(1981) 08 CAL CK 0029

In the Calcutta High Court

Case No : C.R. No. 7393 (w) of 1974

Eastern Distilleries Pvt. Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 07-08-1981

Acts Referred:

Customs Act, 1962 — Section 110, 110(1), 110(2), 124, 124(a)
Industries (Development and Regulation) Act, 1951 — Section 13, 15A, 16, 18, 18A

Citation : 86 CWN 33

Hon'ble Judges : P.K. Banerjee, J

Bench : Single Bench

Advocate : Ranadeb Chaudhuri, Somendra, Chandra Bose and Sundarananda Pal, for the Appellant; D.N. Das and Archana Sengupta, for the Respondent

Judgement

P.K. Banerjee, J.—This Rule is directed against an order passed by the Union, of India on 8th October, 1974 u/s 18A of the Industries (Development and Regulation). Act, 1974 and the notification dated 25th September, 1978 and 7th October, 1980 being Annexure ''B'' to the petition. The petitioner nu. 1 is a company and the petitioner no, 2 has acquired 63% of the total paid up shares of the company. The petitioner stated that the petitioner no. 1 is the owner of the distillery known as-the Russa Distillery situated at B. L Saha Road, P. S. Behala. District 24-panganas. The said distillery was running at a loss for some time past and its accumulated losses amounted to Rs. 27 lakhs. The licence for the distillery granted - by the Excise Commisoner, West Bengal. was suspended since September. 1973. in or about November 1975, the Government of India started an enquiry and investigation u/s 13 of the Industries (Development and Regulation) Act. 1951. It appears that the petitioner no. 1 was in dire necessity of foods and as such the petitioner no. 2 purchased 63% paid up shares of the company and it is alleged that the petitioner also arranged for a loan to the extent of Rs. 10,000,00 to take, care of the purchases and raw materials sufficient to run the unit to its 40% capacity and to pay other pressing outstanding/ expenses; This fact was intimated to the Government of West

Bengal and also to Sri A. Bose, Special -Officer and Ex-officio Secretary, Closed and Sick Industries Department, Government of West Bengal and Chairman, Investigation Committee of the. Company appointed under the order hereinbefore stated.: Immediately after the change of-management of the petitioner'' no. 1, the respondent No. 3 from 1st March, 1974 withdrew the suspension of the licence and the petitioner no. 1 was permitted to sell its products since 19th April, 1974. The petitioner no. 2 thereafter invested a sum of Rs. 10 lakhs byway of cash as also arranged for, loan He also ensured strict supervision of the work of the distillery. This has caused. bringing down of the accumulated loan by over Rs. 8 lakhs in the course of the last six months. Thereafter the company approached the Secretary, Excise Department, Government of West-Bengal, for issue of necessary import authorisation and passes for importing rectified spirit from Bihar and for allocation as much moiassess and possible and for re transfer of waro houses temporarily transferred 10 other distillers as soon as rectified spirit is brought from Bihar. By another letter Dated 15/21 February, 1974 addressed to the Secretary, Excise Department, Government of West Bengal, the company petitioner intimated that it "had" overcome financial problems and have arranged necessary funds for working the distillary ''Without any interruption and asked for necessary orders for delivery of the Excise Licence duly extended upto 31st March, 1974 and hereafter renewal of the same and for allocation of at least 20,000 bulk litres or distilled in the company''s still each month and liquor and for supply of Industrial alcohol out of the surplus Imported rectified spirit ex-other states and for issue of no objection certificate as and when asked for the import of mollasses. Be that as it may the investigating Team headed by the Chairman, A; Bose. wrote to the Director of " the company to appear before the committee. on ''18th March-1974 for giving evidence it must be stated that while the government of West Bengal was considering grant of licence and or other requests made by the company to run the distillery with the finance and (sic) secured by it form bank and friends. the chairmen was proceeding with investigation which in any event was limited in scope as stated in the aforesaid letter dated 2224 November 1973. Persuant to the said letter Sri K. A Himanshu Director-in charge of the company duly appeared before the committee and gave evidence by an order dated 7th March 1974 the commissioner of Excise Government of West Bengal issued an order and intimated the same to the company by his Memo dated 7th March 1974 allotting to the company petitioner 640 M I of mollasses produced or to be produced by M/S Ramnagar Cane and Sugar Company Ltd during the sugar season 1973-74.

2. Be that as it may. by order dated 8th October. 1974 the management of the company was taken over by Central Government under the Industries (Development and Regulation''s Act. 1951, in particular, u/s 18A of the said Act By a subsequent notification, the running management was made over to a body of persons. The said body of persons was appointed as such by the Central Government. It Was further stated that subsequent thereto the management was

transferred by the. Central Government to he State Government and the State Government from time to time changed the personnel of the Board. By the said order of 8th October, 1974 the Government of India authorised the Board of Management to take over the management for a period of 5 years which. expired on 8th october 1979. By the notification dated 8th October 1979 after the (sic) of 5 years, the Central Government u/s 18A(2) of the Act directed that the order of taking over (sic) 1980 it was again extended till 7th october 1981 for 1 year. In the affidavit filed by the respondent it has been stared inter (sic) that the petitioners were given all opportunity as provided u/s 18A of the Act. They were heard and thereafter the order was made. It was further stated that no further hearing is necessary for the purpose of extension u/s 18A(2) of the Act. It was further stated that the company was in (sic) position and now they are tunning smoothly There was a dispute between the parties whether the proper hearing was given or not before passing the order u/s 18A of the Act but now the period of 5 years was over., The petitioner company stated that there was no hearing at all and the respondent, however, contended that alt the opportunities of being heard were given to the petitioner before taking over the management u/s 18a of the Act.

3. Mr. Chowdhury on behalf, of the petitioner, raised two points for consideration. Mr. Chowdhury contended that Schedule to the Act, in particular Item No. 26 of 1st Schedule to the Act is beyond the legislative competency of the Parliament being in violation of item Nos. 8 and 22 of List II of 7th Schedule of the Constitution It is argued that the legislative enactment does not come within the List of item No 52. Secondly it is argued by Mr. Chowdhury followed by Mr. Somen Bose that in any case the extention of time of the continuance of the management for 1 year by two instalments without giving any opportunity to the petitioner cannot be upheld In support of these contention. the petitioners referred to the case reported in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, end AIR 1972 SC (sic) (Asst. colector customs v Malhotra)

4. Mr. D. N Des on behalf of the respondent. Union of India, contended that Hem No, 26 of the 1st Schedule to. the Act comes within the legislative competency of the Parliament being an Industries which, has been so declared and is covered by Item No. 52 of List I as also Item No. 8 of the same list. It Is argued by Mr. Das that u/s 2 of the said Act the Parliament has declared that the Act or Industries mentioned in the 1st Schedule to the Act as controlled Industries. Item No. 26 is related to "Fermentation Industries" and according to Mr. Das Fermentation Industries includes (1) Alchohol (2) other products of fermentation industries. It is argued that the industries in item No. 52 of List I means industries producing alchohol and industries fermentation but not intoxicating liquors.

5. Mr. Advocate General appearing for the State contended that under Item No. 52 of List I of the Constitution of India, the Government of India has enacted Industries (Development and Regulation) Act. Secondly it is argued that the

show. cause notice was given before the order was passed for taking over the management u/s 18A of the Act and as such ho further hearing is necessary. In that view of the matter, the opportunity by way of hearing for the extension of period of management is not necessary. Mr. Advocate-General further contended that the Board of management has since been changed is not a perry in the case and therefore this rule must fail. The preliminary point argued by the Advocate General is that the Board of Management was changed and therefore the rule must fail as there it. no substance in the matter. It appears that the Central Government took over the management and transferred to the State Government under whom the Board of Management was appointed. The Central Government and the State Government are the parties before me and there the Rule may not fail for defect of parties.

6. The question raised by Mr. Chowdhury and Mr. Bose is regarding the validity of the order of extension made by the Central Government u/s 18A(2) of the Act. It has been provided In the sub-section (2) of section 18A that;

If the Central Government is of opinion that it is expedient in the public interest that any such notified order should continual to have effect after the expiry of the period of 5 years aforesaid, it may from time to time issue directions for such continuance for such period, not exceeding 2 years at a time, as may be specified in the direction, so however that the total period of such continuance (after the expiry of the said period of five years) does not exceed ten years; and where any such direction is issued, a copy thereof shall be laid, as soon as may be before both Houses of Parliament

On this proposition Mr. Chowdhury argued that before the order of extention is made the company is entitled to a hearing. Admittedly in this case, no such hearing was given. Mr. Das on behalf of the res-indent contended that under the provision of the Act no such hearing is contemplated. Mr. Chowdhury. however relied upon the case reported in AIR 1972 Sc 9689 (As t. collector. Customs -v- Malhotra). The Supreme Court considered the power of the Collector of Customs under the proviso to section 110(2) of the Customs Act and held whether the Collector of Customs under the provision can extend the period. Section 110 reads as follows :-

5. Section 110. which finds its place in Ch. XIII dealing with searches seizure and arrest, provides for seizure, inter alia, of goods Under subjection (1), if a proper officer has "reason to believe" that any goods are (sic) confiscation under the Act he may seize such goods. Sub-s.(2) reads as follows :-

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under cl (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized

Provided that the aforesaid period of six months may. on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months.

7. It appears that the order was made u/s 124(a) of the Act in respect of the seized watches of foreign made and the Customs Officer has reason to believe that the goods are liable to be confiscated under the law as is provided. The aforesaid order of seizure can be extended on sufficient cause being shown by the Customs Officer for a period not, exceeding 6 months. The matter came to this Court at the instance of the petitioner who argued that (1) the Customs Authorities are liable to return the goods seized u/s 110(1) on the expiry of the time prescribed or in the other words within the over ail period of one year; that therefore, there is no question of any right being vested in the respondent on. the expiry of the firs; six months or the extended perior or such right being divested until one year from the date of seizure has expired and (2) the proviso to section 110(2) does not contemplate any notice to the respondent as the considerations which, would weigh with the (sic) (sic) that only two requirements are envisaged for the extension of time and they are (i) that a sufficient cause is shown, find (ii) the extension is within one year. Their Lordships of the Supreme Court considered this proposition and it was held by the Supreme Court that the power under provison to section 110(2) of the Act is quasi judicial or at any rate, one; requiting a judicial approach. The Supreme Court held that for making an order u/s 110(2) of the Act; the authority must act in The quasi judicial manner because the proviso requires datermination on facts and not on mere suspicion and a sufficient cause being made out by the applicant-officer, and secondly, because a civil right of a citizen to the restoration of the goods on the expiry of the period, whether initial or extended, is affected. In the case reported In AIR 1930 SC 818 (Swadashi Cotton Mills -v- Union of India) Then Lordships of the Supreme Court held that in the ultimate ''analysis, the question as to what extent and in what measure this rule of fair hearing will apply at the pre-decisional stage will depend upon The degree of urgency, if any, evident from the facts and circumstances of the particular case. it has been further held that the reason for forbearance to imply the exclusion of the audi alteram partsem rule from the language of section 18AA (1)(a) of industries (Development & Regulation) Act, 1351 is, that although the power thereunder Is of L drastic nature and the consequence of stake-over are far-reaching and its effect on the-rights and interests of the owner of the undertaking is grave and deprivatory, yet the Act does not make any provision giving a full right of remedial hearing equitable to a full right of appeal at the post decisional stage (sic) the other words when the matter even (sic) u/s 18AA, where immediate action is necessary, the Supreme Court held that Wore taking over the undertaking a fair hearing will have to be given to the person whose property is being taken over at a pre-decisional stage But we are, however, concerned with section ISA. only. If the period is extended by instalment after the expiry of 5 years, the person who was the owner of the industries must be. given a -hearing before the pre-extension, is made, more so, when section 18A of the Act itself provides for hearing before the pre decisional stage. The pre-decisional stage is found in

sections 15, 15A, 16 and 18 of the Act. In that view of the matter, in my opinion, the extension of the period of continuance of the management u/s 18A of the Act cannot be said to be valid in law and must be set aside.

8. The fast-question for consideration is whether the Act itself is within the legislative competency of the Parliament or not and -whether the order can be made under she Act.

9. Mr. Chowdhury contended that item No. 26 of Schedule I to me Act is as. follows - "Fermentation industries (1) Alchohol (2) other products of fermentation industries". Therefore they come within the mischief of Schedule-Vll, List II, item Nos. 8 and 24. Entry No. 8 is as follows; intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors. Entry Mo. 24 is Industries subject to the povisions of entries 7 and 52 of List-1. Entry Nos. 7- and 52 of List are as follows : -- industry declared by Parliament by law to he necessary for the purpose of defence or lot the protection of war and entry No.52 in industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

10. Before ideal with the question raised it appears to me that we are not concerned with Item No. 7 of List-I because it is in respect of Industries declared by the Parliament by law to be necessary for the purpose of defence or for the protection, of war. We are however concerned with item No 52 of List-1. Item No. 52 of List-I has clearly stated that it is concerned with industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

11. The question raised that the industries carried on by the Eastern Distillery are not alchohol industries or fermentation industries as such, but, under the licence given by the State Government as annexed to the petition, it is clear that the petitioner not only produces Alchohol but also produces indian made foreign liquors and intoxicating liquois. that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors. While Mr Chowdhury contended that the Eastern Distillery the petitioner, carries on business of intoxicating liquors, that is to say, the production, possession, etc. etc. Mr. Das on behalf of the respondent contended that this was fermentation industries which includes Alchohol as also other products of fermentation industries, In the case reported in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, in paragraphs 10 and 12 the Supreme Court laid down that how those Lists in the Schedule VII have to be harmonized. It was further held by the Supreme Court that the interpretation of different entries should not be made in such a way as to harmonise apparent conflicting entry between the two entries, ft has been held that there is a conflict between the two entries and they may overlap each other. In such a contingency the doctrine of harmonious construction ought to be invoked. The Supreme Court in That decision was considering the Entry No. 52 of List-1 and Entries Nos. 24 and 25 read with Entry No. 52 of List-I. The Supreme Court held that the word

"industries" must be read in a widest meaning. The word -industries" must be given the same meaning either In List I or List-II. While Mr. Das contended that the Eastern Distillery only produces Alchohol for industrialisation, from the petition itself it is clear that that is not so because the company was empowered by the Government of West Bengal to manufacture intoxicating liquors it is however true that some Alchohol is also manufactured by them but the major thing is the production of spirit and intoxicating liquors or importation of rectified spirit and mollasses and also for manufacture of indian made foreign liquors and for supply of industrial Alchohol out of the surplus imported rectified spirit.

12. In the affidavit in opposition by the Central Government this, allegation has not been denied at all. it will be appear therefore, that the company mainly produces intoxicating liquors and therefore they come within the mischief of Item No. 8 of List-1; and also within the legislative competence of the State Legislature and not within the Indian Legislature. The intoxicating liquors cannot in any case come within the mischief of Item No 52. In that view of the matter, in my opinion, the Parliament has no legislative competency to takeaway the industries being in Item No. 8 of List-II. In that view of the matter, in my opinion, the order for taking over the management of-the Eastern Distillery, on the face of it is beyond the power u/s 18A of the industries (Development & Regulation) Act 1951.

13. Therefore the Rule is made absolute. The order of taking over of the management as also for the extention of the period is set aside and direct that the management will be made over to the Company forthwith. The operation of the order is stayed for three months from today. Both the parties will be given the copies of the judgment, counter-signed by the Assistant Registrar (Court).

