

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal Nos. 3539-3540 of 2020
(Arising out of SLP (C) No.11769-11770 of 2020)

SURESH CHANDRA

.... Appellant(s)

Versus

JOGA SINGH BISHT & ORS.

.... Respondent(s)

J U D G M E N T

L. NAGESWARA RAO, J.

1. The Writ Petition was filed by the First Respondent in the High Court of Uttarakhand at Nainital, challenging the settlement of FL 5 Shop Pithoragarh No.1 B in favour of the Appellant. The Writ Petition was dismissed by the learned Single Judge on the ground that the First Respondent does not have *locus standi*. Questioning the legality and validity of the judgment, the First Respondent filed a special appeal. A Division Bench of the High Court stayed the operation and execution of the settlement of FL 5 Shop Pithoragarh No.1 B in favour of the Appellant herein until

further orders. The Appellant filed an application to vacate the interim order, which was dismissed. Aggrieved thereby, the Appellant approached this Court by filing the above appeals.

2. Sh. Balkar Singh was allotted the licence for a foreign liquor shop at Pithoragarh on 23.03.2020 by the District Level Allotment Committee for the period from 01.04.2020 to 31.03.2021. As the shop was not being operated from 06.05.2020, Sh. Balkar Singh was directed to open the shop. He submitted an application on 12.05.2020 requesting for cancellation of the allotment of the shop. On receipt of the said application, the authorities directed Sh. Balkar Singh to surrender the licence in accordance with the provisions contained in Section 36 of the Excise Act after depositing the amount for first and second instalments along with cancellation charges prescribed for the Month of May, 2020. Balkar Singh did not respond to the letter written by the authorities. The amount deposited by the licensee, Sh. Balkar Singh, was confiscated and the allotment of the foreign liquor shop license in his favour was cancelled under the provisions of Section 34 of the Excise Act. Sh. Balkar Singh was

informed on 28.05.2020 that the process for resettlement of the shop shall be carried out according to the Uttarakhand Excise Rules 2020-21 and the Uttarakhand Excise (Administration of Licensees of Domestic/Foreign Liquor and Beer Retail Sale) Rules, 2011 and the loss that the revenue may suffer after resettlement shall be recovered from Sh. Balkar Singh.

3. An advertisement was issued by the District Excise Officer, Pithoragarh on 02.06.2020 regarding resettlement of the licence for foreign liquor shop Pithoragarh 1 B. Applications were invited from interested persons for issuance of a licence for the remaining period of the financial year 2020-2021. The revenue fixed for the remaining period of the financial year 2020-2021 was Rs.7,70,62,471/-. As none responded to the said advertisement, the District Excise Officer, Pithoragarh issued another advertisement dated 06.06.2020. The Appellant participated in the allotment process and he was declared as the successful bidder and his bid for Rs.3,46,78,112/- was accepted. The licence for foreign liquor shop at Pithoragarh was allotted to him by an order

dated 09.06.2020 subject to the conditions mentioned therein.

4. The First Respondent filed a writ petition questioning the allotment of the foreign liquor shop in favour of the Appellant on the ground that the allotment in favour of the Appellant resulted in loss of revenue. According to him, the allotment of the foreign liquor shop in favour of the Appellant for Rs.3,46,78,112/- could not have been made when the total revenue was fixed in the advertisement was Rs.7,70,62,471/-. By an order dated 06.08.2020, the High Court dismissed the Writ Petition on the ground that the First Respondent did not have locus standi to challenge the allotment of the foreign liquor shop in favour of the Appellant as he did not participate in the process of resettlement of the liquor shop. In the appeal preferred by the First Respondent against the judgment of the learned Single Judge, a Division Bench of the High Court stayed the operation and execution of the settlement of the foreign liquor shop in favour of the Appellant until further orders by an order dated 21.08.2020. It appears that the Division Bench was prima facie satisfied that the First Respondent offered a much higher amount in spite of which the licence

was granted for a lesser amount in favour of the Appellant. The Division Bench observed that *locus standi* cannot be a ground for dismissal of the Writ Petition when there is an allegation that the Government is losing revenue of a huge amount of Rs.5 crores. The High Court was of the opinion that the issue of loss of revenue is of immense public interest. In view of the loss of revenue, the Division Bench felt that the matter requires consideration.

5. The interim order dated 21.08.2020 was sought to be vacated by the Appellant who filed an application which was dismissed on 08.09.2020. The High Court recorded a finding that it was aware about the proceedings that were initiated for recovery of the deficient amount from the original allottee, Sh. Balkar Singh. The High Court observed that the State could not have allotted the shop for an amount of Rs. 3.5 crores and there is a likelihood of higher amount being offered in re-settlement.

6. Admittedly, the First Respondent was an unsuccessful bidder at the time of original allotment in favour of Sh. Balkar Singh. In the re-settlement of the liquor shop after Sh. Balkar Singh expressed his inability

to continue, the First Respondent did not participate in the process. The Appellant was the highest bidder for the allotment of the liquor shop and his offer of Rs.3,46,78,112/- for the remaining period of the financial year 2020-2021 was accepted.

7. The High Court committed an error in proceeding on the premise that the First Respondent has offered a much higher amount and that the State had wrongly accepted a lesser amount offered by the Appellant. As stated above, the First Respondent did not participate in the resettlement process. The High Court was further convinced with the contention of the First Respondent that the State is suffering a loss of Rs. 5 crores. The Government has brought to the notice of the Division Bench that after re-settlement of the license in favor of the Appellant, the shortfall of the annual revenue value of Rs.7,70,62,471/- was being recovered from Sh. Balkar Singh and that the recovery certificate to the effect of Rs.4,08,70,998/- was issued to Sh. Balkar Singh. It is clear from the above that there is no loss to the Government. The liquor shops were closed for a short

period of time in view of the Covid-19 pandemic. After the permission was granted for reopening of the shops, Sh. Balkar Singh expressed his inability to continue running the shop. The resettlement of the foreign liquor shop was for the remaining period of the financial year 2020-2021. The First Respondent filed a Writ Petition, complaining about loss of revenue to the Government as the resettlement of the foreign liquor shop was for a lesser amount. In our opinion, the Writ petition was rightly dismissed by the learned Single Judge on the ground that the First Respondent has no *locus standi* to maintain the Writ Petition. The Division Bench committed an error in staying the operation of the resettlement in favor of the Appellant, even after the compliance of the conditions of the licence by the Appellant who deposited the money as directed. In view of the order passed by the Division Bench, the Appellant was restrained from continuing his business activity. To examine the *bonafides* of the First Respondent, we asked the learned counsel appearing for him to get instructions as to whether the First Respondent would be ready to offer a

higher amount in view of the submission made on his behalf before the Division Bench of the High Court. After obtaining instructions, the learned counsel for the First Respondent submitted that he is not willing to deposit Rupees 8 crores, but would be willing to pay something more than the offer made by the Appellant which was accepted. A perusal of the pleadings would show that there is no allegation of *malafides* on the part of the Government. The only ground on which the High Court interfered with the license is on the basis of the purported loss caused to the revenue. In spite of the Division Bench being informed that there is absolutely no loss to the revenue in view of the recovery proceeding initiated against Sh. Balkar Singh, the interim order was not vacated. As a consequence, the Appellant was prevented from continuing with his business in spite of paying the amount of Rs.3 lakhs per day to the Department. Interference with a valid license granted in accordance with rules is unwarranted. The First Respondent has misled the High Court by contending that he is willing to offer a higher amount. Such an offer

should not have been entertained as he did not participate in the resettlement process. If such petitions are encouraged, there will be no finality to any license or permission granted by the Government, especially when there is no complaint of any *malafides*, favoritism or nepotism. In view of the above, the orders of the High Court dated 21.08.2020 and 08.09.2020 are set aside.

8. The Appellant shall be permitted to continue with the business activity of running the foreign liquor shop forthwith, subject to compliance of the terms of resettlement. It is needless to mention that in case of non-compliance, suitable action may be taken by the authorities. The Appellant could not run the foreign liquor shop due to the interim order passed by the High Court on 21.08.2020. The Writ Petition filed by the Petitioner being frivolous in nature is, therefore, dismissed with cost of Rs.1,00,000/- to be paid to the Appellant within a period of four weeks from today.

J.
NAGESWARA RAO]

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[L.

.....J.

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[HEMANT GUPTA]

.....J.

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[AJAY RASTOGI]

New Delhi,
October 26, 2020.