(2006) 11 PAT CK 0088

In the Patna High Court

Case No : Civil Writ Jurisdication Case No. 3873 of 2006

Anil Kumar Agrawal and Others APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 08-11-2006

Acts Referred:

Citation : (2006) 11 PAT CK 0088

Judgement

Aftab Alam, J.—There are five petitioners in C.W.J.C. No. 3873 of 2006 and a single one in C.W.J.C. No. 11316 of 2006. They are all aggrieved by and seek to challenge a public notice dated 11.03.2006 and its supplement dated 8/13.09.2006 issued by the District Magistrate, Gaya, in an effort to regulate the sale of Mahua flowers.

2. All the six petitioners are wholesale dealers of Mahua flowers. All the six petitioners are registered as dealers under the Bihar Finance Act, 1981, and they also hold licences/permits under the Bihar Agricultural Produce Markets Act, 1960. The petitioners maintain that their buyers used Mahua flowers as animal fodder and in extreme conditions even for human consumption. They would wish to make it appear as if there is no connection between Mahua flowers and any intoxicant.

3. According to the impugned notice dated 11.03.2006, the reality appears otherwise. In the notice, it is stated that in the special raids conducted by the Excise Department in the district of Gaya, thousands of litres of fermented Mahua for making liquor and lakhs of kilograms of Mahua flowers were seized from makers of illicit liquor; that under the Excise Rules, Mahua was notified as the base material for making country liquor; that on queries made from the Animal Husbandry Department, Gaya it was learnt that Mahua flower was not used in any way as cattle fodder; that it was thus evident that Mahua flower dealers in the district were constantly supplying it as raw material for making liquor to illicit distillers. The practice was in violation of Section 13(f)(4) read with Section 88 of the Excise Act. The notice went on to direct the Mahua flower

dealers to sell their goods only to people who may be identified and about whom relevant information might be given to the Excise Department on being asked by it, failing which they would be liable to be prosecuted under Sections 47 & 48 of the Excise Act and on being convicted, would be given a sentence of punishment upto three years with or without a fine of Rs. 5,000/-.

4. The notice was promptly challenged before the Court, inter alia on the ground of undue interference with the petitioner''s right to free trade. When the cases were taken up earlier, the Court noticed the apparent vagueness in the impugned notice and recorded its observations in the order dated 31.08.2006 as follows:

The impugned public notice requires dealers at (Sic. of) Mahua to keep and maintain the identity and full address of their purchasers. It is further stated in the notice that on demand by the Excise authorities, they would be obliged to provide all kinds of information for necessary enquiry against the seller/ buyers of Mahua.

The direction is quite vague inasmuch as it is not clear as to how the seller is to record the identity of the purchasers and what information he would be obliged to furnish to the Excise authorities.

5. In light of the Court''s observation, the District Magistrate issued a supplementary notice dated 13.09.2006, that is brought on record as Annexure-A to the counter affidavit. In the supplementary notice, it is directed that all sales of Mahua flowers should be entered in a proper register and sales should only be made to a person producing anyone of the documents of identification, namely, (i) Voter Identification Card bearing photograph, (ii) Pass book of a Nationalised Bank with the address of the holder, (iii) a recent electricity bill, (iv) a recent payment voucher of BSNL telephone connection, (v) Driving Licence, (vi) Ration Card/Red Card, (vii) Identification Card bearing photograph issued by the Sub Divisional Officer/ Circle Officer, (viii) Payment receipt of Municipal Holding Tax bearing the Holding Number of the house and (ix) PAN Card issued by the Income Tax Department.

6. The supplementary notice fully cures the vagueness of the earlier notice as pointed out by the Court. But the supplementary notice too does not escape the petitioners'' challenge.

7. Counsel for the petitioners in C.W.J.C. No. 3873 of 2006 assailed the notices mainly on three grounds. He first submitted that the notices were in conflict with the terms of the licences taken out by the petitioners under the Bihar Agricultural Produce Markets Act and the conditions of registration under the Bihar Finance Act. He next submitted that the notices imposed unreasonable restriction on the petitioners'' right guaranteed under Article 19(i)(g) of the Constitution and finally that to keep track of the end- use of Mahua flowers sold by the petitioners was the responsibility of the authorities and they can not pass on their responsibility to the petitioners.

8. I see no merit or substance in any of the three grounds. There is no question of any conflict between the directions given in the two notices and the terms of the licence issued under the Bihar Agricultural Produce Markets Act or the conditions of registration under the Finance Act. The purpose of the notice is plain and clear. It seeks to regulate the sale of Mahua flowers to prevent it from falling into the hands of illicit distillers as raw material for making country liquor. In no way, the impugned directions can be said to be in conflict with the licence under the Bihar Agricultural Produce Markets Act or the conditions of registration under the Bihar Finance Act. I also fail to see the notices as unreasonable restriction on any of the petitioners'' rights. The direction to keep the record of the sales or to make sales only to someone who produces anyone of the identification documents from a very wide range can hardly be described as unreasonable.

9. In respect of the third ground, learned Counsel submitted that if the administration or the Excise Department wished to keep track of the end use of Mahua flowers sold by the petitioners, they were free to do so but they could not pass on their burden to the petitioners; if they so desired, they could post a police constable or Excise Official at the petitioners'' shops who would record the identity of anyone who visited, the shops for buying Mahua flowers or otherwise but they could not ask the petitioners to keep a record of their buyers. The submission, in my view, is to be noted only to be rejected.

10. Learned Counsel, in the other case (C.W.J.C. No. 11316 of 2006), submitted that any restriction of a fundamental right guaranteed under Article 19(1) of the Constitution can only be defended by reference to a valid, law but the impugned notices were only executive instructions and the direction contained in the notices clearly imposed a restriction on the petitioners'' right to free trade. The notices were, therefore, bad and illegal and unconstitutional. In support of his submission, the Counsel relied upon the Constitution Bench decision of the Supreme Court in Kharak Singh Vs. The State of U.P. and Others, and a decision of this Court in the case of absolute prohibition in Shivjee Prasad Vs. The State of Bihar and Others, Learned Counsel also contended that even in case there was a valid law justifying the restriction, the direction could, only be issued by the authorities specified in the law. According to him, under the Excise Law, it was the State Government alone that could give such direction(s) and not the District Magistrate. Learned Counsel further submitted that Mahua was not an intoxicant and, therefore, it could not be subjected to any direction issued under the Excise Act or Rules.

11. Taking the third submission first, Section 2(12a) of the Excise Act defines intoxicant as any liquor or any substance from which liquor may be distilled and which was declared by the State Government by notification in the Official Gazette to be an intoxicant for the purpose of the Act. In the first notice itself, it was stated that Mahua flower was notified by the State Government as intoxicant. In the two writ petitions, there is no averment contradicting the

statement made in the notice or stating that Mahua flower was not notified by the State Government as an intoxicant within the meaning of Section 2(12a) of the Act. The only conclusion would, therefore, be that Mahua flower is an intoxicant and subject to the provisions of the Excise law. The other two submissions based on restriction of rights guaranteed under Article 19(1) of the Constitution, are similarly answered adequately by Section 7 of the Excise Act of which only Sub-section (1) is relevant for the present. It is as follows:

7. Establishments & delegation & withdrawal of powers:

(1) The administration of the Excise Department and the collection of the excise revenue within the district shall ordinarily be under the charge of the Collector.

12. The expression ''collection of excise revenue'' would naturally include prevention of illicit distillation as leakage and evasion of Excise duty. Thus, apart from any other considerations based on public health, morality and/or maintenance of public order etc., the Collector of the district has a direct responsibility, obligation and a corresponding authority to regulate the sale of Mahua flowers in discharge of his statutory duty with regard to collection of Excise revenue.

13. As already noticed above, the directions given in the notices can hardly be said to be unreasonable or arbitrary or without any reasonable connection with the object and purpose sought to be achieved.

14. In light of the above discussions, I see no merit in any of the objections raised by the petitioners against the impugned notices. These two writ petitions are thus found to be completely devoid of merit. These are accordingly dismissed.

S.K. Katriar, J.

15. I agree.