

SUPREME COURT OF INDIA

Sri Malaprabha Co-Op Sugar

Vs.

State of Karnataka & Ors.

C.A.No.860 of 2006

(Vikramajit Sen and Shiva Kirti Singh,JJ.,

21.08.2015

JUDGMENT

Vikramajit Sen,J.,

1. This Appeal brings into challenge the Judgment of the Division Bench of the High Court of Karnataka in terms of which the Judgment of the learned Single Judge had been upheld; however, with the direction that the competent authority shall examine the claim made by the Appellant for being classified as a non-captive unit. On 29.7.2004, while issuing notice it had been clarified that the impugned Judgment had not been stayed.

2. The facts that are relevant for deciding the present Appeal, succinctly, are that the Respondent State had fixed the price of rectified spirit uniformly at [pic] 6/- per litre by Government Order dated 12.5.1992. While doing so, it had been indicated that the captive distilleries would be entitled to receive only [pic] 5/- per litre, and the balance [pic] 1/- per litre would be receivable by the Respondent State. For the period of 1.7.1992 to 30.6.1993, supplies of rectified spirit were made by the Appellant to various parties and the entire sum at the rate of [pic] 6/- per litre was recovered/received by the Appellant. It will be relevant to underscore that the supply of rectified spirit (ethyl alcohol) was made by the Appellant with full knowledge of the Government Order to which challenge has been made, namely, the payment of [pic] 1/- per litre to the State Government. The Appellant does not dispute that it is a captive distillery, since it produces molasses which is then distilled and converted into ethyl alcohol/rectified spirit/industrial alcohol. The Government Order dated 12.5.1992 has not been assailed by the Appellant at any point of time. When a demand for a sum of [pic] 13,32,000/- was raised by the Superintendent of Excise, Huballi, by letter dated 15.12.93, a challenge by way of the filing of a writ petition was initiated.

3. The Respondent State is empowered to fix the price of rectified spirit by virtue of Rule 17 of the Karnataka Excise (Manufacture and Bottling of Arrack) Rules, 1987, the vires of which have not been questioned. The Rule is reproduced for facility of reference: Rule 17 - Rectified spirit – Whether Rule 17 which empowers the Government to fix the price of rectified spirit, valid? K.Shivashankar Bhat, J., Held. - Rule 17 of the State rules, invoked in

the present case, nowhere lays down nor indicate the principles or factors to be considered while the Excise Commissioner fixes the price with the prior approval of the State Government. The case of other liquors may be different, because, in those cases, the State has exclusive privilege to deal with those liquors/intoxicants, unlike the case of rectified spirit. The permissible limits of delegation of legislative function cannot be stretched so as to make it notional. It cannot be said that the limitation on the delegation of legislative function has reached a vanishing point. Limitation is needed to prevent any possible dictatorial power being vested in the executive by the legislature. Rule 17 insofar as it empowers of the fixation of price of rectified spirit, is therefore, declared as unconstitutional and ultra vires the provisions of the State Act.

4 .The manner in which the trade of arrack is conducted can be gleaned, inter alia, from a reading of Rule 13, which is also reproduced for convenience:

“Rule 13. Stock of rectified spirit. – (1) The quantity of rectified spirit required for the warehouse shall be allotted by the Commissioner from time to time. It shall be drawn from the distillery on indents duly countersigned by the Warehouse Officer. The transportation charges shall be borne by the licensee. The distillery shall issue such quantity of rectified spirit as allotted by the Commissioner, to the warehouse at the rates fixed by the Commissioner under Rule 17.

(2) The stock of spirit when received at the warehouse shall be verified by the Warehouse Officer by volume and strength or the quantity of pure alcohol in it and taken to the storage vats. The Warehouse Officer shall furnish a certificate of such verification to the Distillery Officer concerned and shall keep a register showing the details of stock indented, issued by the distillery and the stock as received in the warehouse.

(3) Gauging of spirit shall be made by the Warehouse Officer everyday in the presence of the licensee or his authorized representative and the result thereon shall be recorded in a register, which shall be attested by both the Officer and the licensee or his representative.

(4) (a) The licensee or his authorized representative shall give a requisition for the transfer of such quantity of spirit for the production of arrack to the vessels kept for the purpose. The requisition shall contain information as to the date, batch, number, quantity, spirit vat number from which to be issued, and the vessel number to which it should be transferred.

(b) The Warehouse Officer on receipt of the requisition may permit the transfer after gauging the stock in volume and strength.”

A perusal of the said Rule makes it patently clear that the Commissioner allots quantities of rectified spirit from the distillery to a ‘warehouse’, and the indents are duly counter signed by the Warehouse Officer. The Rule clarifies that the transportation charges are to be borne by

the licensee. This arrangement, so far as transportation expenses are concerned, obviously does not arise where molasses is readily available in the very same premises where its conversion or distillation into rectified spirit takes place. The contention of learned counsel for the Appellant is that the State is not entitled to take away the extra profit of [pic] 1/- per litre which the Appellant earns because molasses is available in its own premises. This argument, however, conveniently ignores the fact that the Respondent State had made it incontrovertibly clear that it would permit the Appellant to sell rectified spirit at the common fixed rate of [pic] 6/- provided it transferred [pic] 1/- per litre to the State. If the Appellant was serious in questioning the legal capacity of the Respondent State to recover the said [pic] 1/- per litre, it perforce had to challenge the Government Order dated 12.5.1992. Having failed to do so it cannot, thereafter, challenge the Demand dated 15.12.1993 which is predicted on the Government Order itself. Learned counsel for the Respondent State has made an attempt to rely on the decisions of this Court in *Bihar Distillery vs. Union of India*¹ as also *Synthetics & Chemicals Ltd. v. State of U.P.*². We have not permitted him to do so for the simple reason that the question of law that had engaged the attention of the Court in those cases, as well as in *Vam Organics Chemicals Ltd. v. State of U.P.*³, was altogether different. In the three cases, the challenge was to the competence of the State Government to impose administrative charges for regulating the holding of rectified spirit, since there is an omnipresent danger of the rectified spirit being surreptitiously diverted for the illicit production of arrack and for that matter even Indian-Made Foreign Liquor (IMFL). Learned counsel for the Appellant has endeavoured to place reliance on the decision in *Pratima Chowdhury v. Kalpana Mukherjee*⁴, in order to buttress the argument that estoppel cannot be claimed by the Respondent State; we are unable to appreciate the reliance on this decision in support of this contention. What we have before us is a simple case of recovery of dues, viz. at rates which had been declared well before the permission to supply rectified spirit was accorded to the Appellant. The position may have been different had the Respondent State failed to pass relevant orders or had it failed to inform the Appellant that, since it did not incur transportation costs, this amount, which had been predetermined at [pic] 1/- per litre, would be payable to the State.

5 There were three Appellants before the Division Bench of the High Court of Karnataka but only one of them, i.e. the Appellant before us, has decided to further challenge the Demand of [pic] 13,32,000/- being accorded at [pic] 1/- per litre sold by the Appellant. It is also relevant to mention that the Appellant has not challenged the Demand of transportation charges of [pic] 1/- per litre for any subsequent charges.

6 We find no substance in the Appeal. The Appellant had full knowledge of the fact that it had been permitted to supply rectified spirit to third parties who are engaged in the business of production of arrack on the condition that of the general fixed price of [pic] 6/- per litre, [pic] 1/- per litre would have to be made over to the Respondent State.

7 The Appeal is accordingly dismissed, with no order as to costs.

Judgment Referred.

¹*AIR (1997) SC 1208*
²*(1990) 1 SCC 0109*
³*(1997) 2 SCC 0715*
⁴*(2014) 4 SCC 0196*