(1997) 11 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4022 of 1994

Mahesh Kumar Ramniklal and Company and Others APPELLANT

Vs

District Excise Officer, Excise Dept. and Others RESPONDENT

Date of Decision : 17-11-1997

Acts Referred:

Madhya Pradesh Excise Act, 1915 — Section 12, 62
Madhya Pradesh Mahua Rules, 1959 — Rule 13(1), 4(1)

Citation : (1998) ILR (MP) 165 : (1998) 2 MPLJ 166

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : V.S. Dabir, for the Appellant; R.K. Thakur, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

The factual backdrop, the relief claimed and the questions of law being similar, the three writ applications, for the sake of convenience and clarity, were heard analogously and are disposed of by this common judgment. For better appreciation, the factual matrix in Writ Petition No. 4022/94 is exposited.

Invoking the extra-ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioners in the aforesaid writ petition have prayed for issuance of a writ in the nature of certiorari for quashing of ''Panchnama'' (Annexure P/9) and the order imposing penalty/composition fees dated 18-11-1994 (Annexure P/10) and for direction for refund of the amount involved in the composition fee to the petitioners; for a declaration that the vehicles carrying necessary documents as specified in the memo dated 5-4-1974 by the Commissioner of Excise, Madhya Pradesh should neither be detained nor subjected to composition fee although the said vehicles are not accompanied by "No Objection Certificate"; and for a further direction in the nature of mandamus to be issued to the Excise Authorities for not obstructing interstate trade in

Mahua flowers on the pretext of non-production of "No Objection Certificate" from the District Excise Authority by the exporter of the other State during transit of goods, and for issuance of any other writ, order or direction as deemed fit and proper in the facts and circumstances of the case.

The facts which have been uncurtained by the petitioners are that the petitioners Nos. 1 to 4 are registered partnership firms while petitioners Nos. 5 to 8 are proprietary firms. They are registered as traders and commission agents and are holders of licences granted to them under Rule 12 of the Orissa Excise (Mahua flowers) Rules, 1976. They are engaged in export of Mahua flowers to other States in India. The petitioner No. 1 entered into an agreement with one G. S. Bavankar, a resident of Dhanpwada, District Nagpur in the State of Maharashtra for commission sale and transport of Mahua flowers. Copies of the import permits issued by the Superintendent, State Excise, Nagpur, Maharashtra State authorising import of Mahua flowers have been brought on record. The petitioner No. 1 applied for pass for export of Mahua flowers under Rule 10 of the Orissa Excise (Mahua flowers) Rules, 1976, which was duly issued by the Collector, Nawapada, Orissa permitting transport of the specified quantity of Mahua flowers. The petitioner No. 1 deposited sales tax, Krishi Upaj Mandi fees and marketing fees in respect of the specified quantity of Mahua flowers intended to be exported to the buyers in the District of Nagpur. He also applied to the competent authority of the Forest Department of Orissa for transport permit for export of forest produce in respect of above transaction. The necessary permits were issued in his favour by the Forest Department. It is alleged that the said goods were entrusted to M/s Shri Ram Road Carrier, a transporter. On 17-11-1994 Mahua flowers were loaded in truck No. MP-26-B/5286 and MP-23-B/7392 at Kharier Road, Orissa and relevant documents were handed over to the drivers of the respective trucks. The aforesaid trucks carrying Mahua flowers entered into the State of M. P. on 17-11-1994 and at the check post Tembhari, Baghahara Range, District Raipur, the trucks were inspected and endorsement was made on the reverse of the transport permits. During the transit, the trucks were checked on various check posts and officers at the check posts inspected the trucks and contents therein and endorsed that they had been checked. At Patekohra check post in the District of Rajnandgaon the Excise Sub-Inspector checked the vehicles and found that though the trucks were carrying all the necessary documents, they did not have ''No Objection Certificate'' granted by the competent authority of Madhya Pradesh. Being of this view he detained the trucks and seized the documents and prepared "panchnamas". The District Excise Officer, Rajnandgaon under Annexure P-10 imposed a penalty of Rs. 2,000/- for each truck by his order dated 18-11-1994 as the vehicles in question did not have ''No Objection Certificate'' from the Competent Excise Authority of M. P. for transport of Mahua flowers. It is stated in the petition that as the vehicle was detained by the Excise Authority, the petitioner No. 1 had no option but to pay the penalty as imposed and get the seized truck and the Mahua flowers released in his favour. It is averred in the petition that the vehicle in question was not carrying Mahua flowers collected in the State of Madhya Pradesh but was carrying from Orissa to Maharashtra and, therefore, the vehicles should not have been detained by the Excise Authority of Madhya Pradesh. It is further pleaded in the petition that Excise Commissioner of Madhya Pradesh had issued a circular on 5-4-1974 in accordance with the provisions envisaged u/s 12 of the Madhya Pradesh Excise Act (hereinafter referred to as ''the Act'') and as the petitioner had complied with the same, the demand of ''No Objection Certificate'' was not called for in the facts and circumstances of the case and resultantly the detention and imposition of penalty have no sanction of law.

A return has been filed by the answering respondents and it is contended that the transport of Mahua flowers in the State of M. P. are regulated by the Madhya Pradesh Mahua Rules, 1959 framed in exercise of powers conferred u/s 62(2)(i)(d) of the Madhya Pradesh Excise Act, 1915. Reliance has been placed under Rule 4(1) and also u/s 12 of the Act to emphasize that the Government has authority to regulate the transportation of Mahua flowers inside the State. Reference has been made to a circular dated 1-2-1991 issued by the Commissioner brought on record a Annexure R/1 to indicate that a condition has been laid down in case of transit of Mahua flowers in the State of M. P. to the effect that a ''No Objection Certificate'' has to be obtained from the competent excise authority. It is further stated in the counter affidavit that the said circular has been issued with the intention to avoid theft and illegal transport of Mahua flowers from the State of Madhya Pradesh. It is further stated that the claim of the petitioners that they are entitled to transport Mahua flowers in the State of M. P. without obtaining ''No Objection Certificate'' is not justified inasmuch as rules have been framed in that regard and the said rules cannot be given a go-bye as putforth by the petitioners. Thus, the answering respondents have justified their action of seizure, detention compounding and eventual imposition of penalty.

Mr. V. S. Dabir, learned senior counsel appearing for the petitioners, has contended that once the permission has been obtained from the Government of Orissa and quantity has been specified for the purpose of export of Mahua flowers to another State, namely, State of Maharashtra, there cannot be a demand by the State of M. P. to obtain a ''No Objection Certificate'' from its competent authority. It is his further submission that once the petitioners have complied with the requirement of memorandum dated 5-4-1974 issued by the Commissioner of Excise, which is in accord with Section 12 of the Act, the vehicle could not be detained on the ground that they had not obtained ''No Objection Certificate''. It is canvassed by the learned senior counsel that obtainment of ''No Objection Certificate'' has not been provided for either in the Act or the Rules and, therefore, stipulation of such a condition by the Commissioner of Excise in the alleged circular dated 18-2-1991 can have no bearing and the same cannot be relied upon to justify the illegal action. He has referred to an order passed by this Court in M. P. No. 1581/91, Rajkumar v. District Excise Officer disposed of on 12-2-1991 in support of his contention.

Controverting the aforesaid submissions of the learned counsel for the petitioner, Mr. R. K. Thakur learned Dy. Advocate General has submitted that the scheme of the Act postulates that the State Government is entitled to make provisions to regulate transportation of Mahua flowers inside the State of M. P. and the same having been done no fault can be found with the action of the authorities. He has pressed into service Section 12 of the Act as well as various rules of Madhya Pradesh Mahua Rules, 1959 (hereinafter referred to as the ''Rules''). It is his submission that the instructions dated 18-2-1991 issued as per Annexure R/1 to the counter affidavit are in accordance with the provisions of the Act and Rules and any deviation thereof cannot have allowance. Mr. Thakur has also submitted that the decision of this Court rendered in the case of Rajkumar (supra) is distinguishable on facts and, in any case, is not a precedent for the proposition as proposed by the learned counsel for the petitioners.

On a close scrutiny of the factual matrix of the case, it is clearly evident that the facts are not in dispute. In fact, it is admitted that the petitioner No. 1 has all the documents which are essential for transport of Mahua flowers from Orissa to Maharashtra except the ''No Objection Certificate'' granted by the competent authority of the Excise Department of Madhya Pradesh. The question that falls for determination is whether such a no objection certificate is essential for a vehicle while in transit carrying Mahua flowers from Orissa to a destination in the State of Maharashtra. In this context relevant provisions of the Act are Sections 9 to 12, which read as follows :-

"Section 9. Restriction on import, export or transport. - Without the sanction of the State Government no intoxicant shall be imported, exported or transported, except:

(a) After payment of any duty to which it may be liable under this Act, or execution of a bond for such payment; and

(b) on compliance with such conditions as the State Government may impose.

(c) makes suitable provisions for the effective control of Mahua (Bassia Latifolia and Bassia Longifolla) or any other base which is or which can be utilised for the manufacture of liquor.

Section 10. Requirement of pass for import, export or transport. - No intoxicant exceeding such quantity as the State Government may, by notification, prescribe, either generally or for any specified area, shall be imported, exported or transported except under a pass issued, or deemed to be issued, under the provisions of this Act:

Provided that in the case of duty-paid foreign liquor such passes shall be dispensed with, unless the State Government shall, by notification, otherwise direct with respect to any local area.

Section 11. Passes for import, export or transport. - (1) Passes for the import, export or transport of intoxicants may be granted by the Collector.

Provided that passes for the import and export of such intoxicants as the Excise Commissioner may, from time to time determine, shall be granted only by the Excise Commissioner.

(2) Such passes may be either general for definite periods and kinds of intoxicants, or special or for specified occasions and particular consignments only.

Section 12. Passes issued by other authorities may be deemed passes granted under this Act. - The Excise Commissioner may, by general or special order, direct, subject to such conditions (if any) as he may impose, that a pass granted by any authority in India shall be deemed to be a pass for any purpose under this Act."

Section 62 of the Act authorises the State Government to make rules for the purpose of carrying out the provisions of the Act. Sub-section (2)(d) of the aforesaid section reads as follows :-

"Section 62(2)(d) : regulating the import, export, transport, manufacture, collection, possession, supply of storage of any intoxicant, or the cultivation of the hemp plant and may, by such rules, among other matters -

(1) regulate the tapping of tari-producing trees, the drawing tari from such trees, the marking of the same and the maintenance of such marks,

(ii) declare the process by which spirit shall be denatured and the denaturisation of spirit ascertained, and

(iii) cause spirit to be denatured through the agency or under the supervision of its own officers."

In accordance with the aforesaid provision of Madhya Pradesh Mahua Rules, 1959 have been framed. Rule 4 of the Rules stipulate certain conditions for export, import and transport of Mahua flowers. The relevant portion of Rule 4 is reproduced hereunder:

"Rule 4 (1) No person shall export or import Mahua except under a pass granted by the Collector or an authorised officer.

(2) No person or head of household on his behalf or on behalf of the members of his household shall in aggregate transport or sell or buy or have in his possession Mahua exceeding five (Kgms) in weight, except under the authority and subject to the conditions of a licence, permit or pass granted by the Collector or an authorised officer."

Rule 13 of the Rules prescribe certain procedure to be followed while transporting Mahua flowers. The said provision being relevant for the present purpose, is stated herein :

"Rule 13. (1) Any person desiring to transport Mahua shall make an application to the authorised officer for a permit to transport mahua. The application shall contain the following particular namely :-

(i) the name, age and address of the applicant;

(ii) the number of the licence for the possession or sale as the case may be of Mahua held by the applicant;

(iii) the quantity of mahua to be transported;

(iv) the place from and to which the mahua will be transported;

(v) the route by which mahua will be transported;

(vi) the name and address of the person from whose premises mahua will be removed.

(vii) the number of the licence held by the vendor; and

(viii) the period for which the permit is required to be valid.

(2) no objection certificate from the authorised officer of the district to which mahua is to be transported shall be attached with the application specifying that mahua is required for bona fide needs in the district."

It is relevant to notice that Rule 16 of the Rules deals with the procedure for obtaining a pass to import Mahua flowers and Rule 19 lays down the procedure to obtain a pass by a person desiring to export Mahua flowers. On a fair and objective reading of the provisions of the Act and the Rules it is clear that the Government has the authority to regulate the transport of Mahua flowers within the territory of the State. As it transpires from the materials on records the Commissioner of Excise vide Annexure R-1, has circulated that ''No Objection Certificate'' has to be obtained from the competent authority by a person intends to transport mahua flowers through the State of Madhya Pradesh. The circular is purported to have been issued u/s 12 of the Act. As per Section 12 of the Act the Excise Commissioner is authorised to impose certain conditions to equate a pass granted by any authority in India to be a pass for any purpose under the Act. Reading the aforesaid provision conjointly with the rules framed by the State Government in exercise of powers conferred on it u/s 62 of the Act there remains no iota of doubt that the Commissioner has acted within his bounds. The contentions raised by the Petitioner that they are entitled to a declaration that when all other conditions are specified in accordance with the instructions contained in the letter-circular dated 5-4-1974 they cannot be compelled to obtain a "No objection Certificate", has no force. In my considered view obtainment of "No Objection Certificate" as has been envisaged under Rule 1 is essential and in absence of the same, the vehicle is liable to be detained as has been done in the instant case.

Mr. Dabir, learned senior counsel has pressed into service the order passed by this Court in the case of Rajkumar (supra). In the said case a truck transporting Mahua from Allahabad to Nagpur in the District of Dhulia in the State of Maharashtra was detained and composition fee was demanded. The Court held as follows :

"From the material on record, especially the seizure memo Annexure-G to the writ petition, it is clear that there has been no violation of the terms of Rule 4(2) of the aforesaid Rules. No question of any composition fee in terms of Section 48 of the M. P. Excise Act, 1915 was, therefore, warranted. Even so, the Mahua in question was seized at the Seoni Check Post in the State of Madhya Pradesh for the alleged violation of Rule 4(2) and on pains of confiscation, the composition fee was extracted from the petitioner in spite of the petitioner''s protests."

After so concluding this Court quashed the order relating to deposit of composition fee. On a perusal of the aforesaid order it is clear that the Court observed that there was no violation of the terms of Rule 4(2) of the aforesaid rules. In absence of any violation of Rules, as a necessary corollary, question of any composition fee in terms of the Act did not arise. The aforesaid case is distinguishable on facts. That apart the said decision does not lay down as a proposition of law that ''No Objection Certificate'' from the competent authority is not necessary while transporting Mahua flowers within the State if it is ultimately carried to another State. It is well settled in law that a decision is a precedent for what it decides and not what is inferrable from it. In this context, I may refer to the decision rendered in the case of Ambica Quarry Works v. State of Gujarat and Ors., (1987) 1 SCC 213 , wherein the Apex Court had held that:-

"The ratio of any decision must understood in the background of the facts of the case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically flows from it."

In view of the aforesaid discussion, I am of the considered view that the decision rendered in the case or Rajkumar (supra) is not applicable to the facts of the present case.

In view of the foregoing premises the contentions raised by the learned counsel for the petitioners are devoid of merit, and accordingly the writ petitions are dismissed. However, in the peculiar facts and circumstances of the case, there shall no order as to costs