(1998) 01 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18978 of 1995

Krishna Pasu Aahar Bhanupuri APPELLANT

Vs

Commissioner of Prohibition and Excise, A.P. and Others RESPONDENT

Date of Decision : 29-01-1998

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 12, 13
Constitution of India, 1950 — Article 19(1)
Industries (Development and Regulation) Act, 1951 — Section 18, 2, 3
Industries (Development and Regulation) Amendment Act, 1953 — Section 18

Citation : (1998) 2 ALD 47 : (1998) 1 ALT 803 : (1998) 1 APLJ 271

Hon'ble Judges : T. Ranga Rao, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : M/s. K. Raghava Rao and B.G. Uma Devi, for the Appellant; Government Pleader for Prohibition and Excise., for the Respondent

Judgement

B. Subhashan Reddy, J

1. The writ petitioner is a company carrying on the business of cattle feed at Raipur in Madhya Pradesh and for that purpose needs molasses. After obtaining No objection Certificate from the Commissioner of Excise, Madhya Pradesh for import of Molasses from Andhra Pradesh State, the petitioner had purchased Molasses from two Co-operative Sugar Units, namely M/s. Chodavaram Co-operative Sugars Limited, situated at Govada in Visakhapatnam and M/s. Co-operative Sugars Limited, Bhimadole of West Godavari District and approached the Commissioner of Prohibition and Excise, A.P. seeking permission to transport the same to his place at Madhya Pradesh. But, the Commissioner had directed the petitioner to approach the respective Superintendents of Excise, Visakhapatnam and West Godavari who had demanded Rs 25/-per metric tonne as a condition precedent for lifting the Molasses stating to be towards administrative charges. The petitioner challenges the levy of the same as being illegal and without jurisdiction and raising a contention that it is entitled to purchase and transport without any fetters on the ground that A.P.Excise Act and

the rules framed there under do not govern such purchases and transportation and that Molasses Control Order governs the same, that since it has been rescinded, no such fetters can now be imposed by the state Government. Hitherto, some sugar industries in Andhra Pradesh raised similar contention in W.P.No. 861/94 and batch and by a common judgment dated 16-10-1996, one of us (B. Subhashan Reddy J.) had taken a view that in view of rescission of the Molasses Control Order, 1961 for that legislative field covered by that Order, which has been rescinded, no fetters can be placed purporting to be under A.P.Excise Act and the rules framed thereunder or by any governmental order issued by the State Government. We affirm the said view taken.

2. Molasses Control Order, 1961 was issued in exercise of the power u/s 18G of the Industries (Development and Regulation) Act, 1951. The said Order places several restrictions on the sale, removal storage, grading and also fixation of prices. To implement the said order effectively, Molasses Controller was appointed. Molasses Controller is one defined under clause 2(c) as the Officer appointed as such, by the State Government for the purpose of the Order. The Commissioner of Excise was one such officer exercising the powers of the Molasses Controller. Molasses is the resultant commodity in sugar industries. If Molasses Control Order is subsisting, certainly regulations mentioned therein have got to be followed. But, the objection is that inasmuch as the Molasses Control Order, 1961 is rescinded, there cannot be any further restriction and imposition of such restrictions is infractive of the constitutional provisions, particularly, Article 19(1)(g) and are illegal.

3. In support of the argument that Molasses Control Order has been rescinded, the learned counsel for the petitioner has placed reliance on the Order dated 10-6-1993 issued by the Government of India and gazetted in the Gazette of India dated 10-6-1993, from which it is clear that Molasses Control Order, 1961 has been rescinded with effect from the said date i.e 10-6-1993. The reasons for rescinding the Molasses Control Order were also stated. But, we are not concerned with the said reasons. We are concerned with the constitutional validity of the imposition of restrictions by the State Excise authorities in the movement, storage and sale of molasses by the sugar industries in Andhra Pradesh and also the purchase thereof either by the sugar industries in Andhra Pradesh or by other persons concerns belonging to other States and then transport to their destinations.

4. The stand of the State Government is that molasses contain Alcohol and as such, it the Excise subject of the State and that the State Government in exercise of the powers u/s 12 of the A.P.Excise Act, 1968, can impose curbs and reiterate its rights to issue transport permits for molasses. It also relies on Section 13 of the said Act. It supports its action of demand for payments of Rs. 25/-per metric tone of molasses towards administrative charges. But, there is no statutory provision imposing the said charges and the Governmental order mentioned has got no legal sanction.

5. Section 12 of A.P. Excise Act empowers the State Government to issue permits for the transportation of intoxicants and the conditions which can be imposed by issuing orders periodically in that regard. Section 13 of the Act prevents a person from manufacturing or collecting intoxicants, cultivating hemp plant, tapping an excise tree or drawing toddy from any such trees, constructing or working a distillery or brewery, bottling liquor for sale or using, keeping or having in his possession any materials, stills, utensils, implements or apparatus, whatsoever for the purpose of manufacturing and intoxicant other man toddy, except under the authority and subject to the terms and conditions of a licence granted by such officer not below the rank of an Excise Superintendent as may be prescribed.

6. Legislative subjects for Union of India and States have been clearly enumerated in Lists I and II of Schedule VII of the Constitution . Item 52 of List I of Schedule VII invests the Central Government to enact the law with regard to industries, but it is not exhaustive and whatever is left over with regard to industries for Union legislation under the said item, the State Government is entitled to enact laws by virtue of item 24 of List 2 of Schedule VII of the Constitution of India.

7. The question is as to whether the manufacture, storage, transport and sale of Molasses is List 1 subject or List 2 subject?.

8. The Industries (Development and Regulation) Act, 1951 aims at the Union taking its control over the industries specified in the I Schedule and as such intention is so clear from Section 2 thereof. ''Sugar'' is an item of Schedule I and as such, sugar industry is one covered by Sections 2, 3 and other provisions of the above Act and the Molasses being a product of sugar, being its remnant after crystalisation of sugar particles, is covered by the above Central Act of 1951 and by virtue of the rule-making power u/s 1S-G of the said Act, the Molasses Control Order, 1961 was promulgated and the Central Government later thought that the curbs which were imposed under the Molasses Control Order are no more relevant and as such, had rescinded the same. Manufacture, transport and sale of Molasses being the subject of List I, cannot be legislated by the State. As such, it automatically stands excluded from the purview of the State Legislature as it is an occupied field of List I. If the Central Government, in its considered view, did not think it fit to continue the restrictions and having imposed the restrictions in the year 1961, had lifted it in the year 1993, the State Government cannot place any restrictions either in the sale, storage, purchase or transportation either within the State of Andhra Pradesh or outside the State. Of course, the State will be entitled to deal with the other aspects, other than the above rights, for instance, converting the Molasses for manufacture of intoxicants, which needs permits as contemplated u/s 12 and 13 of the A.P. Excise Act, 1968 and so on.

9. The writ petition is allowed to the extent indicated above. No costs.