

**(1996) 09 AHC CK 0130**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 438 of 1996

Saraya Industries Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Sept. 12, 1996

**Acts Referred:**

- Uttar Pradesh Excise Act, 1910 - Section 24, 3(20), 31
- Uttar Pradesh Excise Rules - Rule 415, 416, 417, 418, 419

**Hon'ble Judges:** R.A. Sharma, J; Kundan Singh, J

**Bench:** Division Bench

**Advocate:** R.D. Misra and S.K. Misra, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

R.A. Sharma, J.

The Excise Commissioner, U.P. invited tenders by notice dated 21.12.1995 from distilleries for supplying country liquor to the retail licencees in various district for the year 1996-97. The Petitioner, the Respondent No. 4 and various other distilleries submitted their tenders. The Government accepted the tenders districtwise. Vide order dated 27.2.1996 the Petitioner was allotted ten districts, whereas the Respondent No. 4 was allotted only one district of Ghazipur for supplying country liquor. The allotment in favour of Respondent No. 4 was subject to the condition that till it starts manufacturing country liquor, the Petitioner will supply the liquor to district Ghazipur. Such a condition was imposed, because in the absence of affluent treatment plant the manufacturing of the country liquor in M/s. P. V. K. Distillery (Respondent No. 4) was stopped under the orders of the U.P. Pollution Control Board dated 25.1.1993. By a letter dated 30.5.1996 of the Excise Commissioner/Controller of Molasses, the Respondent No. 4 was permitted to manufacture the country liquor from the rectified spirit produced by another distillery (Shamli Distillery). By another letter dated 19.6.1996 the Petitioner has been asked by the District Excise Officer. Ghazipur not to supply liquor to district

Ghazipur. Being aggrieved, the Petitioner has filed this writ petition, challenging the said orders/letters dated 30.5.1996 and 19.6.1996. Writ of mandamus, directing the Respondents to permit the Petitioner to continue to supply the country liquor to the licencees in district Ghazipur till the Respondent No. 4 starts actual production of rectified spirit, has also been sought.

2. The learned Counsel for the Petitioner has made two submissions in support of the writ petition, namely, (i) the Respondent No. 4 cannot be permitted to manufacture country liquor, because it is not open to a distillery to manufacture country liquor from the rectified spirit produced by another distillery ; and (ii) the Respondent's distillery has been closed pursuant to the order of the Pollution Control Board dated 25.1.1993 and, therefore, it cannot manufacture the country liquor. Sri P. P. Srivastava, learned Additional Advocate General and the learned Counsel for Respondent No. 4 have disputed the above contentions.

3. The Excise Commissioner has power u/s 24 of the U.P. Excise Act (hereinafter referred to as the Act) to grant a licence to any person for the exclusive privilege of manufacturing or supplying country liquor within any local area. Section 31 of the Act has laid down that the licence shall be granted on payment of the prescribed fee and subject to such restrictions and conditions as the State Government may direct. Rules 415 to 419 of the Rules framed under the Act relate to country liquor. According to Rule 415, the supply of country liquor is to be on the contract supply system. Rule 416 defines "contract supply system", according to which the exclusive privilege is granted for supplying country liquor at fixed price to a firm of distilleries. Rule 417, which lays down the procedure for selection of the distillery for grant of exclusive privilege, is reproduced below:

417. Contractor's how selected.--The firm is selected in the following manner:

Tenders in Form C. L. 23 are invited by the Excise Commissioner vide notice in Form C. L. 22 for the rates at which the different categories of spirit will be supplied at all specified bonded warehouses and wholesale depots in the area indicated. These tenders are submitted for the orders of Government. The contract will ordinarily be awarded to the firm tendering at the lowest rates, but full power is reserved to accept such tender as may be deemed best in public interest, and to reject any of those received without reasons being assigned.

No payment is required for the exclusive right of supply, the object being to secure to the retail vendors a supply of good spirit at a cheap and fixed rate. Spirit may be supplied from any distillery, whether situated within the State or outside.

The detailed conditions of the contract are given in the notice in Form C. L. 22 calling for tenders and in the Form of licence C. L. 1.

In the instant case, tenders were invited in the prescribed form and the contracts for supplying country liquor were granted by the Government to various distilleries in

accordances with law.

4. Rule 8 defines "country liquor" as follows:

8. "Country liquor" means:

(1) plain or spice spirit which has been made in India from materials recognised as bases for country liquor, namely, mahua, rice, gur or molasses and on which duty has not been imposed at the rate fixed for importation of spirit into India ;

(2) tari; and

(3) all fermented alcoholic beverages made from mahua, rice, millet or other grain according to Indian processes.

The word "manufacture" has been defined by Section 3 (20) of the Act as under:

3. (20) "manufacture" includes every process, whether natural or artificial, by which any intoxicant is produced or prepared, and also redistillation and every process for the rectification, flavouring, or blending or colouring of liquor.

The production of the country liquor involves several processes, one of which is the production of the rectified spirit from molasses. Rectified spirit is not fit for human consumption and it is a raw material for manufacturing country liquor. Normally, a distillery having the licence itself produces the rectified spirit from molasses from which it manufactures the country liquor. But there is neither any statutory provision nor is there any condition in the licence and the notice inviting tenders prohibiting a distillery from manufacturing the country liquor unless it also produces rectified spirit. No such provision or condition has been placed by the learned Counsel for the parties before us. In support of the first contention, the learned Counsel for the Petitioner has, however, placed reliance on condition No. 26 of the licence and term/condition No. 1 of the notice inviting tenders. These conditions do not support such a contention. The English translation of condition No. 26 of the licence is as under:

The allotment for supply of country liquor in favour of a distillery can also be cancelled, if such a distillery does not produce rectified spirit.

This is a condition, which enables the Government to cancel the licence if rectified spirit is not produced by the distillery ; but it does not place a mandatory obligation on the Government to cancel the licence if rectified spirit is not produced by the distillery. The Government is, therefore, not bound to cancel the licence even if the rectified spirit is not produced. Whether to cancel or not to cancel the licence of a distillery, which does not produce rectified spirit, has to be decided by the Government on the basis of the relevant considerations including the facts and circumstances of the case. The Government, in the instant case, has not only refused to cancel the licence of Respondent No. 4 but has in fact permitted it to get the rectified spirit manufactured from another distillery for the purpose of

manufacturing the country liquor in its own distillery. The term/condition No. 1 of the notice inviting tenders also does not support the contention of the learned Counsel for the Petitioner. This condition merely states that distilleries, which are authorised to manufacture country liquor can submit the tenders. The distillery, which holds a licence is authorised to manufacture country liquor. The Respondent No. 4 is holding such a licence. In the absence of statutory provision or the conditions of licence prohibiting the Respondent No. 4 from manufacturing the country liquor in its distillery unless it also produces rectified spirit, no exception can be taken to the impugned orders.

5. In the absence of affluent treatment plant, the Respondent No. 4 could not have produced the rectified spirit from molasses. This distillery (Respondent No. 4) also became a sick unit and was taken over by the Provincial Industrial Corporation, U.P. (P.I.C., U.P.) in March, 1994 due to non-payment of loans. It was purchased by the present management of the Respondent No. 4 from the said Corporation and got its possession in April, 1995. Thereafter, it submitted the tenders pursuant to the notice on the basis of which district Ghazipur was allotted to it. The management of Respondent No. 4 is now installing the affluent treatment plant at its distillery, which is in the process of completion. It was, therefore, permitted by the Government to get the rectified spirit produced from molasses of its quota in another distillery. This arrangement was made by the Government for a limited period upto 30.6.1996. We have been informed that this period has been extended for limited period. The Government has taken this step with the object to rehabilitate a sick unit. Such a step is undoubtedly in public interest. In such matters, the Court cannot interfere unless the impugned orders suffer from serious infirmities. That is not the position in the instant case. The first contention is accordingly rejected.

6. The second contention is also liable to be rejected. It is true that the manufacturing of country liquor in P. V. K. Distillery (Respondent No. 4) was stopped in absence of affluent treatment plant under the orders of the U.P. Pollution Control Board dated 25.1.1993. But the Supreme Court vide its order dated 9.2.1996 in Writ Petition (C) No. 3727 of 1985 H.C. Mehta v. Union of India and Ors. has suspended the closure order in respect of P. V. K. Distillery (Respondent No. 4). The relevant extract from; the said order of the Supreme Court is reproduced below:

Certain recommendations were made by the Central Pollution Control Board to be complied with by M/s. P. V. K. Distillery, Ghazipur. The report of the Board states that the recommendations have been complied with by the industry. We direct the Central Pollution Control Board to have a surprise inspection of this industry along with Mr. Krishna Mahajan within the period of next two months and file a report to this Court. Nothing more need be done at this stage. The closure order in respect of this industry is suspended till further orders.

7. The Petitioner was not allotted district Ghazipur and it was permitted to supply country liquor to the licencees in the said district only as stop-gap arrangement till

the Respondent No. 4 starts manufacturing country liquor in its distillery. When the Respondent No. 4 has itself started manufacturing the country liquor, the Petitioner ceased to have any right to supply the liquor to the said district. It, therefore, cannot be said to be the person aggrieved by the impugned orders.

8. For the reasons given above, this writ petition is dismissed. In view of the facts and circumstances of the case, there shall be no order as to costs.