

STATE OF PUNJAB AND ORS.

v.

M/S SURINDER KUMAR AND CO. AND ORS.

DECEMBER 11, 1996

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

Code of Civil Procedure, 1908 : Section 11 - Res Judicata.

Punjab Excise Act, 1914 :

Respondent granted licence for sale of Indian made foreign liquor—Licence cancelled for irregularities in conducting the business—Writ challenging cancellation—Minister for Excise and Taxation impleaded alleging mala fides against him—High Court without going into merits directed the respondent to avail alternative remedy of appeal under Excise Act—On appeal the Appellate Authority upheld that respondents had committed illegalities but felt it expedient instead of cancelling the licence, to treat the period from cancellation of licence till the filing of the writ petitions and grant of stay by the High Court, to be period of substantive suspension as a measure of penalty—Second batch of writ petitions filed against the order of Appellate Authority—The High Court set aside the order and remitted the case to the Excise and Taxation Commissioner to decide the matter afresh on the grounds of mala fides alleged against the Minister—Appeal preferred before Supreme Court—Held in the second batch of writ petitions the Minister was not made a party—The High Court could not have gone into the question of mala fides—In the first round of litigation when the High Court had not gone into the question of mala fides, though the Minister was impleaded as a party, it had remitted the matter for disposal on merits—Obviously, the words "might and ought" used in Section 11 of the C.P.C. stand in the way and, therefore, it operates a res judicata for raising the same question subsequently—The High Court could not have gone into that question, much less giving direction to the Appellate Authority to go into that question.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 16976-78 of 1996.

From the Judgment and Order dated 29.5.96 of the Punjab & Haryana High Court in C.W.P. No. 18522-24 of 1995.

A P.P. Rao and Manoj Swarup for the Appellants.

Rathin Das and Gaurav Banerjee for the Respondents.

The following Order of the Court was delivered :

B Leave granted.

We have heard learned counsel on both sides.

C These appeals by special leave arise from the judgment and order of the Division Bench of the Punjab and Haryana High Court, dated May 29, 1996 in CWP Nos. 18522-18524/95. The respondents had the leasehold right to vend the Indian made liquor at Ludhiana. They had located shops at 44 places to sell under L-2 and L-14 licence of Indian made foreign liquor in retail. They had the licence for the financial year April 1, 1995 to March 31, 1996. The Excise Department officials had noted, on inspection, D certain illegalities or irregularities committed in conducting the business and selling in retail the Indian made foreign liquor. On account thereof, by proceedings dated August 21, 1995, the competent officer cancelled the licence granted to the respondents. Feeling aggrieved by the cancellation order, the respondents filed CWP Nos. 12543, 12546 and 12547/1995. E Therein, the respondents impleaded Shamsher Singh Dullo, Minister for Excise and Taxation, as one of the respondents alleging *mala fides* in the cancellation of licence granted to the respondents. The Division Bench of the High Court by order dated September 15, 1995 allowed the Writ Petition and remitted the matter to the Appellate Authority to decide the appeal within 15 days from the date of the presentation of the appeal since F the respondents had alternative remedy of an appeal provided under the Punjab Excise Act, 1914 (for short the 'Act'). The order reads as under :

G Concededly the respondent Minister against whom allegations of *mala fide* are alleged is no more a Minister. The petitioner has got an alternative remedy of appeal against the impugned order. The petitioner is relegated to the alternative remedy. The respondents undertake not to raise any objection with respect to the limitation for filing appeal if the same is filed within one week. The petitioner may apply for stay of the operation of impugned order before the appellate authority and the same shall be considered by the appellate authority. H The appellate authority is further directed to decide

the appeal within 15 days from the date of presentation of the appeal. In view of this, the writ petition is disposed of." A

On filing the appeal, the Appellate Authority, while upholding that the respondents had committed illegalities and irregularities in conducting the business in violation of the provisions of the Act and the Rules made thereunder, felt it expedient instead of cancelling the licence, to treat the period from cancellation of licence till the filing of the writ petitions and grant of stay by the High Court, to be period of substantive suspension as a measure of penalty. Feeling aggrieved by the order passed by the Appellate Authority, the present writ petitions came to be filed. The Division Bench of the High Court in the impugned order set aside the order and remitted the case to the Excise and Taxation Commissioner to decide the matter on the grounds of *mala fides* alleged against the Minister afresh in the light of the averments made and the contentions on either side. Thus, these appeals by special leave. B C

It is seen that in the batch of the Writ Petitions, admittedly, the Minister was made correspondent and allegations of *mala fides* came to be made against him. The High Court did not decide that questions. On the other hand, a reading of the order would indicate that the High Court instead directed the respondents to avail the alternative remedy of appeal before the Appellate Authority and Appellate Authority was directed to go into the merits of the matter and decide it according to law. It is seen that Appellate Authority did go in the merits, found that the respondents committed illegalities and irregularities in conducting the business of vending the Indian made foreign liquor. However, in the matter of imposition of penalty the Appellate Authority had felt it expedient, instead of cancelling the licence, to confine the period from August 22, 1995 till September 22, 1995, the date on which the High Court granted interim suspension of the operation of the cancellation order as "suspended". It could be seen that in the second batch of Writ Petition the Minister was not made a party. It is the settled legal position that the High Court could not have been gone in the *mala fides* and it would not decide the matter on merit on the question of *mala fides*. In such a situation can the Division Bench direct the Appellate Authority to go into the question of *mala fides*. It is seen that in the first round of litigation when the High Court had not gone into the question of *mala fides*, though the Minister was impleaded as a party, it had remitted the matter for disposal on merits. Obviously, the words D E F G H

A "might and ought" used in Section 11 of C.P.C. stand in the way and therefore, it operates as *res judicata* for raising the same question in the present writ petitions. The High Court could not have gone into that question, much less giving direction to the Appellate Authority, namely, the Excise and Taxation Commissioner, to go into that question.

B Shri Rathin Das, learned counsel for the respondents, contends that the respondents had not committed any serious irregularities or illegalities warranting even suspension of the licence for the period mentioned by the Appellate Authority. Unfortunately, that question was not considered by the Division Bench and it had not given any finding thereon. No appeals
C are filed by the respondents. Under those circumstances, we cannot go into that question. Thus, we hold that the view taken by the Division Bench is clearly unsustainable.

The appeals are accordingly allowed and the Writ Petitions stand dismissed. No costs.

D T.N.A.

Appeals allowed and Petitions dismissed.