

M/s. Indian Chemical & Pharmaceutical Works

Vs

State of Andhra Pradesh & Others

Civil Appeal No. 649 of 1964

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

07.10.1965

JUDGMENT

WANCHOO, J. –

This is an appeal by special leave against the judgment of the Andhra Pradesh High Court. The appellant manufactures drugs in Hyderabad and among the drugs manufactured by it is chloral hydrate. In September 1962, the State of Andhra Pradesh issued rules called the Andhra Pradesh (Telangana Area) Chloral Hydrate (Chloral) Rules, 1962 with respect to manufacture, possession, sale, import, export and transport of chloral hydrate (hereinafter referred to as the Rules). We shall refer to the Rules in detail later; but in brief they provide that the manufacture of chloral hydrate shall take place only in accordance with the conditions of a licence granted by the Excise Commissioner and only on payment of excise duty of Rs. 500/- per annum. The Rules also provide for possession, import, export, sale and transport of chloral hydrate. In consequence of the issue of the Rules, the appellant was called upon to take out a licence and pay the necessary excise duty. The appellant refused to do so and in November 1962 filed a writ petition in the High Court challenging inter alia the validity of the Rules. It may be mentioned that the Rules were issued under the Andhra Pradesh (Telangana Area) Intoxicating Drugs Act, No. IV of 1333 Fasli, (hereinafter referred to as the 1333-F Act) as amended by the Hyderabad Opium and intoxicating Drugs (Amendment) Act, No. XXII of 1953.

The main contention of the appellant in the High Court was that the 1333-F Act had been repealed in toto on the introduction of the Dangerous Drugs Act, No. 2 of 1930 by the Opium and Revenue Laws (Extension of application) Act, No. 33 of 1950, and of the Drugs Act, No. 23 of 1940 by the Part B States (Laws) Act, No. III of 1951, and therefore there was no power in the Hyderabad legislature to amend it by Act 22 of 1953. In consequence there was no law in force on the basis of which the Rules could be promulgated in 1962. Secondly, it was contended that even if the 1333-F Act did not stand repealed as above, the Rules framed by the State of Andhra Pradesh in 1962 with respect to chloral hydrate were not within the powers conferred by the 1333-F Act as amended in 1953, as chloral hydrate was not a narcotic or narcotic drug and was not covered by item 51 and List II of the Seventh Schedule to the Constitution.

The petition was opposed on behalf of the State, and it contended that there was no repeal of the 1333-F Act by the introduction of the Dangerous Drugs Act 1930 and the Drugs Act, 1940, and consequently the amendment of the 1333-F Act by the Hyderabad Act No. 22 of 1953 was good, and the 1333-F Act as amended was in force in 1962 when the Rules were framed. It was further contended that the Rules were intra vires the 1333-F Act as amended in 1953 as chloral hydrate was a narcotic and an intoxicating drug.

The High Court repelled the contentions raised on behalf of the appellant and dismissed the writ petition. The appellant then applied for a certificate for leave to appeal to this Court, which was refused. It then obtained special leave from this Court; and that is how the matter has come before us.

Before we consider the points raised in the High Court which have also been before us, we should like to refer to certain provisions in the three legislative Lists in the Seventh Schedule to the Constitution dealing with various aspects that arise in this case. The first of these provisions is item 59, List I, which deals with "cultivation, manufacture, and sale for export, of opium". Then there are two items in List II, item 8 which deals with "intoxicating liquors, that is to say, the production, manufacture, possession, transport and sale of intoxicating liquors" and item 51 which deals with "duties of excise on the following goods manufactured or produced in the State..... :- (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in subparagraph (b) of this entry". Lastly reference may be made to item 19 of List III, which deals with "drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium".

It will be seen from a perusal of these entries that a substance may fall in a number of them. For example, opium falls under item 59 of List I for certain purposes mentioned therein but also falls in item 51 of List II for the purpose of duties of excise thereon and for such control as may be required for the purpose of collecting the duties of excise. Thus for the purpose of cultivation and manufacture opium is exclusively a Union subject but for the purpose of duties of excise it is an exclusive State subject. Take another substance like chloral hydrate with we are concerned in the present appeal. It is undoubtedly a drug and therefore falls under item 19 of List III. Drugs being in the Concurrent List both the Union and the State can thereon. There are two Central Acts which deals with drugs, namely, the Dangerous Drugs Act 1930 and the Drugs Act, 1940. Now a substance may fall under the Dangerous Drugs Act it is so defined there. It may also fall under the Drugs Act and may be subject to its provisions if so indicated therein. But at the same time a substance which is a drug may also fall under item 51 of List II if it is a narcotic or is a narcotic drug. Even intoxicating liquor which falls under entry 8 of List II as well as under entry 51 of List II may fall under entry 19 of List if it is a drug. This will show that even if a substance is governed by the Dangerous Drugs Act and the Drugs Act it may well be liable to duties of excise under entry 51 of List II and such control as is incidental thereto. It is in this background that we have to consider the points raised on behalf of the appellant.

We now come to the first point raised on behalf of the appellant, namely, whether the 1333-F Act survived the introduction of the Dangerous Drugs Act and the Drugs Act in the State of Hyderabad. The 1333-F Act was in force in Hyderabad State as it was before the Constitution from 1924. At that time the State of Hyderabad was a sovereign State and had full power to deal with all subjects now contained in Lists I, II and III of the Seventh Schedule to the Constitution subject of course to British paramountcy and effect thereof on the sovereignty of the Hyderabad State. The 1333-F Act dealt with opium and intoxicating drugs. Intoxicating drugs were defined in this Act as meaning "ganja, bhang, charas, cocaine and all such things which are prepared therefrom and will also include such intoxicating substances which the Government may, by gazette notification, include in it, (s. 2)". This definition shows that besides the four substances mentioned therein, intoxicating drugs could include other substances if a notification was issued by the Government in that behalf. We do not know as a fact whether any notification was issued after 1924 and before the Constitution came into force under this provision. But in any case the 1333-F Act applied not only to the four substances mentioned therein but also to others which might be notified. The 1333-F Act further

provided that "save as authorised under this Act or rules thereunder, no person shall possess.... sell, manufacture, opium or intoxicating drug, (s. 4)". The Government was also given the power to make rules regarding administration and supervision, grant of licences and collection of duties of excise, (s. 5)". The 1333-F Act also provided for punishment for the for the contravention of the Act and the Rules and for confiscation under certain circumstances, (ss. 7 to 11). It gave powers to excise officers for search of houses and arrest of accused persons, (s. 16). It also provided for other powers for such officers (s. 17). There were other provisions therein to which it is unnecessary to refer. It will be seen from this brief analysis of the 1333-F Act that it was in the nature of an excise Act and provided for licences and collection of duties of excise and made provisions incidental thereto. We have already said that Act applied not only to opium and the four intoxicating drugs mentioned therein but also to other substances which might be notified thereunder. It continued in force in the Part B State of Hyderabad after the Constitution came into force in January 1950.

In 1950, Parliament applied the Opium Act (No. 13 of 1857), the Opium Act (1 of 1878) and the Dangerous Drugs Act (No. 2 of 1930) to the Part B State of Hyderabad by Central Act 33 of 1950. Section 4 of this Act inter alia provided that if immediately before the commencement of this Act there was in force in any Part B State, other than Jammu and Kashmir, any law corresponding to any of the Acts specified therein, that law would upon the commencement of this Act, stand repealed.

The Dangerous Drugs Act deals with coca-leaf, coca derivative, hemp including bhang, siddhi, ganja, charas, medicinal hemp, opium and opium derivative. It also gave power to Central Government to notify any narcotic substance as a manufactured drug under certain circumstances. The Dangerous Drugs Act thus deals, among others, with coca-leaf, hemp, opium and all manufactured drugs therefrom, though there is power in the Central Government to notify other substances. The Act further provides for prohibition and control of these drugs. Further s. 39(1) lays down that "nothing in this Act or in the rules thereunder shall affect the validity of any Provincial Act of any State Legislature for the time being in force, or of any rule made thereunder, which imposes any restriction not imposed by or under this Act, or imposes a restriction greater in degree than a corresponding restriction imposed by or under this Act, on the consumption of or traffic in any dangerous drug within India". It will be seen that the Dangerous Drugs Act provides for prohibition or control, creates offences, provides for penalties and lays down procedure in that behalf. It is not an Act imposing duties of excise. Therefore, when this Act deals with hemp, which includes ganja, bhang and charas, it does not deal with that aspect of hemp which is concerned with the imposition and collection of duties of excise on it and with incidental provisions in that behalf. We have already said that a substance can come both under the Dangerous Drugs Act as well as under the Drugs Act may also be liable to duties of excise under entry 51 of List II of the Seventh Schedule. The fact that hemp is defined as a dangerous drug under this Act would not therefore in any way affect any law dealing with the imposition and collection of duties of excise on hemp. Consequently when the Dangerous Drugs Act was introduced in the Part B State of Hyderabad in 1950, it could not affect that part of the 1333-F Act which dealt with ganja, bhang and charas, as intoxicating drugs and provided for grant of licences and collection of duties of excise thereon. Similarly, with the introduction of the Dangerous Drugs Act, the operation of the 1333-F Act could not be affected with respect even to opium insofar as that Act dealt with grant of licence and collection of duties of excise thereon, though insofar as it dealt with manufacture of opium which comes under entry 59 of List I, there was a repeal of the provisions relating to manufacture contained in the 1333-F Act and the Rules. We are therefore of opinion that the introduction of the Dangerous Drugs Act in the Part B State of Hyderabad in 1950 did not result in complete effacement of the 1333-F Act. It remained alive even so far as opium, charas, bhang and ganja were

concerned for the purpose of collection of duties of excise thereon. It also remained alive with respect to other substances which might be notified as intoxicating drugs under the 1333-F Act. If there was any such notification between 1924 and 1950 that notification would remain valid and the 1333-F Act would apply to it. If there was no such notification, the 1333-F Act would remain on the statute book as a conditional statute under which a notification in respect of any substance could be issued. The argument that the introduction of the Dangerous Drug Act in 1950 completely repealed the 1333-F Act has no force and must fail.

Then we come to the Drugs Act of 1940 which was extended to the Part B State of Hyderabad by the Central Act III of 1951. Section 6 of the 1951-Act provides that "if immediately before the appointed day, there is in force in any Part B State any law corresponding to any of the Acts or Ordinances now extended to that State, that law shall, save as otherwise expressly provided in this Act, stand repealed". It is not in dispute that chloral hydrate was controlled under the Drugs Act, and the argument on behalf of the appellant is that on the coming into force of the Drugs Act, the 1333-F Act so far as it applied to intoxicating drugs which could be notified thereunder, must be deemed to have been repealed. We are of opinion that there is no force in this argument either. The Drugs Act is mainly concerned with standard and quality of drugs manufactured in this country and therefore controls the manufacture, sale and distribution of drugs. It has nothing to do with duties of excise and with their imposition on narcotics and narcotic drugs. We have already indicated that narcotics and narcotic drugs are to be found in entry 51 of List II, which provides for imposition of duties of excise on such drugs. If a substance is a narcotic drug, it is liable to be controlled under the Drugs Act as a drug. But at the same time it is liable to duties of excise under entry 51 of List II, and such duties can be imposed only by the State legislature. Further the State legislature will have power to enact necessary provisions for the imposition and collection of duties of excise and for all incidental matters which might be necessary for such imposition and collection. The fact that the Drugs Act was introduced in the Part B State of Hyderabad in 1951 would not therefore affect in any way that Part of the 1333-F Act which dealt with collection of duties of excise and provided for licences in that connection. As we have said before, the 1333-F Act is more in the nature of an excise Act while the Drugs Act has nothing to do with the collection of duties of excise. Further s. 2 of the Drugs Act specifically provides that "the provisions of this Act shall be in addition to, and not in derogation of, the Dangerous Drugs Act, 1930, and any other law for the time being in force." Therefore even if s. 6 of the Central Act III of 1951 can be said to have repealed any provision of the 1333-F Act which is concerned with matters other than collection of duties of excise thereunder, that will not affect the later amendment made in the 1333-F Act by the Hyderabad Act No. 22 of 1953, for that amendment will be treated in addition to the provisions of the Drugs Act so long as the 1333-F Act was not completely dead before the Hyderabad Act No. 22 of 1953 was passed. We have already said when dealing with the Dangerous Drugs Act that the introduction of that Act could not be said to have completely repealed the 1333-F Act which dealt with matters not covered by the Dangerous Drugs Act at all, (namely, collection of duties of excise of matters incidental thereto). The same in our opinion applies to the Drugs Act which did not deal at all with the collection of duties of excise on drugs covered by it. Therefore the 1333-F Act insofar as it deals with the collection of duties of excise on any drugs which are narcotics or narcotic drugs would remain alive to that extent. There can be no doubt therefore that the 1333-F Act continued in existence so far as it dealt with collection of duties of excise on substances covered by it and it could therefore be amended by Hyderabad Act No. 22 of 1953.

This brings us to the second point raised in the present appeal, namely, that even if the 1333-F Act had not been completely repealed by the introduction of the Dangerous Drugs Act and the Drugs Act and could be properly amended by the Hyderabad Act of 1953, the Rules were not within the

power conferred by the Act. For that purpose we have to look at the 1333-F Act as it stands after the amendment of 1953. The amended Act defines "intoxicating drugs" to mean (i) Indian hemp including all forms known as bhang, sendhi or ganja, (ii) charas, (iii) any mixture of the above or any drink prepared therefrom, and (iv) any other intoxicating and narcotic substance which the Government may by notification declare to be an intoxicating drug, such substance not being opium, coca leaf or a manufactured drug as defined in s. 2 of the Dangerous Drugs Act. The amended Act is also clearly an excise Act as will be clear from the definition of "intoxicating drugs revenue" in s. 2(2) which means revenue from any duty, fee, tax, fine or confiscation imposed or ordered under the provisions of this Act. It was therefore open to the State Government to declare by notification any substance as an intoxicating drug within the meaning of the Act provided it was an intoxicating and narcotic substance, If such a declaration is made, the substance will be liable to excise duty under the amended Act and the Rules framed thereunder and will be liable to such incidental control as may necessary for the collection of duties. Further, drugs being in the Concurrent List, the provisions of the 1953 amendment Act will also be a law under item 19 of List III and will be in addition to the Drugs Act of 1940 by virtue of s. 2 thereof. Now it appears that chloral hydrate has been notified by the Government of Andhra Pradesh as an intoxicating drug within the meaning of the amended Act. It was thereafter that the Rules were framed. The Rules provide for the manufacture of chloral hydrate under a licence and for payment of duties of excise of Rs. 500 per year on such manufacture. They also provide for possession, sale, import, export and transport. If chloral hydrate is a narcotic drug or a narcotic within the meaning of entry 51 of List II of the Seventh Schedule and is an intoxicating drug and narcotic substance within the meaning of s. 2(1)(iv) of the Amended Act, it could be notified under the amended Act and on such notification it would be liable to excise duty and to such incidental control as may be necessary for the purpose of collection of excise duty. We are in the present case mainly concerned with the grant of licence and imposition of excise duty of Rs. 500/- per annum. If chloral hydrate is an intoxicating and narcotic sub-stance, the Rules could be framed with respect to its control and the appellant could be asked to take out a licence and pay excise duty on the manufacture thereof, even though chloral hydrate may be a drug which is controlled under the Drug Act.

The case of the State Government in this connection is that chloral hydrate is a narcotic drug or a narcotic within the meaning of entry 51 of List II of the Seventh Schedule. Its further case is that it increases intoxication if mixed with liquor and that it is being produced in large quantities in order that it may be mixed with liquor. That is the reason why the State has framed the Rules to control the production of chloral hydrate. The appellant in its writ petition admitted that chloral hydrate was used in small doses as a hypnotic and sedative. Now the dictionary meaning of the word "narcotic" is a substance which relieves pain, produces sleep, and in large doses brings on stupor, coma, and even death, as opium, hemlock, alcohol etc. Obviously, therefore, if chloral hydrate is hypnotic and sedative as admitted by the appellant, it would be a narcotic. The appellant however relies on the statement in the affidavit filed on behalf of the State of show that chloral hydrate is not a narcotic or a narcotic drug within the meaning of within the meaning of entry 51 of List II, for if it is not a narcotic drug within that meaning no duty of excise can be imposed by the State legislature thereon. The part of the affidavit on behalf of the State relied upon by the appellant was dealing with a vague allegation of the appellant that chloral hydrate was a medicinal preparation. In that connection it was submitted on behalf of the State that chloral hydrate was not a medicinal or toilet preparation coming within the definition of the Medicinal and Toilet Preparations (Excise Duties) Act, 16 of 1955 "as this substance in a finished form does not contain either alcohol, opium, Indian hemp or other narcotic drug or narcotics". These last words were taken from the schedule to the Act of 1955 which mentions any medicinal preparation not containing alcohol but containing opium, Indian

hemp or other narcotic drug or narcotic. In the 1955-Act narcotic drug or narcotic has been defined as meaning a substance (other than alcohol) which when swallowed or inhaled by, or injected into, a human being induces drowsiness, sleep, stupefaction or insensibility in the human being and which is a dangerous drug within the meaning of the Dangerous Drug Act 1930. Obviously, therefore, the words "narcotic drug" and "narcotic" used in the 1955-Act have a special meaning and this was all that was intended when in the affidavit filed by the State these words were used. But all narcotics or narcotic drugs are not covered by the Dangerous Drug Act and there can be narcotics and narcotic drug which are not covered by the Dangerous Drugs Act. There can be no other conclusion on the evidence in the present case than that chloral hydrate is a narcotic or a narcotic drug within the meaning of entry 51 of List II of the Seventh Schedule. It also has intoxicating effect when mixed with liquor and so is an intoxicating drug within the meaning of the amended Act.

The appellant also relies on the Medicinal and Toilet Preparations (Excise Duties) Act No. 16 of 1955, in this Court. It is true that the appellant stated in its writ petition that it was holding a licence under the 1955-Act; but there was no clear averment in the petition that chloral hydrate was being manufactured as a medicinal preparation under the 1955-Act. The licence which has been produced shows that chloral hydrate is being manufactured under the Drugs Act and the rules framed thereunder. Further the judgment of the High Court shows that no argument was raised before it to the effect that chloral hydrate was a medicinal preparation under the 1955-Act. In the circumstances we are not prepared to allow the appellant to raise this point for the first time before us, even though there was some kind of denial on this point by the State Government in its affidavit to which we have already referred.

In the result the appeal fails and is hereby dismissed with costs.

Appeal dismissed.

</html