
(1981) 03 MAD CK 0012
In the Madras High Court
Case No : W.A. No. 538 of 1980

Board of Revenue, Madras

APPELLANT

Vs

Associated Pharmaceutical Industries Private Limited

RESPONDENT

Date of Decision : 04-03-1981

Acts Referred:

Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 — Rule 142, 86, 91

Citation : (1982) 10 ELT 23 : (1981) 2 MLJ 432

Hon'ble Judges : Venugopal, J;Gokulkrishnan, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; S. Ramasubramanian, for King and Patridge, for the Respondent

Judgement

Offg. C.J.

1. The respondent herein filed W.P. No. 558 of 1980, praying for the issue of a writ of Mandamus directing the appellants herein to give effect to

the ruling of this Honourable Court in W.P. 100 of 1977 without insisting that any particular product could only be manufactured within a ceiling

limit out of the quantity of restricted preparations. The respondent herein inter alia averred that he got licence in for L-1 for the year 1979-80 and

was allowed to consume a quantity of alcohol not more than 25000 P.L. for the year 1979-80. Medicinal and toilet preparations containing

alcohol for which the respondent herein got 25000 P.L. fell into categories. One is restricted and the other is unrestricted. Restricted preparations

are those which are capable of being consumed as ordinary alcoholic beverages and defined and classified as such under the provisions of the

Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. Other preparations are unrestricted preparations. The holder of a licence in form

L.1 under the Medicinal and Toilet Preparations (Excise Duty) Rules, 1956, shall, be deemed to be a registered dealer for the purpose of the notification. The second appellant herein by an order dated 13-11-1975 has directed that L-1 licences like the respondent should not manufacture any restricted preparations by using more than 10% of the annual quota of alcohol allotted to them. Immediately, after the communication of the said order, representations were made to the Government of Tamil Nadu by the manufacturers, but it fell in deaf ears. Since nothing concrete was done and as the business was seriously affected, the respondent was obliged to file W.P. 100 of 1977, on the file of this Hon'ble court for a writ of certiorified mandamus for quashing the order of the second appellant dated 13-11-1975, and directing the appellants not to interfere with the lawful manufacture of restricted preparations by the respondent in accordance with the terms of the licence granted under the Medicinal and Toilet Preparations (Excise Duty) Rules, 1956.

2. Mohan J. by his order dated 21-2-1977, after referring to the impugned circular challenged in that writ petition, held that the Government is interested in the welfare of the people and that stringent regulations are imposed before licensing or concerning the sale of Tr. Zingibersi Mitis or Tr. Zingiberis Fortis. The learned Judge after referring to the decision in Enoch Pharma Vs. The State of Kerala and Another, , observed that it is a clear authority wherein under similar circumstances, the impugned circular in that case was held to be bad. Applying that ruling, Mahan J. allowed the writ petition but without costs.

3. After the said judgment was pronounced, the respondent herein took up with the appellants the question of allotting sufficient quantity of rectified spirit for the manufacture of restricted preparations. Notwithstanding repeated demands, there has been no attempt on the part of the appellants to implement the judgment of this Honourable court. In particular, the Bonded Manufactory Officer at the respondent's factory was refusing to make available rectified spirit for the purpose of manufacturing restricted preparations except for three stated purposes mentioned in the licence. The protests made by the respondent went unheeded and such restriction has very much affected the business of the respondent. Hence the respondent came forward with the present W.P. No. 558 of 1980 for the issue of a writ of

Mandamus directing the appellants to give effect the ruling of this

Honourable court without insisting that any particular product only be manufactured within a ceiling limit out of the quantity of rectified spirit made available for manufacture.

4. Mohan J. who heard W.P. 558 of 1980 observing that the judgment in W.P. 100 of 1977 has become final, that the authorities are bound to

obey and implement the same and that there can hardly be any excuse for not implementing the same, allowed the writ petition. Aggrieved by the

said order, the appellants have preferred the above writ appeal.

5. In the counter-affidavit filed by the respondent in this writ appeal, the respondent has inter alia stated that the respondent has been issued a

licence in form L-1 and that will be in force till 31-3-1981. Under the provisions of the said licence, the quantity of spirit that the respondent can

possess at one time should not exceed 900 litres and that in the manufacture the respondent can consume alcohol not more than 25000 proof

litres for the year 1980-81. According to the licence, the respondent can manufacture 35 preparations containing alcohol and they are shown in

the annexure to the said licence. In the circular dated 13-11-1975, the second appellant herein has stated that L.1 licensee should not manufacture

any single restricted preparation out of the list annexed to the L-1 licence by using more than 10 per cent of the annual quota allotted to them. It

has been further averred by the respondent herein that even though the licences have been permitted to manufacture 35 preparations as per the L-

1 licence, they have been restricted by the circular dated 13-11-1975 in making the restricted preparations. The said circular was challenged in

W.P. 100 of 1977, and in spite of the judgment in the said writ petition dated 21-2-1977, the appellants did not implement the direction in the said

judgment. Hence the respondent was constrained to file W.P. 558 of 1980. After the order in the said writ petition, the appellants made an

endorsement in the respondent's licence dated 27-3-1980 stating that 10 per cent ceiling of the annual alcohol quota imposed in S2/1298/77,

dated 4-3-1977 is not applicable for 1980-81 in view of the High Court's order in W.P. No. 558 of 1980. While so, the second appellant by a

letter dated 23-1-1981, has stated that no more alcohol will be issued to the company for the manufacture of restricted medicines in excess of 10

per cent restriction as contemplated by the original 1975 communication and has also stated that this Honourable Court has granted stay of the

judgment in W.P. 558 of 1980. The respondent finally reiterated that the restriction imposed is not only beyond the powers vested with the

appellants, but is opposed to the decision in W.P. 100 of 1977.

6. The appellants have filed a reply to this counter affidavit stating that 10 per cent limitation for using alcohol in any one of the restricted items is

done in the interests of the public, that the order in W.P. 100 of 1977 cannot by any stretch of imagination be construed as preventing the proper

authority from exercising powers conferred on it under the Act and the Rules, that the authority competent to give licence can impose additional

condition at the time of issue of or renewal of the licence, that the order in W.P. 100 of 1977 itself will be relevant only for the year 1975-76 and

that the same cannot go beyond, since that order impugned in that writ petition was made in the middle of the year 1975-76. The appellants have

further stated that ten per cent ceiling on the use of alcohol for manufacture of any single restricted preparation has been incorporated in all the L.1

licences from the licence year 1977-78 onwards and that the same is in accordance with the order of this Honourable court in W.P. 100 of 1977.

There is a further averment to the effect that under Rules 84(2), 86 and 142 of the rules the former Excise Commissioner, now Director of Excise

and Prohibition, is competent to impose additional condition in the L.1 licence or issue supplementary instruction and restrict the issue of alcohol if

he is of the opinion that the quantity of alcohol asked for is not in conformity with the bona fide needs of the manufacturers. The appellants would

interpret the order in W.P. 100 of 1977 as meaning that the restrictions, if any should be made clear before the issue of the licence and the same

should not be subsequent to the issue of licence. Inasmuch as the appellants have mentioned the restrictions in the licence itself, the appellants have

stated that the order in W.P. 558 of 1980 is not correct. With the abovesaid allegations, the appellants have prayed that the writ appeal may be

allowed holding that the restrictions imposed by the appellant are in accordance with the Act and the Rules framed thereunder.

7. Mr. Venkataswami, the learned Government Pleader, after taking us through the relevant provisions of the Medicinal and Toilet Preparations

(Excise Duties) Act, 1956 and the Rules made thereunder, submitted that the restrictions imposed by the appellants are in public interest and are within the powers of the authority acting under the said Act and the Rules made thereunder. The decision in W.P. 100 of 1977 cannot be extended to the licences issued subsequent to the said decision when especially the licences contained restrictions for the manufacture of the restricted goods.

8. Mr. Ramasubramanian, the learned counsel appearing for the respondent, read out the decision in Enoch Pharma Vs. The State of Kerala and

Another, and submitted that the said decision applies on all fours to the facts of the present case. According to the learned counsel, the judgment in

W.P. 100 of 1977 has followed the reasoning and conclusion in the said Kerala case and to say that it is restricted to the particular year in which

the writ petition was filed cannot be correct. Until the order in W.P. 100 of 1977 is set aside, the decision is clear and categorical, the restrictions

as have been imposed now, cannot be sustained.

In W.P. 100 of 1977, Mohan J. even though has observed that stringent regulations will have to be imposed before the licence is granted, has held

that M/s. Enoch Pharma v. State of Kerala, AIR 1965 Ker. 289 is clear authority wherein under similar circumstances, the impugned circular in

that case was held to be bad. The learned Judge has further observed that applying the said ruling to this case the writ petition will stand allowed. It

is clear from the said judgment that the learned Judge intoto followed the above said Kerala decision and only on that basis allowed the writ

petition. Even subsequent to the said order, the appellants insisted upon the restriction of only 10 per cent of the supplied alcohol to manufacture

each of the restricted goods.

9. It will be relevant in this connection to refer to the ruling in Enoch Pharma Vs. The State of Kerala and Another, . In that decision, Govindan

Nair J. (as he then was) had occasion to deal with the Medicinal and Toilet Preparations (Excise Duties) Act (hereinafter referred to as the Act).

The Board of Revenue of Kerala State after examining the question in all aspects, found that there was a lot of abuse of various manufactured

items which will go to defeat the provisions of the Prohibition Act. Hence it decided that the items recommended by the Director of Health

Services will alone be allowed to be manufactured or imported into the State. As such, the Board restricted the manufacture of certain items which are recommended by the Director of Health Services as per the quantities fixed by the director. By that order (Ex. P. 4) the manufacturers were allowed to produce only the 15 items mentioned therein. By a subsequent order (Ex. P. 5) the number of items was raised to 45. The learned Judge of the Kerala High Court considered the question as to whether the provisions of the Act and the Rules made thereunder contemplate imposition of restrictions as detailed in Exs. P. 4 and P. 5. The learned Advocate General of Kerala submitted that S. 6 read with Rule 84 and the provisions in the form A. L-1 show that the statute provides for control not merely of a regulating nature for the purpose of ensuring the collection of duty imposed by the Act but also control of the quantum and the number of articles that could be allowed to be manufactured. According to the Advocate General, the section, the rule and the form clearly provide the power to impose the restrictions of the nature that have been imposed by Exs. P. 4 and P. 5. But the learned Judge, after examining the provisions of the Act and the Rules made thereunder observed that he is unable to see in those provisions any power conferred on the licensing authority. The learned Judge observed -

No person engaged in manufacturing medical preparations shall do so without a proper licence. This is an ordinary provision which is intended for regulating of various types of activities for different purposes. Such regulation may be for the purpose of health or for the purpose of imposition of a fee for services rendered by local authorities or as in this case to ensure the collection of the duty imposed by the Statute. I find no provision in the statute even suggesting in a remote manner any control being exercised in relation to the articles to be produced and regarding the quantum that could be manufactured.

The learned Judge further observed that the restrictions imposed under Exs. P. 4 and P. 5, in that case were measures to prevent the misuse of the medicinal preparations in order to enforce strictly the prohibition policy. The learned Judge further observed that such measures taken to enforce the prohibition policy are not warranted under the Act and the Rules made thereunder. With these observations, the Kerala High Court allowed the

writ petition holding that Exs. P. 4 and P. 5 the orders passed by the Board of Revenue of Kerala State were bad.

Bearing the above said decision in mind, we can look into the provisions of the Act and the Rules made thereunder. Section 6 of the Act reads as

follows :-

6. (1) The Central Government may by notification in the Official Gazette, provide that from such date as may be specified in the Notification, no

person shall engage in the production or manufacture of any dutiable goods or of any specified component parts or ingredients of such goods or of

specified component parts or ingredients of such goods or of specified containers of such goods or of labels of such containers except under the

authority and the accordance with the terms and conditions of a licence granted under this Act.

(2) Every licence under sub-section (1) shall be granted for such area, if any, for such period, subject to such restrictions and conditions, and in

such form and containing such particulars as may be prescribed.

From Section 6(2) it is clear that there must be rules prescribed for putting restrictions and conditions apart from other things mentioned in Section

6(2).

10. Rule 82 of the Rules framed under the Act deals with procedure for obtaining licence. Rules 83 deals with the form of application. Rule 84(1)

reads as follows -

On receipt of the application, the licensing authority may make such inquiries for verification of the details stated in the application and also such

other inquiries as it deems necessary. If the authority is satisfied that the conditions for the grant of the licence applied for have been complied with;

it shall grant the applicant an appropriate licence.

Rule 84(2) states -

In fixing the quantity of alcohol while issuing the licence under sub-rule (1) to any manufacturer, the licensing authority shall satisfy itself about the

requirements of alcohol of that manufacturer and if that authority is of the opinion, that the quantity of alcohol asked for is not in conformity with the

bona fide needs of the manufacturer, it shall either reduce or refix the quantity of alcohol as it may deem fit.

Rule 86 deals with alteration or substitution of licence. It reads -

The licensing authority may, at any time, call for any licence and may amend or alter it or may tender to the licence a new licence in accordance

with any further conditions which may be prescribed.....

Even in this Rule 86 it is made clear that there must be some rule prescribing the conditions contemplated under Rule 86. Rule 91 deals with

additional rules specially applicable for applying for a licence for working a bonded/non-bonded manufactory. Sub-rule (ix) states -

a list of all preparations which the licence proposes to manufacture in his manufactory showing the percentage or proportion of alcohol in terms of

London Proof gallons contained in each such preparation quoting the authority (pharmacopoeia) under such preparation is proposed to be

manufactured.

Rule 142 deals with the power to issue supplementary instructions. The rule states -

The Excise Commissioner may issue written instructions providing for any supplemental matters arising out of these rules.

In our opinion, rule 142 is intended for issuing executive instructions. Except the abovesaid rules, the learned Government Pleader has not cited

any other provision in the Act or the Rules made thereunder for the purpose of imposing restrictions now in question. In the light of the abovesaid

provisions in the Act and the Rules made thereunder, we do not find any authority for the Board to levy a ceiling stating that the licencees should

not manufacture any single restricted product or preparation by using more than 10 per cent of the quantity of alcohol allotted to them. The

impugned order inter alia states -

In the interest of the Prohibition Programme of the Government and in the interest of public as well as the trade the L. 1 licencees are informed

that they shall not manufacture any single restricted product or preparation by using more than 10 per cent of the quantity of alcohol allocated to

them"".

11. Thus it is clear that such order was passed in order to prevent the misuse of the alcohol and for the purpose of effectively enforcing the

prohibition programme. In our opinion, such restrictions are unwarranted and they are made only to effectively implement the prohibition policy.

The misuse, if apprehended, must be prevented by enforcement of the Act and the Rules. Prevention of such misuse is not by restricting the number and quantity of the medical preparations that can be manufactured. Such restrictions, in our view, are not in accordance with the prescribed Rules framed under the Act. We are in complete agreement with the observation of Mohan J. and that on all fours the decision in Enoch Pharma Vs. The State of Kerala and Another, , applies to the facts of this case. From the discussion we have made above, it is clear that such restrictions now sought to be imposed, are not warranted under the Act and the Rules made thereunder. In these circumstances, the writ appeal is dismissed with costs. Counsel's fee Rs. 250/-.