

Hamdard Dawakhana (Wakf), Delhi & Anr.

Vs

Union of India and Others

Civil Appeal No. 934 of 1964

(CJI P. B. Gajendragadkar, J. C. Shah, S. M. Sikri, R. S. Bachawat JJ)

23.11.1964

JUDGMENT

GAJENDRAGADKAR, C.J. –

The two appellants, the Hamdard Dawakhana (Wakf), Delhi, and its Mutawalli Haji Hakim Hameed, represent the Hamdard Dawakhana institution which was initially established in or about 1906 as a dawakhana and was subsequently declared and founded as a Wakf. Since its inception, the institution has been running dispensaries and clinics for the treatment of patients and has been manufacturing and supplying medicines and medicinal products according to Ayurvedic and Unani Systems of medicines. Appellant No. 1 also manufactures medicated syrups which contain some fruit juices for medicinal use and they are prepared according to a certain formula devised by it. "Sharbat Rooh Afza" which is a medicated syrup manufactured by appellant No. 1 is made of the following ingredients :-

"Kasni seeds, Khus, Pumpkin Juice, Water melon Juice, Chharila, Ripe grapes, Spinach, Nilofar, Sandal, Gul Gaozaban, Coriandar, Carrot, Mint, Kulfa, Keora, Rose, Citrus flower, Orange Juice, Pine-apple Juice, Water, Sugar".

The formula determining the ratio and proportion in which each one of the ingredients has to be used, has been evolved by appellant No. 1 as a result of various experiments spread over a long period. The manufacture of this Sharbat began in 1920. It is intended to be used for common ailments during hot season, particularly for ailments like loss of appetite, sun stroke, nausea, sleeplessness, etc. This Sharbat Rooh Afza is not a foodstuff, and cannot be regarded as an essential commodity under section 2 of the Essential Commodities Act, 1955 (No. 10 of 1955) (hereinafter called 'the Act'). In substance, this is the case as set out by the appellants in their petition.

Purporting to act under section 3 of the Act the Central Government made an Order called the Fruit Products Order, 1955 (hereinafter called 'the Fruit Order') under Notification No. S.R.O. 1052 dated May 3, 1955. Under clause 3 of the Order, respondent No. 4, the Central Fruit Products Advisory Committee, has been constituted. It appears that on the 22nd September, 1956, the Central Government purporting to act under section 3 of the Act, made certain amendments in the Fruit Order. The result of one of the amendments thus made was to direct that the minimum percentage of fruit juice in the final product of a fruit syrup as indicated in Part II of the Second Schedule to the Fruit Order should be raised from 10% to 25%. The change so made was notified to the appellants by respondent No. 2, the Marketing Development Officer, Fruit Products, Central Zone, Delhi, on January 29, 1957. As a result of this intimation, certain correspondence followed between the appellants and respondent No. 2. The appellants had urged in the course of this correspondence that

Sharbat Rooh Afza did not fall within the scope of the Act and the Fruit Order.

On March 25, 1957, respondent No. 3, the Agricultural Marketing Adviser to the Government of India, New Delhi, invited a representative of the appellants for discussions, and as a result of the said discussion, Mr. Sood, the Marketing Development Officer, Delhi, inspected the factory of the appellants and watched the process of manufacture of Sharbat Rooh Afza on April 29, 1957. Thereafter, on May 10, 1957, the appellants received a communication from Mr. Sood ordering the appellants to stop further manufacture and sale of Sharbat Rooh Afza forthwith on the ground that it did not contain the minimum percentage of fruit juice prescribed by the relevant clause of the Fruit Order. This communication mentioned the fact that the appellants had been specifically asked to prepare fruit syrups strictly in accordance with the specifications prescribed, but in utter disregard of the said instructions, the appellants had wilfully continued to contravene the provisions of the Fruit Order. That is why by virtue of the powers conferred on him by clause 13(f) of the Fruit Order, the present order was served on the appellants. It is this order which was challenged by the appellants by their writ petition filed before the Punjab High Court on the 18th May, 1957 (No. 258-D of 1957).

By their writ petition, the appellants prayed that the impugned order as well as the several orders passed preceding it, should be quashed and a writ of mandamus should be issued against the respondents restraining them from seeking to enforce the material provisions of the Fruit Order in respect of the appellants' product 'Sharbat Rooh Afza'. The appellants urged that the said Sharbat is not a foodstuff, but a medicinal product and as such, its production cannot be regulated under the provisions of section 3 of the Act. According to them, the said Sharbat was not an essential commodity, nor was it a fruit product' as defined by clause 2(d) of the fruit Order. They also urged that the impugned order was invalid, because it contravened the fundamental rights of the appellants under Art. 19(1)(f) & (g) of the Constitution; the Sharbat in question was in fact a medicinal product and as such, the impugned order was inconsistent with clause 16(i)(c) of the Fruit Order. It is on these grounds that the appellants sought relief by way of an appropriate writ or order quashing the impugned order issued against them on May 10, 1957. To this petition, the appellants impleaded the Union of India as respondent No. 1.

This petition was resisted by the respondents on several grounds. It was alleged that the Sharbat in question fell within the scope of the Act and the Fruit Order. The respondents referred to the fact that the Hamdard Dawakhana had duly applied and was granted a licence in 1955 as a manufacturer engaged in the business of manufacturing fruit products for sale. The Dawakhana is holding this licence since 1955. The bottles in which the Sharbat in question is sold by the appellants do not bear labels containing the words "for medicinal use only". It appears that the Dawakhana obtained a licence for the year 1952 under the Fruit Products Order 1948 for the manufacture of the Sharbat in question. On analysis, it was found that the said Sharbat did not contain fruit juice, though it was sold as fruit juice. The label on the bottle of the Sharbat depicts pictures of fruits. Under the said Order of 1948 the synthetic syrups containing no fruit juice were required to be clearly marked as 'synthetic' and to abstain from using labels with pictures of fruits. In 1954 when it was found that the Dawakhana did not get the licence renewed, the appellants were asked either to get their licence renewed or to get exemption by complying with the necessary conditions. When the appellants did not comply with these directions, some of the bottles of the Sharbat were detained in the market. That led to a writ petition filed by the appellants in 1954 (No. 11-D/1954) in the Punjab High Court. When the petition, however, came for final hearing, it was not pressed, and so, was dismissed on June 5, 1954. The Dawakhana then filed a suit for injunction, but the said suit became infructuous with the expiry of the Fruit Products Order, 1948 on January 25, 1955. The present Fruit Order

came into force on May 3, 1955; and the Dawakhana filed another suit for injunction, but pending the suit, the appellants applied for and obtained a licence under the Fruit Order and in consequence, the suit was withdrawn on October 18, 1955. Even after obtaining the licence, the requirements of the relevant provisions of the Fruit Order as to the minimum percentage of fruit juice were not complied with by the appellants; and that led to the impugned order. That is the background of the present writ petition.

In the present writ petition, the respondents urged that the Sharbat in question is not sold for medicinal purpose; it is manufactured by the appellants as a fruit product and sold as such. No exemption was claimed by the appellants under clause 16 of the Fruit Order. The Sharbat in question is foodstuff within the meaning of section 2 of the Act and it falls within the purview of the Fruit Order. The impugned order is not unconstitutional, because the restriction imposed by it is consistent with the relevant provisions of the Act and the Fruit Order, and the said provisions are perfectly valid, because they impose a reasonable restriction in the interest of general public.

This writ petition came on for final disposal before the Punjab High Court on January 13, 1964. The High Court has rejected the pleas raised by the appellants and dismissed their writ petition. The High Court has held that there was no substance in the appellants' grievance that the Fruit Order was invalid. In support of this conclusion, the High Court has relied upon a decision of this Court in *M/s. Amrit Banaspati Co., Ltd. v. The State of Uttar Pradesh* (Criminal Appeal No. 141 of 1959 decided on 30-11-1960.). The High Court negated the appellants' argument that the Sharbat in question was either prepared or sold as a medicinal product. In this connection the High Court has commented on the fact that the label borne by the bottles containing the Sharbat did not show that it was for medicinal use only as required by cl. 16(i)(c) of the Fruit Order. According to the High Court, clause 11 of the Fruit Order covered the case of the Sharbat prepared by the appellants, and so, the impugned order was justified. The High Court also found that there was no substance in the grievance made by the appellants that as a result of this impugned order, their registered trade-mark label had been affected.

The High Court then examined the question as to whether the provisions of the Fruit Order could be said to be invalid, and it held that the said provisions were perfectly valid inasmuch as the restrictions imposed by them were reasonable and in the interests of the general public. It is on these grounds that the High Court dismissed the appellants' petition.

Thereafter, the appellants applied for and obtained a certificate from the High Court to come to this Court in appeal. This certificate was granted on July 22, 1964. After the appeal was admitted in due course, the appellants moved this Court on October 26, 1964 for stay; in fact, during all the seven years that the writ petition was pending before the High Court, the appellants had obtained stay and they wanted the stay to continue pending the final disposal of this appeal. When we found that the writ petition had taken an unusually long time in the Punjab High Court, we directed that the stay should continue in favour of the appellants, but that the appeal should be heard on November 9, 1964. That is how the hearing of this appeal has been specially expedited.

Before we deal with the points which have been raised before us by Mr. Pathak, we would refer very briefly to the scheme and the relevant provisions of the Act and the Fruit Order. The Act was passed in 1955 for the purpose of controlling the production, supply and distribution of, and trade and commerce in, certain commodities in the interests of the general public. The commodities which were intended to be brought within the purview of the Act were essential commodities as defined by section 2(a) of the Act. Amongst them are included foodstuffs, including edible oilseeds

and oils covered by section 2(a)(v), and any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of entry 33 in List III of the Seventh Schedule to the Constitution; this is included in the definition by section 2(a)(xi). Section 3(1) provides that if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Sub-section (2) by clauses (a) to (h) provides for different categories of orders which may be passed by the Central Government without prejudice to the generality of the powers conferred on it by sub-section (1), It would thus be clear that the Act confers power on the Central Government to regulate the production, supply and distribution of essential commodities. This power is conferred in a very general and wide sense by section 3(1)., There can be little doubt that the power to regulate the production of an essential commodity will include the power to regulate the production of essential commodities which may operate either qualitatively or quantitatively. In other words, in regard to essential commodities, the Central Government is given the power to direct how certain essential commodities should be produced and in what quantity. This power, of course, can be exercised only if the condition precedent prescribed by section 3(1) is satisfied, and that is that the Central Government should be of opinion that it is necessary or expedient to regulate the production of any essential commodity for one of the purposes mentioned by it. This position cannot be, and is not, disputed before us. In fact in *M/s. Amrit Banaspati Co., Ltd. (Criminal Appeal No. 141 of 1959)* decided on 30-11-1960.) this Court whilst dealing with the provisions of the Vegetable Oil Products Control Order, 1947, issued under section 3(1) of the Act, has definitely ruled that a qualitative regulation in respect of the production of an essential commodity is permissible under section 3(1) of the Act.

That takes us to the Fruit Products Order which was issued by the Central Government on May 3, 1955, in exercise of the powers conferred on it by section 3 of the Act. Clause 2 of the Fruit Order defines 'fruit product'. Cl. 2(d)(i) takes in synthetic beverages, syrups and sharbats; cl. 2(d)(v) takes in squashes, crushes, cordials, barely water, barreled juice and ready-to-serve beverages or any other beverages containing fruit juices or fruit pulp. Clause 2(d)(xiv) takes in any other unspecified items relating to fruits or vegetables. Clause 2(j) defines "sharbat" as meaning any non-alcoholic sweetened beverage or syrup containing non-fruit juice or flavoured with non-fruit flavours, such as rose, khus, kewra, etc; and cl. 2(k) defines "synthetic beverage" as meaning any non-alcoholic beverage or syrups, other than aerated waters, containing no fruit juice but having an artificial flavour or colour resembling as fruit, Clause 7 of the Fruit Order prescribes that every manufacturer shall manufacture fruit products in conformity with the sanitary requirements and the appropriate standard of quality and composition specified in the Second Schedule to this Order; it adds that every other fruit and vegetable product not so specified shall be manufactured in accordance with the standard of quality and composition laid down in this behalf by the Licensing Officer.

That takes us to clause 11; it is necessary to read this clause fully :-

(1) Any beverage which does not contain at least 25 per centum of fruit juice in its composition shall not be described as a fruit syrup, fruit juice, squash or cordial or crush and shall be described as a synthetic syrup.

(2) Every synthetic syrup shall be clearly and conspicuously marked on the label as a 'SYNTHETIC' product, and no container containing such product shall have a label,

whether attached thereto or printed on the wrapper of such container or, otherwise, which may lead the consumer into believing that it is a fruit product. Neither the word 'FRUIT' shall be used in describing such a product, nor shall it be sold under the cover of a label, which carries the picture of any fruit. Aerated water containing no fruit juice or pulp shall not have a label which leads the consumer into believing that it is a fruit product.

Part II of the Second Schedule to the Fruit Order prescribes the specifications for fruit juice and other beverages. In regard to fruit syrup, it provides, inter alia, that the minimum percentage of fruit juice in the final product must be 25%. The respondents' contention is that since the Sharbat in question produced by the appellants does not comply with this specification, it contravenes the mandatory provision of cl. 11(1). Part IV of the Second Schedule prescribes the specifications for synthetic syrups and sharbats. Under this Part, there is no requirement as to any minimum of fruit juice in the said syrups and sharbats.

Clause 16 of the Fruit Order provides for cases to which the Order does not apply, Clause 16(i)(c) provides that nothing in this Order shall be deemed to apply to any syrups which are sold in bottles bearing a label containing the words "For medicinal use only" which does not exhibit any picture of fruits. It is common ground that the appellants do not sell the Sharbat in question in bottles bearing a label containing the words "For medicinal use only" and so, cl. 16(i)(c) does not apply and the appellants can claim no exemption on that account.

Mr. Pathak no doubt attempted to argue that the Sharbat in question is not an essential commodity and as such, it does not fall within the purview of the Act or within the purview of the Fruit Order. It appears that this plea was not urged by the appellants before the Punjab High Court. It was argued by them before the High Court that the Sharbat in question was a medicinal product; and that point had been considered and rejected by the High Court; and so, it has assumed that the Sharbat in question is an essential commodity within the meaning of section 2 of the Act; that question cannot now be allowed to be argued for the first time before this Court.

Mr. Pathak wanted to suggest that the Sharbat in question is not a fruit product and as such, is outside the purview of the Fruit Order. We are not impressed by this argument. We have already referred to cl. 2(d)(v) of the Fruit Order which refers to several beverages, and the residuary part of this clause takes in any other beverages containing fruit juices or fruit pulp. The suggestion that this clause should be read ejusdem generis with the previous categories of beverages cannot obviously be accepted because an examination of the said beverages will disclose the fact that there is no genus by reference to which the rule of ejusdem generis can be properly invoked. Besides, the context of the clause clearly suggests that it is intended to take in all beverages other than those earlier specified, provided they contain fruit juices or fruit pulp. Therefore, we feel no difficulty in holding that the Sharbat in question falls within the purview of cl. 2(d)(v) of the Fruit Order and as such, its production can be controlled by its relevant provisions.

Then it is urged by Mr. Pathak that the Fruit Order itself is invalid, because it does not purport to say that before it was issued, the Central Government had formed the opinion that it was necessary or expedient to issue the Order for maintaining or increasing supplies of the commodity in question. Mr. Pathak contends, and rightly, that the condition prescribed by the first part of section 3(1) of the Act is a condition precedent and it is only when and after the said condition is satisfied that the power to issue a regulatory order can be exercised by the Central Government. This contention again cannot be allowed to be raised for the first time in appeal, because if it had been raised before

the High Court, the respondents would have had a chance to meet it. It is true, as Mr. Pathak contends, that in the absence of any specific averment made by the Fruit Order that the Central Government had formed the necessary opinion, no presumption can be drawn that such opinion had been formed at the relevant time; but it would have been open to the respondents to prove that such an opinion had been formed at the relevant time; and it cannot be suggested that the failure to mention that fact expressly in the Fruit Order itself would preclude the respondents from proving the said fact independently. That is why we think Mr. Pathak cannot be permitted to urge this contention at this stage.

Mr. Pathak, has, however, strenuously argued before us that the Fruit Order is invalid, because its relevant provisions indicate that it is in Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954). In support of this argument, Mr. Pathak has relied on the fact that Act 37 of 1954 is relateable to the legislative power conferred by Entry 18 in List III of the Seventh Schedule to the Constitution which refers to adulteration of foodstuffs and other goods; and so, the material provisions of the Fruit Order which really prevent the adulteration of fruit products could be legitimately enacted under this Act. On the other hand, the Essential Commodities Act, 1955 is relateable to Entry 33 in List III and the Fruit Order issued under it would, therefore, be inappropriate, having regard to the object which this Order is intended to achieve. He argues that the two powers are distinct and separate, and the Fruit Order with which we are concerned, cannot be said properly to have been issued under the Act. It is true that the Prevention of Food Adulteration Act does deal with the problem of preventing adulteration of food; but it is not easy to accept Mr. Pathak's assumption that the regulatory Order of the kind with which we are concerned which imposes regulations of a qualitative character in the production of essential goods, could have been issued under this Act. But quite apart from this consideration if section 3(1) of the Act authorises the Central Government to regulate the qualitative and quantitative production of essential commodities, it is idle to contend that the regulations imposed by the Fruit Order in respect of fruit products are outside the purview of section 3(1). The pith and substance of the relevant provisions of the Fruit Order clearly is to regulate the qualitative production of fruit products covered by it. This object is illustrated by the specification with which we are concerned. Part II of the Second Schedule to the Fruit Order which has imposed the obligation on the manufacturers of fruit syrups to include at least 25% of fruit juice in the final product of the fruit syrup produced by them, shows that by virtue of its powers under section 3(1) of the Act, the Central Government thought it necessary to require that a particular quality of fruit syrup should be put on the market as fruit syrup and no other. This object plainly falls within the purview of section 3(1), and so, the contention that the Fruit Order is invalid inasmuch as it purports to tackle the problem of adulteration of fruit product, cannot be accepted.

Then Mr. Pathak suggested that there was some inconsistency between the definition of 'synthetic beverage' prescribed by cl. 2(k) and the provisions of cl. 11(2) of the Fruit Order. We have already read cl. 11. The effect of cl. 11(1) is that if any beverage does not contain at least 25 per cent. of fruit juice, it shall not be described, inter alia, as 'fruit syrup', but shall be described as a 'synthetic syrup', and sub-cl. (2) of cl. 11 therefore provides that if any syrup that has to be described as a 'synthetic syrup' by virtue of the provisions of sub-cl. (1) is put on the market, it would be necessary to describe it as a 'Synthetic' product clearly and conspicuously. It is with the object of bringing it to the notice of the customers at large that the synthetic product does not contain the minimum fruit juice prescribed by the Fruit Order that sub-cl. (2) imposes an obligation that whoever puts the synthetic product in the market shall mark it with a label "Synthetic" and no attempt would be made to describe the product as though it was a fruit product. That is why a specific provision is made by sub-cl. (2) that neither the word "Fruit" shall be used in describing such a product, nor will it bear a

label which carries the picture of any fruit. From this provision aerated waters are exempted, because it was thought that no customer would ever mistake aerated water for fruit juice. Now, if we bear in mind this scheme of clause 11, it is difficult to see where the inconsistency lies between cl. 11 and the definition of a 'synthetic beverage' as prescribed by cl. 2(k). The definition of synthetic beverage indicates that it is a beverage which contains no fruit juice, and clause 11 which contains a positive provision that beverages containing less than 25 per cent. fruit juice should be shown as a 'synthetic' product. The definition of 'synthetic beverage' cannot be said to conflict with the requirement that the products falling under cl., 11(2) should be sold as 'synthetic' products. Besides, clause 11 contains a positive provision and the validity of the mandatory requirements of cl. 11 cannot be said to be impaired by any alleged inconsistency between the said provision and the definition of 'synthetic beverage' prescribed by cl. 2(k) of the Fruit Order.

The last contention which Mr. Pathak urged before us is that the impugned order is invalid, because it affects the appellants' trade mark right. It is not easy to appreciate this argument. We have already held that the Act and the Fruit Order issued by the Central Government by virtue of its powers conferred by section 3(1) of the Act are valid. If that be so, the impugned order which is fully justified by the provisions of the Act and the Fruit Order cannot be challenged as being invalid. The conclusion that the Act and Fruit Order issued under it are constitutionally valid proceeds on the basis that the restrictions imposed by them are reasonable and in the interests of general public. What the impugned order purports to do is to require the appellants to comply with the reasonable restrictions imposed by the Fruit Order. The fact that incidentally compliance with Fruit Order may tend to affect their trade-mark right cannot, in our opinion, render the impugned order invalid. In this connection, it is necessary to bear in mind that appellant No. 1 would not be justified in contending that the registered trade-mark which is usually intended to distinguish one manufactured article from another can be used by it even though it is likely to mislead the customers, or its use would mean a breach of some other law. Besides, it is significant that the impugned order does not really compel the appellants to change their trade-mark. If the appellants desire that the sharbat in question should be put on the market without complying with the requirements of clause 11(1), all that they to do is to comply with cl. 11(2) of the Fruit Order. In the process of complying with cl. 11(2), if their trade-mark right is likely to be affected, that would not render the impugned order invalid, because the restriction which is sought to be enforced against them is found to be reasonable and in the interests of the general public. Besides, we would like to add that if the appellants wanted to urge this point seriously, they should have placed before the Court more material in respect of their alleged trade-mark right. The appellants had alleged in their writ petition that they are putting the Sharbat on the market as a medicinal product. In that case, they may claim exemption by complying with cl. 16(i)(c) of the Fruit Order. We are, therefore satisfied that the Punjab High Court was right in holding that no case had been made out by the appellants for quashing the impugned order.

Before we part with this appeal, we would like to refer to one unfortunate aspect of the present proceedings. We have already indicated that the present writ petition was filed by the appellants in the Punjab High Court on May 18, 1957, and it was finally decided on January 13, 1964. It is very much to be regretted that the final disposal of this writ petition should have been taken such an unusually long period. The appellants have been agitating this matter since 1957 and as a result of the long duration of the present writ petition in the High Court, they have had the benefit of the stay order all this time, though ultimately it was found that there was no substance in the petition. It is hardly necessary to add that writ petitions in which orders of stay and injunction are passed, should be decided as expeditiously as possible. That is why when it came to the notice of this Court that this writ petition has taken an unusually long period in the High Court, we directed that it should be

set down for hearing within a fortnight after it was brought to us on a notice of motion for stay.

The result is, the appeal fails and is dismissed with costs.

Appeal dismissed.

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