

(1987) 08 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 39763 of 1982 etc

H. Dasappa and Sons

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-08-1987

Acts Referred:

Karnataka Excise (Tapping of Trees) Rules, 1991 — Rule 7, 8
Karnataka Excise Act, 1965 — Section 71, 71 (3), 71 (4)

Citation : (1988) ILR (Kar) 1678 : (1988) 2 KarLJ 19

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : M.R. Narasimha Murthy, for Hegde Associates; A. Jagannatha Shetty, for the Appellant; M.R. Achar, Government Advocate, for the Respondent

Judgement

Rama Jois, J.—In all these Writ Petitions, the petitioners who are toddy contractors, have questioned the validity of Rule 6 of the Karnataka Excise (Tapping of Trees) (Amendment) Rules, 1982.

2. The facts of the case, in brief, are as follow : The right to vend toddy is sold by the Government annually. The year for the purpose of the sale and purchase of the right to vend toddy commences from 1st July of every year and ends on 30th June of the next year, called the Excise Year. Prior to 1 -7-1982 apart from the price required to be paid for the purchase of the right to vend toddy in a particular locality, a person who had acquired such right was at liberty to apply to the Government for allotment of trees; from which toddy has to be collected; situate in Government lands. After the trees are allotted, the concerned contractor was required to pay a rent of Rs. 1.75 per tree, in addition to the payment of tree tax per tree as prescribed in Rule 7. The rate of tax prescribed was as below:

"(i) Tree Tax per Tree:

(a) Date tree

Rs.7.50 for four months

(b) Coconut tree

Rs. 10.00 half yearly

(c) Palmyra tree

Rs. 10.00 per year

(d) Bagini tree

Rs.7.50 per year

(e) Dadsal tree

Rs.5.00 per year."

On 12-4-1982, the Excise Commissioner in Karnataka issued a Notification regarding the disposal of the lease of retail vend of toddy and arrack for the excise year 1982-83. It was published in the Official Gazette (Extra-ordinary) on 12-4-1982. Pursuant to the said Notification, the petitioners in some of the Writ Petitions purchased in public auction the right to vend toddy in different areas of the State during the excise year commencing from 1 -7-82. After the contract commenced, on 7-8-1982, the State Government published Draft Rules proposing to amend Rule 7 of the Karnataka Excise (Tapping of Trees) Rules 1967 ("the Rules" for short) in exercise of its powers u/s 71 of the Karnataka Excise Act, 1965. Objections and suggestions were invited to the Draft Rules. Thereafter, the State Government promulgated an Amendment to the Rules on 8-11-1982 and the same was published in the Official Gazette on 9-11 -1982. Amended Rule 7 reads :

"Tree Rent - Tree rent payable for the grant of a tapping licence shall be twenty five rupees per tree :

Provided that the tree rent in respect of Government tree assigned for the purpose of manufacture of palmgur shall be one rupee per tree."

According to the Amended Rule, the rent payable in respect of every tree from which toddy was to be tapped was fixed at Rs.25/- per tree. Earlier, everyone of the toddy contractors who sought license from the Government to tap toddy from any of the trees from which it could be collected, was required to pay a rent of Rs. 1-75 per tree and also tax at the rate prescribed as indicated earlier. The tree rent fixed at the rate of Rs.25-00 per tree was a consolidated amount and as a result the earlier prescription of tree tax was abolished. Thereafter, some of the petitioners who had secured the right to vend toddy during the excise year commencing from 1-7-1982, presented these petitions questioning the validity of the Amendment Rules. The other Writ Petitions are by those who have purchased the right to vend toddy during the subsequent excise years. They have also challenged the validity of the Rules.

3. The petitioners have urged the following contentions:

(1) The Rules could be regarded as having come into force only after the expiry of 30 days after it was placed before the Legislature as required u/s 71 of the Act, and therefore it could not be enforced either with effect from 1-7-1982 or with effect from 9-11-1982.

(ii) As the petitioners had entered into contract on the basis of the rates of tree tax and tree rent which existed as on the date of agreement, by the exercise of Rule making power, the right so vested in the petitioners could not be affected till the end of the excise year.

(iii) As the petitioners entered into the contract on the basis of the rates which were in force as on the date of auction and they had carried on business on the said basis for more than 4 months after the commencement of the excise year having taken the tapping licence after paying the tax and rent in terms of Rule 8 of the Rules, the respondents cannot demand any more a mount from 1-7-1982, till the Rules were framed.

(iv) Rule 7 was arbitrary and therefore violative of Article 14 of the Constitution and further it also amounted to unreasonable restriction on the fundamental right of the petitioners to do business guaranteed under Article 19(1)(g) of the Constitution, as by the said Rule, while the excise contractors intending to tap toddy from any of the trees belonging to the Government were required to pay a rent of Rs.25/- per tree, persons who were desirous of tapping toddy for the purpose of manufacture of palmgur, were required to pay a rent of Rs. 1/- per tree.

4. The first contention depends upon the interpretation of Section 71 of the Act. The relevant portion of the Section reads:

"71. POWER TO MAKE RULES - (1) The State Government may, by notification and after previous publication, make Rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, the State Government may make Rules -

xxx xxx xxx (m) prescribing the rent payable to the Government in respect of toddy trees from which toddy is drawn; (n) any other matter that may be prescribed under this Act.

(3) A Rule under this Act may be made with retrospective effect and when such a Rule is made the reasons for making the Rule shall be specified in a statement laid before both Houses of the State Legislature. Subject to any modification made under Sub-section (4) every Rule made under this Act shall have effect as if enacted in this Act.

(4) Every Rule made under this Section shall be laid as soon as may be after it is made before each House of the State Legislature while it is in Session for a total period of thirty days, which may be comprised in one session or in two or more

successive sessions as if before the expiry of the session in which it is so laid or the sessions immediately following, both Houses agree in making modification in the Rule or both Houses agree that the Rule should not be made the Rule shall thereafter have effect only in such modified form or be of no effect, as the case may be : so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Rule."

(Underlining by me)

The above Section confers rule making power on the State Government. The said Section requires that the Rules made by the Government should be placed before the Legislature for 30 days, whether those 30 days are comprised in one session or more than one session. It further provides that the Rules, if modified by the Legislature, shall thereafter be effective as modified, and further if the Legislature disapproves it, it shall thereafter have no effect. Learned Counsel for the petitioners contended that the above condition prescribed in Section 71 of the Act was mandatory and the Rules therefore would come into force only after the Rules were placed for full 30 days before the Legislature, and consequently the Rules could not be enforced until the expiry of 30 days after it was placed before the Legislature. In support of the above contention, the learned Counsel relied on the Judgment of this Court rendered by a learned Single Judge in *Anjanappa and Co. Vs. State of Karnataka*, . The decision in the said case does support the contention of the petitioners. In the said case the learned Judge held that the ratio of the decision of the Supreme Court in *Atlas Cycle Industries Limited and Milton Cycle Industries Limited Vs. State of Haryana and Others*, was distinguishable and that the observation of the Supreme Court in the case of *M.K. Papiiah and Sons Vs. The Excise Commissioner and Another*, supported the view that the condition prescribed in Section 71 regarding laying before the Legislature was mandatory and therefore it must be held that the Rule was ineffective till it was so placed.

5. Sri M.R. Achar, learned Government Advocate appearing for the State, however, submitted that there was a clear pronouncement of a Division Bench of this Court in *AVALA REDDY RAMAPPA v. STATE OF MYSORE* 1960 Mys. L.J. 315 and the Judgment of the Constitution Bench of the Supreme Court in *Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another*, in which Sections with identical wording were interpreted and it was held that the Rules would come into force from the date on which they were made and the Rules would become partially or totally ineffective only when a negative resolution is passed by the Legislature as and when the matter is placed before the Legislature, and, therefore the view taken by a learned Single Judge in *Anjanappa and Co. Vs. State of Karnataka*, to the effect that the Rules would come into force only after the expiry of 30 days after the placement of the Rules before the Legislature, being contrary to the binding Rulings of this Court and of the Supreme Court, they should be followed.

6. The requirement of laying subordinate legislation before the Legislature

incorporated in an enactment discloses the intention of the Legislature to peruse the Rules made by the authority on whom the Rule making power is conferred and to have opportunity to modify or annul any Rule, if it considers expedient to do so. But the conditions regarding laying and the effect of non-laying are not always similar. In some provisions, regarding laying, the Legislature merely provides that an order or Rule made by the specified authority in exercise of the power given to it under the law should be laid before the Legislature without indicating any further procedure. Section 3(6) of the Essential Commodities Act considered in the case of *Atlas Cycle Industries Limited and Milton Cycle Industries Limited Vs. State of Haryana and Others*, by the Supreme Court is of that type. The said provision provided that the order made by the Central Government or by any Officer or Authority under the Act should be laid before both the Houses of Parliament as soon as may be after it was made without prescribing any further conditions. The Supreme Court held that the requirement for laying prescribed in Section 3(6) of the Essential Commodities Act was directory and non laying did not render the order void.

7. In certain enactment the Legislature provides that the Rules made in exercise of Rule making power should be laid before the Legislature for specified number of days with a further provision for modification or amendment of the Rules by the Legislature. The effect of such a provision was considered by the Supreme Court in the case of *Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another*, . The provision considered in the said decision was . That Section required that the Rules framed under that Act should be laid before the Legislature for the specified period and it was liable to be modified or rescinded by a resolution by the Legislature. The Supreme Court considered the question as to whether in such a case, the Rules would be effective from the date of its making or not and held as under:

"The Rules are valid from the date on which they are made u/s 26(1). It is true that the Legislature has prescribed that the Rules shall be placed before the Houses of Legislature, but failure to place the Rules before the Houses of Legislature does not affect the validity of the Rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of Sub-section (5) of Section 26 by reason of the failure to place the Rules before the Houses of Legislature were violated. we are of the view that Sub-section (5) of Section 26 having regard to the purposes for which it is made and in the context in which it occurs, cannot be regarded as mandatory. The Rules have been in operation since the year 1941 and by virtue of Section 64 of the Gujarat Act 20 of 1964 they continue to remain in operation."

(Underlining by me)

Thus it may be seen that as the wording of Section 71 of the Karnataka Act is similar to that of Section 26(5) of the Bombay Agricultural Produce Markets Act, 1939, the Rules framed under the Excise Act are valid from the date they are made.

8. It is also useful to refer to the provision regarding laying of an Ordinance framed by the Governor under Article 213 of the Constitution before the State Legislature. The said Article empowers the Governor to promulgate an ordinance at a time when the Legislature is not in Session and it provides that it would automatically come to an end after the expiry of six weeks from the date of re-assembly of the Legislature, if it is not passed into law before such date. If in a given case nothing is done by the Legislature in respect of an Ordinance promulgated under Article 213, the ordinance automatically ceases after the expiry of six weeks from the date of re-assembly of the Legislature. Even in such a case the Ordinance would be effective from the date of its promulgation, as effective as an Act of Legislature, till the expiry of six weeks from the date of re-assembly of the Legislature and does not become void ab initio if it is not passed into a law by the Legislature. This aspect is expounded by the Supreme Court in the case of T. Venkata Reddy and Others Vs. State of Andhra Pradesh, Just as Article 213(2) provides that an ordinance promulgated under that Article would have the same force and effect as an Act of Legislature, Section 71(3) of the Act provides that every Rule made under the Act shall have effect as if enacted under the Act. An analysis of Section 71(4) of the Act which provides for laying for thirty days before the Legislature indicates the following aspects:

"(1) The Rules made under the Act should be laid, as soon as may be before the Legislature for a total period of thirty days, which may be comprised in one session or two or more successive sessions.

(2) The Rules shall be effective from the date of its making.

(3) They are subject to modification if both Houses agree for effecting any modification before the expiry of the session in which they are placed or annulment if both the Houses agree to do so.

(4) If the Rules are modified by the Legislature, the Rules shall thereafter have effect in the modified form.

(5) If the Rules are annulled by the decision of the Legislature, they will be of no effect from the date of annulment.

(6) The modification or annulment is without prejudice to the validity of anything previously done under that Rule.

This provision is in pari materia with Section 26(5) of the Bombay Agricultural Produce Markets Act considered by the Supreme Court in the case of Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another, and Section 246 of the Mysore Village Panchayats and Local Boards Act, interpreted by a Division Bench of this Court in Avala Reddy Ramappa's case 1960 Mys. L.J. 315. The attention of the learned Judge was not invited to these binding decisions, in Anjanappa and Co. Vs. State of Karnataka, In M.K. Papiiah and Sons Vs. The Excise Commissioner and Another, such a question did not arise for consideration. I am bound to follow the ratio of the two decisions, Jan

Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another, aforesaid in preference to the view taken by the learned Judge in Anjanappa and Co. Vs. State of Karnataka, Accordingly, I hold that the Rules have the effect from the date of their making, and reject the first contention.

9. The second contention of the petitioners is that till the end of the excise year the Rules cannot be enforced. Elaborating this contention, learned Counsel submitted that the petitioners had entered into a contract on the basis of the Rules which were in force at the time when the auction was held and thereby a right was vested in them for securing tapping license on payment of tree rent of Rs. 1.75 per tree and the tree tax at the rate prescribed in Rule 7 of the Rules as in force prior to 1-7-1982 for the whole of the period of contract and such a vested right cannot be altered by framing a Rule.

10. Sri M.R. Achar, learned Counsel for the State, per contra, submitted that the contract entered into between the petitioners and the State itself was subject to the condition that the provisions of the Act and the Rules as amended from time to time would be a part of the term of the contract and the petitioners were required to pay the tree rent according to the law in force. The relevant portion of the Notification 5-4-1982 in Which the conditions were set out reads:

"The lease shall be subject to the provisions of the Karnataka Excise Act, 1935, and Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules, 1969 and all other relevant Rules under the Karnataka Excise Act 1965 as amended from time to time.

The general conditions governing the auction are detailed below for the information of the intending bidders.

xxx xxx xxx 19. The licensee to sell toddy shall pay tree tax and tree rent as per laws in force. He shall insure all toddy tappers, employed by him or under contract with him, to supply toddy, against risks and for accidents which may be caused during the course of toddy tapping.

20. The tree tax and tree rent shall be paid in full as per laws in force along with the application for grant of tapping licence."

The above conditions set out in the Notification are clear and unambiguous. One of the conditions of the contract is that all the Rules as amended from time to time would form part of the contract and the petitioners would be liable to pay tree rent according to the rate as in force. The conditions set out in the Notification have become a term of contract and this aspect has been clearly highlighted by the Supreme Court in the case of Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, of the Judgment reads:

"21. On the preliminary objection it was finally urged by the appellants that the objection was misconceived because there was in fact, no contract between the parties and therefore they were not attempting to enforce any contractual rights or to wriggle out of contractual obligations. The short answer to this contention is

that the bids given by the appellants constitute offers and upon their acceptance by the Government a binding agreement came into existence between the parties. The conditions of auction become the terms of the contract and it is on those terms that licenses are granted to the successful bidders in Form L. 14-A of the Rules. As stated in Cheshire and Fifoot's Law of Contract (Eighth Ed. 1972 ; P.24)

"In order to determine whether, in any given case, it is reasonable to infer the existence of an agreement, it has long been usual to employ the language of offer and acceptance. In other words, the Court examines all the circumstances to see if the one party may be assumed to have made a firm "offer" and if the other may likewise be taken to have "accepted" the offer. These complementary ideas present a convenient method of analysing a situation, provided that they are not applied too literally and that facts are not sacrificed to phrases."

Analysing the situation here, a concluded contract must be held to have come into existence between the parties. The appellants have displayed ingenuity in their search for invalidating circumstances but a Writ Petition is not an appropriate remedy for impeaching contractual obligations."

(Underlining by me)

The ratio of the decision of the Supreme Court in the case of GOPISSETTI VENKATARATHNAM v. VIJAYAWADA MUNICIPALITY AIR 1968 SC 354 which arose in the context of the liability of a consumer to pay energy charges at the increased rate is also apposite to this case. In that case the Supreme Court held that an agreement to pay electricity charges at "current rates" amounted to an agreement to pay the charges at the rates increased subsequently also. The same analogy holds good in these cases. Therefore, the contention of the petitioners that they had entered into contract only subject to the condition of paying tree rent or tree tax at the rate which was prevailing on the date of lease even after the increase, is itself incorrect. The condition for which the petitioners agreed was that they would be liable to pay the tree rent according to the Rules as in force at any given point of time which means at the rate prescribed in Rule 7 as amended from time to time. Therefore, the very basis of the contention, namely, that there had been vested right and that has been taken away by the Rules, does not exist. Therefore, the second contention of the petitioners is also liable to be and is hereby rejected.

11. The third contention of the petitioners is that in the nature of things and even in terms of the contract, they cannot be compelled to pay tree rent at the rate fixed in the amended Rule with effect from 1-7-1982 till 9-11-1982, the date on which the Amendment was promulgated having regard to the nature of the demand and the time of its payment under Rule 8 of the Rules.

12. There is no dispute that at the time when the auction took place, the tree rent as well as the tree tax, which "were required to be paid by the petitioners, were those as fixed in Rule 7 extracted earlier. Rule 8 of the Rules prescribes the time of payment of tree rent. It reads :

"8. Manner of payment of Tree Rent: The tree rent shall be paid in full along with the application for grant of tapping licence."

In view of this Rule, the tree rent has to be paid in full along with the application for grant of tapping licence. When the petitioners have paid the tree rent according to the rates fixed in Rule 7 of the Rules and in terms of the contract and have taken the licence for tapping, there is no further liability on their part, as far as tree rent is concerned for that period. Hence this contention is well founded and the petitioners are entitled to the issue of a direction to the respondents not to demand the enhanced tree rent for the period commencing from 1-7-1982 till 9-11-1982.

13. The last contention of the petitioners is that of discrimination and unreasonableness of Rule 7. Learned Counsel pointed out that while a rent of Rs.25-00 was fixed as tree rent generally, only a rent of Rs. 1/- per tree was prescribed in respect of trees assigned for the purpose of manufacture of Palmgur. The Rules which have been in force right from 1967 have been extracted earlier. Throughout, a clear distinction has been maintained between the tapping of trees for the purpose of extracting toddy and the tapping of trees for the purpose of manufacture of Palmgur. Both situations cannot be regarded as similar. The earlier position was, in respect of tapping licence the concerned excise contractor was required to pay a tree rent of Rs. 1.75 in addition to the tax at the rate prescribed earlier. There was no prescription of tree tax in respect of tapping licence for the purpose of manufacture of Palmgur. On the face of it, there is no comparison between the tapping licence for extracting toddy and the tapping licence for manufacture of Palmgur. The former is an intoxicating liquor and the latter is a food article. The difference is writ large and on the face of it the classification has a rational basis and has also nexus to the object sought to be achieved. Therefore, the contention that the provision in so far it relates to the prescription of tree rent is discriminatory, is untenable.

14. There is also a contention in some of the petitions that the State is prevented by the principle of promissory estoppel, from raising the tree rent. This plea is raised on the basis that there was an announcement made on the floor of the Legislature that tree tax would be abolished. I see no substance in this contention also. In fact, tree tax has been abolished. The statement that tree tax would be abolished, did not amount to a promise that tree rent would not be raised. As stated earlier, the terms of the contract was so clear that everyone was made aware that he was liable to pay tree rent at the prevailing rates, which means as and when Rules are amended the contractor concerned was required thereafter to pay tree rent at the rate prescribed in the Rules. Therefore, the question of preventing the State from collecting tree rent on the plea of promissory estoppel does not arise.

15. In the result, I make the following order :

(i) The Writ Petition in so far they relate to the challenge to the validity of the

Amended Rule is concerned, they are dismissed.

(ii) A direction shall, however, issue to the respondents not to demand the difference between the rate of tree tax and tree rent fixed in Rule 7 prior to its amendment and at the rate prescribed in Rule 7 after amendment, for the period prior to 9-11-1982, on which date the Amended

Rules were promulgated, and that if such difference had already been collected from any of the petitioners, such amount shall be either refunded to such petitioners or adjusted towards the amount due, if any, from such petitioners.