

(1988) 02 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1707 of 1982

Ganeshprasad Jaiswal

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 17-02-1988

Acts Referred:

Madhya Pradesh Excise Act, 1915 — Section 15, 25, 25(2)

Citation : (1988) MPLJ 615

Hon'ble Judges : G.G. Sohani, Acting C.J.;K.K. Adhikari, J

Bench : Division Bench

Advocate : D.M. Dharmadhikari and Rajendra Tiwari, Deputy Advocate-General for State, for the Respondent

Final Decision : Dismissed

Judgement

G.G. Sohani, Actg. C.J.

This is a petition under Article 226 of the Constitution of India.

The material facts giving rise to this petition, briefly are as follows: The petitioner carries on business of manufacture of Ayurvedic medicines in the name and style of "Kesare Regal Chemical Works" at Indore. The petitioner manufactures "Madhur Munakka" alleged to be a medical preparation and the petitioner uses "Bhang", an intoxicant drug as an ingredient of "Madhur Munakka". The petitioner obtains the said intoxicating drug from the warehouse at Indore which is under the control of respondent No. 3, the District Excise Officer, in accordance with the provisions of the M.P. Excise Act, 1915, (hereinafter referred to as the Act and the Rules made there-under). At the time of the removal of "Bhang" from the warehouse, the petitioner has to pay excise duty as provided by Section 15 of the Act. In exercise of the powers conferred u/s 25 of the Act, the State Government, by notification dated 15th October 1981, fixed the rate of duty on "Bhang" at Rs. 42.00 per Kg. for medicinal preparations, while the rate of duty on "Bhang" fixed for contractors of "Bhang" was Rs. 25.00 per Kg. Subsequently,

by another notification dated 21-12- 1981, the rate of duty on "Bhang" for medicinal preparation was enhanced to Rs. 50.00. per Kg., while the rate of duty on "Bhang" for contractors was enhanced to Rs. 27.00 per Kg.. The petitioner contends that this discriminatory imposition of excise duty is violative of the provisions of Art 14 of the Constitution and there is no legal justification for this discrimination. It was also contended that the said notifications were in excess of powers conferred by the provisions of Section 25(2) of the Excise Act Hence the petitioner filed this petition.

During the pendency of the petition, the provision of Section 25(2) of the M.P. Excise Act were amended by Ordinance No. 3 of 1986 which was subsequently repealed by Act No. 14 of 1987. By the Amending Act, Section 25(2) of the Excise Act was amended empowering the State Government to impose excise duty at different rates according to the use of excisable article for different purposes. Section 4 of the Amending Act validated such imposition of excise duty with retrospective effect The petitioner thereafter amended the petition and also challenged the validity of provisions of Section 25(2) of the Act as amended.

Shri Dharmadhikari, the learned counsel for the petitioner, contended that excise duty was a duty on the manufacture or production of an excisable article and the provisions of Section 15 of the Act which empower the State Government to impose excise duty on the dealer or contractor at the time of removal of the article from the warehouse, are ultra vires. It was further contended that the provisions of Section 25(2) of the Act as amended, which empower the State Government to impose excise duty at different rates according to the use of excisable article for different purposes, was also ultra vires. It was also contended that the notifications dated 15th October 1981 and 21-12-1981 issued by the State Government, imposing different duty or excise on contractors and on persons who were supplied intoxicants for medicinal purposes, was discriminatory and violative of the provisions of Article 14 of the Constitution. It was then contended that in any event the imposition of higher excise duty on those who were supplied intoxicants for medicinal purposes, was inconsistent with the directive principle enshrined in Article 47 of the Constitution.

In reply, it was contended on behalf of the respondents that though excise duty was a duty on manufacture or production of an article, it was permissible to levy it at any stage and that the provisions of Section 25(2), as amended, empowering the State Government to impose different rates of duties on the basis of use of the intoxicant for different purposes, were not ultra vires. It was also contended that the basis for levying duty at different rates on those who obtained the supply of intoxicants for medicinal purposes and those who obtained the supply for selling it in the market, was that those falling in the latter class, had to pay a substantial sum amounting to lacs of rupees by way of licence fees for obtaining licence to sell the intoxicant, while the petitioner and other persons falling in that class who obtained supply of intoxicant for medicinal purposes, were required to pay only Rs. 200.00 as licence fees under the provisions of

Medicinal and Toilet Preparation and Excise Duty Act, 1955. It was, therefore, urged that the cases of these two classes of persons were not similar. It was contended that the impugned notifications did not suffer from any vice of discrimination and that they were not inconsistent with the provisions of Article 47 of the Constitution.

Before we proceed to appreciate the contentions advanced on behalf of the parties, it would be useful to refer to the relevant provisions of the Act. Section 2(6) of the Act defines an "excisable article". It includes any intoxicating drug, "Bhang" is an intoxicating drug as defined by Section 2(12) of the Act. Section 13 of the Act prohibits the manufacture or collection of any intoxicant except under the authority and subject to the terms and conditions of a licence granted in that behalf. Section 15 of the Act lays down that without the sanction of the State Government, no intoxicant shall be removed from any warehouse or other place of storage established or licensed under the Act unless the duty payable under Chapter V of the Act has been paid or a bond has been executed for payment thereof. Section 25 occurring in Chapter V of the Act empowers the State Government to levy an excise duty on excisable articles. The relevant provisions of Section 25(2) of the Act, as amended by Act No. 14 of 1987, are as follows :

- (2). Duty may be imposed under sub-section (f) at different rates according to --
- (1) the place to which any excisable article is to be removed; or (2) the strength and quality of excisable article; or
- (3) the use of excisable article for different purposes.

In pursuance of the powers conferred by the aforesaid provisions, the State Government have fixed rates of excise duty on "Bhang" and it is the validity of these notifications that is assailed by the petitioner.

The first contention advanced on behalf of the petitioner was that excise duty, being a duty on the manufacture or production, could not be imposed on a person who was a dealer or consumer. The contention is not well founded. It is now well settled that though excise duty is a tax on manufacture or production, it need not necessarily be levied at the stage of manufacture or production and that it may even be levied at the stage the excisable article reaches the retailer. In this connection, we may refer to the following observations of the Privy Council in *Governor General in Council vs. Province of Madras*, 1945 P.C. 98 :

The term "duty of excise" is a somewhat flexible one; it may, no doubt cover a tax on first and perhaps on other sales; it may in a proper context, have an even wider meaning. An exhaustive discussion of this subject, from which their Lordships have obtained valuable assistance, is to be found in the judgment of the Federal Court in 1939 F.C.R. 18. Consistently with this decision, their Lordships are of opinion that a duty of excise is primarily a duty levied upon a manufacturer or producer in respect of the commodity manufactured or

produced. It is a tax upon goods not upon sales or the proceeds of sale of goods. Here again their Lordships find themselves in complete accord with the reasoning and conclusions of the Federal Court in the Boddu Paidanna case. The two taxes, the one levied upon a manufacturer in respect of his goods, the other upon a vendor in respect of his sales, may, as is there pointed out, in one sense, overlap. But in law, there is no overlapping. The taxes are separate and distinct imposts. If in fact they overlap, that may be because the taxing authority imposing a duty of excise, finds it convenient to impose that duty at the moment when the excisable article leaves the factory or workshop for the first time upon the occasion of its sale. But that method of collecting the tax is an accident of administration; it is not of the essence of the duty of excise which is attracted by the manufacture itself.

Referring to the aforesaid passage, the Supreme Court observed in *R.C. Jall Vs. Union of India (UOI)*, as follows:

With great respect, we accept the principles laid down by the said three decisions in the matter of levy of an excise duty and the machinery for collection thereof. Excise duty is primarily a duty on the production or manufacture of goods produced or manufactured within the country. It is an indirect duty which the manufacturer or producer passes on to the ultimate consumer, that is, its ultimate incidence will always be on the consumer. Therefore, subject always to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character of the impost, that is, it is a duty on the manufacture or production, is not lost. The method of collection does not affect the essence of the duty, but only relates to the machinery of collection for administrative convenience.

In view of the aforesaid decision of the Supreme Court, the imposition of excise duty at the time of removal of an excisable article, cannot be held to be illegal. It was then contended that imposition of excise, duty at different rates according to the use of excisable article for different purposes, was not permissible, as the classification on that basis has no rational relation to the object sought to be achieved and that the impugned notifications suffer from the vice of discrimination. Now, in the matter of taxation, as observed by the Supreme Court in *Mrs Meenakshi alias Rama Bai and Others Vs. State of Karnataka and Others*, , the Constitution gives a wide latitude to the legislature in classification for taxation. The rate of tax and the objects to be taxed are to be determined by the legislature and unless it is found to be so unreasonable, the Court would not interfere with the latitude enjoyed by the legislature in this behalf. We may, in this connection, usefully refer to the following observation of the Supreme Court in *income tax Officer, Shillong and another vs. N. Takin Roy Rymbai etc.*, AIR 1976 SC 670:

While it is true that a taxation law cannot claim immunity from the equality clause in Art 14 of the Constitution and has to pass, like any other law, the equality test of that Article, it must be remembered that the State has, in view of

the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion in the matter of classification for taxation purposes. Given legislative competence, the legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects which it would tax and which it would not tax. So long as the classification made within this wide and flexible range by a taxing statute does not transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some income or objects and not others. Nor the mere fact that a tax falls more heavily on some in the same category is, by itself, a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14. See *East India Tobacco Co. Vs. State of Andhra Pradesh*, ; *Vivian Joseph Ferreira and Another Vs. The Municipal Corporation of Greater Bombay and Others*, ; *Jaipur Hosiery Mills (P) Ltd., Jaipur Vs. The State of Rajasthan and Others*, .

Moreover, to make out a case of denial of the equal protection of law under Article 14 of the Constitution, a plea of differential treatment is, by itself, not sufficient. As held by the Supreme Court in *State of Madhya Pradesh Vs. Bhopal Sugar Industries Ltd.*, , a petitioner pleading that equal protection of the laws has been denied to him, must make out that not only he has been treated differentially from others, but he has been so treated from persons similarly circumstanced without any reasonable basis and that such differential treatment is unjustifiably made. The burden to establish that discrimination is not based on a valid classification, is on the person who assails a legislature as discriminatory. In *East India Tobacco Co. Vs. State of Andhra Pradesh*, , the Supreme Court has observed as follows:--

It should, in this connection be remembered that under the law, it is for the person who assails a legislation as discriminatory to establish that it is not based on a valid classification and it is well settled that this burden is all the heavier when the legislation under attack, is a taxing statute. "In taxation, even more than in other fields" it was observed by the Supreme Court of United States in *Madden vs. Kentucky*, (1940) 309 U.S. 83; 84 Law Ed 590, "Legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." How wide the powers of the Legislature are in classifying objects for purposes of taxation, will be seen from the following resume of the law given by Rottschaefer in his "Constitutional Law" p. 668:

The Federal Supreme Court has seldom held invalid any classification made in connection with the levying of property taxes. It has sustained the levy of a heavier burden of taxation upon motor vehicles using the public highways than that levied upon other forms of property and the imposition of a heavier tax upon oil than upon other property. The equal protection clause does not prohibit the

levy of a tax on ores which is not imposed upon similar interests in quarries, forests and other forms of wasting assets, nor even the imposition of a tax upon entracite that is not levied upon bituminous coal. A statute providing for the assessment of one type of intangibles are assessed at their face value does not deny equal protection even when both are subject to the same rate of tax. The decisions of the Supreme Court, in this field, have permitted a State legislature to exercise an extremely wide discretion in classifying property for tax purposes so long as it refrained from clear and hostile discrimination against particular persons or classes.

Judging by the aforesaid test, from the material on record, it cannot be disputed that the contractors have to pay a very substantial sum by way of fees for obtaining licence under the Act to sell the excisable article. It may be that the petitioner is required to pay sales tax and other taxes under some other Acts, as urged on behalf of the petitioner, but under the provisions of the Act, it cannot but be held that the amount paid by the contractors by way of duty or fees, is far higher than the amount paid under the Act by those who obtain an excisable article for medicinal purposes. In treating these two classes separately, it cannot be held that a case of hostile discrimination against the petitioner and other persons of his class has been made out.

As regards directive principle embodied in Article 47 of the Constitution, it cannot be held that imposition of excise duty on those who obtain supply of any intoxicant for medicinal purpose, is not permissible in the light of the directive principle set out in Article 47 of the Constitution. Though in the petition, the retrospective validation of duty imposed by the Amending Act was assailed, that point was not rightly pressed at the time of hearing in view of the decision of the Supreme Court in *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, .

For all these reasons, the petition fails and is accordingly dismissed. In the circumstances of the case, parties shall bear their own costs of this petition. Security amount, if any, be refunded to the petitioner.