioned the permission granted by the Government in favour of the appellant by writ petition No. 189 of 1986 and prayed for quashing of the said order granting permission on the ground that there has been a violation of the circular No. CLR. 1173(III) Gen/K dated 27th February, 1973 in as much as the total population of the said village did not exceed 100,000 and as such the permission for shifting the said shop of the appellant to the village Narsi Chaurasta was illegal and bad.

The writ petition No. 189/86 was heard by the High Court, Bombay and it was allowed by holding that without duly considering the criteria laid down in the circular dated 18.3.1982 i.e. economic viability of the proposed shop and the likely volume of consumption of country liquor, the purported permission for shifting the shop was granted. Accordingly, the rule was made absolute and the order granting permission by the Government was quashed. An application for review of the said order was filed by the appellant and the same was rejected by order dated July 17, 1986 in Review Petition No. 837 of 1986. Aggrieved by the said two orders the special leave petition was filed out of which this appeal has arisen.

The only question that falls for consideration in this appeal is whether the permission granted by the State of Maharashtra i.e. Respondent No. 1 for shifting of C.L. III liquor shop of the appellant from village Sawli to village Narsi Chaurasta is in accordance with the guidelines laid down by the latest circular dated 27th April, 1984 which is annexed as annexure P-7 to this appeal. It has been urged on behalf of respondent No. 5 by drawing the notice of the Court to the circular

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dated 27.2.1973 (annexure P-2) that the permission that was accorded for shifting of the appellant's shop from Mouza Sawli to Mouza Narsi is in infringement of the aforesaid circular in as much as the total population of Mouza Narsi did not exceed 10,000 and as such no additional shop could be permitted in the said Mouza nor any permission could be accorded for shifting of the appellant's liquor shop in the said Mouza. This argument advanced on behalf of respondent No. 5 is devoid of merit in as much as the aforesaid circular was superseded by the guidelines laid down by the Government as is evident from the order No. CLR 1480/1101/PRO-3 dated 2nd October, 1980 wherein it has been stated in clauses 4 and 5 that permission for additional shop can be granted only if it would be economically viable. It is also evident from the circular dated March 18, 1982 that rules 23 and 24 of the Maharashtra Country Liquor Rules, 1973 were amended by Government Notification dated 26th February, 1982 and guidelines have been laid down for grant of a licence for shops for the retail sale of country liquor. One of the guidelines to be considered is that due consideration has to be given to the likely volume of consumption of country liquor and economic viability of the proposed shop before granting any permission for a new shop. This circular was followed by another circular dated September 16, 1983 wherein it has been mentioned that in granting additional licences for country liquor shop, the Collector should use the discretion and propose shops at such places taking into consideration the likely volume of consumption, economic viability, menace of illicit distillation etc. This circular is annexed as annexure P-5 to the appeal. By the latest circular dated April 27, 1984 the Government in supersession of the guidelines in the previous circulars had laid down certain guidelines of which

clause 6 is relevant for our consideration which is to the following effect:

"Whether additional shop at the new place would be economically feasible."

In the instant case the District Collector of Nanded made due enquiries in accordance with the guidelines contained in circular dated April 27, 1984 (annexure P-7 to this appeal) with regard to the shifting of country liquor shop of the appellant and recommended the permission for shifting the shop stating that the population of Mouza Narsi is about 3738 and it is a commercial place. There is a lot of crowd of people at this place and as such if the country liquor shop is shifted from Mouza Sawli to Mouza Narsi the financial condition of the licence-holder would improve resulting in his being able to pay the licence fee and incur the other expenses of the shop. It has been

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further stated that the sale of country liquor at Mouza Narsi is 1300 litres and starting of another shop at this place is feasible. This report was forwarded to the Secretary, Home Department, Government of Maharashtra, a copy of which is annexed as P-1 to this appeal. The Government of Maharashtra had first rejected the application of the appellant for the shifting of the shop on 25.7.1985 and on representation being made by the appellant had reconsidered its earlier decision and accorded sanction to the proposal of shifting of country liquor shop of the appellant from village Sawli to village Narsi Chaurasta, Taluka Biloli. This order according permission cannot be assailed as arbitrary or in breach of the latest circular issued by the Government laying down the guidelines in 1984. The Government duly considered the guidelines laid down in the said circular namely the economic viability and also the volume of consumption of liquor in the particular Mouza as is evident from the report of the Collector, Nanded. It is also pertinent to mention in this connection that the State of Maharashtra, respondent No. 1 filed a return to this appeal wherefrom it is manifest that the respondent No. 1 duly considered the report of the Collector recommending permission to transfer the country liquor shop of the appellant. It has also been stated in the said counter that the guidelines contained in the circular dated February 27, 1973 are in respect of the grant of new country liquor licence. These guidelines cannot be made applicable in respect of the shifting of any country liquor shop existing already in one village to another village. It has further been stated that after the permission was granted the appellant shifted his country liquor shop to village Narsi Chaurasta and he has been running the country liquor shop there since February, 1986. The sanction accorded to the shifting of the shop of the appellant is not in breach of the latest circular dated April 27, 1984 annexed as P-7 to this appeal.

For the reasons aforesaid there is no merit in the submissions made on behalf of respondent No. 5 and the same cannot be sustained. The appeals are therefore allowed. The impugned judgment and order passed by the High Court of Bombay dated April 7, 1986 in Writ Petition No. 189/86 as well as the order dated July 17, 1986 made in Review Petition No. 837/86 are quashed and set aside. There will, however, be no orders as to costs.

S.L.

Appeals allowed.

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JUDIS