

(1996) 02 KAR CK 0066
In the Karnataka High Court
Case No : Writ Petition No. 3639 of 1994

Duphex Chemicals

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 28-02-1996

Acts Referred:

Karnataka Excise (Rectified Spirit) Rules, 1967 — Rule 2F, 3 (1), 4 (2)

Citation : (1996) ILR (Kar) 1146 : (1996) 6 KarLJ 748

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : M.R. Naik, for the Appellant; L. Narayanaswamy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Bharuka, J.—Petitioner herein has challenged the Constitutional validity of the Notification No. FD 13 PES 92 dated 21-11-1992 (Annexure-A) whereby, by amending Rule 4(2) of the Karnataka Excise (Rectified Spirit) Rules 1967 (in short, the Rules"), the Government has substantially raised the fee for obtaining the licence thereunder and sought for quashing the consequential demand notice dated 22-2-1993 in No.EXE/RS.II/201/92-93 (Annexure-B).

2. Petitioner is engaged in the manufacture of various chemicals and drug intermediaries. In the said manufacturing process rectified spirit is used as one of the raw materials. Accordingly, as required under the provisions of the Rules, it has obtained Form RS(2).

3. Rule 2(f) of the Rules defines "rectified spirit" as meaning "plain un-denatured alcohol of a strength not less than 52° OP and includes absolute alcohol. Admittedly, it is non-potable and is commonly known as industrial alcohol. Rule 3(1) provides that any person desiring to possess and use rectified spirit for bonafide, medicinal, industrial, scientific, etc. purpose has to make an application for a licence to the prescribed authority for grant thereof. Sub-rule (2) of Rule 3,

which is material for the present purpose reads thus:

"The application shall contain the following particulars namely

- (a) name and address of the applicant;
- (b) place where the rectified spirit will be kept and used;
- (c) quantity of rectified spirit to be used per month;
- (d) specific purpose for which rectified spirit is required, and the use it will be put to;
- (e) whether the applicant held any rectified spirit licence in the year before the date of application and if so, the number of the licence and the quantity sanctioned;
- (f) the period for which the licence is required;
- (g) registration number of the applicant if he is registered medical practitioner."

4. By the impugned Notification dated 21-11-1992 sub-clause (ii) of Clause (b) of Rule 4(2) of the Rules was amended by raising the licence fee from Rs. 25,000/- to Rs. 50,000/-, and a Proviso was also added to this clause providing that if the licence capacity of the licensee is of more than 5000 litres of spirit in a year, additional licence fee of Re. 1/- per litre shall be calculated at the time of issue of licence. By a subsequent Notification being GSR 80 dated 21-11-1992, apart from deleting the said Proviso, Clause (b)(ii) of Rule 4(2) of the Rules was again amended by slashing down the licence fee from Rs. 50,000/- to Rs. 250/-. This Notification was brought into force with effect from 1-7-1993. Therefore on and after coming into force of this Notification, for obtaining RS(2) Licence only Rs. 250/- is required to be paid as licence fee.

5. In the present case, according to the petitioner, he was granted Licence in RS(2) for the excise year 1992-93 i.e. from 1- 7-1992 to 30-6-1993 on payment of Rs. 25,000/- as licence fee, as per the provisions of the Rules then existed. But because of the amendment made by the impugned Notification dated 21-11-1992, he has been served with the impugned demand notice dated 22-2-1993 (Annexure-B) requiring him to pay Rs. 4,51,400/- as an additional licence fee for the said year. This has been worked out on the basis that as per the licence granted to the petitioner it can use 39700 litres of rectified spirit per month which works out to Rs. 4,76,400/- per annum and under the newly inserted Proviso by the impugned Notification, apart from the additional fee of Rs. 25,000/- he has to pay Re.1/- per litre of the rectified spirit which he has been permitted to use.

6. Petitioner has challenged the impugned enhancement of fee and the consequential demand on the plea that the respondents apart from issuing and renewing the licence in Form RS(2) did not render any kind of service under the provisions of the licence justifying such exorbitant and shocking enhancement

from Rs. 25,000/- to Rs. 4,51,400/-. According to them, the industrial alcohol used by them was purchased from the private manufacturers and no service element was involved at the instance of respondents either in such purchases or transport or storage in the premises of the petitioner. Accordingly it has been submitted that since there will be complete absence of any quid pro quo or reasonableness in the enhancement of the fee as having sought to be done by the impugned Notification, the same is Constitutionally invalid.

7. On the other hand, respondents though have filed their statement of objections have virtually placed no materials in terms of the figures or otherwise to justify the impugned enhancement of the licence fee. According to them, the enhancement was necessitated in view of the impugned order, because money value had fallen down to a great extent during this period. The further plea taken in this regard is that the State has to incur huge expenses as stated in paragraphs 2 to 5 of the objections which are to the following effect:

"2. The State has to incur huge expenses towards regulating the possession, transport and sale of Rectified Spirit. Periodical inspections are to be conducted by the officials of the Excise Department to ensure proper utilisation of the R.S. At least once or twice the accounts and licenced premises are to be verified by the departmental staff. The total expenses of department towards salary and other allowances exceed Rs. 4 to Rs. 5 crores per year. The State has to incur expenses towards communication and transport of the officials during the investigation and enquiry.

3. The petitioners are getting huge profit from the business they conduct out of the R.S. obtained under licence or permit. The licence fee payable by them bears" a small proportion compared to their business turn over and profit margin.

4. During the year 1993-94 in respect of RS-2 licensees, licence fee is reduced to Rs. 250/-. The State Government has reduced the licence fee to encourage industrial development in the State. Rectified Spirit is the major raw material for them. The Government has considered the request of RS-2 licensees, while reducing the licence fee.

5. The licence fee to be charged for RS-2 licensees need not be in proportion to the service rendered. With a view to raise state revenue a reasonable amount may be charged, which is being utilised for the welfare of the society."

8. The Supreme Court in State of Uttar Pradesh and Others Vs. Synthetics and Chemicals Ltd. and Others, declared the exclusive privilege of the Government for manufacture of all alcohols including denatured spirit and industrial alcohol. But this Judgment was over-ruled in the second Synthetic case reported in , Synthetic and Chemicals Ltd. vs. State of Uttar Pradesh. In paragraph 5 of this Judgment, with regard to industrial alcohol, it has been inter alia held that -

(i) the State Legislature may lay down regulations to ensure that the non-potable alcohol is not diverted and misused as a substitute for potable alcohol; and,

(ii) in case the State is rendering any service as distinct from its claim of so called grant of privilege, it may charge fee op quid pro quo,

9. In view of the declaration of the Supreme Court in the Second Synthetic case Synthetics & Chemicals Ltd. v. State of Uttar Pradesh (supra), it has now to be found whether keeping in view the pleadings of the parties, materials placed on record and the Judicial Pronouncements in this regard, respondents have been able to establish the requisite quid pro quo for justifying the impugned enhancement of licence fee.

10. In the case of Indian Mica Micanite Industries Vs. The State of Bihar and Others, , the appellant was a consumer of denatured spirit. It used to purchase denatured spirit from wholesalers or manufacturers for the purpose of manufacturing micanite. It has challenged the licence fee levied upon it under the provisions of the Bihar and Orissa Excise Act, 1915 and the Rules framed there under on the ground that there was no sufficient quid pro quo for the said levy. The Court after referring to leading Judgments on the subject bringing out distinction between "tax" and "fee", in paragraph 11 of the Judgment held that -

"From the above discussion it is clear that before any levy can be upheld as a fee, it must be shown that the levy has reasonable relationship with the services rendered by the Government. In other words the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact relationship. The relationship expected is one of a general character and not as of arithmetical exactitude."

11. In the case of Kewal Krishan Puri and Others Vs. State of Punjab and Another, , it has been held by the Supreme Court that -

"It is axiomatic that the special service rendered must be to the payer of the fee. The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee. It may be so intimately connected or interwoven with the service rendered to others that it may not be possible to do a complete dichotomy and analysis as to what amount of special service was rendered to the payer of the fee and what proportion went to others. But generally and broadly speaking it must be shown with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount of fee realised is spent for the special benefit of its payers."

(underline is mine)

11. In the case of The Chief Commissioner, Delhi and Another Vs. The Delhi Cloth and General Mills Co. Ltd. and Others, , the question for consideration was whether the registration fee charged on the document satisfied the two conditions of fee which were enumerated in the following language:

- (i) There must be an element of quid pro quo that is to say, the authority levying the fee must render some service for the fee levied however remote the service may be;
- (ii) That the fee realised must be spent for the purposes of the imposition and should not form part of the general revenues of the State.

In this case the second condition was not found to have been fulfilled and hence impost was held to be bad. The Supreme Court in its later Judgment in Kewal Krishan Puri case (supra) while considering the said two requisites for upholding the import as fee has observed that:

"We would like to point out that the first condition is rather couched in too broad and general a language. Rendering some service, however remote the service may be, cannot strictly speaking satisfy the element of quid pro quo required to be established in cases of the impost of fee."

12. In the above background, now let me test the reasons which have been put forward by the respondents for justifying the impugned enhancement of licence fee in the present case.

12A. So far as the first ground relating to establishment cost in maintaining the elaborate staff for preventing improper use of denatured spirit is concerned, it has to be rejected out right in view of the Judgment in Indian Mica and Micanite Industries case (supra). In paragraph 17 of the said Judgment a similar contention was rejected by inter alia holding that the requirement of "close and effective supervision" because of the risk of the denatured spirit being converted into potable liquor and thus evading" heavy duty is necessitated for protecting State's own right and by doing so State does not render any service to the consumer of rectified spirit. Apart from this, it was also noticed that under Rule 9 of the Rules the actual cost of supervision of manufacturing process by the Excise Department was required to be borne by the manufacturer himself. In the Karnataka Rules also, the position is the same, and, therefore, as held by the Supreme Court, there cannot be double levy in this regard.

13. The second ground given for justifying the enhancement, namely that the petitioner is earning huge profits and the levy is only a fraction thereof, is also equally extraneous because such a ground can stand nowhere for justifying the requirement of quid pro quo i.e. the corresponding property services which the State is required to render in lieu of fee charged.

14. The last ground given is that the fee has been enhanced for enriching the general revenue of the State so that it may be utilised in the welfare of the Society. This plea can at best sustain a levy of tax, but under no circumstance it can be advanced for rescuing a levy in the nature of fee. As noticed above, fee can be levied only for rendering special services to its payer.

15. Apart from the above reasonings, the existence of correlationship between the services rendered and the fee levied is essentially a question of fact which

has to be worked out on the basis of concrete materials placed before the Court. The State which is in possession of all such materials is supposed to establish the justification for enhancement of fee in question and to establish broadly and generally the correlation between the levy and the services rendered. But the State has miserably failed to do so. Respondents, despite reasonable opportunities granted to them, have failed to place relevant materials on record.

16. For the aforesaid reasons, in my opinion, the impugned Notification to the extent it has sought to enhance the licence fee by amending Rule 4(2) of the Rules, is declared as ultra vires the powers of the State Government and thus void and unenforceable in law. The consequential demand notice at Annexure-B is accordingly quashed. Writ Petition thus stands allowed. No costs.