

M/S. Dabur India Ltd. and Another

Vs

State of U. P. and Others

Civil Appeal Nos. 121-22 of 1987 with Writ Petition No. 1659 of 1986

(B. C. Ray, K. Jagannatha Shetty JJ)

09.12.1987

JUDGMENT

JAGANNATHA SHETTY, J. –

1. The questions raised in these matters relate to the power of the State Government to regulate the transport, possession and consumption of Mirta Sanjiwani Sura and other like Ayurvedic preparations under the U.P. Excise Act, 1910. Appellant 1 is the manufacturer of Ayurvedic preparations and appellant 2 is the wholesale dealer of such preparations. The latter is carrying on his business in Almora, one of the districts of U.P. where prohibition has been introduced by the State Government.

2. On September 14, 1978 the State Government issued a notification under Section 75 of the U.P. Excise Act removing exemption of U.P. Excise Act to its applicability to Mirta Sanjiwani Sura and other preparations. On the same day, another notification was issued under Section 4(1) of the said Act declaring Mirta Sanjiwani Sura and other preparations to be 'liquor' for the purposes of transport, possession and sale within the meaning of the said Act. Again a third notification was issued under Section 40(3) of the Act publishing the rules called the U.P. Transport and Possession of Notified Restricted Spirituous Preparations (Prevention of Misuse) rules, 1978. The Excise Commissioner, U.P. in exercise of the powers under Section 41 issued a notification dated September 14, 1978 making the rules regulating the sale of the medicinal or toilet preparations containing alcohol which is capable of being misused as ordinary alcoholic beverages. The Excise Commissioner also issued a notification fixing the limit of possession of Mirta Sanjiwani Sura for consumption.

3. The validity of these notifications has been challenged by the petitioner in the writ petition before the High Court of Allahabad. The High Court has dismissed the writ petition. The appeal has been preferred against the judgment of the High Court. The connected writ petition under Article 32 of the Constitution has been filed by the dealers of the Ayurvedic medicines for the same relief.

4. It has been urged among others, that the question raised in these matters is completely covered by a decision of the Supreme Court in State of Bombay v. F. N. Balsara ((1951) SCR 682 : AIR 1951 SC 318). This decision was by a Bench of five judges. In that case certain provisions of the Bombay Prohibition Act (25 of 1949) and in particular Sections 12(c), 12(d) and 13 (b) came up for consideration along with the restrictions imposed by certain notifications issued under the Bombay Prohibition Act in regard to sale, possession, consumption or use of medicinal and toilet preparations containing alcohol. This Court after examining the scope and effect of the enactment observed : (Per Fazal Ali, J.)

I consider that the Act is not a law imposing reasonable restrictions so far as medicinal and toilet preparations containing alcohol are concerned. The National Prohibition Act or the Volstead Act of America, to which I have referred, was also an Act relating to prohibition; but toilet and medicinal preparations containing alcohol were expressly excluded from the scope of that Act. I refer to that Act simply to show that a complete scheme of prohibition can be worked without including such articles among those prohibited. Again, Article 47 of the Constitution also takes note of the fact that medicinal preparations should be excluded in the enforcement of prohibition. I do not consider that it is reasonable that the possession, sale, purchase, consumption or use of medicinal and toilet preparations should be prohibited merely because there is a mere possibility of their being misused by some perverted addicts.

This Court was of the view that the restrictions sought to be imposed by the enactment were not reasonable. So stating this Court declared the provisions of Section 12(c), 12(d) and 13(b) and other provisions to be invalid so far as they affect the possession, selling or buying or consumption or use of medicinal and toilet preparations containing alcohol.

5. The decision in *Balsara case* ((1951) SCR 682 : AIR 1951 SC 318) proceeds on the basis that it would be open to the legislature to provide against the abuse of the medicinal preparations in the interest of the general public, but not open to it to regulate the legitimate use. The judgment also proceeds on the basis that Article 47 of the Constitution takes note of the fact that medicinal preparations should be excluded in the enforcement of prohibition.

6. With respect, we are unable to subscribe to this view taken in *Balsara case* ((1951) SCR 682 : AIR 1951 SC 318). We do not think that the State should wait till a person misuses the medicinal preparations containing alcohol for his intoxication. We do not think that the State could deal only with the perverted addicts and not preventing persons from becoming addicts by the misuse of medicinal preparations containing alcohol as ordinary alcoholic beverages. Article 47 of the Constitution provides as follows :

47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Article 47, in our opinion, does not indicate that medicinal preparations containing alcohol should be excluded in the enforcement of prohibition, even though the medicinal preparations contain high percentage of alcohol. Article 47 uses the words prohibition of the consumption "except for medicinal purposes". It seems to suggest that the user of liquor for making medicinal preparations only even otherwise, the expression 'medicinal purposes' contained in that article has to be construed in the light of the directive principles of State policy of bringing about prohibition of intoxicating drinks and of drugs which are injurious to health. The medicinal preparations with which we are concerned contain about 24 per cent of alcohol. Anybody can consume it as a liquor for being intoxicated. For the effectiveness of prohibition, the State, in our opinion, must be held to have the power to regulate the possession or consumption of such medicinal preparations containing comparatively high percentage of alcohol under the Excise Act. A construction to the contrary would defeat the very object of the prohibition and at any rate, not warranted by Article 47 of the Constitution.

7. We, therefore, refer these cases to a Constitution Bench for disposal. Let the papers be placed before the Hon'ble Chief Justice for necessary orders.

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