

(2008) 12 SC CK 0166

In the Supreme Court Of India

Case No : Civil Appeal No's. 7412-7413 of 2008 (Arising out of SLP (C) No's. 15533-34 of 2004) and Civil Appeal No's. 7414-7415 of 2008 (Arising out of SLP (C) No's. 16982-16983 of 2004)

Kopargaon S.S.K. Ltd.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Bombay Prohibition Act, 1949 — Section 114, 58A
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 162, 19(1)(C), 19(1)(G), 309
Country Liquor Rules, 1976 — Rule 2(2)

Citation : (2009) 2 BomCR 59 : (2009) 120 FLR 766 : (2009) 2 LLJ 524 :
(2009) 1 SCALE 523 : (2009) 3 SCC 273 : (2009) 8 SLR 758

Hon'ble Judges : S. B. Sinha, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : Arvind V. Savant, Arvind S. Avhad, S.D. Autade, Chandan Ramamurthi and Shivaji M. Jadhav, for the Appellant; Chinmoy Khaladkar, Asha Gopalan Nair and T. Raja, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Leave granted.

2. This appeal is directed against a judgment and order dated 23.9.2003 passed by the High Court of Bombay at Aurangabad in Writ Petition No. 3050 of 2003 declining to entertain the writ petitions filed before it.

3. Appellant has been granted licence for manufacturing spirit and potable liquor in terms of the provisions of the Bombay Prohibition Act, 1949 and the Rules framed thereunder. Respondents, indisputably, posted some of its employees for supervision of the manufacture or sale of country liquor from the said factory.

4. A demand was raised for a sum of Rs. 7,43,686/-. Admittedly, such supervision charges have been paid in advance. The State, however, revised the

salary of its employees with retrospective effect from 1.1.1996 by Notification dated 10.12.1998 for the period 1.1.1996 to 31.12.1998. A communication dated 17.6.2000 was issued calling upon the appellant to pay the arrears of supervision charges for the period 1.4.1996 to 31.12.2000 amounting to Rs. 7,43,666/-

5. Questioning the legality and/or validity of the said claim, a writ petition (No. 4092 of 2000) was filed before the Bombay High Court by the appellant praying for, inter alia, the following reliefs:

(B) Hold and declare that the demand notice dated 17.6.2000 and August 2000 and the circular dated 17.6.1999, 30.7.1999 issued by the Respondents 2, and the demand notice issued by the Respondent No. 3 dated 17.6.2000 towards the difference in the salary and wages, w.e.f. 1.1.1996 i.e., retrospective effect towards the supervision charges is therefore illegal, arbitrary and violative of Article 14, 19(1)(g) of the Constitution of India; and therefore strike down the same.

(C) Issue a Writ prohibition or any other appropriate Writ, order or directions in the nature of Writ of Prohibition prohibiting the Respondent Nos. 1 to 4, their officers and subordinates from demanding and/or recovering any amount towards the salary and wages with retrospective effect from 1.1.1996 as per the circular dated 30.7.1999 as per the demand notices dated 17.6.2000 and August 2000 and for that purpose issue necessary orders.

6. Similar other writ applications before the said court were also filed. A learned Single Judge of the Bombay High Court, by a judgment and order dated 7.12.2000 passed in Writ Petition No. 3501 of 2000 opined as under:

We are also amazed to note that in spite of the fact that the Government of Maharashtra by notification dated 10.12.1998 decided to implement the Fifth Pay Commission's recommendations, the respondents did not diligently and failed to claim the supervision charges at the revised rates at least from 1.1.1999. For the first time, such a demand has been raised on 30.5.2000.

7. The demand was held to be illegal. Following the said decision, the writ petition filed by the appellant was allowed, holding:

In view of our detailed judgment passed today on Writ Petition No. 3501/2000, we allow the petition. Karkhana is liable to pay the supervision charges at the revised rates from 1.7.2000 as the first demand notice for arrears for the period from 1.1.1996 onwards was issued on 17.6.2000. Rule made absolute accordingly.

Concededly, the said orders were not appealed against. They attained finality.

8. One matter involving similar question, however, was brought to this Court. The decision of this Court is since reported in Government of Maharashtra and Others Vs. Deokar's Distillery, The majority opinion rendered in the said decision, inter alia, reads as under:

This apart, the High Court was also not right in rejecting the writ petition of the respondents at the threshold. The High Court has failed to notice another important factor that the statutory provision under Article 309, namely, the Notification dated 10.12.1998 and the consequential administrative instructions/orders issued for carrying out the executive function u/s 58A of the Prohibition Act and Article 162 namely, the circular letter dated 30.7.1999 had not been challenged by the respondents herein and, therefore, they were not entitled to challenge the demand notice which was merely a consequential communication. The High Court, therefore, is not right in quashing the demand notice issued by appellant No. 4, namely, the Sub-Inspector of State Excise, in charge of the manufactory of the respondent, without examining the validity of or quashing the Rules of 1988 and the consequential circular letter dated 30.7.1999 issued by appellant No. 2, namely, the Commissioner, since the demand notice was merely a consequential communication issued in furtherance of the Rules of 1998 and the circular letter dated 30.7.1999.

Pursuant to the said decision, the Commissioner of Excise issued a circular letter, operative portion of which reads as under:

Polychem Ltd. and Ors. v. Govt. of Maharashtra, the Supreme Court had ruled in their decision on appeal No. 3494/1991 that recovery of outstanding of supervision charges with retrospective effect is illegal. Considering the said decision the units who were provided supervision were informed vide above circular of this office that presently the difference of enhanced supervision charges with retrospective effect not be recovered. Further taking support of Supreme Court above decision some units had filed petitions in Mumbai High Court, Aurangabad and Nagpur Bench and the decision on some of them was in the favour of the units. A special petition is being filed in Supreme Court against that decision. If the decision of it is in favour of Govt. all the Superintendants were informed that the outstanding amounts should be necessarily recovered with interest, vide above referred circular and instructions were issued to recover the difference of outstanding.

Now Supreme Court has ruled that the orders to recover outstanding of supervision charges with retrospective effect are legal. This was the decision of Supreme Court on the Civil Appeal No. 7399/2001, 7400/2001 and 1302/2003 and SLP No. 22942/2001 in M/s. Deokar Distillery and others case on 10.3.2003. Considering the above decision of Supreme Court, it is necessary to recover from those units with whose difference in supervision charges with retrospective effect are pending. Therefore, you are required to submit in the attached format the details of suit outstanding from units in your district and submit action taken report. Copy of Supreme Court decision is sent to all Divisional Dy. Commissioner along with this letter.

In terms of the said circular letter, the appellant was asked to pay the dues of the supervision charges along with interest by the Deputy Superintendent, State Excise Duty, Kosaka by a letter dated 26.6.2003. Appellant denied and disputed

its liability, inter alia, contending that the dispute between the parties has been settled by the Bombay High Court in the aforementioned Writ petition No. 4092 of 2000. It was stated:

The basis on which you demanded the recovery of the difference amount that is wrong, as the said decision is not applicable to us. By filing independent petition against your demand notice, your demand is cancelled. You have no right to recover the said amount. This is the ruling of the Supreme Court, which is still valid. Therefore, you cannot demand the difference amount. This is our position, which we have put forward in our letter dated 12.6.2003. It is for you to decide what to do. In spite of this, your office is repeatedly issuing warning that action would be taken if the amount is not paid immediately. This is not proper.

9. Notwithstanding the said contention, several other demands were raised. It is in the aforementioned situation, appellant filed another writ petition marked as W.P. No. 3050 of 2003, inter alia, praying for the following reliefs:

(B) Hold and declare that, the said Maharashtra Civil Services (Revised Pay) Rules, 1998 dated 11.12.1998 namely Sub-section (ii) of Rule (1) is not applicable to the Petitioners along with circular dated 17.6.1999 and 30.7.1999 being illegal, arbitrary and violative of Articles 14, 19(1)(C) and 19(1)(G) of the Constitution of India and quash and set aside the same along with circular dated 17.6.1999, 30.7.1999, 17.6.2000 and 29.4.2003 and for that purpose issue necessary orders;

(C) Hold and declare that, the demand notices dated 20.5.2003, 10.6.2003 and 26.6.2003 are illegal, arbitrary and violative of Articles 14, 19(1)(C) and 19(1)(G) of the Constitution of India and therefore same are liable to be quashed and set aside and for that purpose issue necessary orders;

(D) Hold and declare that the said demand notices are illegal, arbitrary and violative of Articles 14, 19(1)(C) and 19(1)(G) of the Constitution of India and Section 114 of the Bombay Prohibition Act, 1949 and further declare that the State is not entitled to charge the said interest in pursuance of the demand notices dated 20.5.2003, 10.6.2003 and 26.6.2003 and for that purpose issue necessary orders.

10. During the pendency of the said writ application, the respondents withdrew the said demand letter, stating:

With reference to above subject, it is informed that Dy. Superintendent, State Excise Duty, officiating Kopargaon S.S.K. Ltd., Kolpewadi, Tal. Kopargaon had erroneously issued demand letter No. Supervision 112003/333 dated 20.5.2003 regarding recovery of Supervisory charges with retrospective effect. As Superintendent I am withdrawing the said letter.

You are requested to arrange to bring this to the notice of the High Court, Aurangabad Bench on 12.11.2003.

11. Despite the same, a Division Bench of the High Court, in view of this Court's judgment in Deokar's Distillery (supra), dismissed the appellants' writ application, opining:

When the matter comes up for hearing, on behalf of the respondents, learned G.P. produces a letter dated 12.11.2004 setting out therein that demand letter dated 20.5.2003 for recovery of supervision charges with retrospective effect has been withdrawn vide letter No. SUP/112003/7553 dated 12.11.2003 and that the officer would be recovering the supervision charges as per the order of this Court dated 28.9.2000 as passed in Writ Petition No. 4092/2000. In other words, the demand for interest has been withdrawn and consequently the Respondents cannot demand interest from the Petitioners. The only demand can be in respect of the supervision charges, which has been upheld by this Court by the impugned order referred to earlier. Considering that the letter dated 20.5.2003 has been withdrawn, nothing further survives. In so far as to claim any charge with retrospective effect and interest thereon, nothing further survives in this petition. Rule in both the Petitions discharged. There shall be no order as to costs.

12. Mr. Savant, learned senior counsel appearing on behalf of the appellant, would contend that keeping in view the earlier decision of this Court, the impugned judgment cannot be sustained.

13. Mr. Chinmoy Khaladkar, learned Counsel appearing on behalf of the respondent, on the other hand, urged that the cause of action for which the earlier writ petition was filed was different from that of the writ petition filed later.

Indisputably, the claim of the respondent was based on the notification implementing recommendations of the Fifth Pay Revision Commission, pursuant where to and in furtherance where of, the pay of the concerned employees had been revised with retrospective effect from 1.1.1996. Admittedly, the matter relating to payment of supervision charges is governed by the provisions of Section 58A of the Bombay Prohibition Act and the Rules framed by the State known as Country Liquor Rules. According to the appellants, the supervisory staff had been employed under Sub-rule (12) of Rule 6; the supervisory charges were required to be paid to the State Government quarterly in advance. Under Sub-rule (2) of Rule 2 of the Liquor Rules, 1976, the supervision charges are to be paid annually in advance. It is also not in dispute, although not very relevant for our purpose, that the appellant is entitled to recover the supervision charges or other charges from its customers by including such sum in the price of the liquor.

14. Appellant in Writ Petition No. 4092 of 2000, indisputably questioned the right of the respondents to recover the supervision charges with retrospective effect. It was furthermore contended therein that in any event no interest was payable on the said charges, particularly in view of the fact that although the notification was issued in the year 1998 the demand was made in the year 2000. The said writ petition was allowed opining that the difference in payment of supervision charges was not recoverable. The said order of the High Court dated 7.12.2005

attained finality. It would, therefore, operate as res judicata.

15. Submission of Mr. Khaladkar that the demands were for different charges, namely, one in respect of pay and the other in respect of leave salary etc. cannot be accepted. The basis for both the claims was the same. If the principle of res judicata applies in a writ proceeding, no fresh demand could have been raised by the respondents. We may notice that even the Commissioner of Excise, only keeping in view that aspect of the matter, issued a circular only in respect of those distilleries from whom the charges were yet to be realized. The said circular had not and, in fact, could not have any application in respect of those cases where the dispute between the parties had attained finality. It is no longer res integra that the principles of res judicata apply in writ proceedings. It was so held in *Ishwar Dutt Vs. Land Acquisition Collector and Another*, wherein this noticed:

23. Yet recently in *Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others*, one of us was a party, this Court observed:

The object and purport of principle of res judicata as contained in Section 11 of the CPC is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute book with a view to bring the litigation to an end so that the other side may not be put to harassment.

The principle of res judicata envisages that a judgment of a court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment.

24. It was further noticed:

In *Pandit Ishwardas Vs. State of Madhya Pradesh and Others*, this Court held:

...In order to sustain the plea of res judicata it is not necessary that all the parties to the two litigations must be common. All that is necessary is that the issue should be between the same parties or between parties under whom they or any of them claim...

16. Yet again in *Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others*, this Court held:

The object and purport of the principle of res judicata as contended in Section 11 of the CPC is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to

reopen it in a subsequent litigation. Such a rule was brought into the statute-book with a view to bring the litigation to an end so that the other side may not be put to harassment.

The principle of res judicata envisages that a judgment of a court of concurrent jurisdiction directly upon a point would create a bar as regards a plea between the same parties in some other matter in another court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment.

17. It was, however, contended that the question of applicability of the principles of res judicata was not raised before the High Court. We have noticed hereinbefore that the said questions were clearly raised even in the responses to the notices of demand.

18. For the reasons aforementioned, the impugned order dated 23.09.2003 and judgment dated 13.11.2003 cannot be sustained which are set aside accordingly. The demand notices impugned in W.P. No. 3050 of 2003 are quashed. The appeals are allowed with costs. Counsel's fee assessed at Rs. 25,000/-.