
(2003) 07 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 3433 of 2003

Kuldipkumar Girdhar Das and Co.

APPELLANT

Vs

Commissioner of State Excise, Government of Maharashtra
and The State of Maharashtra

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Bombay Prohibition Act, 1949 — Section 2, 65, 70

Citation : (2003) 4 ALLMR 77 : (2003) 6 BomCR 594 : (2004) 1 MhLj 71

Hon'ble Judges : C.K. Thakker, C.J.; V.K. Tahilramani, J

Bench : Division Bench

Advocate : Shekhar Naphade, G.S. Kulkarni and Sonali Joshi, in Writ Petition Nos. 3433, 3434, 3436 and 3437 of 2003 and Nitin Thakker, G.S. Kulkarni and Sonali Joshi, in Writ Petition No. 3435 of 2003, for the Appellant; S.G. Aney, Special Counsel and C.R. Sonawane, Assistant Government Pleader in Writ Petition No. 3433 of 2003 and S.G. Aney, Special Counsel and P.I. Khemani, Assistant Government Pleader in Writ Petition Nos. 3434, 3435, 3436 and 3437 of 2003, for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—In all these petitions, common questions of fact and law have been involved. It is, therefore, appropriate if all the matters are decided by a common judgment.

2. Rule, Mr. S.G. Aney, learned Special Counsel, instructed by Mr. C.R. Sonawane and Mr. P.I. Khemani, learned Assistant Government Pleaders, appears and waives services of notice of rule on behalf of the respondents.

3. In the facts and circumstances, and with the consent of parties, all the matters are taken up for final hearing.

4. In all these petitions, the petitioners have approached this Court for an appropriate writ, direction or order directing the respondents to forthwith unseal their godowns and to release jaggery contained therein.

5. To appreciate the controversy raised in the present group of petitions, facts in the first petition (Writ Petition No. 3433 of 2003) may briefly be stated.

6. The petitioner is a partnership firm registered under the Indian Partnership Act, 1932. It is a member of the Federation of Associations of Maharashtra (FAM). It is engaged in business of trading in jaggery since 1993. The petitioner is also a member of Agricultural Produce Market Committee, Navi Mumbai, and has been allotted Godown No. M-21. The petitioner has asserted that it has always obeyed law and has a spotless record of business. According to the petitioner, an illegal, arbitrary and unconstitutional action was taken by the Commissioner of State Excise, Government of Maharashtra, respondent No. 1 herein, in sealing godown, M-21, situated at Market-I, Phase II, Turbhe, Navi Mumbai, along with jaggery inside lawfully traded under a licence possessed by the petitioner. That action was taken in purported exercise of powers under the Bombay Prohibition Act, 1949 as amended in 2000, by which the definition of molasses has been amended so as to include jaggery / gur, vesting unfettered powers in the respondents, which would hinder lawful trade, commerce and business in the said commodity.

7. According to the petitioner, the Bombay Prohibition Act, 1949 (hereinafter referred to as "the Act") came to be amended by the Bombay Prohibition (Amendment) Act, 2000 (Act No. XXXV of 2000) (hereinafter referred to as "the Amendment Act"). The Amendment Act was brought into force with effect from November 16, 2001. In exercise of the powers under the Amendment Act, illegal actions were taken against the traders dealing in the trade of jaggery, such as, sealing godowns, seizing vehicles and goods, and, thus, interfering with lawful activities of merchants and traders in jaggery. The Federation, therefore, was constrained to approach this Court by filing a Writ Petition No. 2598, 2002. A Division Bench of this Court on April 24, 2003 admitted the petition by issuing Rule. By way of ad-interim relief, the court directed the respondents not to take coercive action "under the Act". The said order is in force and operative till today. Despite the said order, the first respondent sealed the godown and seized jaggery belonged to the petitioner. Neither notice was issued to the petitioner before taking the action, nor explanation was sought. No hearing was afforded, and the action was taken in a high-handed manner. The petitioner has, therefore, approached this Court for appropriate reliefs.

8. The petitioner has also stated that it has obtained all licences necessary for doing business. The details of licences possessed by the petitioner have been mentioned in the petition.

9. The petitioner stated that the term molasses was defined in Clause (28) of Section 2 of the Act. Clause (28) of Section 2, as it originally stood, reads as under:-

"Molasses means the heavy, dark coloured viscous liquid produced in the final stage of the manufacture of gur or sugar containing, in solution or suspension,

sugars which can be fermented, and includes the solid form of such liquid and also any product formed by the addition to such liquid or solid of any ingredient which does not substantially alter the character of such liquid or solid; but does not include any article which the State Government may, by notification in the official gazette, declare not to be molasses for the purpose of this Act."

10. Clause (28) was amended by the Amendment Act, and for the first time, jaggery, which is a totally different and distinct commodity considered from all technical and other parameters, was sought to be included in the definition of molasses. The amended definition reads thus:-

"Molasses means... ..

and shall also include substances containing sugars obtained from sugarcane known as black gur (jaggery), rotten gur (jaggery), rab or rotten rab, which contain, irrespective of their colour--

(i) total sugars (expressed as invert sugar) less than 90 per cent. and sucrose less than 60 per cent.; or

(ii) extraneous matter insoluble in water more than 2 per cent; or

(iii) total ash more than 6 per cent.; or

(iv) ash insoluble in Hydrochloric acid (HCL) more than 0.5 per cent.; or

(v) more than 10 per cent. of moisture; or

(vi) Sulphur dioxide in concentration exceeding 70 parts per million;"

11. In view of the amendment and inclusion of jaggery in the definition of "molasses", illegal actions were taken by the respondents, which compelled the Federation to move this Court by filing the aforesaid petition. The writ petition is admitted, interim relief is granted and is pending for final hearing.

12. In spite of the order in Writ Petition No. 2598 of 2002, the first respondent, through his officers, sealed godown of the petitioner with jaggery inside on March 19, 2003. Being aggrieved by the said action, the petitioner has approached this Court.

13. In other petitions, a similar grievance has been made and similar prayer has been sought directing the respondent-authorities to unseal godowns and release jaggery.

14. The petition was filed on May 19, 2003. It was placed before the learned Vacation Judge on May 23, 2003. After hearing the learned counsel for the petitioner, as well as Assistant Government Pleader, the learned Vacation Judge noted that the respondents had registered an offence for selling gur/jaggery lying in the godown of the petitioner and with a view to seize that property, the godown was sealed.

15. The Court then stated:

"The Respondents shall remove the seized goods from the godown as early as possible not later than two weeks from today and unseal the godown and give its possession to the Petitioners."

Thus, so far as the first part regarding sealing of godown is concerned, the prayer was granted by the learned Vacation Judge. The question now remains as to release of goods i.e. gur/jaggery.

16. We have heard the learned counsel for the parties.

17. The learned counsel for the petitioners raised several contentions. It may be stated here that constitutional validity and vires of the Amendment Act of 2000 have been challenged by the Federation in Writ Petition No. 2598 of 2002, which has been admitted, and Rule is issued. It awaits final hearing. In the circumstances, it is not appropriate to express any opinion, one way or the other, so far as vires of the Amendment Act is concerned. A limited grievance in the present petitions relates to the action taken by the first respondent and described by the petitioners as illegal, unlawful and high-handed of-

(i) Sealing of godowns; and

(ii) Seizure of gur/jaggery.

18. As already mentioned, the first grievance of the petitioners does not survive in view of the order passed by the learned Vacation Judge, which has not been challenged by the respondents. The question that remains to be considered relates to release of gur/jaggery.

19. The main contention of the petitioners is that in Writ Petition No. 2598 of 2002, an order was passed by the Division Bench, which is in force even now. In view of the said order, the impugned action could not have been taken by the first respondent. It is, therefore, necessary to bear in mind the orders passed by Division Bench Writ Petition No. 2598 of 2002 from time to time. The said petition was instituted in this Court in April, 2002. On April 24, 2002, the Division Bench of this Court passed the following order:-

"Rule. Returnable in eight weeks. Rule on interim relief returnable in eight weeks. In the meantime Respondents will not take any coercive action under the Act.

Parties to act on copy of this order duly authenticated."

20. From the above order, it is clear that on writ petition, Rule was issued, and was made returnable within eight weeks. In the meantime, the respondents were restrained from taking coercive action under the Act.

21. According to the petitioners, during the pendency and final disposal of the petition, no coercive action could be taken by the respondents, and, hence, no action of sealing godowns and/or seizing gur/jaggery could be taken by the

respondents. Any such action would be clearly in breach of the order passed by this Court. It was the case of the petitioners that after the order passed by the Division Bench, the Excise Authorities took coercive steps against the members of the Federation/Association at various places in the State of Maharashtra by carrying out raids, sealing godowns, seizing goods and launching prosecutions against them in criminal courts. All those actions were clearly illegal and unlawful. In the circumstances, on July 10, 2002, a notice was sent by the petitioner through its advocate to the Government Pleader, High Court, Bombay (A.S.), requesting him to instruct his clients-respondents to comply with the order dated April 24, 2002 passed by the Division Bench of this Court. However, there was no reply to the said letter by the respondents. The respondents continued to take coercive action despite the order of the Division Bench. It was also stated by the petitioners in the petitions that the respondents wanted to find some excuse for not complying with the order of the Court. They, therefore, started disinteresting the order to mean that they were free to take coercive action after the completion of eight weeks from the date of the order, as in the order, it was stated that the Rule was made returnable in eight weeks, and "in the meantime", the respondents were restrained from taking coercive action. The Federation, therefore, moved the Division Bench by a praecipe of the advocate on October 28, 2002 seeking clarification of the order. the Court, however, observed that no clarification was necessary. The Court stated:-

"Today the papers are placed before us for clarification of the order dated 24th April 2002. In our opinion, no clarification is necessary. If there is any infringement in this order, the petitioner shall be at liberty to move before appropriate Bench."

22. According to the petitioners, the first respondent proceeded to take coercive action, and hence, the Federation filed a Contempt Petition [Stamp] No. 42755 of 2002 in this Court. The learned Single Judge of this Court passed an order on November 1, 2002 observing that prima facie, there was non-compliance of the order passed by the Division Bench on April 24, 2002 on account of seizure of trucks, which would amount to "coercive action". A notice was, therefore, issued to the respondents as to why contempt proceedings should not be initiated against them for wilful breach of the order dated April 24, 2002. The said petition is pending.

23. In spite of the above order, again, a similar order was passed. The petitioners stated that the Federation filed another Contempt Petition No. 117 of 2003. It came up before another Single Judge, and the learned single Judge was pleased to reject the same on the ground that interim order dated April 24, 2002 was in operation only for a limited period of eight weeks, and since no coercive action was taken during that period, no contempt could be said to have been committed by the respondents. The Court, however, was pleased to grant liberty to the petitioner to approach the Division Bench for clarification of the order dated April 24, 2002 as to whether it was in operation. The Federation, therefore, moved the

Division Bench again for clarification of the order dated April 24, 2002, praying that it may be clarified that the order dated 24, 2002 continues till it is vacated on hearing of Rule on interim relief. The Division Bench, by an order dated May 6, 2003, clarified that the order dated April 24, 2002 continues till it is vacated. In paragraph 4, the Court observed:

"Rule on interim relief was made returnable in eight weeks. Unfortunately due to paucity of time it could not be heard. But we are sure that the interim relief as ordered by us on 24.4.02 continues till it is vacated on hearing of the rule on interim relief."

(emphasis supplied)

24. It was submitted by the learned Assistant Government Pleader on behalf of the authorities that coercive actions were being taken for violation of the provisions of the Act and not for not possessing the licences as required by the amended provisions, which were made subject-matter of writ petition. According to the Court, however, no further clarification was needed. In paragraph 5, the Court stated:-

"Shri Sonawane, learned AGP on behalf of the State and other respondents submits that coercive action which is now taken is for violation of the provisions of Bombay Prohibition Act and not for not possessing the licence as required by the amended provisions which are subject matter or challenge in writ petition. In this view of the matter, in our opinion, no further clarification is needed. The interim order continues to operate as mentioned above. No further clarification is called for."

25. The Court also clarified that the order would apply only to members of the Federation/Association. In paragraph 6, the Court stated:-

"It has been already made clear that interim order of 24.4.2002 shall operate only in relation to the members of the Federation-Association. In any case where such action is sought to be taken and the person is unable to trace his relation with the Association he need not be covered by that order."

26. The question, therefore, is whether the impugned action of sealing godowns and/or seizing materials, gur/jaggery, can be said to be "coercive action", as contended by the petitioners. According to the petitioners, such an action is a coercive action and, as the Division Bench has restrained the respondent-authorities from taking any coercive action by an order dated April 24, 2002, which, as clarified by the Division Bench itself, has remained operation till the hearing of the Rule on interim relief, the action of sealing godowns and seizing goods would be illegal, bad in law and must be held to be in violation of the interim order passed by this Court. On the other hand, it was submitted on behalf of the Government that the action is independent of the order passed by the Division Bench and it has nothing to do with the interim relief granted by the court and continued as per the clarification dated May 6, 2002. It was also stated

that the order of the Court would apply only to the members of the Federation/ Association. As the petitioners are not members of the Federation/Association, they cannot claim benefit of the said order.

27. In this connection, our attention was invited by Mr. S.g. Aney, learned Special Counsel, instructed by Mr. C.R. Sonawane and Mr. P.L. Khemani, learned Assistant Government Pleaders, on behalf of the respondents, to an affidavit-in-reply filed by the Commissioner of State Excise on June 9, 2003 and also further affidavit dated June 17, 2003.

28. In the first affidavit, it was stated that when the matters were placed before the learned Vacation Judge, only one relief was granted, viz., unsealing of godowns. So far as jaggery is concerned, the Court refused relief, and hence, the petitioners are not entitled to the said relief. It was also stated that in respect of rotten black jaggery seized from the godowns of the petitioners, offences have been registered and particulars have been mentioned as to the quantity of jaggery seized, places of registration of offences and the Courts where complaints were filed. It was stated that the offences were registered under Sections 65(f) and 70 of the Act. According to the deponent, therefore, release of seized goods would be covered by the relevant provisions of the Code of Criminal Procedure and the petitions are not maintainable. It was also stated by the Commissioner of State Excise that he has been empowered to discharge the responsibility under the Act and has taken the action "in order to check the activities of illicit distillation, when affects public health and also causes enormous losses in revenue to the State Exchequer on account of sale of such illicitly and illegally produced liquor". It has been asserted by him that illicit liquor is brewed from black jaggery, which is totally unfit for human consumption. It is injurious, causing loss of human lives. The petitioners are dealing in large quantities of inedible rotten jaggery from various States, such as Karnataka, Andhra Pradesh, Uttar Pradesh, etc. They are engaged in the sale of inedible and rotten jaggery under the guise of edible jaggery.

29. Regarding ad-interim order passed by the Division Bench of April 24, 2002, the deponent has submitted that what was directed by the ad-interim order was "not to take coercive action under the provisions of Bombay Prohibition Act". The Court, however, has not granted stay against the Amendment Act of 2000, which had been brought into force from November 16, 2001. In the Amendment Act, definition of "molasses" has been amended.

30. In paragraph 8, the deponent stated:-

"I say that as part of drive to root out illicit distillation in the State of Maharashtra in the interest of public health and Government revenue, officers of State Excise Department have been continuously carrying out raids on the basis of specific information on both the spots, where illicit distillation takes place, where rotten and inedible black jaggery is stored, stocked or sold for the purposes of illicit distillation and commonly known as Hatbhatti or Hand made

Liquor, which is injurious to public health. On account of consumption of said Hand made liquor several families have been ruined. I again repeat that the said Hand made Liquor is injurious and hazardous to health. I further say that the said black jaggery, which is not edible jaggery and which cannot be used for human consumption is sold in the market mainly for the purpose of making illicit liquor. On account of sale of illicit liquor made from black jaggery, the Government is deprived of revenue, which it would obtain from the sale of Licensed Liquor."

31. It was also stated by the Commissioner that samples of black jaggery seized from the petitioners were sent for analysis to the Laboratory of Mumbai Municipal Corporation, and the laboratory opined that the samples conform to the standard of black jaggery (molasses) as defined in Clause (28) of Section 2 of the Act.

32. It was also stated that contempt petition was dismissed by the learned Single Judge of this Court. Review petition was also rejected. According to the first respondent, the petitioners were selling black jaggery for the purpose of brewing illicit liquor.

33. The deponent has also stated that the black jaggery is not fit for human consumption and cannot be sold. It was, therefore, necessary to sell the commodity only to licensed distilleries. As a part of drive in the interest of public health and Government revenue, the officers of the State Excise in Mumbai, Thane, Ulhasnagar and Ambarnath had registered several offences and seized black jaggery. Details of such materials have been furnished in the counter-affidavit. It was also stated that C.R. Nos. 170 and 174 of 2002 were registered by Inspector, Flying Squad, M.S., Mumbai. The accused applied for release of seized black jaggery. The learned Metropolitan Magistrate, by an order dated May 7, 2002, directed the authorities to return goods, but the said order was challenged by the State in Criminal Revision Application No. 196 of 2002, and the learned Single Judge of this Court had issued Rule and stayed the order passed by the learned Magistrate.

34. In additional affidavit, it was stated that the order passed by the Division Bench would be applicable only to the members of the Federation/Association of the petitioner in Writ Petition No. 2598 of 2002. Since the names of the members of the Federation have not been furnished, the petitioners are not entitled to any relief.

35. So far as the last part is concerned, in our opinion, the contention of the respondents cannot be accepted. Alongwith the additional affidavit-in-reply itself, a copy of five lists (I to V) of Members of the Federation/Association is annexed which had been received by the Office of the Government Pleader, High Court. In one of the lists (List IV) at serial Nos. 126, 128, 129, 130 and 131, names of the petitioners are found. It is, thus, clear that all the five petitioners are members of the Federation/Association.

36. Regarding interim relief and injunction against taking coercive action, in our

opinion, the grievance of the petitioners is well-founded. It is true that the Court, while issuing Rule in Writ Petition No. 2598 of 2002, had not granted stay against implementation of the Amendment Act of 2000. At the same time, however, it cannot be disputed and is not disputed that the constitutional validity and vires of the Amendment Act of 2000 have been questioned by the petitioners on several grounds. It also cannot be disputed that gur/jaggery was not included in the definition of molasses under Clause (28) of Section 2 of the Act before the amendment. It was only after the Amendment Act that gur/jaggery was included in the definition of molasses under Clause (28) of Section 2 of the Act. Therefore, when the Division Bench of this Court on April 24, 2002 made an order that no coercive action should be taken under the Act, obviously, it related to an action under the Amendment Act of 2000. The contention of the learned Special Counsel on behalf of the authorities, that no stay is granted against operation of the Act, and, hence, such action can be taken, cannot be upheld in view of the interim order passed by the Division Bench of this Court. It would virtually make the order of interim relief redundant. Under the old Act, gur/jaggery cannot be said to be molasses, and, hence, even otherwise, no action could have been taken under the Act, as it then stood. It is only because of the amendment in 2000 that Clause (28) was amended and certain articles were added, including gur/jaggery to mean molasses. Keeping in mind the amendment, the Division Bench restrained the respondents from taking any coercive action under the Act. It is, therefore, clear to us that in view of the interim order passed by the Division Bench of this Court in Writ Petition No. 2958 of 2002, it was and is not open to respondent No. 1 or to any officer to seal godowns or seize goods.

37. It is also clear from various orders, and particularly order dated May 6, 2003, that the order passed on April 24, 2002 remains to continue till it is vacated on hearing of the Rule on interim relief. If it is so, obviously, no coercive action could have been taken during the pendency and hearing of Rule on interim relief.

38. So far as the orders passed by the learned Metropolitan Magistrate and by the learned Single judge of this Court are concerned, in our considered opinion, this will not carry the case of the respondents further. Likewise, orders passed in Contempt Petitions also are not material so far as the controversy raised in the present petitions before us is concerned. Once we hold that sealing of godowns and/or seizure of goods can be said to be "coercive action", we have to hold that it is covered by the interim order passed by the Division Bench of this Court, and unless interim relief is vacated and/or modified, such an action could not be taken by the authorities.

39. It is, no doubt, seriously contended by the learned Special Counsel on behalf of the first respondent that all actions have been taken by him in larger public interest. IN our view, however, that does not give the first respondent right to ignore or violate an order passed by this Court. Once we hold that the action of sealing of godowns or seizure of goods "coercive action" within the meaning of interim order passed by this Court, in our opinion, the conclusion is incapable the

no such action can be taken.

40. We must state at this stage that we are not unmindful of concern of the first respondent as to public health, loss of revenue to the Government and serious consequences likely to ensue if appropriate steps are not taken immediately. In our opinion, however, proper course to follow for the respondents is to request the Court, so that either the main matter (Writ Petition No. 2598 of 2002) is finally disposed of or in any case, Rule on interim relief is heard. We are told at the Bar that the matter is on the Board for final hearing. We, therefore, grant liberty to the respondents to put forward the facts and circumstances in their entirety, including the factors highlighted by the first respondent in his counter-affidavit and request the Court to decide the case finally and/or hear the Rule on interim relief.

41. for the foregoing reasons, in our opinion, all the petitions deserve to be allowed, and are hereby allowed. Rule is made absolute. The action of sealing of godowns, as well as seizure of goods, is hereby quashed and set aside. In the facts and circumstances, however, there shall be no order as to costs.