

Government of Andhra Pradesh

Vs

M/s Anabeshahi Wine and Distilleries Pvt. Ltd.

Civil Appeal No. 12 (N) of 1973

(M.P. Thakkar, N.D. Ojha JJ)

16.02.1988

JUDGMENT

OJHA, J. –

1. This appeal on the basis of a certificate granted under Article 133(1)(c) of the Constitution of India has been filed by the Government of Andhra Pradesh against the judgment dated March 14, 1972 of the Andhra Pradesh High Court allowing Writ Petition No. 4312/71 filed by the respondent. The respondent obtained a distillery licence under the Andhra Pradesh Distillery Rules, 1970 (hereinafter referred to as 'the Rules') framed under the Andhra Pradesh Excise Act, 1968 (hereinafter referred to as 'the Act') and has been carrying on the business of manufacture and sale of wine and other allied products. The excise authorities posted one Inspector, on Sub- Inspector and four Constables at the respondent's factory premises and required the respondent to pay their salaries and allowances etc. in pursuance of Section 28 (2) of the Act. The respondent made representations to the excise authorities against the said demand and having failed to get any redress, filed the aforesaid writ petition challenging the demand on two grounds :

(1) By virtue of Entry 51 List 2 of the Seventh Schedule to the Constitution of India, no duty other than excise duty could be levied or collected under the Andhra Pradesh Excise Act. And since the impugned demand which was in the nature of establishment charges did not constitute excise duty, the respondent was not liable to pay the same.

(2) The said demand could not be justified even on the ground that it was a fee, as no services were rendered and there was no quid pro quo.

2. These contentions raised on behalf of the respondent found favour with the High Court which by the judgment appealed against allowed the respondent's writ petition and directed the issue of a writ restraining the Excise Department from either demanding or collecting the aforesaid establishment charges of the supervisory staff posted at the factory premises of the respondent.

3. It has been urged by the learned counsel for the appellant that the High Court committed an error in appreciating the true nature of the demand. According to learned counsel for the appellant, the demand was in the nature of price for parting with the privilege - which privilege exclusively vested with the government. Learned counsel for the respondent on the other hand supported the reasoning which commended itself to self to the High Court in allowing the writ petition.

4. Having considered the respective submissions made by learned counsel for the parties, we find

substance in the submission made by learned counsel for the appellant. It has not been disputed, and in our opinion rightly, by learned counsel for the respondent that the business which the respondent has been carrying could not have been carried on by it unless licence had been granted to it under the Act and the Rules. Section 17 of the Act as it stood at the relevant time contemplated grant for a fixed period at any place a lease jointly or severally for the supply, manufacture or sale of any intoxicant subject to such conditions as the government may deem fit to impose. Section 28 of the Act which deals with the form and conditions of licence etc. reads as under :

28. Form and conditions of licence etc. - (1) Every permit issued or licence granted under this Act shall be issued or granted on payment of such fees, for such period, subject to such restrictions and conditions, and shall be in such form and shall contain such particulars, as may be prescribed.

(2) The conditions prescribed under sub-section (1) may include provision of accommodation by the licensee to excise officers at the licensed premises on the payment of rent or other charges for such accommodation at or near the licensed premises and the payment of the costs, charges and expense (including the salaries and allowances of the excise officers) which the government may incur in connection with the supervision to ensure compliance with the provisions of this Act, the rules made thereunder and the licence.

Similar is the provision contained in Rule 15 of the Rules which for the sake of convenience is reproduced hereinbelow :

15(a) The licensee shall, if required by the Commissioner provide within the premises of the distillery or at such site as may be approved by the Commissioner buildings for the office and residence of the staff posted under Rule 14.

(b) The license shall, if required by the Commissioner, deposit into the Government Treasury such amount as may be demanded towards the salaries and allowances of the government establishment posted at the distillery, but he shall not make any direct payment to any member of such establishment.

5. The perusal of the aforesaid provisions of the Act and the Rules leaves no manner of doubt that it was open to the appellant to grant the exclusive privilege of manufacturing and selling wine etc. to the respondent only provided it was, apart from making any other payment, also willing to pay the salaries and allowances referred to in the aforesaid provisions which for the sake of convenience have been described as establishment charges, and which were sought to be recovered as such under the impugned notice of demand. The respondent-Company was not under any obligation to take the licence. It was open to it to have refrained from taking any licence under the Act the government for the grant of privilege to manufacture and sell intoxicants. The nature of the payment which a licensee such as the respondent is required to make to the State by reason of the State parting with the privilege in regard to manufacture sale etc. of intoxicants came up for consideration before a Constitution Bench of this Court in *Har Shankar v. Deputy Excise and Taxation Commissioner* [(1975) 3 SCR 254 : (1975) 1 SCC 737]. It was held that amounts charged to the licensees are neither in the nature of tax nor excise duty, but constituted the price or consideration which the government charges to the licensees for parting with its privileges and granting them to the licensees. In this connection, it was pointed out : (SCC pp. 758-59, paras 53 and 55)

In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court in Balsara case [State of Bombay v. F. N. Balsara, 1951 SCR 682 : AIR 1951 SC 318 : 52 Cri LJ 1361], Cooverjee case, [Cooverjee B. Bharucha v. Excise Commr., 1954 SCR 873 : AIR 1954 SC 220], Kidwai case [State of Assam v. A. N. Kidwai, 1957 SCR 295 : AIR 1957 SC 414] Nagendra Nath case [Nagendra Nath Bora v. Commr., 1958 SCR 1240 : AIR 1958 SC 398], Amar Chakraborty case [Amar Chandra Chakraborty v. Collector of Excise, (1972) 2 SCC 442] and the R.M.D.C. case [State of Bombay v. R. M. D. Chamarbaugwala, 1957 SCR 874 : AIR 1957 SC 699] as interpreted in Harinarayan Jaiswal case [State of Orissa v. Harinarayan Jaiswal, (1972) 2 SCC 36] and Nashirwar case [Nashirwar v. State of M.P., (1975) 1 SCC 29]. There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. In "American Jurisprudence", Volume 30 it is stated that while engaging liquor traffic is not inherently lawful, nevertheless it is a privilege and not a right, subject to governmental control (p, 538). This power of control is an incident of the society's right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people. Liquor traffic is a source of pauperism and crime (pp. 539, 540, 541).

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Since rights in regard to intoxicants belong to the State, it is open to the government to part with those rights for a consideration. By Article 298 of the Constitution, the executive power of the Constitution, the executive power of the State extends to the carrying on of any trade or business and to the making contracts for any purpose. As observed in Harinarayan Jaiswal case, [State of Orissa v. Harinarayan Jaiswal, [(1972) 2 SCC 36] (SCC p. 44, para 13)

if the Government is the exclusive owner of those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the government, nor can there be any infringement of Article 14, if the government tries to get the best available price for its valuable rights.

Section 27 of the Act recognises the right of the government to grant a lease of its right to manufacture, supply or sell intoxicants. Section 34 of the Act read with Section 59(d) empowers the Financial Commissioner to direct that a licence, permit or pass be granted under the Act on payment of such fees and subject to such restrictions and on such conditions as he may prescribe. In such a scheme, it is not of the essence whether the amount charged to the licensees is predetermined as in the appeals of Northern India Caterers and of Green Hotel or whether it is left to be determined by bids offered in actions held for granting those rights to licensees. The power of the government to charge a price for parting with its rights and not the mode of fixing that price is what constitutes the essence of the matter. Nor indeed does the label affixed to the price determine either the true nature of the charge levied by the government or its right to levy the same.

The principle of law enunciated in the case of Har Shankar [(1975) 3 SCR 254 : (1975) 1 SCC 737] was reiterated in State of Haryana v. Jage Ram [(1980) 3 SCR 746 : (1980) 4 SCC 599]. wherein

Chandrachud, C.J. speaking for the court said : (SCC p. 607, para 22)

The amount which the respondents agreed to pay to the State Government under the terms of the auction is neither a fee properly so called which would required the existence of a quid pro quo, nor indeed is the amount in the nature of excise duty, which by reason of the constitutional constraints has to be primarily a duty on the production or manufacture of goods produced or manufactured within the country. The respondents cannot therefore complain that they are being asked to pay "excise duty" or "still-head duty" on quota of liquor not taken, lifted or purchased by them. The respondents agreed to pay a certain sum under the terms of the auction and the rules only prescribe a convenient mode whereby their liability was spread over the entire year by splitting it up into fortnightly installments. The rules might as well have provided for payment of a lump sum and the very issuance of the licence could have been made to depend on the payment of such sum. If it could not be argued in that event the lump sum payment represented excise duty, it cannot be so argued in the present event merely because the quota for which the respondents gave their bid is required to be multiplied by a certain figure per proof litre and further because the respondents were given the facility of paying the amount by installments while lifting the quota from time to time. What the respondents agreed to pay was the price of a privilege which the State parted with in their favour. They cannot therefore avoid their liability by contending that the payment which they were called upon to make is truly in the nature of excise duty and that no such duty can be imposed on liquor not lifted or purchased by them.

6. The principles laid down in the aforementioned cases will, in our opinion, apply to the instant case also. The fact of the demand being with regard to establishment charges will make no difference. A predetermined amount equivalent to or even higher than the amount which is sought to be recovered by the appellant from the respondent calculated for the entire period of the licence could have been demand in a lump sum as price for parting with the privilege and it could not have been challenged by the respondent in view of the principle enunciated by this Court in the aforesaid case. Simply because the demand was spread over with a view to making it just and reasonable so as to represent the actual expenditure incurred by the government to maintain the requisite excise staff at the factory premises of the respondent as contemplated by the relevant provisions of the Act and the Rules, it would not become illegal and vulnerable.

7. In view of the foregoing discussion, we are of the opinion that the judgment appealed against rendered by the High Court cannot be sustained and deserves to be set aside. In the result, this appeal succeeds and is allowed. The judgment appealed against is set aside and the writ petition filed by the respondent is dismissed with costs throughout.

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