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In the High Court Of Kerala

Case No : O.P. No''s. 13965 and 15818 of 1995 and 27852 of 2000

Cochin Refineries Ltd. APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Kerala Standards of Weights and Measures (Enforcement) Rules, 1992 — Rule 14, 14(1)
Standards of Weights and Measures (Enforcement) Act, 1985 — Section 24
Standards of Weights and Measures Act, 1976 — Section 2, 3

Citation : AIR 2002 Ker 290

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : Antony Dominic, for the Appellant; Viju Thomas, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—O. P. No. 13965 of 1995 had been filed by Cochin Refineries Limited, which is a Government company. The other two Original petitions have been filed by Bharat Petroleum Corporation Limited, (BPC) which also is an enterprise of the Government of India. Notices issued by the Department of Legal Metrology are under challenge. O.P. Nos. 13965 and 15818 of 1995 challenge the directions for calibrating the storage tanks installed by the petitioners.

2. O. P.No. 2752 of 2000 has been filed by BPC for a declaration that the flow-meters installed by them at the Loading Gantries, in its Irimbanam Installation, are not required to be calibrated under the Standards of Weights and Measures (Enforcement) Act, 1985 and the Rules thereunder. The impact of the Standards of Weights and Measurements Act, 1976, Enforcement Act, 1985 and Rules framed thereunder comes to be decided in these set of writ petitions. I may deal with the issue of storage tanks, in the first instance, and later on deal with the issue concerning the flow meters.

3. Cochin Refineries Limited is engaged in the manufacture of High Speed Diesel, Petrol, Naphta, raw kerosene. Asphalt, Low Sulphur Heavy stock. Furnace Oil, LPG and other petroleum products. For the purposes of (1) storage of raw materials imported and pumped into the factory premises, (2) for storage of intermediate products after the first processing and (3) for storing the finished products, facilities in the form of storage Tanks with capacity ranging from 16000 kilo litres to 65000 kilo litres have been installed. All of them may not be used at all times. From the storage tanks, where finished products are kept, the products are removed either by tanker lorries or by pipelines or by Railway wagons. It has been stated that six tanks are used for storing raw materials. 14 tanks are used for storing intermediate products and 16 storage tanks are intended for storage of other petroleum products. The balance are either kept idle or used for storage of finished products, the other finished products, namely petroleum and High Speed Diesel,

4. Tank No. 70 in the Refinery is used for the purpose of storage of motor spirit. The petitioner-company requested the Legal Metrology Department to witness calibration, by letter dated 24-10-1994. By Ex.Pl dated 25-10-1994, the Department directed that in view of the provisions of the Enforcement Act and Rules, which had come into effect from 25-7-1992, the specification and calibration was required to be done as per Schedule IX A of Part II. The storage tanks were to be recalibrated once in five years and insofar as that the petitioner-company had not taken steps for such calibration the rules stood violated. As such compounding fee, as decided by the Department, was payable so as to escape from coercive proceedings. It has also been pointed out that as the actual volumetric capacity were not furnished, the volume fee could not be calculated. Stamping fee was also required to be paid. The matter was taken up by the petitioner for further deliberation with the Department, and it appears that calibration had been attended, in respect of the tank that had,been requested for.

5. The petitioner had thereafter addressed a letter on 5-12-1994,requesting the Department to witness and certify that recalibration of the storage tanks and to exempt the tanks which were used for LPG storage and also intermediate products tanks and other tanks where dip rods were not used. However, this request was rejected, as according to the Department, the exemption could not be granted. The Department struck on to its stand that in view of the enforcement of the rules additional fee in fact was payable. Therefore, the stamping got delayed. An appeal had been filed by the company to the Government. But, the Government took a stand that as per the relevant rules additional fee for calibration could not be waived. This was by way of Ext.PlO. These proceedings are also challenged.

6. At the time of filing of the Original Petition, only two out of the 68 tanks stood calibrated. The petitioner contends that the approach, evidenced by the direction in Ext. PI,, was Irregular and illegal. They canvassed for the position that in respect of storage tanks, where raw materials and intermediate products are

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stored, neither the Act nor the Rules required that they should be calibrated. It is therefore submitted that the insistence for calibrating the tanks in the aforesaid manner is without basis or jurisdiction and interference of this Court is warranted to see that there are no coercive steps, without authority of law.

7. Almost similar contentions have been raised by the Bharat Petroleum Corporation Limited in their Original Petitions. It is stated that they have got a net work of depots having storage facilities for storage of High Speed Diesel, petrol and other products. There are large tanks with thousands of litres of storing capacity. From such tanks the products are transported by tanker lorries. The averments also show that the petitioner has attached flow-meters to the storage tanks in order to regulate the out flow of the product from the storage tanks mechanically, when the products are required to be removed. It is contended that the storage tanks and the flow-meters are used by the petitioner for its own convenience and as an internal arrangement, and are not used as weights or measures as contemplated by law.

8. It is complained that for the first time a notice had been issued by the Department on 11-11-1994 requiring them to calibrate the storage tanks. By way of reply, the petitioner had informed the Department that the proposal was not legal and almost in similar circumstances notices issued by the Department had been under challenge in various High Courts and orders had been passed by such Courts interdicting the coercive action so contemplated. But this was ignored and by way of Ext. P4 dated 27-6-1995 the petitioner was directed to take immediate steps for calibration of storage tanks and this led to the filing of the writ petition.

9. The petitioners submit that the proceedings as are envisaged u/s 24 of the Standards of Weights and Measurements (Enforcement) Act, 1985 (hereinafter referred to as Enforcement Act) and the rules framed thereunder have application only if such weight or measure is being, or is intended or likely to be used in any transaction or for industrial production or for protection. According to them, the storage tanks are neither weighing or measuring instruments, nor they can be envisaged as being put to use for any such purpose and therefore verification or re-verification or stamping of such tanks could not have been intended and respondents overstepped the jurisdiction vested in them. It is also submitted that the basic objective of the Act, as could be seen from the original enactment and the Enforcement Act was to see that the interest of the consumers were protected. Only commercial transactions involving weights and measures were therefore to be brought under the purview of the Act. They reiterate that the use of storage tanks at the depots do not affect the retailers nor consumers. The receptacles are to hold the products, which might be the crude oil that is imported or intermediate products undergoing stages of processing. The end products are also stored, and it can be equated to stocking of articles and due to the peculiar nature of the products it has become necessary for use of tanks. It was not the look out of the customers or

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distributors as to what was the quantity of the product is held at a particular time and it was purely an internal arrangement for the convenience of handling the goods, and therefore calibration insisted by the Weights and Measures Department was misconceived.

10. As far as the Cochin Refineries is concerned, they submit that they are prepared to calibrate and get stamped the tanks which contained the end products, as such tanks had been fitted with dip measurement devices and it was not objectionable that accuracy was ensured, at the seller point, even though this was only to satisfy their own requirements. Therefore, it was only a misreading of the Act that had prompted the statutory authorities to proceed against them in the matter. As regards Rule 14{1) of the Kerala Standards of Weights and Measures (Enforcement) Rules, to the extent it provided for, verification and calibration of storage tanks, petitioners submitted that the rule went far beyond the statutory prescriptions and could not have been enforced as being ultra vires of the statute.

11. I had occasion to hear the Government Pleader.. He relied on the counter affidavit filed in the cases, and did not place any additional materials. The Assistant Controller of Legal Metrology had attempted to contradict the objections that have been raised in the Original Petitions. According to them, there is a specific admission that the products are filled in the storage tanks through pipelines. Calibration of the tanks was necessary to ascertain and countercheck whether the quantity received in the tanks tallies with the quantity sent from refinery or ship. This involved a contract and consequent accountability and therefore falls within the ambit of "transaction" defined in Section 2(z) of the Standards of Weights and Measures Act, 1976. It had been averred that the products in the storage tanks were drawn and sold to various dealers and this also involved a transaction. It could never be stated that it was used for domestic or internal purpose. In view of the enforcement of the section (Section 24), such weight or measure, including storage tanks, were to be invariably verified and re-verified from time to time. Of course reference had been made to Sections 9, 21 and 22 of the Enforcement Act. As calibration and stamping was therefore a statutory obligation, it had been contended that the action initiated against the petitioners were valid. It had also been suggested that they could have resorted to the statutory remedy provided u/s 69 of the Act. Rule 14(1) of the Rules imposed a duty on absolute terms, and the omission on the part of the petitioners were actionable.

12. The Standard Act, in its present form had been enacted in 1976 by the Parliament and its object was to establish standards of weights and measures to regulate inter-State trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and to provide for matters connected therewith or incidental thereto. Counsel for the petitioners had contended that it was not inter-State trade or commerce and the Act was wholly inapplicable. It is pertinent to note that Part IV of the. Act commencing

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from Section 31 are specifically stated to be applicable to inter-State trade or commerce only and shows that the other parts of the Act will have application in various other contexts. There is also no averment, in convincing terms, that the transportation that is there from the depots are confined to locations exclusively in the Kerala State. On the other hand, the specific reference to filling in tanker wagons in fact shows that there is inter-State trade as well. But this has not much of relevance as Standard Act provided for the introduction of standards and weights in order to standardise the legislations with international conventions. In 1985, so as to facilitate enforcement, the Standards of Weights and Measures (Enforcement) Act (Act 54 of 1985) had been brought in. to provide for the enforcement of standards of weights and measures, established under the 1976 Act and for incidental requirements. Section 3 of the 1985 Act lays down definitions and Section 3(o) states that words and expressions used in the Act and not defined but defined in the Standards Act shall have the meaning respectively assigned to them in that Act. The Act deals with manufacture, repair or sale of weights or measures, and verification and stamping of weights or measures as well.

13. The relevant section, for the purpose of this case, is Section 24. Section 24(1) is to the following effect :

"24. Verification and stamping of weights or measures.-- (1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or likely to be, used by him in any transaction or for industrial production or for protection, shall, before putting such weight pr measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf (hereinafter referred to as the specified place or specified time), on payment of such fees as may be prescribed,"

The key position, according to me, is that the weight or measure should be used in any transaction or for industrial production or for protection. Weights and measures are defined u/s 2(zd) as a weight or measure specified by or under the Act, and includes a weighing or measuring instrument. 1976 Act defines "transaction" in the following terms of Section 2(z) :

"(i) any contract, whether for sale, purchase, exchange or any other purpose, or

(ii) any assessment of royalty, toll, duty or other dues, or

(iii) the assessment of any work done, wages due or services rendered,"

It at once strikes that the definitions are worded in such a manner that they have an extended meaning, not normally invested with, and therefore deserves a liberal interpretation in favour of the Revenue. It is any contract or sale, purchase or any other purpose and situations similar thereto. In the context of Section 24, the storage tank cannot but be stated as one for a ''transaction''. But the protection as defined In Section 3(o) of the Act has no relevancy so far as

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the present case is concerned and reliance thereon by the respondent is misconceived. The other circumstance relevant is that it should be used for industrial production. It cannot but be stated that the weight or measure in possession of the petitioners are not used for industrial production. A storage tank where an intermediate or raw material is kept is "possession of a measure" in a circumstance indicating that such measure is intended or likely to be used by him in a transaction or industrial production. It comes within the mischief of Section 24 of the Act. Petitioners submit that a tank''s function Is only storage, and as pointed by the counsel, it may be that a receptacle had to be used taking note of the nature of the commodity, and had it been a solid object, such storage might not have been necessary. But these are beside the point. The only reason that a container had to be used for storage items ipso facto authorised the respondents to insist that the container should as well be calibrated and stamped. At a given point, the measure was not put to any specific use is not a yardstick for absolving one from liability. Therefore I do not see merit in the submission that it did not serve any purpose whatsoever towards the objective of the enactment and the proceedings were misconceived. If it was a measure, answering the definition. Section 24 had to apply.

14. The storage tanks, which are used perhaps only internally for storage purposes and for transferring commodities while they are undergoing processing, are intended to come within the definition. To read into it that measurement was to guarantee its accuracy vis-a-vis the consumer is impermissible. When the provision of the enactment is clear and not ambiguous, the Court has no business to interpolate words or restrict the meanings by any purposive interpretation. The Act was definitely not one confined to the objective of safeguarding the interest of the consumers alone. It had a larger perspective.

15. It is not disputed that with reference to the storage tanks, where the end products such as petrol and high speed diesel are stored for measuring it out to the customers, either through lorries or the tanker wagons, calibration is essential. If that be so the same equally applies to other tanks as well. Being a commodity assessable to Central Excise, every litre of the raw material and waste and end products are always to be accurately accounted for. Therefore the inconvenience or cumbersome procedures cannot be successfully pleaded to get over the liability as such -- clause (it) of Section 2(z) of Standards Act deals with the situation of assessment of duty as well. In the . aforesaid circumstances, I hold that Rule 14(1) of the Kerala Standards of Weights and Measures (Enforcement) Rules, 1992, which provides for verification and calibration of storage does not suffer from the disabilities attributed to it. The Rule has inherited relevance from Section 24 and the definition of words incorporated In the section. The challenge of the petitioners consequently fail.

16. Now we may come to the Original Petition (P.P. No. 27952 of 2000) filed by the Bharat Petroleum Corporation Limited in respect of the directions issued by the Department in the matter of calibration of flow-meters.

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17. The company receives petroleum products from the Cochin Refineries Limited through pipelines and they are stored in the storage tanks erected within the Installation. Products received through other means are also stored in the above manner. Such products are thereafter distributed to the other depots and Installations of the petitioner company as also other oil companies and they are transported by Rail Wagons or through tanker lorries. The contention is that the products so transferred are filled in the Rail Wagons calibrated by the Central Tank Wagon Calibration Committee. Likewise, the tanker lorries are also fabricated as per the specifications of the Petroleum Act. The Wagons are filled as per the calibration certificate and are again verified by using dip-rods. As far as the tanker lorries are concerned, the quantity filled at the consumer point is checked by a standard measurement known as dip-rod. This dip-rod is as well calibrated, verified and stamped under the Enforcement Act.

18. In the abovesaid background, the counsel submits that in the process of filling the Tanker Wagons and tanker lorries for the purpose of regulating the flow from the tanks the petitioner uses flow-meters. It is stated that the flow-meters available at Irimbanam were installed during 1997 and were calibrated by the Department in 1997, 1998 and 1999. On 15-9-1999 a notice had been issued by the respondents requiring the petitioner-company to remit the verification fee and additional fee for calibration of 216 flow-meters, by way of Ext. PI. At that time, a contention had been taken that the flow-meters so installed at the Loading Gantry were used only for internal purposes and the products are delivered on stock transfer basis, based on the Calibration Committee. There was no transaction also done based on flow-meter reading.

19. But this argument was not accepted by the Department and the fee had been remitted under protest. The submission is that since such flow-meters are installed only for its internal purpose, it is not legal to insist that they require calibration. During the year 2000 as well, there was a requirement for arrangement of calibration process. The petitioner had taken up an identical objection, and under protest, remittances had been made, but in view of the basic question that stands projected, the petitioners submit that the O.P. had been filed. It is submitted that u/s 24 of the Enforcement Act, calibration in respect of the flow-meters is unwarranted. Insofar as they are not used as a measuring instrument for transaction, it is pointed out that they are not liable to be calibrated. The measurement entirely go by dip-rods and calibration chart and the approach, evidenced by the impugned orders, according to them, are unsustainable. It is submitted that they are entitled to a declaration that flow-meters are not required to be calibrated and there has been a further prayer for return of the fee, that is already paid.

20. The Assistant Controller (Central Laboratory), Legal Metrology, ErnakUlam has filed a counter-affidavit. The claim is resisted. It is submitted that the distribution of the products as available in the terminal is a transaction coming within Section 2(z) of the Standards of Weights and Measures Act. Reference is

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also made to the definition "sale". It is pointed out that basic approach to the issue has been erroneous. After the introduction of the Standard Act and the Enforcement Act, it may not be possible for the petitioner to contend that the Railway Wagons or the tanker lorries, even if they have been fitted with mechanism for independent measurement, could not absolve the petitioner of the liability as a supplier at a point of transaction. It is pointed out that the Central Wagon Calibration Committee is not authorised to verify or calibrate a weight or measure under the Enforcement Act. Referring Co the contention of the petitioner that the flow-meters are used for loading petroleum products so as to avoid spillage or overflow of petroleum and other chemical products, it is submitted that it may also attract the term "protection" as defined under the Central Act. However, I am of the view that element of protection hardly can be employed when the matter is being dealt with, in the nature of the contentions that have been raised, and such arguments have been made forgetting the context of the term used in the enactment.

21. The issue is thus simplified substantially. When a product ultimately reaches a container which is calibrated or is capable of being subjected to examination so as to assess,the quantity of the goods, the petitioner says, the flow-meter through which it is led, needs no calibration. Therefore, it is claimed that in the process of filling, even though a measure system is used, nevertheless it does not require and it is not a measure requiring calibration. This argument is difficult to be appreciated; in fact it is basically absurd. At the final point of delivery, the goods are either transferred or they are parted with and in the course of a trade. Necessarily a strict view is to be employed. When such filling is carried out, the flow-meters have to give accurately the amount of product that stands parted with, even it be initially a stock transfer. It may be that the container to which the product is loaded may be calibrated or the quantity capable of being assessed by other methods. But as far as the petitioners are concerned, they have entered in a ''transaction'' and a definite quantity is parted with in favour of a third person. The size of the container or capability of its being accurately measured are Irrelevant. We may even advert to a simple example. The capacity of the gasoline tank of a car may be prefixed, and it cannot be changed. Can a petrol pump owner justifiably say while filling up an empty tank, that his dispensing equipment needs no calibration as the capacity of the tank is predetermined. Or can a vendor selling vegetable oil be permitted to use an unauthorised decanter, claiming that the customer has brought to him a bottle which has a predetermined capacity for holding the oil. The law does not permit it and at times it may even run counter to a popular or common sense view. But strict obedience is called for, though it may be inconveniencing. At the filling point, be it a sale or a stock transfer, there can be spelt out a transaction, and therefore there cannot be two different yardsticks. As pointed out by the respondents, the calibration of tanker lorries or wagons are done by other agencies, and after the advent of the Act, the above can be no defence for seeking exemption. In fact Parts II and III of the General Rules, 1987,

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extensively deal with calibration of tanks, especially that is relatable to petroleum products.

22. The petitioner had invited my attention to the two judgments, one rendered by the High Court of Madras in Writ Petition No. 7586 of 1998 and other connected cases. The Court examined the question where the flow-meters were being used. But the decision proceeded on the basis that the petitioner was not doing any transaction or sale of products in the terminals. In other words, as they served only a decanting function, the system was stated to be out of bounds for the enforcement. But, since I find that there is ''transaction'' and at times sale, I am unable to share the views of the learned Judge. A Division Bench of the Bombay High Court in Writ Petition No. 518 of 1989 also had held that the insistence for calibrating flow-meters was without justification. But, the judgment has come on an assumption that "on the basis of clear averments on the factual situation to which we have already made a detailed reference, we are of the opinion that no commercial transaction takes place at the depot". This is not the actual situation available, at least here, since what transpires is a transaction as coming within the contemplation of the section at the point of filling. It is difficult to exclude application of Section 24 in this context. Also grammar and etymology has to yield place to clear statements in an enactment. I find difficulty to agree to the views of the Division Bench.

23. I hold that the petitioner has not made out a case for interference. All the three writ petitions are therefore dismissed. There will be no order as to costs.

24. Since stay of further proceedings were in operation, and as the legal position was not conclusive, I am of the view that any penalty proceedings, fine, claim for additional fee etc., may not be enforced as against the petitioners. However, this benefit will be available only if the actual dues are paid by the petitioners promptly and latest by 31-3-2002.

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