

Punjab Traders and Others

Vs

State of Punjab and Others

Civil Appeal No. 1372 of 1980

(K. N. Singh, Dr. T. K. Thommen, Kuldip Singh JJ)

18.09.1990

JUDGMENT

THOMMEN, J. -

1. This appeal by special leave arises from the judgment of the Punjab and Haryana High Court in Civil Writ Petition No. 1378 of 1973. The appellants in the writ petition challenged the constitutionality of the East Punjab Molasses (Control) Amendment Act, 1973 (hereinafter referred to as the "Amendment Act, 1973") on the ground that the said amendment had not received the previous sanction of the President of India in terms of Article 304(b) of the Constitution. The High Court dismissed the writ petition holding that the appellants were not shown to have been aggrieved by the impugned amendment.

2. The Amendment Act, 1973 amended the provisions of the East Punjab Molasses (Control) Act, 1948 (East Punjab Act 11 of 1948) (hereinafter referred to as the "Principal Act"), as it stood at the relevant time. The Principal Act had been earlier amended in 1950, 1957, 1964 and 1968. It was subsequently amended in 1976. The appellants have, however, challenged only the Amendment Act, 1973 and have significantly not challenged the earlier or subsequent amendments. Rejecting the appellants' contentions, the High Court observed :

"... We have very carefully gone through the petition and we have asked the learned counsel for the petitioners to point out any averment from the petition, to show that the petitioners were dealing with molasses which were not covered under the definition of molasses given in the unamended Act, but are covered within the definition of molasses under the Amending Act. No such averment has been made.... The grievance of the petitioners that they have been made subject to the provisions of the Act in view of the Amending Act, thus does not stand substantiated from the averment made in the petition...."

3. The appellants admitted before the High Court that, apart from the Principal Act, as enacted in 1948, being an 'existing law', and therefore beyond challenge, none of its provisions could be regarded as an unreasonable restriction on the freedom of trade, commerce and intercourse. The appellants, however, contended that the impugned provisions inserted in 1973 were null and void for the reason that the restrictions so introduced had not received the previous sanction of the President.

4. Section 2 of the Principal Act was amended in 1973 to define 'molasses' as well as 'khandsari unit'. By this amendment, a new definition of 'molasses' was substituted in the place of the original

definition (see clause (c)). Clause (f) of Section 2 was added to define a 'khandsari unit'.

5. Section 3 of the Principal Act empowered the Controller to "direct the owner or occupier of a sugar factory or any other person" to furnish returns of the stock of molasses in his possession. This section was amended in 1973 to bring a khandsari unit or distillery within the statutory ambit. Section 3(A) had been added in 1964 to empower the Controller to direct the owner or occupier of a sugar factory or distillery, or any other person permitted to store and preserve molasses, to construct tanks for the storage of molasses. This section was amended in 1973 to bring a khandsari unit within its ambit.

6. Section 4 of the Principal Act says that no person shall, without a permit issued by the Controller, move molasses by road, rail, river or by any other means or sell or otherwise dispose of molasses to any person other than the government or a person licensed by the government in this regard. It also authorises the Controller to direct the owner or occupier of a sugar factory to supply molasses of specified quantity and quality to such persons as the Controller may direct. This section was amended in 1964 to provide that no person shall store or preserve molasses without the Controller's permit. It was further amended in 1973 to bring a khandsari unit within the ambit of the Controller's power to direct supply of molasses.

7. Section 5 of the Principal Act empowers the government to regulate prices from time to time and prescribed the manner in which molasses has to be graded, marketed, packed or stored for sale. It was amended in 1976 in certain respects which are not material. Section 6 provides for the imposition of penalty in the event of contravention of any provision of the Act. The section was substituted in 1964 for the original section. It was amended in 1973 in certain respects. Section 7 of the Principal Act refers to liability for breaches by corporation or company. This section has not undergone any change. Section 8 of the Principal Act provided that no court should take cognizance of any offence punishable under the Act except on a report made by the Controller. This section was substituted in 1964 to provide for the exercise of supervision and control by the Controller over sugar factories through sub-ordinates. It was amended in 1973 by including a khandsari unit within its ambit. Section 9 of the Principal Act provided for power of entry and seizure. It was substituted in 1973 by a new section with certain changes which are immaterial. Section 10 of the Principal Act provided for the procedure of seizure. It was substituted by a new section in 1973, but the changes are not material. Section 11 deals with the delegation of powers. It has not undergone any change. Section 12 of the Principal Act deals with the power of the government to exempt any area or person from the provisions of the Act. This section was amended in 1973 to empower the government to exempt any kind of molasses from the provisions of the Act. Section 13 of the Principal Act deals with the rule making power of the government. It was amended in 1973 to include khandsari unit or distillery within the scope of the section. These are the changes made in the Principal Act.

8. The substantial change introduced by the Amendment Act, 1973 is in the substituted definition of 'molasses' so as to include within its meaning mother liquor produced in the final stage of manufacture of sugar or khandsari sugar.

9. The appellants being dealers in Khandsari molasses are stated to be aggrieved by the expanded definition of 'molasses'. 'Molasses' was defined under the unamended Section 2(c) of the Principal Act as follows :

"2. (c) 'Molasses' means the heavy, dark-coloured residual syrup drained away in the

final stage of the manufacture of sugar by vacuum pans or in open pans in sugar factories either from sugarcane or by refining gur; when such syrup has a density of not less than 75 degrees brix and a fermentable sugar content (expressed as reducing sugars) 19 per cent."

This definition was substituted by the Amendment Act, 1973 as follows :

"2. (c) 'Molasses' means the mother liquor produced in the final stage of manufacture of sugar or khandsari sugar, by vacuum pans or in open pans, from sugarcane or gur, with or without the aid of power."

The new definition of 'molasses' under the amended provision specifically refers to khandsari sugar, apart from sugar, while the unamended Section 2(c) referred only to sugar. Section 2(f), as introduced by the Amendment Act, 1973 defines 'khandsari unit' as follows :

"2. (f) 'Khandsari unit' means bay premises, including the land, godowns or outhouses appurtenant thereto, wherein, or in any part of which a manufacturing process connected with the production of khandsari sugar from sugarcane or gur in open pans is carried in with or without the aid of power."

The 'occupier of a khandsari unit' is defined as "a person who has control over the affairs of a khandsari unit". The definition of 'sugar factory' has not undergone any change, and it reads as follows :

"2. (d) 'sugar factory' means any premises, including the land, godowns or outhouses appurtenant thereto, whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process connected with the production of sugar by means of vacuum pans or in open pans is being carried on or is ordinarily so carried on, with the aid of power."

The main object of the Amendment Act, 1973 is to clarify that the Principal Act applies in equal measure to a khandsari unit as it does to any other sugar factory.

10. The contention is that the provisions of the Amendment Act, 1973, though not in themselves unreasonable restrictions, nevertheless bring the appellants under greater statutory control, and are, therefore, invalid for want of previous sanction of the President in terms of the proviso to Article 304(b). This challenge, as seen above, has been rejected by the High Court for the reason that the appellants' business has been in equal measure controlled by the Principal Act itself. The appellants being dealers in molasses, the new definition of the term "molasses", which includes "khandsari sugar", does not subject their business to any greater control.

11. The appellants' counsel, Mr G.L. Sanghi contends that the provisions of the Amendment Act, 1973 impose direct and immediate restrictions upon the appellants' trade. They are a burden on trade and they deter the appellants from trading. They directly affect the freedom of trade and commerce. They are not merely regulatory for the purpose of facilitating the free flow of trade and commerce. They are restrictions hampering trade. They may be justifiable as reasonable restrictions, but being restrictions unsupported by previous sanction of the President, they are nevertheless invalid.

12. Mr C.M. Nayar, appearing of the respondents, on the other hand, contends that the impugned

provisions of the Amendment Act, 1973 are regulatory measures enacted to facilitate trade and they do not come within the ban of the proviso to clause (b) of Article 304. These provisions do not require the previous sanction of the President in terms of the proviso to Article 304(b).

13. Counsel on both sides, in support of the respective contentions, refer to the principal stated by this Court in *Atiabari Tea Co. Ltd. v. State of Assam* ((1961) 1 SCR 809 : AIR 1961 SC 232); *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan* ((1963) 1 SCR 491 : AIR 1962 SC 1406); *State of Bihar v. Harihar Prasad Debuka* ((1989) 2 SCC 192 : 1989 SCC (Tax) 250) and other cases ((1) *State of Mysore v. H. Sanjeeviah*, (1967) 2 SCR 361 : AIR 1967 SC 1189

(2) *Hans Raj Bagrecha v. State of Bihar*, (1971) 1 SCC 59

(3) *Sodhi Transport Co. v. State of U.P.*, (1986) 2 SCC 486 : 1986 SCC (Tax) 410 : (1986) 1 SCR 939

(4) *Buxa Dooars Tea Co. Ltd. v. State of W.B.*, (1989) 3 SCC 211 : 1989 SCC (Tax) 394

(5) *Video Electronics Pvt. Ltd. v. State of Punjab*, (1990) 3 SCC 87 : 1990 SCC (Tax) 327

(6) *Lilavati Bai v. State of Bombay*, 1957 SCR 721 : AIR 1957 SC 521

(7) *Vrajlal Manilal & Co. v. State of M.P.*, (1969) 2 SCC 248 : (1970) 1 SCR 400

(8) *Harishankar Bagla v. State of M.P.*, (1955) 1 SCR 380 : AIR 1954 SC 465 : 1954 Cri LJ 1322

(9) *Hughes and Vale Proprietary Ltd. v. State of New South Wales*, (1954) 3 All ER 607 : (1954) 3 WLR 824

(10) *Cooverjee B. Bharucha v. Excise Commr. & Chief Commr.*, 1954 SCR 873, 880 : AIR 1954 SC 220

(11) *Syed Ahmed Aga v. State of Mysore*, (1952) 2 SCC 131 : 1975 Supp SCR 473

(12) *Malwa Bus Service (P) Ltd. v. State of Punjab*, (1983) 3 SCC 237 : 1983 SCC (Tax) 162

(13) *National & Grindlays Bank Ltd. v. Municipal Corpn. of Greater Bombay*, (1969) 1 SCC 541).

14. It is not, and cannot be, disputed that if the impugned provisions are not merely regulatory with a view to facilitating trade, but are in quality and substance restrictive, though reasonable as restrictions can be, and if they in effect constitute a hindrance or impediment to the free flow or movement of trade, they are unconstitutional in the absence of previous sanction of the President. The question, however, is, the Principal Act, being an "existing law" and, therefore, beyond challenge, do the impugned provisions, introduced in 1973, being additional provisions, enlarge in substance and quality the scope and ambit of the Principal Act, thereby impeding in greater measure the free flow or movement of trade so as to fall within the ban of the proviso to clause (b) of Article

304 ? In other words, does the Amendment Act, 1973, restrict the appellant's business to a greater extent or is it merely clarificatory insofar as, at any rate, the appellants are concerned ?

15. The point then really is, has the amendment made the Act more stringent insofar as the appellants are concerned ? If the answer is negative, as the High Court has held, the appellants are not aggrieved, and cannot, therefore, successfully challenge the Amendment Act.

16. Referring to the principle of *contemporanea expositio*, Mr Sanghi says that the Act, as it stood before the amendment, was not understood to apply to khandsari unit, and consequently to the business of the appellants, and it became applicable only as a result to the amendment. We do not agree that this submission is right. The High Court has, on the basis of the pleadings and other evidence, and with reference to the relevant provisions, categorically held that the Act, as it originally stood, was applicable to the trade of the appellants, and the amendment in effect did not make any difference to them. The High Court has found that the appellants were not aggrieved solely by reason of the amendment, and the provisions, as they stood prior to the amendment, applied to them in equal measure. This apart, the amendment, in our view, was merely clarificatory, and it was always well understood in trade that khandsari sugar was also sugar, and that any reference to sugar, in the absence of specific exclusion or qualification, was capable of equal application to sugar of all kinds including khandsari. Even if it is true that persons who dealt with the statute understood its provisions in a restricted sense, such mistaken construction of the statute did not bind the court so as to prevent it from giving it its true construction. (See the observation of Lord Blackburn in *Trustees of the Clyde Navigation v. Laird & Sons* ((1883) 8 AC 658, 670 (HL)) as quoted in *National & Grindlays Bank Ltd. v. Municipal Corporation of Greater Bombay* ((1969) 1 SCC 541).

17. We are of the view that the reasoning of the High Court was correct. The Principal Act being an 'existing law' within the meaning of Article 366(10) read with Article 305 of the Constitution, and the provisions of the Amendment Act, 1973 which are impugned in this appeal being clarificatory, the previous sanction of the President was not required. See the principle stated in *Syed Ahmed Aga v. State of Mysore* ((1975) 2 SCC 131 : 1975 Supp SCR 473). We do not, however, express any view as to whether the impugned Act is regulatory or restrictive, for that question, for the present purpose, is, in our opinion, academic.

18. The appeal is dismissed with costs throughout.

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