

Razakbhai Issakbhai Mansuri and Others

Vs

State of Gujarat and Others

Writ Petition (Civil) No. 12532 of 1985

(L.M. Sharma, S. Mohan, N. Venkatachala JJ)

04.12.1992

JUDGMENT

SHARMA, C.J. –

1. The petitioners in all these cases (including the appellants in the civil appeals) have challenged the constitutional validity of the amendments made to the Bombay Prohibition Act, 1949 (for short "the principal Act") by the Gujarat Legislature prohibiting possession of rotten gur in excess of the prescribed limit without a permit and regulating manufacture etc. of rotten gur. The provisions which have been challenged are those of Section 2(39-A) defining "rotten gur", Section 64 imposing restriction on possession of "rotten gur", Section 64-A regulating manufacture etc. of "rotten gur" and Section 70-A providing for imposition of punishment of contravention of the relevant statutory provisions. It has been contended on behalf of the petitioners the gur and jaggery are popular commodities, consumed by humans and cattle and used in the preparation of sweets and Ayurvedic medicines as also in certain industries; and, consequently the provisions under challenge are causing serious difficulties in carrying on the business not only in "rotten gur" but also in jaggery and gur, which are not "rotten".

2. The main points raised in support of the present petitions (including the civil appeals) are mentioned below :

(i) The impugned amendments are ultra vires on the ground of lack of legislative competence. Entry 8, List II of the Seventh Schedule of the Constitution, under which the State Legislature has purported to act, does not cover the subject-matter; and Entries 26 and 27 of List II of the Constitution being subject to the provisions of Entry 33 of List III are not available as the legislative field referable to Entry 33 of List III is occupied by the Gur Control Order, 1968 read with Essential Commodities Act, 1955.

(ii) As a result of the impugned amendments, the police and the other authorities of the State have been vested with arbitrary and uncontrolled power. The same is violative of Article 14 of the Constitution.

(iii) Even otherwise also the impugned provisions are violative of Articles 19(1)(g) and 301.

3. Mr. Ashok Desai, appearing in Writ Petition No. 12532 of 1985, arguing on the question of legislative competence, contended that none of the entries in List II of the Seventh Schedule to the

Constitution authorities the Gujarat Legislature to incorporate the impugned provisions in the principle Act. Referring to the entries in the List the learned counsel proceeded to say that at the most, it is only three entries i.e., 8, 26 and 27, which can be said to have some relevance in the present context. Yet, none of them can cover the present case.

4. Entry 8 reads thus :

"8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

The learned counsel challenged the correctness of the judgment impugned in the civil appeals and the special leave petitions. According to him, the High Court had since relied on the observations of this Court in the State of Bombay v. F. N. Balsara (1951 SCR 682 : AIR 1951 SC 318) for holding that the amplitude of Entry 8 was wide enough to cover the present legislation, such conclusion cannot be sustained as the observations in Balsara case (1951 SCR 682 : AIR 1951 SC 318) are no longer good law after the decisions in Synthetics and Chemicals Ltd. v. State of U.P. (Synthetics and Chemicals Ltd. v. State of U.P., (1990) 1 SCC 109). The judgment in Synthetics and Chemical case (Synthetics and Chemicals Ltd. v. State of U.P., (1990) 1 SCC 109) was placed before us at some length, and reliance was place on paragraphs 27 and 29, where Balsara case (1951 SCR 682 : AIR 1951 SC 318) is discussed and on paragraphs 41, 50-52 and 54, where the scope of Entry 8 is indicated. The argument is that in view of this latest Constitution Bench decision, Entry 8 cannot be construed as widely as it was done earlier.

5. We have examined the contentions very closely but do not find any merit in them. The argument overlooks the fact that the observations in Synthetics and Chemicals Ltd. (Synthetics and Chemicals Ltd. v. State of U.P., (1990) 1 SCC 109), relied upon on behalf of the petitioners, were made in the context of power to levy 'vend fee' on industrial alcohol. That very decision upholds the State's authority to regulate the use of alcohol, which necessarily includes the power to make provisions for preventing circumvention of the law. Paragraph 63 of the main judgment positively recognised this power and then proceeded to examine whether the provision which was under consideration in that case, was in substance regulatory or not. In his concurring judgment Mr. Justice Oza also reiterated this aspect. In the cases before us we are concerned only with the scope of regulatory power of the State. Section 64 prohibits possession by a person of "rotten gur" in excess of the prescribed quantity without a valid permit. Similar is the provision in Section 64-A regulating the manufacture etc. of "rotten gur". It is only the regulatory power which has enabled the State Legislature to make the impugned provisions requiring the person concerned to take a permit. There is no grievance that the fee payable for such a permit is in any way excessive. We, in the circumstances, hold that Gujarat Legislature was fully competent to enact the Amendment Act.

6. We also do not find any merit in the argument based on Entries 26 and 27 of List II. It has been urged that they deal with production, supply, distribution, trade and commerce, and are subject to the provisions of Entry 33 of the List III. The State Legislature could not have, therefore, made the impugned amendments as the field was already occupied by Gur (Regulation of Use) Order, 1968 (hereinafter referred to as '1968 Order'), made under Section 3 of the Essential Commodities Act, 1955. Entry 33 of the concurrent list is in the following terms :

"33. Trade and commerce in, and the production, supply and distribution of, -

(a) the products of any industry where the control of such industry by the Union is

declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oil seeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute."

Mr. Desai contended that clauses (b) and (c) of Entry 33 covered possession etc. of gur and since 1968 when the aforesaid Order was made, the field became occupied and, therefore, not available for the exercise of State's legislative power. Reference was made to Clause 3 of 1968 Order, which reads as follows :

"3. Regulation of use of gur. - No person shall use gur for any purpose other than for the purpose of -

(a) consumption in the form of gur; or

(b) preparation of any article (not being alcoholic liquor) used as food or drink (or medicine) for human consumption; or

(c) cattlefeed :

Provided that the Central Government or any officer authorised by it in this behalf, may, by order in writing, permit the use of gur for the following purposes, namely -

(i) use in tobacco industry;

(ii) use in leather tanning industry;

(iii) use in chemical industry;

(iv) any other industrial use."

It is significant to note that Clause 3(b) above, of the Order excluded from its scope the regulation of gur in relation to its use for preparing alcoholic liquor by the use of words "not being alcoholic liquor", within brackets, in the sub-clause. The field for the State Legislature to enact the impugned provisions and incorporate them in the principle Act is thus, left untouched. There is another relevant aspect which needs consideration. Section 64 prohibits the possession of "rotten gur" in excess of the prescribed quantity without a permit and Section 64-A deals with regulation of manufacture, use of consumption of "rotten gur". The State of Gujarat is implementing the policy of prohibition of intoxicating liquor, as envisaged in the Directive Principles constrained in Article 47 of the Constitution. It is this policy which has led to the enactment of the impugned provisions. So far as the 1968 Order is concerned, it was a measure adopted to eliminate convert trade practices which cause artificial scarcity of essential commodities or pushes their prices to an unjustifiable high level to the prejudice of the general public. It has, therefore, to be noticed that the 1968 Order is made applicable to only gur. It does not extend to "rotten gur" as defined and dealt with by the

amended provisions of the principal Act in that it has the potentiality of being used for manufacture of intoxicating liquor. We are, therefore, of the considered view that in pith and substance it is a law relating to intoxicating liquor providing for regulatory measure and squarely falls under Entry 8 List II of Seventh Schedule. As rightly urged by Mr. Subramania Poti, learned counsel of the respondent, if the manufacture of liquor could be prohibited, certainly its manufacture with rotten gur could be regulated. Entry 8 confers the necessary competence on the State Legislature to enact laws for such regulation. We may also add that 1968 Order excludes alcohol from its purview because it is covered by Entry 8 of List II. It is, therefore, incorrect to suggest that the State Legislature was lacking in legislative competence in passing the Amendment Act.

7. The arguments pressed on behalf of the petitioners based on Article 19(1)(g), 301 and 14 are overlapping and the learned counsel referred to the common materials and circumstances, in their support. It has been contended that the definition of "rotten gur" is imprecise and capable of being understood widely and in different senses. The enforcing authorities are thus armed with wide discretion to act on their individual whims. This gives a handle to police officers to misuse their power to serious prejudice of persons who are genuine interested in doing business in gur alone and who are not interested at all in "rotten gur". On the pretext of examining whether 'gur' is so much deteriorated in quality as would bring it within the term "rotten gur" the police officers take unfair steps so as to cause great hardship to the genuine traders dealing in 'gur' alone. The concentration of arbitrary power in the enforcement machinery in the absence of a scientific basis for determination whether 'gur' has deteriorated to such an extent that it can be called "rotten gur" violates Article 14 of the Constitution. The inevitable result is the closure of all business in 'gur' which robs the people of their right to carry on the business of their choice guaranteed under Article 19(1)(g). The restrictions imposed under the impugned Amendments have been described as too remote from the object sought to be achieved by the law and, therefore, cannot justify their constitutional validity.

8. The learned counsel has, in support of the above argument, referred to a publication under the name of Monograph on the Gur Industry of India (referred to by the learned counsel as the 'Monograph') brought out in 1951 by the Indian Central Sugar Cane Committee of the Indian Institute of Sugar Technology, Kanpur. The expression "rotten gur" has been defined by Section 2(39-A) as mentioned below :

"2. (39-A) 'rotten gur' means the article known as gur, gul, jaggery, palmyra jaggery or rab and other intermediary product prepared by boiling or processing juice pressed out of sugar-cane or extracted from palmyra palm, date palm, sogo palm, prabpalm or coconut palm, with or without admixture of molasses, and which is in a liquid form or a semi-liquid or viscous form and which has a dark brown or a black colour or which, in spite of being in a solid, liquid, semi-liquid or viscous form, is unfit for human consumption owing to it becoming filthy, putrefied, disgusting or decomposed."

The above definition, according to the learned counsel, is wide enough to include even 'gur' of good quality before its deterioration. It is suggested that the definition should have been in more precise terms. If a challenge is made to the view taken by the enforcement authority about the article being "rotten gur" it could be done by relying on some specific method. A comparison has been made with the definition of "rotten gur" in the Order dated May 3, 1950 issued by the State of Maharashtra under the Bombay Prohibition Act as :

"(G)ur containing less than 50 per cent sucrose and more than 20 per cent sugar."

with the definition of the term under the subsequent Order dated November 6, 1958 in Section 2 as mentioned below :

"2. (b) 'rotten gur' means gur which is unfit for human consumption or the consumption of which is injurious to health.

Explanation : (1) 'Gur' shall be deemed to be unfit for human consumption or the consumption of it shall be deemed to be injurious to health if it is of dark brown colour, with strong smell or if, on chemical analysis it is found to contain more than 15 per cent of reducing sugars or less than 70 per cent of total sugars."

(omitting the other sub-sections)

Similar extracts from the Prevention of Foods and Adulteration Act and Rules thereunder are also placed before us. The Monograph has been relied upon for showing that the physical features of 'gur' in different parts of the country are not the same and that gur is actually transported from long distances to Gujarat. The transportation takes time and deterioration sets in, on the way. It is, therefore, contended that a wider definition as mentioned in Section 2(39-A) is too misleading for judging whether gur transported from different parts of the country has become rotten or not. Mr. Ganesh, who appeared for the petitioners in Special Leave Petition No. 8501 of 1980, emphasised the fact that at the time the 'gur' from Bihar or Tamil Nadu is loaded on vehicles for transport it is in perfectly good condition but when the same arrives on the borders of Gujarat, some portion of it deteriorates to such an extent as to answer the description of "rotten gur" in Section 2(39-A). The result is that a bond fide traders in 'gur' suddenly lands into the hands of the unscrupulous police officers armed with the vague definition of "rotten gur" inserted into the principal Act by the Amendment Act. The learned counsel also made a grievance against the fixation of the quantity of "rotten gur" exempted from the requirement of a permit under the rules as unreasonably small.

9. While considering the argument, addressed on behalf of the petitioners, it should be kept in mind that the impugned provisions do not place absolute restriction or prohibition either against the possession of "rotten gur" or the manufacture, use or consumption thereof. The law requires only a permit to be taken in advance and admittedly there is no hurdle in obtaining such a permit which is readily available on the payment of a nominal fee. The purpose of the permit is to make available information to the authorities concerned as to the persons dealing in "rotten gur" to facilitate vigilance against misuse of "rotten gur" for preparation of intoxicating liquors. There is absolutely no difficulty in obtaining such a permit in advance which will be a complete remedy for all the hardships highlighted on behalf of the petitioners. The grievance of the petitioner is that the requirement to obtain permit is violative of the freedom to carry on any trade and business of one's choice guaranteed by Article 19(1)(g). We do not find any substance in the argument that the restriction complained against, can be considered to be such a hindrance as to infringe sub-clause (g). The freedom is not uncontrolled and clause (6) of Article 19 authorises legislation which imposes reasonable restrictions on this right in the interests of the general public. The question, therefore, is whether the restriction placed by the impugned amendment is in the interests of the general public and can be considered reasonable.

10. It has been repeatedly observed by this Court that the test of reasonableness should be applied to each individual statute impugned. No abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent of the evil sought to be remedied thereby,

the disproportion of the imposition, the relevant prevailing conditions, should be all enter into the judicial verdict. The limitations in enjoyment of the right should not, however, be arbitrary or of an excessive nature. In other words it should not be more than what is essential in the interests of the public.

11. Although the Directive Principles of State Policy as contained in Part IV of the Constitution are not enforceable by courts, nonetheless it is the duty of the State to give effect to those principles by making appropriate laws. It has been described as matters of constitutional obligation of the State to do so in the public interest. A large body of legislation under Article 19(1)(g) when challenged, has been upheld by courts, as being in furtherance of such policy, as valid on the ground of the Directive Principles. So far the intoxicating drinks are concerned their evils effect are well established specially for the Indian society. This was why the framers of the Constitution considered it fit to include it, in expressed terms, in Article 47 while indicating the duty of the State to raise the standard of living and to improve the public health. It is, therefore, within the authority of the State of prohibit consumption of intoxicating liquor and the State of Gujarat was fully justified when it adopted the policy of prohibition. In order that this policy may succeed, it is not sufficient to merely ban manufacture and consumption of alcoholic drinks. To render it really effective further measures became essential in order to defeat the illegal activities of the anti-social elements engaged in illicit manufacture and illegal distribution of the liquor in the market. It, therefore, became obligatory for the State to take all such steps as found necessary for implementing the prohibition policy, by not only placing restrictions on the manufacture, sale and consumption of liquors but also by adopting such other regulatory measures, essential to achieve the objective. In this connection we may usefully quote the following extract from *Balsara case* (1951 SCR 682 : AIR 1951 SC 318) at page 707 :

"Laws of this nature designed of the promotion of public order, safety, or morals and which subject those who contravene them to criminal procedure and punishment, belong to the subject of public wrongs rather than to that of civil rights. They are of a nature which falls within the general authority of Parliament to make laws for the order and good government of Canada..... (*Russell v. Queen*, (1882) 7 AC 829, 839)

Again, referring to liquor laws and liquor control, a learned British author (*The Encyclopaedia Britannica*, 14th Edn., Vol. 14, p. 191) says as follows :

"The dominant motive everywhere, however, has been a social one, to combat a menace to public order and the increasing evils of alcoholism in the interests of health and social welfare. The evils vary greatly from one country to another according to differences in climate, diet, economic conditions and even within the same country according to differences in habits, social customs and standards of public morality. A new factor of growing importance since the middle of the 19th century has been the rapid urbanisation, industrialisation and mechanization of our modern every day life in the leading nations of the world, and the consequent wider recognition of the advantages of sobriety in safeguarding public order and physical efficiency."

12. The question which arises here is as to whether restrictions are permissible only in relation to the alcoholic liquors directly or can be extended to such articles which are not intoxicating by themselves but which have the potentiality to defeat the policy. The stand of the petitioners is that the business in intoxicating liquor is altogether on a different level when a question of right arises.

But so far the business in 'gur' is concerned it cannot be prohibited and for that reason the impugned provisions must be struck down.

13. The unlawful activities of bootleggers are too well known. In this country as also in several other countries of the world, where the policy of prohibition was attempted, they have jeopardised its success. The problem, therefore, has been engaging the attention of the social reformers and other experts on the subject. With that view in mind several committees have been set up in this country from time to time, which after making extensive and thorough study of the malady and its cure have reported that it is necessary to adopt further remedial measures by way of placing restrictions on the business of such articles which aid the illegal manufacture of liquors. Mr. Poti, the learned counsel appealing on behalf of the respondent State, has placed before us certain portions of the Prohibition Policy Inquiry Commission Report, 1983, dealing with the potentiality of "rotten gur" being used for this purpose. This aspect has been dealt with in the affidavit of Shri D. K. Mehta, Deputy Secretary, Labour Social Welfare and Tribunal Development Department, State of Gujarat. It is stated that after considering the matter thoroughly, the State Government came to the conclusion that in Gujarat "rotten gur" was being used for manufacture of illicit liquor. In paragraph 9 of the affidavit reference has been made to the report of Tekchand Committee wherein attention of Government was drawn to be misuse of "rotten gur" for this purpose. This was widely rampant specially in the districts of Broach, Bulsar and Surat. The exercise undertaken in this regard, before the impugned provisions were enacted, is mentioned by the committees constituted by persons having expert knowledge which were placed before us on behalf of the State. We do not consider it necessary to discuss them in detail. The problem which faced the State was that unscrupulous persons while pretending to be engaged in business of "rotten gur" or for that matter, 'gur' were aiding and abetting bootlegging on large scale. For checking effectively this illegal activity it was considered necessary to require a person in possession of "rotten gur" in excess of the prescribed quantity to obtain a permit. This would help the administration in keeping a vigilant eye on the violators of the law. We have examined the materials placed before us by the parties. We are fully satisfied that the impugned steps were taken after a detailed, careful and deep deliberation of the problem and its solution and that the impugned amendments fully satisfy the public interest test.

14. As has been mentioned earlier, there is no restriction whatsoever on carrying on business in 'gur' or "rotten gur", and what is required by the law is merely to get a permit which is granted as a matter of course to anyone making an application. The argument on behalf of the petitioners is that although the law does not require the taking of a permit for business in 'gur', it becomes necessary to do so also for a person engaged exclusively in the business of 'gur' and not in "rotten gur"; and that in view of the wide powers available to the enforcing machinery the restriction is arbitrary and uncalled for. The basis of this argument is the assumed fact that it becomes difficult to distinguish between 'gur' and "rotten gur" for the purposes of Section 2(39-A). It has been stated that in the course of a few days while 'gur' of fairly good quantity is being transported from the other States to Gujarat it deteriorates in quality on the way and may be mistaken for "rotten gur". In other words the process of 'gur' being rendered "rotten gur" is not a long one and it does not take much time for the article to reach from one stage to another. If we accept what is being asserted before us on behalf of the petitioners as correct, it means that the chances of 'gur' turning into "rotten gur" are inherent in the business. What follows from this? By whatever reason it may be, the article which was harmless is converted quickly into the form in which it acquires the potentiality of being misused for the purpose of preparing intoxicating liquor. If this mischief is not taken care of, it will become difficult to effectively implement the policy of prohibition. We are also of the opinion that for the purpose of Prohibition Act, it can define rotten gur even if it is fit for human consumption in such a way to eliminate the mischief. The question is, is it capable of misuse? The impugned restriction,

therefore, is fully justified and cannot be condemned as excessive or unreasonable.

15. We appreciate the difference between the power to control the business in intoxicating liquor directly and the extent to which regulatory measures can be taken in respect of other commodities. But so far these cases are concerned, this aspect does not assume any significance, in view of our unhesitating conclusion that the restrictions imposed by the impugned provisions are reasonable and in the public interest, and are, therefore, fully protected by clause (6) of Article 19. We also hold that there is no merit in the argument based on Article 14 in view of the discussions made above.

16. For the reasons indicated above, we do not find any merit in the writ petitions, civil appeals and special leave petitions and they all are dismissed but, in the circumstances, without costs.

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