
(2001) 10 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 7218 of 2000

Bharat Manufacturing Company

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-10-2001

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 33N

Citation : (2002) 1 BLJR 74 : (2001) 4 PLJR 722

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, petitioner has prayed for quashing the notification dated 20-7-2000, contained in Annexure-2, issued by the Health Medical Education and Family Welfare Department, Government of Bihar, prescribing the content of alcohol and packing size of the Ayurvedic Medicinal preparation out of self-generated alcohol.

2. In short, the case of the petitioner is that it is an unit of Somras Ayurvedic Bhawan Pvt. Ltd. and is engaged in the manufacture of Ayurvedic medicinal preparations by self-generated alcohol for which has got a licence from the Respondent State Government. It has been contended by the learned Counsel appearing for the petitioner that Section 33N of the Drugs and Cosmetics Act, 1940, herein after referred to as "the Act", empowers the Central Government to make rules for the purpose of giving effect to the provisions of law as contained in Chapter-I of the Act, which prescribes the method of establishment of the laboratories and the methods of test or analysis to be employed in determining whether any Ayurvedic, Siddha or Unani Drug is labelled with the true list of the ingredients which it purported to contain, and the same are enumerated in Sub-clause (a) to (h) of Sub-section (2) of Section 33N of the Act. In exercise of the powers vested in the Central Government u/s 33N of the Act, the Central Government have framed Rule 161 in the Drugs and Cosmetics Rules, 1945

which provides for labelling, packing and limit of alcohol in Ayurvedic (including Siddha) or Unani drugs.

It has been submitted that Sub-clauses (ix)(a) and (ix)(b) of Sub-rule (3) of Rule 161 of the Rules were inserted vide notification No. GSR 904 (E) dated 2-12-1992, which provide for the size of packing and content of alcohol in Ayurvedic medicinal preparations, with high content of alcohol as base as also preparations containing self-generated alcohol. According to the learned Counsel for the petitioner by an amendment in Section 33N of the Act the power of the State Government to make rule were only in respect of grant or renewal of a licence, inspection, test or analysis of any Ayurvedic medicinal preparations or any other matter for which the fees may be prescribed and under the specific provision of Section 33N of the Act the State Government have not been conferred with any jurisdiction either to prescribe the packing size or the content of alcohol in Ayurvedic medicinal preparations, hence, the impugned notification dated 20-7-2000 issued by the State Government, contained in Annexure-2, is without jurisdiction and illegal.

3. Learned Counsel appearing for the petitioner has further submitted that the State Government in similar manner had issued a notification on 7-5-1993 which was challenged in C.W.J.C. No. 5417 of 1993 (Annexure-3 series) and this Court while admitting the writ petition for hearing directed that the petitioner shall continue to manufacture drugs other than covered by the impugned notification dated 2-12-1992 and during the pendency of that identical matter the Respondents are not justified in issuing the impugned notification. It has further been submitted that in the case of Chandra Narain Rai v. State of Bihar and Ors. C.W.J.C. No. 6754 of 2000 this Court vide order dated 31-7-2000 (Annexure-4) passed interim order to the effect that Annexure-3 shall not be given effect to as the Central Government alone power to frame Rules.

4. Despite sufficient opportunities granted to learned Standing Counsel No. I, appearing for the Respondent State of Bihar and its officials to seek instruction and file counter-affidavit, no counter-affidavit was filed.

5. In this matter, the order was reserved on 16-8-2001. However, on 18-9-2001 on the joint request the matter was again adjourned for one week for enabling the learned Counsel for the parties to file affidavit with regard to framing of Rule. Again on 24-9-2001 on the joint request the matter was adjourned for listing on 3rd October, 2001 when a supplementary affidavit was filed on behalf of the petitioner. On 5th October, 2001 a counter-affidavit was filed on behalf of Respondent Nos. 1, 2, 3 & 7. In the supplementary affidavit, the petitioner has specifically asserted that there is no amendment in Section 33N of the Act so as to vest the State Government with the power to make Rules in the State of Bihar. It is further stated that there is only one amendment in Section 33N of the Act which vests power with the State of Maharashtra to make Rules for its State. In the counter-affidavit filed on behalf of the Respondents it is admitted that there has been no amendment up-till-now in Section 33N by the State Legislature

though the matter with respect to it is under active consideration of the Government of Bihar, However, it is further stated that by the impugned memo percentage of alcohol and packing size of Ayurvedic Alcoholic drugs has been determined by the Government on the basis of direction of the MANTRI PARISHAD KE ARTHIK NEETI AVAM ARTHIC SAMANVAY VISHAYAK SAMITTEE meeting held on 28-6-2000. It is submitted that the samittee took such decision in public interest for the purpose of stopping misuse of Ayurvedic alcoholic drugs as alcoholic beverages.

6. This Court fails to appreciate as to how the Samittee could take such decision in absence of any power. Learned Counsel for the State has failed to point out the power of the Samittee to take any such decision. Section 33N of the Act vests power in the Central Government to make Rules for the said purpose. No doubt, in view of item 19 of the concurrent list of 7th Schedule of the Constitution the State Legislatures are also vested with the power to make such provision relating to Drugs and Poisons subject to the provisions of Entry 59 of List I with respect to opium, but so long such provision is not made by the State Legislature, the State Government was not competent to issue the impugned notification prescribing the content of Alcohol and packing size of the Ayurvedic medicinal preparation out of self generated alcohol, and, thus, the same is wholly without jurisdiction and fit to be quashed on this ground alone.

7. In the result, writ application is allowed. The impugned notification dated 20-7-2000, contained in Annexure-2 is hereby quashed. However, the State may expedite to complete the active consideration to make necessary amendment in Section 33N of the Act to protect the public interest as claimed in their affidavit. In the facts and circumstances, there shall be no order as to costs.