

Goodwill Paint and Chemical Industry

Vs

Union of India and Another

Writ Petition (Civil) No. 677 of 1988

(Kuldip Singh, V. Ramaswami-II JJ)

27.09.1991

JUDGMENT

V. RAMASWAMI, J. -

1. In this petition under Article 32 of the Constitution, the petitioners have questioned the constitutional validity of Section 5 of the Poisons Act, 1919 (12 of 1919) (hereinafter called 'the Act'). The grounds on which the vires of the provisions is attacked are that the section gives an unguided, unchanellised and arbitrary power to the State Government to include any substance as poison for the purpose of restriction to be imposed on the possession for sale and sale of the same. It was further contended that the restriction imposed on possession for sale and sale were not reasonable restrictions. The petitioners have also taken the plea that though the Act is a Central enactment it is possible of unjust and unjustified discriminatory application as it is left to each State Government to determine what substance they would include as poison and regulate and the decision in one State to include the substance as poison is not automatically made applicable to the other states.

2. The object of the enactment is to regulate the possession for sale and the sale, whether wholesale or retail of poisons and the importation of the same. In other words, it is intended to exercise control over the traffic in poisons. Though the original enactment, the Poisons Act, 1904 was restricted, it was applicable to white arsenic, the Poisons Act, 1919 expanded its provisions and enabled State Government to declare any substance as poison for the purposes of the Act by a notification under the Act or the rules made under the Act.

3. In exercise of this power by the Notification No. F. 10/44/72-Fin. (G) dated August 7, 1973 the Lt. Governor of Delhi amended the Delhi Poisons Rules, 1926 (hereinafter called the Rules) by including to the list of substances included in the Rules as "Poisons" "the substance commonly known as 'thinner' containing spirit and other soluble material such as shellac in which the percentage of such soluble material does not exceed 30 per cent" as poison and consequential amendment of Rules 12 and 13 of the Rules. It was the contention of the petitioners before the authorities that their "unit is manufacturing only those thinners which contain only liquid substance, like acetone, ethyl acetate SDS etc. and not all solubles". According to them, therefore, the substance manufactured by them would not come within the amended Rules. Though in the beginning the petitioners were contending that the substance manufactured by them did not come within Rule 2(x)(2) and there were some correspondence in this regard, when the competent authority held that the substance manufactured by the petitioners would come within the definition of 'thinner' as contained in Rule 2(x)(2) of the Rules, the petitioners did not question the finding on any material. Before us also they did not place any material to show that the finding was wrong or

that the substance would not come within Rule 2(x)(2). In fact the learned counsel argued the petition on the basis that the petitioners are a manufacturer of 'thinner' within Rule 2(x)(2) which has been declared as poison for purposes of the Act.

4. Originally the Act contained a schedule in which the list of substances declared as poisons were listed. Later when Delhi Poisons Rules, 1926 were made in exercise of the powers under the Act those list of substances were included in the list enumerated in Rule 2 thereof. Rule 2 was amended as already stated including 'thinner' of the description mentioned therein as poison. Section 5 of the Act the constitutional validity of which is questioned reads as follows :

"5. Presumption as to specified poisons : Any substance specified as a poison in a rule made or notification issued under this Act shall be deemed to be a poison for the purpose of this Act."

It was a law in force in the territory of India before the commencement of the Constitution and as such continued in force. The Act is intended to regulate the importation, possession and sale of poisons. Some substances were included in the Rules made in 1925 as poisons and that is not in dispute.

5. Section 5 of the Act deals with presumption and states that any substance specified as a poison in a rule or notification issued under the Act shall be deemed to be a 'poison' for purposes of the Act. Rules of 1926 were made in exercise of the rule making power under Section 8 of the Act. That section enables the State Government to make Rules generally to carry out the purposes and objects of the Act. Rules were amended in 1973 and duly notified as required by the Act. Section 2(3) of the Poisons Act 1 of 1904 defined poison as :

"2. (3) Any substance which when applied to the body internally or externally, or in any way introduced into the system, is capable, without acting mechanically, but by its own inherent qualities, of destroying life."

When this Act 1 of 1904 was repealed and re-enacted as Poison Act 12 of 1919 the definition was omitted and specified substances were included in the schedule with a power vested in the State Government to amend the same by Rules including other substances to the list of poisons. It is not all poisonous substances that are brought within the regulation under the Act. It is those substances which the government consider its possession for sale or sale to be regulated in the interest of health and safety of the society. This limitation is inherent in the scheme of the Act itself.

6. Of course no comprehensive definition can be given to the word poison. Under this term would fall anything calculated to destroy life. Substances harmless in themselves might become poison by the time or manner of their administration. Nothing is a poison unless regard be had to its administration. A substance may be a deadly poison or a valuable medicine according to how and how much is taken. If the resultant effect of administering into the system produces a violent, morbid or fatal change or which destroys living tissues, the substance can be safely called poison. Section 4 of the Act impliedly sets out certain guidelines when the State can notify a substance as poison. It states that the State Government may by rule regulate the possession of any specified poison in any local area in which the use of such poison for the purpose of committing murder or mischief by poisoning cattle appears to it to be of such frequent occurrence as to render restriction on the possession thereof desirable. Any substance which is used for purposes mentioned therein can definitely be declared as poison. That is what the government have done in this case. It has

become a notorious fact, which we can even take judicial notice of, that the substance known as 'thinner' as it is or mixing with some other substances are taken as intoxicating spirits endangering the life. In many cases deaths have also occurred due to drinking such substance. If the government thought in the circumstances that the possession or sale of the same is to be regulated it could not be said that they have no power to regulate. Section 2 also enables the government by rule to regulate the possession for sale and the sale of the specified poison. It is in exercise of this power Rule 13 was amended by substituting the old rule by the following rule :

"13. (1) All poisons kept for sale by any licence holder under these rules (except those kept by a chemist, druggist or compounder for the purpose of dispensing or compounding in compliance with the prescription of medical or veterinary practitioner) shall be kept in a box, almirah, room or building (according to the quantity maintained), which shall be secured by lock and key and in which no substance shall be placed other than poisons, possessed in accordance with a licence granted under the Act, and each poison shall be kept within such box, almirah, room or building in a separate closed receptacle of glass metal or earthenware. Every such box, almirah, room or building and every receptacle shall be marked with the word 'poison' in red characters both English and vernacular and in the case of receptacles containing separate 'poison' with the name of such 'poison' :

Provided that above rule shall not apply to 'poison' mentioned in clause (x) of Rule 2.

(2) All 'poisons' mentioned in clause (x) of Rule 2 shall be kept in a room or building (according to quantity maintained) which shall be secured by lock and key in a separate receptacle of glass metal and earthenware etc. Every such room, building and every such receptacle shall be marked with the word 'poison' in red character both English and vernacular, with the name of the 'poison'."

We are not impressed with the argument that any requirement in this rule is unreasonable or offends the petitioners' right to carry on any trade or business. The nature of trade in poison is such that nobody can be considered to have an absolute right to carry on the same. It is a business which can be termed even as inherently dangerous to health and safety of society in view of the rampant misuse and sale of the poor, weak and helpless as an intoxicant. A law in such circumstance can regulate the trade. This position is well settled and it would be pedantic to cite all the authorities ___ of this Court on this point. It is also not necessary that the me substance should be declared as poison for the entire country. The notification and its application to any area would depend on the necessity to declare the substance as poison on the particular facts and situation prevailing in that area and the need to regulate the possession and sale in that area. No question of discrimination can arise in such circumstances.

7. We are of opinion that the provisions of neither Section 2 nor 5 nor the impugned notification are hit by any constitutional limitation. The writ petition accordingly fails and it is dismissed. Rule nisi is discharged. No order as to costs.

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