

CASE NO.:
Appeal (civil) 1847 of 1994

PETITIONER:
M/S. COOPERATIVE CO. LTD.

Vs.

RESPONDENT:
STATE OF U.P. & ANR.

DATE OF JUDGMENT: 10/04/2001

BENCH:
CJI & N. Santosh Hegde

JUDGMENT:

SANTOSH HEGDE, J.
L...I...T.....T.....T.....T.....T.....T...J

The appellant herein, which is a limited company, was running a distillery with a bottling plant at Nawabganj, Saharanpur, since 1910. On 14.7.1980 it made an application to the Commissioner of Excise, State of U.P., stating that its distillery has been operating annual licences for wholesale supply of country-liquor to Delhi Administration for many years continuously. Therefore, it stated that it wanted to establish a bottling warehouse in district Ghaziabad to meet its requirement of supplying country-liquor to Delhi conveniently and economically. It pleaded that due to close proximity to Delhi if it is permitted to start a bottling unit somewhere in the district of Ghaziabad, it will have obvious advantages since bulk of its production of country-liquor was being sold in Delhi. It also stated in the said application that it would help the company to bid competitively in the auctions and consequently, the State would also stand to benefit from the excise revenue. In the said letter, it is stated in clear terms that the State Government would not stand to lose anything by permitting the company to start the bottling warehouse in district Ghaziabad because it would continue to bottle both at Saharanpur as well as at Ghaziabad, hence, the State excise duty from Saharanpur would not suffer. It was also made specific in the said application that it was seeking a licence for an additional bottling warehouse at Ghaziabad.

Pursuant to the said application, the appellant was informed on 29.7.1980 that it is permitted to bottle country spirit under bond for exports in a bonded warehouse to be licensed for suitable premises to be indicated by the appellant at Ghaziabad along with various other conditions. The said intimation also called upon the appellant to make necessary arrangements after executing counterpart agreement prescribed under the Excise Rules and that the amended CL-I licence will be issued by the Office of the Excise Commissioner as also F.L.-3 licence will be issued by the Collector, Ghaziabad.

It is stated that for a considerable time the appellant was unable to establish the bottling warehouse as permitted under the letter of the Excise Commissioner, referred to above. But it is an admitted fact that such a warehouse with the permission of the authorities was established at Sahibabad, district Ghaziabad, and has been functioning for a number of years. In the meantime, it is noticed that the appellant faced certain difficulties in running of its distillery and bottling warehouse at Saharanpur because of the dispute in regard to the property in which its distillery plant was situated at Saharanpur as also because of the provisions of the Water (Prevention & Control of Pollution) Act, 1974. Therefore, sometime in the year 1987 the appellant wrote to the Commissioner of Excise in view of the above-cited difficulty that it be permitted to shift its distillery from Saharanpur to some other suitable place. The Government as per its letter dated 20.7.1988 informed the appellant that it had no objection to shifting the said distillery from Saharanpur to some other place, other than Sahibabad, district Ghaziabad. Subsequently, by another letter of the Government dated 7.9.1988, the appellant was informed that in supersession of its aforesaid letter dated 20.7.1988, the Government had decided to approve the transfer of the distillery of the appellant to a place near the existing site in Saharanpur and that it had no objection to the working of the appellants bottling plant at a place owned by the appellant in any other district provided this did not result in reduction in the number of workers working in the district of Saharanpur. Consequent to the above order of the Government dated 7.9.1988, the Assistant Commissioner of Excise informed the appellant the sanction of the Government for shifting of the site of the distillery of the appellant. This was done by its letter dated 27.9.1988. In the said letter it was made clear that the permission to shift the distillery at Saharanpur was given on a condition that the shifting shall be done to some place near Saharanpur city with installation of necessary pollution control devices. Based on this permission, the appellant contends that it shifted its distillery and the attached bottling plant from Nawabganj, Saharanpur to Yusufpur, Tapari Road, Saharanpur. When this was the position the appellant received a letter dated 9.7.1991 wherein, according to the appellant, for the first time the appellant was informed that it was granted a licence to run a bottling warehouse at Sahibabad only till such time as the appellant shifted its distillery and bottling plant from the existing site at Saharanpur and since that shifting has taken place, the Government was not willing to continue with the temporary permission given to it to do the bottling process at Sahibabad, district Ghaziabad. By the said letter, the appellant was called upon to show cause why the sanction accorded to it to establish a bottling/filling plant at Sahibabad be not revoked.

To the aforesaid letter of the Government, the appellant replied on 7.8.1991 stating that the licence granted to it to run a bottling warehouse at Sahibabad, district Ghaziabad, was totally unconnected with its distillery and bottling plant at Saharanpur and was independent of the same. They stated that they sought permission and the same was granted to establish a bottling plant at Sahibabad because of its proximity to the State of Delhi and because of the contract it had with the Government of Delhi to supply huge quantity of country-liquor and it had no

connection whatsoever with the shifting of the distillery and the bottling plant attached to that distillery at Saharanpur. The Government, however, did not agree to this stand of the appellant and by a letter of 6.11.1992 directed the appellant to take necessary steps to stop the bottling plant at Sahibabad and mandated that all further bottling of the arrack manufactured by the appellant should be done only at the relocated site of its distillery at Saharanpur within 3 months from the date of the said order.

The appellant challenged the said cancellation of its licence to run the bottling plant at Sahibabad, district Ghaziabad, by way of a writ petition before the High Court of Judicature at Allahabad in Civil Misc. W.P. No.172/93. In the said writ petition, the appellant sought for quashing of the order of the State of U.P. dated 6.11.1992 along with certain other reliefs.

A Division Bench of the High Court came to the conclusion that the permission to start the bottling plant at Sahibabad was not in addition to the bottling plant run by the appellant at Saharanpur but was as a temporary measure to facilitate the appellant to shift its distillery and bottling plant from the existing site at Saharanpur to another site at Nawabganj, Saharanpur, the High Court further held now that a new distillery and bottling plant have been set up at an appropriate place at Saharanpur, the appellant cannot be permitted to use the bottling plant at Sahibabad. On that premise the writ petition came to be dismissed, giving 3 months time to the appellant to shift its bottling plant from Sahibabad to the new distillery situated at Yusufpur, Tapari Road.

Before us, Mr. Shanti Bhushan, learned senior counsel has contended that the application of the appellant which was made as far back as on 14.7.1980 was based on certain special facts inasmuch as the appellant had obtained major contracts for the supply of country-liquor to the State of Delhi and in executing the said contract, the appellant was finding difficulty in transporting such huge quantity of arrack bottled from Saharanpur to different places at Delhi. Therefore, with an intention of making supply of country-liquor to Delhi easier and economical, the appellant approached the Government with permission to establish only a bottling plant so that it could bring the permissible raw-liquor from its distillery and other permissible places and convert the same to potable arrack and bottle them at its bottling plant closer to Delhi whereby apart from preventing wastage of liquor in transit, the appellant would also save considerable amount of money in transportation. This, according to the appellant, is clear from the contents of its application made to the Government. Mr. Shanti Bhushan also contended that the permission granted to the appellant pursuant to its application dated 29.7.1980 also indicates in clear terms that it is a permission for starting an independent bottling unit at the place to be notified by the appellant in the district of Ghaziabad. He says that a perusal of this permission shows that it was meant for bottling arrack to be supplied at Delhi. He pointed out that the licence given to establish and run the bottling plant at Sahibabad was an independent licence and was not in substitution of the bottling plant which was being run at that point of time at Nawabganj, Saharanpur. He contends that the belated stand of the Government that the bottling unit at Sahibabad was only a temporary

arrangement and was meant to be in existence only till the shifting of the bottling plant at Saharanpur is not supported by any material on record and is contrary to facts. It is urged that the appellant has spent huge sums of money in establishing a modern bottling plant at Sahibabad, district Ghaziabad, because of the volume of its business with the State of Delhi, and it would be futile to contend that such huge amount for a permanent bottling unit would have been expended by the appellant if the licence granted to it was not a permanent one. He contends that this stand of the Government that the licence to run the bottling plant at Sahibabad is only transitory in nature, is a lame excuse.

On behalf of the State it is contended by Mr. Subodh Markandeya, learned senior counsel contended that in fact the permission accorded vide letter dated 29.7.1980 was only temporary and for the limited period during which the appellant had to shift his distillery and the bottling plant at Saharanpur from Nawabganj, Saharanpur to some other place and now that it has re-established its distillery and the bottling plant at another place in Saharanpur, it has no right to operate the bottling plant at Sahibabad.

Having heard learned counsel for the parties in extenso and perused the records, the only question that arises for our consideration is whether the appellant was given sanction to start an independent and additional bottling warehouse at Sahibabad, district Ghaziabad by the competent authorities or was it only a temporary permission to facilitate the appellant to continue with the process of bottling during shifting of its distillery and the bottling plant from one place to another at Saharanpur.

We have already referred to the application made by the appellant for grant of permission to start a bottling plant in district Ghaziabad on 14.7.1980 so also the permission accorded by the authorities on 29.7.1980. Basically, the necessary material to decide the above questions is found in these two documents. Though we have referred to the said document in some detail earlier, we think it appropriate to refer to it at the cost of repetition once again while deciding these question.

As per the letter dated 14.7.1980, the appellant sought for licence for establishment of bottling warehouse in Ghaziabad. In the said letter/application, the appellant stated that the company has been awarded annual licence for wholesale supply of country-liquor to Delhi Administration for the last 7 years continuously. It also stated for the current year (referable to the date of the letter) that the Delhi Administration had granted licences for two brands of liquor, namely, country-liquor and Rum 50 degree strength. It also stated that the State of U.P. earns substantial revenue in the form of export duty on the supplies of liquor made by the appellant to the Delhi Administration which according to the appellant was to the tune of crores of rupees. The letter further stated that in view of the bitter competition from distillers in other neighbouring States like Punjab, Haryana and Himachal Pradesh, the appellant was finding it economically difficult to compete with other suppliers because of the fact that it had to transport bottled liquor from Saharanpur all the way to Delhi. In the process, it is stated that a large quantity

of liquor also gets wasted and the cost of transportation was also becoming uneconomical. They had pointed out that if it lost the contract with the Delhi Administration then the State of U.P. also stood to lose crores of rupees in excise revenue. Therefore, the letter specifically stated that it is in the interest of both the appellant and the U.P. Government to permit the appellant to establish its additional bottling warehouse at Ghaziabad. They further stated that they will be investing on the establishment of the said warehouse with a long term perspective. So it is in these circumstances that the appellant sought permission from the respondents to establish a new bottling warehouse at district Ghaziabad. The respondent vide its letter dated 29.7.1980 informed the appellant that they are allowed to bottle country spirit under a bond for exports in a bonded warehouse to be licensed at Ghaziabad in suitable premises provided by the appellant on the conditions mentioned in the said letter. One of the conditions enumerated therein stated that the appellant was permitted to reduce the plain country spirit into spiced country spirit in the said bottling warehouse at Ghaziabad, and that it should provide office facilities for the excise officials who will be incharge of the bonded warehouse attached to the bottling premises, and that the appellant should make necessary arrangements to execute counterpart agreement to receive the necessary CL-I and FL-III licences from the Commissioner of Excise and the Collector, Ghaziabad, respectively. In the background of what is urged on behalf of the State, it should be noticed from this letter that there is absolutely no indication whatsoever to show that this permission to start the bottling unit at district Ghaziabad was either temporary or was in lieu of the bottling unit at Saharanpur. Neither the application of the appellant dated 14.7.1980 nor the sanction of the respondents dated 29.7.1980 has made any reference whatsoever to the bottling plant attached to the distillery of the appellant at Saharanpur. From the reasons given by the appellant for starting the bottling plant at Ghaziabad and the conditions attached to the approval of such sanction to start the bottling plant at Ghaziabad, we cannot even remotely come to the conclusion that this permission was either temporary or was in lieu of the bottling plant at Saharanpur. However, the respondents strongly relied upon letter dated 9.7.1991 wherein it had informed the appellant that the permission to establish a bottling plant was granted vide its letter dated 7.9.1988 and was meant as a temporary measure till the construction of a distillery plant at Sahibabad, district Ghaziabad, by the appellant. It was also mentioned in the said letter that CL-I licence was issued to the appellant for its unit at Ghaziabad on the condition that the distillery will shift the work from Saharanpur to Sahibabad, district Ghaziabad. It is true that the letter of 9.7.1991 does state so but then that letter relies upon an earlier letter dated 7.9.1988. A perusal of that letter of 7.9.1988 clearly shows that it had nothing to do with the establishment of the bottling plant at district Ghaziabad. While appreciating the contents of that letter, we will have to bear in mind certain additional facts such as after the permission was granted to the appellant to establish the bottling plant in district Ghaziabad, the appellant seems to have run into certain difficulties while running its distillery at Saharanpur. Therefore, they corresponded with the Government to shift its distillery along with the existing bottling plant from Saharanpur to some other place. It is in that context that the Government wrote letter dated

7.9.1988 which was nearly 8 years after the sanction granted to start the bottling warehouse at district Ghaziabad. This letter conveying approval of the Government to transfer the site of the appellants distillery from Saharanpur to a place near the existing site in Saharanpur and to install the required pollution control devices at the new site, made a reference to the existing bottling plant attached to that distillery and stated that the Deptt. would have no objection to the work of bottling in the godown by the producer in other district (i.e. Ghaziabad) provided there shall not be lay off in the number of the workers working in distt. Saharanpur. In our opinion, this reference to the bottling plant in the letter of 7.9.1988 or the place Ghaziabad cannot be in any manner connected with the bottling plant already permitted to be established at district Ghaziabad in the year 1980 by the Government. Per contra, it is clear that this is with reference to the bottling plant which was attached to the distillery at Saharanpur. Therefore, we find that reference to letter dated 7.9.1988 in the letter of the Government dated 9.7.1991 is wholly misplaced and the respondents in our opinion cannot make that as the basis for contending that the licence issued to the appellant for establishing a bottling plant at Ghaziabad was in lieu of the bottling plant at Saharanpur or was in fact a temporary one. In this regard we are supported by certain notings found in the notes and orders of the Excise Commissioner's office, U.P., Allahabad, in File No. II Technical D-19 pages 33, 24, 39 & 40 which was exhibited as Annexure A-17 before the High Court. The notings in clear terms show that what was intended to be granted to the appellant by the letter of the respondent dated 29.7.1980 was a permission to start a new bottling plant and grant of a new bottling licence.

In this background if we have to consider the impugned order of the respondents dated 6.11.1992 it is seen that an entirely new stand has been taken on behalf of the State. This letter the original of which is in Hindi and a fresh translation thereof was provided to us on behalf of the State inter-alia states : "It is also made clear that during this period you must stop the Bottling plant at Sahibabad and further bottling must only be done at your relocated site of your distillery at Saharanpur. After the expiry of these 3 months you will not be allotted any alcohol from other distilleries for your bottling plant at Sahibabad. Actually, this was a letter in reply to the complaint of the appellant on insufficient electric supply to its distillery at the relocated plant. In this letter the State took the opportunity of informing the appellant of closing its bottling plant at Sahibabad. By this letter it is clear that the respondents treated the earlier permission granted to the appellant as a temporary permission to last till the appellant shifted its distillery and the bottling plant attached to it. We have already noticed that from the original application and the sanction granted thereof, it is clear that the permission to start the bottling plant at district Ghaziabad which was ultimately established at Sahibabad, district Ghaziabad, was not temporary or stand-by permission. It was given for a specific purpose of facilitating the appellant to bottle bulk country-liquor at Sahibabad so that the appellant could compete with the other bidders for supply of country liquor to the State of Delhi. That permission cannot be treated as a permission having been granted as a stand-by permission till the appellant shifted its distillery and the bottling unit at Saharanpur.

We are satisfied that the High Court has erred in coming to the conclusion that the licence granted to the appellant to establish and run a bottling unit at Sahibabad, district Ghaziabad is a temporary one.

We however make it clear that if the appellant has not complied with any of the provisions of the said Excise Act and Rules or has contravened any of the provisions of the Act or any of the terms of the licence, it is open to the State to take such action as is legally permissible but this licence to run a bottling warehouse at Sahibabad, district Ghaziabad, shall not be cancelled on the ground that the same was granted as a temporary measure.

In the result, the appeal succeeds and is allowed. The order dated 16.11.1992 is hereby set aside. No costs.