SUPREME COURT OF INDIA

SIEL Ltd.

Vs.

Union of India

(M.M.Punchhi, Sujata V.Manohar JJ.)

11.09.1998

JUDGMENT

MRS. SUJATA V.MANOHAR, J.

Civil Appeal Nos. 4726-4741/98 (A SLP(C)Nos.4162-4177/96) Leave granted.

The appellants in these appeals have challenged the constitutional validity of the Uttar Pradesh Sheera Niyantran Adhiniyam 1964 being U.P.Act 24 of 1964 which received the assent of the President on 17th Oct. 1964. The occasion for this challenge appears to have arisen on account of orders passed by the Controller of No1asses/Excise Commissioner, U.P. under Section 8 of the said Act read with Rule 22, and dated 13th of August 1983, 22nd of October, 1993 and 1st of January, 1994. Under Section 8 to the said Act the Controller may by order require the occupier of any sugar factory to sell and supply in the prescribed manner such quantity of molasses to such person, as may be specified in the order, and the occupier shall, notwithstanding any contract, comply with the order. Under Section 10 the occupier of a sugar factory shall sell molasses in respect of which an order under Section 8 has been made at a price not exceeding that prescribed in the Schedule. Under sub-section (2) of Section 10 the State Government may, by notification in the Gazette, amend the Schedule if such amendment is necessitated by reason of any variation in the cost of storage of molasses or loading or shunting charges of molasses in tank wagons or in order to bring the prices of molasses in conformity with the prices, if any, fixed by the Government of India. Under the said

orders of the Controller dated 13.8.1993, 22.10.1993 and 1.1.1994, different percentages of graded molasses were reserved for distilleries and industries based no molasses and alcohol, in the State of U.P. The reserved quantity under the said orders was required to be sold at prices fixed by the State Government under the notification issued under sub-section (2) of Section 10 at the relevant time. The appellants have challenged the constitutional validity of the U.P. Sheera Niyartaran Adhiniyam 1964 on the ground that the State Legislature lacked competence to pass the Act. They have also challenged the restrictions imposed on the sale of molasses under the said Act and the said orders made thereunder as unreasonable restrictions violative of Article 19 (1)(g) as also Article 301, being restrictions which affect in the state, freedom of trade. All these writ petitions which were filed in 1993 have been dismissed by the Allahabad High Court. Hence the present appeals have been preferred before us.

The Industries (Development and Regulation) Act, 1951 was enacted by Parliament and came into force on the 8th of May, 1952. Section 2 of the Act declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. Item 25 in the First Schedule was sugar industry. Thus control over the sugar industry was taken over by the Union Government as being in public interest. By an amendment of 1953, Section 18G was introduced in the Industries (Development and Regulation) Act of 1961. Sub-section (1) of Section 18G is as follows:- "Section 18G: Power to control supply, distribution, price etc. of certain articles- (1)The Central Government, so far as it appears to be necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry may, notwithstanding anything contained in any other provision of this Act, by notified order, provide for regulating the supply and distribution thereof and trade and commerce therein.

(2) .....

(3) .....

(4) .....

(5) .....

In 1961 the Central Government promulgated the Molasses Control Order under Section 18G of the Industries (Development and Regulation) Act, 1951 imposing restrictions on the sale of molasses and fixing the maximum price of molasses. A similar Ethy1 Alcohol price control order was issued in 1971 relating to Ethy1 Alcohol which is a product of molasses. Sub-clause (2) of Clause 1 of the Molasses Control Order, 1961 provided that it shall come into force in a State on such date as the

Central Govt. may by notification in the official Gazette, appoint in this behalf for such State, and different dates may be appointed for different States. It is an accepted position that the Molasses Control Order, 1961 was never extended to the States of U.P. and Bihar.

In 1984, the U.P. Legislature enacted the U.P.Sheera Niyantaran Adhiniyam, (Molasses Control Act) 1964 which is impugned in the present appeals. It is the case of the respondents that although the Central Molasses Control Order of 1961 was never extended to the State of U.P. the State Government would notify the maximum price of molasses under Section 10 of the U.P. Act of 1964 in consonance with the maximum price prescribed by the Central Government under the Molasses Control Order of 1961. Identical notifications were issued by the Central Government and the State Government relating to the price of molasses every year. On 10.6.1993 the Molasses Control Order, 1961 and the Ethy1 Alcohol Price Control Order were rescinded by the Central Government by two separate notifications of the same date. In the State of U.P. however, the U.P. Sheera Niyantaran Adhiniyam, 1963 continued to operate despite the repeal of the Central Molasses Control Order, 1961. The State Government thereafter issued three notifications of 13.8.1993, 22.10.1993 and 1.1.1994 under the U.P.Sheera Niyantaran Adhiniyam, 1964. This gave rise to the present litigation. According to the appellants, by reason of the Industries (Development and Regulation) Act, 1951 and Entry 25 in the First Schedule to the said Act, all legislation pertaining to sugar industry is within the exclusive domain of the union Government, being covered entirely by Entry 52 of List I. Therefore, the State of U.P. had no legislative competence to enact the U.P.Sheera Niyantran Adhiniyam, 1964 or the orders thereunder. It is this contention which requires to be examined.

In this connection, the Entries in the Seventh Schedule to the Constitution of India which require consideration are the following:

List I - Union List :

Entry 7: Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of was.

Entry 52 : Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

List II - State List:

Entry 24 :Industries subject to the provisions of entries 7 and 52 of List I.

Entry 26 :Trade and commerce within the State subject to the provisions of Entry 33 of List III>

Entry 2y:Production, supply and distribution of goods subject to the provisions of Entry 33 of List III. List III

- Concurrent List:

Entry 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 sluch products;

(b).....

(c).....

(d).....

(e).....

Before construing these entries, it is necessary to bear in mind the principle laid down in several decisions of this Court relating to the interpretation of these entries. In the case of Calcutta Gas Company (Proprietary) Ltd. V State of West Bengal and Ors. (AIR 1962 SC 1044) this Court has held that when some of the entries in the different Lists or in the same List may overlap or may appear to be in direct conflict with each other, it is the duty of the Court to reconcile the entries and bring about harmony between them. This Court observed, (at page 1050), "It may, therefore, be taken as a well settled rule of construction that every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire content and make it nugatory." While dealing with Entry 24 of List II and Entry 52 of List I, this Court in the above case considered what

was meant by the term "industry" which was used in both these entries. This Court held that in the first place, whatever be the connotation of "industry", it must bear the same meaning in Entry 24 List of II as in Entry 52 of List I because the two entries are interconnected, and giving different meaning to the word "industry" in the two entries will snap their connection. this Court further observed that ordinarily "industry" was in the field of State Legislation; but, if Parliament by law makes a relevant declaration or declarations, the industry or industries so declared would be taken off the state field and passed on to Parliament. This Court in that case was concerned with interrelationship between Entry 52 List I, Entry 24 List II, and Entry 25 of List II. The last entry expressly dealt with gas and gas works. This Court held that if Entry 24 of List II is interpreted to include within the term "industry", gas and gas works, Entry 25 of List II would be emptied of all its contents and would become nugatory. Therefore, one should apply the principle of harmonious construction and hold that gas and gas works would be outside the term "industry" under Entry 24 of List II. If this was so, then gas and gas works could not, by appropriate declaration by Parliament, be made the subject mater of Entry 52 of

List I.

If we apply the same principle of harmonious construction to Entries 24, 26 and 27 of List II, the term "industry" in Entry 24 would not take within its ambit trade and commerce or production, supply and distribution of goods which are the express province of Entries 26 and 27 of List II. Similarly, Entry 52 in List I which deals with industry also would not cover trade and commerce in or production, supply and distribution of the products of those industries which fall under Entry 52 of List I. For the industries falling in Entry 52 of List I these subjects are carved out and expressly put in Entry 33 of List III.

In the Calcutta Gas Company case (supra) the decision of this Court in Ch. Tika Ramji & Ors. etc. V. The state of Uttar Pradesh L& Ors. (1956 SCR 393) was relied upon. In Ch. Tika ramji's case (supra) this Court, inter alia, considered the interrelationship between Entry 52 List I, Entry 24 List II, Entry 27 List II and Entry 33 of List III as it stood prior to its amendment, and as amended. This Court examined the contention that the term "industry" should be widely construed to include all activities including activities preceding production such as acquisition of raw material and activities subsequent to production such as disposal of the finished products of that industry. Negativing this contention in the light of the Legislative entries, this Court held that what would fall under Entry 24 of List II would be the process of manufacture or production except where the industry was a controlled industry when it would fall within entry 52 of List I. The products of the industry would be comprised in Entry 27 List II except where these were the products of a controlled industry, when they would fall within Entry 33 of List III. Therefore, the subject matter falling within Entry 26 and Entry 27 of List II would not be covered by Entry 24 of List II; and similarly the subject matter falling under Entry 33 of List III would not fall under Entry 52 of List I.

Another principle which has been evolved for determining the legislative competence to enact any

particular piece of legislation is the doctrine of pith and substance. In the case of A.S.Krishna and Ors. V. State of Madras (AIR 1957 SC 297) this Court observed that it was the essence of a Federal Constitution that there should be distribution of legislative powers between the Centre and the States. When the Constitution enumerates elaborately the topics on which the Centre and the States can legislate, some overlapping over the fields of legislation is inevitable. Therefore, to decide whether an impugned legislation is intra vires regard must be had to its pith and substance. If a statute is found in substance to relate to a topic within the competence of that Legislature it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment may be an element in determining whether the legislation is colorable, but where that is not the position, the fact of encroachment does not affect the vires of the law. To determine this one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions.

In the light of these entries if one looks at Section 2 of the Industries (Development and Regulation) Act, 1951, Section 2 clearly declares an industry which is in the First Schedule as an industry falling under Entry 52 of List I. Section 18G, however, deals with control over supply, distribution, price etc. of certain articles or products of such industry . Section 18G empowers the Central Government to provide by notification for regulating the supply and distribution of a product of such industry and trade and commerce therein. Section 18G is, therefore, an exercise of the powers of legislation conferred by Entry 33 of List III. By its express language, Section 18G is clearly covered under Entry 33 of List III and is excluded from Entry 52 List I. Any notification, therefore, issued under Section 18G would be an exercise of a power conferred by Entry 33 of the Concurrent List. Since the exercise of power under Section 18G falls under the Concurrent List in the Seventh Schedule of the constitution and not under Entry 52 of List I, the State Legislature is equally competent to legislate in respect of the same subject matter, subject to Article 254 of the Constitution. Article 254 expressly deals with a situation where any provision of a law made by the Legislature of a State is repugnant to any provision of law made by Parliament in respect of one of the matters in the Concurrent List. Under Clause 2 of Article 254, where the law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament, or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has been given his assent, prevail in the State subject to the proviso contained therein. The contention of the appellants, therefore, that by the enactment of Section 18G the power of the State Government to legislate under Entry 33 of List III is taken away, is untenable.

The respondents have also rightly contended that the enactment of Section 18G by the amending Act does not create by itself any repugnancy between the Parliamentary Legislation and the State Legislation, namely, the U.P. Sheera Niyantaran Adhiniyam of 1964. Although Molasses Control Order of 1961 was issued by the Central Government under Section 18G of the Industries (Development and Regulations) Act of 1951, the Molasses Control Order was never brought into operation in the State of U.P. or the State of Bihar. Therefore, the power of the State of U.P. under Entry 33 List III to legislate in relation to the trade and commerce in or supply and distribution of molasses in that State was not taken away, in any event, irrespective of Article 254 of the Constitution of India.

In this connection our attention was drawn to the observations of this Court in Ch. Tika Ramji's case (supra). The Court in that case was concerned with the legislative competence of the State Government to legislate in respect of sugarcane in the light of Section 18G of the Industries (Development and Regulation) Act, 1951. This Court observed (at page 432) that even assuming that sugarcane was an article relatable to the sugar industry within the meaning of Section 18G, no order had been issued by the Central Government in exercise of the powers vested in it under that section. Hence no question of repugnancy would arise. Repugnancy must exist in fact and not depend merely on a possibility. Ch. Tika Ramji's case (supra) has been cited with approval in the more recent case of Indian Aluminium company Ltd. and Anr. V. Karnataka Electricity Board and Ors. (1992 3 SCC 580) where this Court again held that in the absence of any notification under Section 18G of the Industries (Development and Regulation) Act there was no question of any repugnancy on the score of tariff of electricity fixed by the State Amending Act. Section 18G per se did not take away the State's right also to legislate under Entry 33 of List III. This Court also noted the provisions of Article 254 (2) of the Constitution in this connection.

The appellants, however, relied upon certain observations in the case of synthetics and Chemicals Ltd. And Ors. V. State of U.P. and Ors. (1990 1 SCC 109) to contend that by the enactment of section 18G the entire field relating to sugar industry was an occupied field and the state could not legislate in that connection. This argument has been negative by the Full Bench of Allahabad High Court in the present case by detailed and cogent reasoning. The High Court has rightly observed that in the said case this Court had no occasion to examine Entry 33 of List III in relation to Entries 24, 26 and 27 of List II and Entry 52 of List I. A mere observation that Union had evinced a clear intention to occupy the whole field was in the context of exclusive privilege claimed by the State of U.P. In fact, in the said case this observation was not in the context of any product of the controlled industry; and hence these observations cannot be considered as holding that Section 18G prevented the State from exercising its power of legislation under Entry 33 List III. In fact, Ch. Tika Ramji's case (supra) has been followed subsequently in a number of cases including Indian Aluminium case (supra). It has also been followed in lB. Viswanathiah and Company and Ors. V. State of Karnataka and Ors. (1991 3 SCC 358) where this Court held that when the industry is a controlled industry and falls under Entry 52 of List I legislation in regard to the products of that industry would be permissible both by the Central and the State Legislatures by virtue of Entry 33 of List III. This Court has relied upon Ch.Tika Ramji's case (supra) and has cited with approval the following passage from Ch. Tika Ramji's case :

"Industry in the wide sense of the term would be capable of comprising three different aspects : (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. The raw materials would be goods which would be comprised in Entry 27 of List II. The process of manufacture or production would be comprised in Entry 24 of List II except where the industry was a controlled industry when it would fall within Entry 52 of List I and the products of the industry would also be comprised in Entry 27 of List II except where they were the products of the controlled industries when they would fall within Entry 33 List III. In the case of (third) State of U.P. and Anr. V. Synthetics and Chemicals Ltd. and Anr. (1991 4 SCC 139) this Court explained certain observations made in the

earlier Synthetics and Chemicals case (supra). What is however, relevant for our present purposes is to note that the case of Ch. Tika Ramji (supra) has been relied upon by this Court and this Court has reaffirmed that the power to control industry being vested in Parliament (Entry 52 of List 1) and the legislative power in respect of trade and commerce in the product of such industry being concurrently vested in the Union and the States (Entry 33 of List III) any exercise of control by the State by legislation under Entry 33 List III must be subject to and tin accordance with Articles 246 and 254 of the Constitution. However, it is also necessary to note in this context the provisions of Article 254 (2) under which a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List of it contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State provided that the Parliament is not prevented from enacting at any time any law with respect to the same matter including a law adding to amending, varying or repealing the law so made by the Legislature of a State. The respondents have pointed out that the U.P. Sheera Niyantaran Adhiniyam, 1964 has also received President's assent under Article 254(2). In any event, looking to the fact that the Molasses Control Order of 1961 passed by the Central Government in exercise of powers conferred by Section 18G was not extended at any point of time to the State of U.P. or the State of Bihar, the question of repugnancy between the Molasses Control Order, 1961 and the U.P. Sheera Niyantaran Adhiniyam, 1964 does not arise. In fact, the present litigation has commenced after the Molasses Control Order, 1961 of the Central Government has been rescinded and the only legislation which holds the field is the U.P.Sheera Niyantaran Adhiniyam of 1964 which is in legitimate exercise of power of legislation under Entry 33 of List III.

In the premises the U.P.Sheera Niyantaran Adhiniyam of 1964 is within the legislative competence of the State Government.

It was also contended that the three notifications of 13.8.1993, 22.10.1993 and 1.1.1994 are unreasonable or they do not constitute a reasonable restriction on the right to carry on any occupation, trade or business under Article 19(1)(g). It is contended that there is also a violation of Article 301 of the Constitution. The State Government has submitted that the provisions of the U.P. Sheera Niyantaran Adhiniyam, 1964 and the State notifications have to be viewed in the context of development of sugar, alcohol and chemical industries in the State of U.P. If looked at in a historical perspective, there has been control over molasses in the State of U.P. from the year 1947 and this was not challenged. The State Government has tried the policy of partial decontrol by the notification of 13.8.1993 under which the State kept control only over 30% of the molasses and the sugar industry owners were left free to sell 70% in the open market subject to certain regulatory provisions. The impact of such partial decontrol had been watched and judged. By another order of 31.12.1993, the ratio of controlled over uncontrolled molasses was substantially changed. The percentages of permissible sales in the control zone and in the free market have had to be changed depending upon the economic impact of such decontrol.

The respondents also submitted that molasses is an important raw material for the distilleries which

produce industrial alcohol a raw material for chemical industries in the State. To attract various industries to that State, steps were taken from the beginning to facilitate availability of industrial alcohol. A policy of control over molasses is framed bearing in mind the economic requirements of the State and , therefore, this policy should not be now challenged. Respondents have pointed out that industrial development of Uttar Pradesh is largely based on this control over allocation and pricing of molasses, and a sizeable revenue of the Government is dependent on the control. Even prior to 1964 the control over allocation and price fixation of molasses in the State of U.P. was with the State Government. Even when the Government of India issued the Molasses Control Order of 1961 it left the control of molasses in U.P. in the hands of the State Govt. Neither the sugar industry or any body else objected to this control of the State over allocation and prices of molasses at any point of time till the announcement of decontrol over molasses by the Government of India.

In order to keep a proper balance over distribution of molasses to the industries which had come up over a period of time when decontrol was announced by the Government of India, it was not possible for the State of U.P.to announce a total decontrol. Nevertheless by the first notification of 13.10.1993, 70% of molasses were freed from control. However, it had an immediate adverse effect on the chemical and down stream industries in U.P. As a result, the subsequent State notifications were issued in October, 1993 and January, 1994 reducing substantially the percentage of molasses which were made free of control and increasing the percentage of controlled molasses. Simultaneously, the price of controlled molasses was also enhanced by the State Government. The State has followed a fair economic policy. In fixing from time to time, the percentage of free and controlled molasses and the prices for controlled molasses, the overall market position had also been borne in mind and the extent of availability, and the price of imported petro feed stock and chemical products had also to be borne in mind. In other words, the State has submitted that price fixation of molasses and the percentage of free and controlled molasses is essentially a matter of economic policy and the same should not be the subject matter of challenge under Article 19(1)(g) of the Constitution when the policy is fair and has been in force for a long time. This submission has much force. This Court has held that in examining the reasonableness of an economic measure, the State should have more latitude in formulating economic policy as well as appropriate legislation in comparison to legislating relating to fundamental rights. (See in this connection Delhi Science Forum & Ors. etc. V. Union of India & 'Anr. etc. (JT 1996 (2) SC 295) and Dalmia Cement (Bharat) Ltd. & Anr. etc. V. Union of India & Ors. etc. (JT 1996 (4) SC 555). It has also been pointed out by the respondents that in public interest an industry, in the present case, the sugar industry, can be required to make a supply to another industry of their product or by-product. Looking to all the circumstances, the U.P. Sheera Niyantaran Adhiniyam 1964 and the State notifications of 13.8.1993, 22.10.1993 and 1.1.1994 having been held by the High Court as not violative of Article 19(1)(g) of the Constitution, we are inclined to agree with the findings so arrived at by the High Court. In the premises these appeals are dismissed with costs.

CIVIL APPEAL NOS> OF 1998

(Arising out of SLP (C)Nos.14670/95 and 16925/95)

Leave granted.

These two appeals pertain to the distribution and price control over molasses in the State of Bihar. In 1947 the Bihar State Legislature had enacted Bihar Molasses (Control) Act, 1947 with the assent of the Governor General. Initially the Act was intended to remain in force only for one year. But from time to time various Acts were passes by the State Legislature extending the validity of the said Act. Even after coming into force of the Industries (Development and Regulation) Act of 1951, and the Molasses Control Order of 1961 issued by the Central Government, the Bihar Molasses Control Act, 1947 continued to remain in force as the Molasses Control Order of 1961 was not extended to the State of Bihar.

The Bihar State Legislature thereafter enacted the Bihar Amending Act 1 of 1964 which was passed with the assent of the President, under which the Bihar Molasses (Control) Act, 1947 was made permanent instead of temporary. After the repeal of the Molasses Control Order, 1961 by the Central Government in June, 1993 the State Government of the State of Bihar issued an order in the exercise of powers under Section 7 of the Bihar Molasses (Control) Act, 1947 on 9.6.1993 directing sugar industry to sell molasses at a specified controlled rate to different distilleries. The Controller of molasses in the State of Bihar also gave a further clarification that the central Government had not rescinded the Bihar Molases (Control) Act, 1947 and the State authorities were free to regulate and control molasses in exercise of power vested in the State under the State Act. In the State of Bihar also, in September 1993, a system of partial decontrol of molasses was introduced allowing sugar factories to sell the remaining molasses at free market prices after fixing a certain percentage for molasses to be supplied at fixed controlled rates to the distilleries. The challenge to these orders and the Bihar Molasses (Control) Act, 1947 are similar to the challenges in the appeals pertaining to the State of U.P. For reasons which we have set out in our judgment in the appeals pertaining to the State of U.P., these appeals are also dismissed with costs.