
(1990) 09 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No. 940 of 1982

Gustad Mayur Irani

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 12-09-1990

Acts Referred:

Bombay Prohibition Act, 1949 — Section 58A
Constitution of India, 1950 — Article 14, 226

Citation : (1991) 51 ELT 232

Hon'ble Judges : M.L. Pendse, J; E.D.D. Da Silva, J

Bench : Division Bench

Judgement

Pendse, J.—The petitioner carries on business in the name and style of M. N. Irani & Sons as sole proprietor and deals in trade and import of foreign liquor including Indian made foreign liquors. The petitioner is holder of licence issued under the provisions of the Bombay Prohibition Act, 1949, the Maharashtra Foreign Liquor (Import and Export) Rules, 1963, and Maharashtra Foreign Liquor (Storage in Bond) Rules, 1964. Section 58A of the Bombay Prohibition Act, inter alia, provides that the State Government may by general or special order direct that the manufacture, import, export, transport, storage, sale, purchase, etc. of any liquor shall be under the supervision of such prohibition and excise or police staff as they may deem proper to appoint and the cost of such staff shall be paid by person manufacturing, importing, exporting, etc. of the liquor. The charges paid by the manufacturers or importers u/s 58A of the Act known as supervision charges. Condition No. 3 of F.L.I. licence prescribes that the petitioner shall pay to the Government in advance at the beginning of each quarter such costs or charges as may be fixed by the State Government from time to time. The State Government fixed the charges from time to time and the same were paid by the petitioner.

2. On March 12, 1982, the Prohibition and Excise Officers, Dahanu addressed communication to the petitioner informing that the amount of supervision charges for one Sub-Inspector and one Constable posted at the place of trade of

the petitioner since October 1, 1974 to March 31, 1982 comes to Rs. 1,22,251.70. The petitioner had already paid charges of Rs. 1,02,209.17 and was thereafter called upon to pay the balance sum of Rs. 20,042.55. On March 19, 1982, the petitioner was informed that unless the petitioner credits the amount demanded, the licences in form F.L.I. and B.W.I. will not be renewed for the year 1982-83. These communications have given rise to the filing of the present petition under Article 226 of the Constitution of India on March 30, 1982.

3. The principal contention urged by Shri Setalwad, learned counsel appearing on behalf of the petitioner, is that Section 58A does not empower the respondents to impose the fees with retrospective effect. It was urged that the fees are demanded in advance for each quarter and the payment made was never provisional one or subject to the settlement of fees. The learned counsel urged that pre-determined charges are recovered for each quarter and such charges are not settled subject to alterations in future. The second contention of the learned counsel is that the demand for in the year 1982 for the period commencing from 1974 onwards is unreasonable and, therefore, the demand notice should be struck down. As regards the first contention that the respondents have no authority to demand the difference in the cost of rendering service u/s 58A of the Act, an identical contention was raised in Writ Petition No. 631 of 1982 *Maneckjee Majshedjee v. The State of Maharashtra and others* filed on the Original side of this Court and one of us (Pendse, J.) by judgment dated June 19, 1986 turned down the contention. It was held that what is charged by the State Government u/s 58A is fees for the service rendered and not the tax. Section 58A enables the State Government to appoint staff under whose supervision the importation or storage of liquor will be carried out and the cost of such staff can be recovered from the importer. It was also held by the Single Judge that the mere fact that the charges are recovered after passage of time would not make recovery defective or without authority. The contention that the recovery is made with retrospective effect was turned down by holding that the liability to pay charges was undertaken and what is being recovered is only the difference in rates of charges and the liability and the quantum are two different concepts and the liability is not imposed with retrospective effect but merely rates are revised retrospective effect. In our judgment, the view taken by the Single Judge is correct and is required to be upheld.

Shri Setalwad did not dispute that the charges sought to be recovered are in respect of service rendered. The additional charges are demanded because they pay scales of the staff was revised with retrospective effect.

4. Shri Setalwad referred to the decision of the Supreme Court *Government of Andhra Pradesh Vs. Anabeshahi Wine and Distilleries Pvt. Ltd.*, and submitted that the charges payable by the respondents are neither in the nature of tax nor fees but is a consideration for parting with privileges of the Government to manufacture liquors. The learned counsel referred to the observation in paragraph 6 of the judgment to the effect that a predetermined amount

equivalent or even higher than the amount which is sought to be recovered for the entire period of the licence could have been determined in a lump sum or spread over. Relying on the expression "pre-determined amount" Shri Setalwad urges that according to the terms of the licence, the predetermined price was recovered from the petitioner for each of the quarter and the condition nowhere prescribed that the charges are subject to alteration and, therefore, it is not open to demand additional charges because of revision of wages of the staff. We are unable to find any merit in the submission. The charges were settled for every quarter by taking into consideration the cost which is required to be incurred by the State Government for providing the service of the staff. As soon as the cost increased because of revision of wages, the Government is entitled to demand from the licence holder the difference arising out of revisions of wages. The judgment relied upon by Shri Setalwad instead of supporting the petitioner, helps the respondents as the liability to recover charges is considered neither as fees or tax but compensation for a privilege granted to the licence. In our Judgment, the first submission of the learned counsel that the respondents have no authority to demand additional charges cannot be accepted.

5. The second contention urged by Shri Setalwad is that the demand made in the year 1982 for the difference for the period commencing from October 1, 1974 to March 31, 1982 should be struck down on the ground of unreasonableness. They learned counsel referred to the decision of the Supreme Court Government of India Vs. Citald Fine Pharmaceuticals, Madras and Others, The Government of India v. The Citadel Fine pharmaceuticals, Madras and others in support of the submission. In the case before the Supreme Court, Rule 12 of Medicinal and Toilet Preparations (Excise Duties), Rules, 1956 provided for recovery of duty as well as any other sum payable to the collecting Government under the Act if the same is not paid on account of short-levy or deficiency or for any other reason. Rule 12 does not prescribe any period within which recovery is to be made. The Supreme Court held that merely because period is not prescribed, the rule is neither unreasonable nor violative of Article 14 of the Constitution of India. The Supreme Court then observed :

"In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend will depend upon the facts of each case."

Relying upon this decision, Shri Setalwad submitted that the demand made after 8 years is unreasonable and the delay makes the notice bad. We are unable to accede to the submission. The decision of the Supreme Court is of no assistance

in the present case because the Supreme Court was examining the case where the liability to pay the duty had occurred but the demand was made after a considerable period. The present case is not comparable because here the liability did not arise in the year 1974 but only in the year 1982 when the pay scales of the staff employed by the Government were retrospectively revised and consequently the cost increased for providing for their services. It is, therefore, obvious that the claim that the demand is unreasonable on the ground of delay is not accurate. Even otherwise on the facts and circumstances of the case, we are not inclined to hold that the demand suffers from unreasonable delay and, therefore, must be struck down. In our judgment, the demand does not suffer from any infirmity and the petition must fail.

6. Accordingly, rule is discharged with costs.