

KERALA HIGH COURT

G.R. Silk Mfg. (Wvg.) Co. Ltd

Vs

Appellate Committee

O.P. Nos.954 to 977; 2593 to 2604 and 2628 to 2639 of 1981

(M.P. Menon, J.)

19.11.1982

ORDER

M.P. Menon, J.

1. The challenge in this batch of petitions is to the orders of the appellate authority constituted under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (Central Act 36/77), and the revised assessment orders passed on their basis. The petitioners who were the appellants before the "appellate committee" are the Pulp Division and Staple Fibre Division of the Gwalior Rayon Silk Mfg. (Wvg.) Co. at Mavoor. The orders passed in appeal are all marked as Ext.P-1, and the revised assessment orders, as Ext.P-2. Three grounds are urged, and they are:-

- (i). The Pulp Division is not a "specified industry" within the meaning of Section 2(c) of the Act, and no cess can consequently be levied in respect of that Division under Section 3;
- (ii). The proceedings of the appellate committee are vitiated by legal bias; and
- (iii). Rule 6 of the Water (Prevention and Control of Pollution) Cess Rules, 1978 relied on by the appellate committee for denying the benefit of rebate to the petitioners is ultra vires.

2. The respondents rely on some of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (Central Act 6/74) to sustain the validity of the rule in question. Even otherwise, the levy of cess under Act 36/77 is for augmenting the resources of the Central Board and State Board constituted under Act 6/74. It is therefore necessary to examine the schemes of both the enactments.

3. Act 6/74 (hereinafter called the 'Pollution Act') is an Act for the prevention and control of water pollution and for the establishment of "Boards" for such prevention and control. Pollution is defined in Section 2(e), and broadly stated, it means such contamination or alteration of the properties of water, or such discharge of sewage or trade effluent into water, as is likely to create a nuisance, or render such water harmful or injurious to public health. Chapter II of the Act

provides for the constitution of a Central Board and State Boards for exercising the powers conferred on them and performing the functions assigned to them. Chapter IV deals with the powers and functions of the Board. Section 17 deals with the functions of a State Board, and they include:-

- (i) the inspection of trade effluents and works and plants for the treatment of trade effluents, and reviewing of plans, specifications and other data relating to treatment plants, and the system for disposal of trade effluent or other works in connection with the grant of 'consent' under the Act;
- (ii) the laying down of standards for trade effluents and for the quality of receiving waters resulting from the discharge of such effluents;
- (iii) the laying down of standards of treatment of trade effluent to be discharged into a stream;

and (iv) the making, varying or revoking of orders for the prevention, control or abatement of discharges. Chapter V contains the key provisions for preventing and controlling water pollution. Section 20 in this Chapter empowers a State Board to collect information and data about the flow of water in streams by itself; and also to give directions to persons and establishments consuming water to furnish data. Under Section 21, the Board can collect samples of effluents and get them analysed; and under Section 22, a copy of the report of the analyst is to be furnished to the occupier of the factory or premises concerned, and another copy is to be retained for use in legal proceedings that may be initiated against him. Section 23 empowers any person authorised by the Board to enter any place for performing the functions entrusted to him; he can inspect the place and detect non-compliance with notices, orders or directions of the Board. Plants, records, registers, documents and material objects can be examined if commission of an offence is suspected. Section 24 provides that no person shall knowingly cause or permit any poisonous, noxious or polluting matter (determined in accordance with the standards laid down by the Board) to enter any stream or well; discharge into the stream of any other matter likely to impede the flow of water or likely to lead to aggravation of pollution is also prohibited. Section 25(1) provides that no person shall, without the previous 'consent' of the Board, bring into use any new or altered outlet for discharge of trade effluent, or begin to make any new discharge. The consent can be obtained by making an application to the Board under sub-section(2). After making an enquiry under sub-section(3), the Board may grant its consent under sub-section(4), subject to conditions as to the point of discharge, construction and use of the outlet, and the nature, composition and rate of discharge of trade effluent. Even when an outlet is brought into use if a new discharge is made without obtaining previous consent, the Board can by notice impose such conditions, under sub-section(5). Section 26 extends the provisions of Section 25 to "existing discharges". Under Section 27, the Board can review the conditions imposed under Section 25, from time to time. Sections 28 and 29 deal with appeals and revisions. Section 30 empowers the Board to carry out works in regard to conditions imposed by it, where the occupier commits default. When the Board apprehends that the water in a stream is likely to get polluted by reason of the disposal of any matter therein, it can apply to a Magistrate, under Section 33, to restrain the person responsible from doing what is apprehended; and the court can pass appropriate orders, including an order to the person concerned to desist from such discharge. Sections 41 to 46 deal with offences and penalties. Violation of a Magistrate's order issued under Section 33 can be punished with imprisonment up to three months and with fine. Contravention of Sections 24,

25 and 26 will lead to imprisonment for not less than six months, and provision is also made for enhanced penalty for continuing offences. In the case of a second conviction, the offender's name can also be published in newspapers. Section 58 bars the jurisdiction of civil courts, and Section 60 gives overriding effect to the provisions of the Act.

4. The Gwalior Rayons are discharging their trade effluent into the Chaliyar river, causing or likely to cause pollution of its waters. The Act empowers the authorities to strike at such pollution either by stopping the discharge altogether, or by prosecution. Laying down of standards, inspection, analysis, imposition of conditions, prosecution and even a total prohibition of discharge, are the weapons available to the authorities under the Pollution Act for preventing and controlling pollution.

5. Turning to the relevant provisions of the Cess Act (36/77), Section 3 provides for the levy and collection of a cess for the purposes of the Pollution Act, on every person carrying on a "specified industry" and on every local authority. The levy is to be calculated on the basis of water consumed by them, for the purposes and at rates not exceeding those specified in Sche.II, reading as follows :-

Purpose for which water is consumed. Maximum rate.

(1) (2)

1. Industrial cooling, spraying in mine pits or boiler food. Three-fourths of a paisa, per kilo litre.

2. Domestic purpose. One paisa, per kilo litre

3. Processing whereby water gets polluted and the pollutants are not easily bio-degradable. Two paisa, per kilo litre.

4. Processing whereby water gets polluted and the pollutants are not easily bio-degradable and are toxic. Two and a half paise, per kilo litre.

Section 4 provides for affixing meters for measuring consumption of water, Section 5 requires every person liable for payment of cess under Section 3, to furnish returns to the prescribed authority. The authority is to make assessments under Section 6, after enquiry into the particulars of the returns. Section 7 provides for grant of rebate to those consumers who instal plants for treatment of trade effluents, and reads :-

"Rebate.- Where any person or local authority, liable to pay the cess under this Act, instals any plant for the treatment of sewage or trade effluent, such person or local authority shall, from such date as may be prescribed, be entitled to a rebate of seventy per cent of the cess payable by such person or, as the case may be, local authority."

Section 10 provides for collection of interest in cases of delayed payment of the cess, and Section 11 for imposition of penalty. Section 12 authorises recovery of the amounts due by resort to Revenue Recovery proceedings. Section 13 provides for appeals against assessments and imposition of penalties. Section 17(1) confers power on the Central Government to make rules for carrying out the purposes of the Act, and sub-section(2) enumerates some of the matters for which provision could be made in the Rules.

6. The rules framed under Section 17 are the Water (Prevention and Control of Pollution) Cess Rules, 1978. Rule 2(b) prescribes that in relation to a State, the assessing authority shall be the member-Secretary of the State Board. Rule 4 provides for submission of returns by consumers every month, in Form I. Rule 6 relating the grant of rebate is in the following terms:-

"6. Rebate.- Where a consumer instals any plant for the treatment of sewage or trade effluent, such consumer shall be entitled to the rebate under Section 7 on and from the expiry of fifteen days from the date on which such plant is successfully commissioned and so long as it functions successfully."

And Rule 9 provides that the appellate authority under Section 13 of the Act shall be a committee consisting of the Chairman of the State Board and two members of that Board. Form I prescribed under Rule 4 indicates that analytical reports relating to the performance of the treatment plant and particulars regarding its break-down are also to be furnished by the consumer, along with the return.

7. Fifteen industries are specified in Schedule I of the Act, and the first question to be decided is whether the Pulp Division of the Company is a

"Chemical Industry", as has been held by the appellate committee. The expression "chemical industry" may mean an industry where chemical processes are involved, or an industry where chemicals are produced; and the committee has understood the expression in the latter sense. In its opinion, rayon grade pulp manufactured in the Pulp Division of the company is a chemical i.e. chemical cellulose. It is this finding which is hotly disputed. The company's case is that its manufacturing process consists only of isolating cellulose present in bamboo and wood by removal of "lignin" and other contents, and that the resultant product is not chemical cellulose. The process itself is explained in the Original Petitions in the following form :-

"The actual process of manufacture of Rayon grade pulp is by feeding the raw materials on the conveyors leading to the chippers, where they are chipped into small pieces in uniform sizes. The raw materials are washed by a continuous stream of water before they are fed into chippers for removal of their adhering mud and dirt. The chips are then conveyed into Digesters, where they are subjected to acid pre-hydrolysis, using dilute sulphuric acid solution. The spent liquor is then drained out, and the chips washed to remove the acid. The chips are again cooked using a solution containing cooking chemicals at high temperature of above 160C. After the chips are thus cooked the pressure is released, and the material is collected in a blow tank, from where the chipped pulp is sent to "Knotter Screen" for removal of uncooked particles. The pulp is washed in a series of washers in a counter-current manner. The washed pulp is bleached in a multi-staged Bleaching Plant, and converted into sheets in a continuous machine. The pulp sheets so obtained are sent to other factories for their conversion into Staple Fibre."

Admittedly, the product of the Pulp Division is rayon-grade pulp, extracted from bamboo or

wood; and the question is whether it can be called a chemical in the context in which "Chemical Industry" is used in Sch.1 of the Act.

8. For holding that rayon-grade pulp is a chemical, the appellate committee has relied on a passage from Dryden ("Outlines of Chemical Technology", 4th Printing 1973, 2nd Edn.) suggesting that "rayon-grade chemical cellulose" is being produced in the company's unit at Mavoor; and one of the contentions raised is that this passage has been deleted from the next edition of the book. Reference is made to the 1969, 3rd Reprint, but it is a matter of considerable doubt whether it is a later publication. Ignoring this controversy and going by passages common to both the publications, it is clear that according to Dryden, "pulp" is cellulose derived from bamboo or wood. Cellulose is a carbohydrate like starch, dextrose or sugar; it is.

"a polysaccharide used in chemical industries in the form known as chemical cellulose for preparation of fibres and plastics".

Carbohydrate is an organic compound of carbon with oxygen and hydrogen in the proportion to form water; and saccharide is the salt of saccharic acid. "Cellulose and Cellulose Derivatives" Part II, "High Polymers", Vol. V, 2nd Ed., p. 547 states that

"The principal requirement for a pulp as a chemical raw material is a high content of alpha-cellulose with almost complete removal of lignin and extractives, and substantial reduction of hemicelluloses".

The pulp produced in the Pulp Division of the company is the raw material for the Staple Fibre Division; and when the passage extracted above is read along with the exhaustive treatment of the subject in parts C and O of Chapter III of Dryden, there can be no doubt that the pulp in question is a chemical, used as a chemical raw material, in the form known as chemical cellulose, for preparation of fibres.

9. The following passage from the "Book of Popular Science" Grolier, 1969, Vol. 7, p. 55 is also instructive :-

"Just what is a chemical, after all? Presumably it is a pure chemical substance (an element or compound) and not a mixture. Thus sulphuric acid is a chemical. But common salt and sugar, with which all of us are familiar, are also pure chemical substances..... The truly chemical industries, which manufacture chemicals, are seldom well known to the public. This is because we, as consumers, do not ordinarily make use of chemicals in their pure form. Instead they are converted into products that reach the consumer only after a number of operations...."

10. For the scientist, therefore, cellulose is a carbohydrate, an organic compound, a saccharide; and for the layman also, it is a chemical like salt and sugar. The finding of the appellate committee that the pulp produced in the company's plant is a chemical, cannot therefore be characterized as perverse. The object of Act 36/77 is to levy a cess on large-scale consumption of water likely to aggravate water-pollution; Schedule II shows that the rate of the levy varies with

different degrees of pollution. Manufacture of pulp from wood or bamboo involves consumption of large quantities of water which get polluted in the process (See "Industrial Pollution Control", H.F. Lund, Ch. 18); and "chemical industry", in the context in which it is used in Sch.I of the Act, can therefore include an industry manufacturing rayon-grade pulp.

11. Legal bias, which is the second head of complaint, is said to arise from the very composition of the appellate committee. The cess, it is argued, is for augmenting the resources of the State Board under the Pollution Act, and since Rule 9 of the Cess Rules conceives of an appellate committee consisting of members of that Board only, the members must naturally be interested in getting more funds by way of cess. It is well-known that the limits of natural justice can be controlled by statute; a statute can even provide for denial of natural justice. Where a statute provides for an appeal and prescribes the appellate forum, and aggrieved person cannot resort to that form and then complain that it is not a proper forum. The Appellate Assistant Commissioner and the Commissioner under the Income-tax Act are all interested in collecting income-tax, and yet they are appellate and revisional authorities under the Act. Any complaint of legal bias on their part can easily be answered by pointing out that is all that the statute provides by way of remedy. At the worst, you have to take it that the legislature has provided for remedies only at the hands of bodies likely to be biased. You cannot resort to those remedies and then complain that their decisions are likely to be vitiated by legal bias. Section 13 of the Cess Act provides for an appeal to such authority as may be prescribed and the authority prescribed under Rule 9 is a committee consisting of members of the State Board. There is no attack against the Section and the Rule, and no question of bias can arise other than as their creation. The second contention of the company should also therefore fail.

12. The third and last contention is about the rebate which an occupier or consumer could claim under Section 7 of the Cess Act. That Section provides that 70% rebate shall be given to a person who instals a plant for treatment of trade effluent, from such date as may be prescribed. Installation of a treatment plant is the only condition for claiming rebate, though the date from which it could be claimed depends on the date prescribed. The company's case is that it has installed a treatment plant, that the plant has been working during the period covered by the assessments, and that the authorities have still refused to grant any rebate for the whole of the periods in question. The Section authorizes the rule-making authority only to prescribe a date, and the complaint is that in the guise of prescribing such a date, the authority has added further qualifications and cut down the sweep of the Section. Rule 6, as we have already seen, provides for grant of rebate:

"from the expiry of fifteen days from the date on which the plant is successfully commissioned and so long as it functions successfully".

The appellate committee has declined to grant rebate because in its opinion, the company's plant has not been successfully commissioned; and the argument is that it successful commissioning means anything more than "installation" as contemplated in the Section, the rule is ultra vires.

13. To instal means to place an apparatus in position for use. Mr. Kesava Menon for the company is prepared to concede that installation does not mean mere erection without use; setting up and actual use for the purpose for which a plant is set up, is comprehended within the terms "install". His case is however that you cannot go further and hold that there is no installation even in the

above sense, it the assessing authority and the appellate authority feel that the result of the plant's operation is not sufficiently successful in their opinion.

14. There is no dispute that the company has installed an effluent treatment plant. There is also no dispute that it has been working. The view taken by the authorities is that it is not sufficiently successful in purifying the water consumed or reducing its pollution level. Sch.II to the Act deals with four different "purposes for which water is consumed". The 3rd and 4th purposes mentioned are cases where water gets seriously polluted. When it gets polluted and the pollutants are easily bio-degradable, the rate of cess is two paise; and when the pollution is of a higher level where the pollutants cease to be bio-degradable and are also toxic, the rate is 2.5 paise. On the finding of the appellate committee, the pollution found in the processed water of the company attracts only the third entry in the Schedule, and not the fourth. In other words, the pollution level is controlled, at least to some extent, by using the treatment plant. It cannot therefore be said that the plant in question is a useless one giving no performance or result at all. It successfully prevents pollution from reaching the fourth degree in Sch.II. Assuming, therefore, that the expression "successful commissioning" in Rule 6 is within the scope of Rule 7, it is still difficult to endorse the appellate committee's view that the company's plant has not been working successfully at all.

15. Counsel for the respondents develops his arguments like this. The object of the Cess Act is to augment the resources of the Water Pollution Boards constituted under the Pollution Act. Section 7 of the Cess Act provides for an incentive to consumers who install treatment plants. It is not enough to put up and operate some kind of plant; the plant must yield a reasonable measure of success in the matter of reducing pollution. The extent to which a plant has succeeded can be measured by reference to the conditions imposed by the State Board while giving consent under Section 25(4) of the Pollution Act. It is said that when the company was allowed to discharge its effluents into the Chaliyar river, conditions were imposed regarding permissible degrees of pollution and that in so far as the effluents analyzed were found to be below this standard, the plant was unsuccessful. "Successful", in the context of Rule 6, has to be related to the satisfaction of the conditions imposed under Section 25(4) of the Pollution Act, it is argued. It is also contended that Section 17(1) of the Cess Act authorizes the Government to frame rules for carrying out the purpose of the Act.

16. I am unable to endorse this line of approach. The power conferred under Section 17(1) of the Cess Act is to make rules for the purposes of that Act, and not for the purposes of the Pollution Act. The purpose of the Pollution Act is to control water Pollution; but the purpose of the Cess Act is only to levy and collect a cess, i.e., a tax for a special administrative purpose. You cannot make rules under the Cess Act to achieve the purposes of another Act. If the conditions specified by the Board under Section 25(4) of the Pollution Act are not satisfied by an occupier, the discharge of his effluent can altogether be stopped under Section 33. He can be prosecuted and gaoled under Sections 41 to 45; his name can also be publicized under Section 46. They are the sanctions of the Pollution Act for achieving its object; and that object cannot be achieved by making use of the rule-making power granted by another enactment for a different purpose. If the company's plant is defective, if its performance is below standard, and if its operations are contaminating the water of the Chaliyar river there are enough remedies under the Act which defines pollution and creates the machinery for its control. Those reluctant to take action under those provisions cannot try to ease their conscience by extracting a few more rupees from the

Company under the Cess Act, if the Company is showing scant regard to public health. Parliament was aware of what it had provided for under Act 6/74 when it enacted Section 7 of Act 36/77; and it was obviously not its intention to depend upon the rule-making authority under the latter enactment, to carry out the purposes of the former.

17. Call it incentive or what you like, the mandate of Section 7 of the Cess Act is to grant a rebate to those who install treatment plants. The rule-making authority cannot cut down its sweep by adding further conditions of its own. Assuming for a moment that the word "instals" in Section 7 has to be read as "successfully instals", and that the word "plant" has also to be read as "effective plant", and further assuming that all these additional words could be read into the section for sustaining Rule 6, what is the criterion laid down by the Rule for deciding success and effectiveness? The rule leaves it to the assessing authority, and he in turn leaves it to the authority giving "consent" under Section 25(4) of the Pollution Act. Stated in a different form, the will of the Parliament as reflected in Section 7 of the Act is placed by the rule-making authority at the mercy of an outside agency. That is not permissible.

18. It is a well-known rule of construction that no words are to be added to a statute unless there are adequate grounds to justify an inference that the legislature has intended something which it has omitted to express. "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do". (*Thompson v. Gold¹*). Where the Income-tax Act of 1952 made provision for allowances in respect of industrial buildings used for the purposes of a trade consisting in the storage of manufactured goods (i.e. goods not yet delivered to a Purchaser), and where an assessee used only one-third of the warehouse for storing shoes manufactured by it, leaving the rest of the space for storing shoes delivered to it as a purchaser by other producers, the *House of Lords I.R.C. v. Saxone, Lilley and Skinner²*, refused to hold that "used for the purposes of trade" could be read as "wholly used" or "mainly used". The revenue contended that it would be unfair to allow the trader to get the full allowances if the building was used only in part for the statutory purpose, but Lord Ried said :-

"But that involves writing in words which are not there and I can see nothing in the context to make that necessary Of course, there can be cases where the use for a statutory purpose is only intermittent or small and such cases could not reasonably be brought within the Act; but here, the use for a

¹1910 AC 409

²(1967) 1 WLR 501

statutory purpose was regular and substantial".

If the effluent treatment plant of the company is no plant at all, or if its use has been so irregular or substantial as to hold that there has been no installation worth the name, the position could probably have been different; Section 7 could in such cases be reasonably interpreted to exclude installation in name, as distinct from installation in substance. That again will be an interpretation of the Section by the Court, and not the making of a rule by the rule-making authority in terms wide enough to control the section.

19. In a very recent decision (*Prithi Pal Singh v. Union of India³*), the Supreme Court has said :-

"The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well-recognized canons of construction is that the legislature speaks its view by use of correct expression and unless there is any ambiguity in the language of the provision the court should adopt literal construction if it does not lead to an absurdity. The first question to be posed is whether there is any ambiguity in the language used..... If there is none, it would mean the language used speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to....."

In my opinion, no absurdity or ambiguity arises if Section 7 is literally construed; on the other hand, ambiguity will arise if words like "successful" or "effective" are added to its language. It is legitimate to think that Parliament never expected an industrialist to install an effluent treatment plant at high capital cost, just to claim a rebate under Section 7, of the Cess Act. It empowered the rulemaking authority to prescribe the date from which rebate could be claimed, but it did not empower the authority to prescribe other conditions for achieving the object of another enactment.

20. In the result, I hold that the words "successfully commissioned" and "functions successfully" in Rule 6 have to be read down so as to apply only to those cases where what is installed is no plant, or where there is no installation worth the name. So read, the rule can be allowed to stand, though parts of Form I would still be otiose. In any event, there is nothing on record to suggest that the company's plant is no plant or that it is not installed. There is no such finding; on the other hand, the finding is that it prevents pollution to some extent. The orders of the appellate committee and the reassessment orders of the assessing authority herein impugned are therefore set aside, and the assessing authority is directed to pass fresh orders allowing the claim for rebate.

21. Allowed as above. No costs.

Order accordingly.

³ AIR 1982 SC 1413