SIR SHADILAL DISTILLERY AND CHEMICALS WORKS

v.

THE STATE OF U.P. AND OTHERS.

NOVEMBER 26, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Liquor Shops—Licence for—Cancellation of—Validity—Licence for districts of Haridwar and Saharanpur granted to third respondent—Subsequently order passed by Commissioner—Licence granted for district of Haridwar cancelled and allotted to appellant—Writ challenging cancellation and reallotment to appellant—Commissioner's order quashed by High Court—Appeal—Held, the Government did not issue any notice before cancellation of the allotment made to the third respondent and the third respondent had no opportunity to have his say in that behalf—Under these circumstances, the direction issued by the High Court stands set aside—Direction to Government to consider objections of appellant and third respondent—Thereafter speaking order should be passed for refusal or grant of licence in respect of District of Haridwar.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15398 of 1996.

From the Judgment and Order dated 18.9.96 of the Allahabad High Court in W.P. No. 995 of 1996.

Satish Chandra, H.K. Puri, Ujjwal Banerjee and Rajesh Srivastava for the Appellant.

U.R. Lalit, Gaurav Jain, G.E. Alam, Mrs. Abha Jain, Ms. Richa Goyal and A.K. Goel for the Respondent Nos. 3-4.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

The admitted position is that the Commissioner had invited tenders on December 21, 1996 for supply of country made liquor in various districts

A of U.P. for the year 1996-97. Pursuant thereto, parties had submitted their tenders. The Commissioner by his proceedings dated February 27, 1996 allotted to the Co-operative Distillery Co. Ltd., the third respondent, the Districts of Saharanpur and Haridwar. He, however, revoked the same by his proceedings dated March 27, 1996 and allotted the district of Haridwar to the appellant. Consequently, the third respondent filed writ petition challenging the cancellation and reallotment to the appellant of Haridwar District. The High Court in the impugned order has directed in the operative part as under:

> "In the result, the writ petition is allowed and orders dated 26.3.1996 and 27.3.1996 contained in Annexures 6 and 6-A to the writ petition so far as it pertains to the allotment of district Haridwar to respondent No. 3 are quashed. A mandamus is also issued commanding the respondents 1 and 2 to restore the position as it was obtained on 27.2.1996 and the opp. parties are also restrained from interfering in the rights of the petitioners to make supply to the district Haridwar."

Calling this order in question, the present appeal has been filed.

Clause 18(c) of the Tender Conditions indicates that "[I]f all the aforesaid conditions are fulfilled the distillery situated in the district would be given preference in respect of supplies to the same. If there are two distilleries situated in the same district and if there is no material difference in the rates quoted by the said two distilleries, the distillery which was granted the district earlier, shall be given preference."

It is an admitted position that prior to bifurcation of districts Saharanpur and Haridwar, Haridwar was part of Saharanpur. It is also an admitted position that on the earlier occasion, the third respondent was granted licence for Saharanpur and Haridwar. The question remains : whether the factory of the third respondent is situated in Haridwar district? It is an admitted position that the third respondent's factory is not situated in Haridwar District. It is also an admitted position that the respondent No. 3 had not executed the agreement for the purpose of issuance of the licence. As a result, no licence had been issued as on date.

On these facts, the question arises : whether the allotment to the third respondent is correct in law? We need not express any opinion on

the facts since, admittedly, the Government did not issue any notice before cancellation of the allotment made to the third respondent on February 27, 1996 and the third respondent had no opportunity to have his say in that behalf. A

Under these circumstances, the direction issued by the High Court stands set aside. The Government is directed to issue notice to the third respondent as well as the appellant, consider their objections and pass appropriate speaking order in that behalf for grant or refusal of licence in respect of district of Haridwar in accordance with the Rules to the 3rd Respondent. B

The appeal is accordingly allowed. The Government is directed to issue the notice and complete the exercise within a period of six weeks from the date of the receipt of this order. Till then *status quo* as on today shall continue. C

T.N.A. Appeal allowed. D