(1972) 09 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 605 of 1971

Mohinder Singh Kohli APPELLANT

Vs

The State of Punjab, etc. RESPONDENT

Date of Decision : 26-09-1972

Acts Referred:

Constitution of India, 1950 — Article 301, 304, 305
Punjab Distillery Rules, 1932 — Rule 4, 93
Punjab Excise Act, 1914 — Section 3(6), 58, 58(2)

Citation : (1975) 1 ILR (P&H) 583

Hon'ble Judges : Harbans Singh, C.J;Bal Raj Tuli, J

Bench : Division Bench

Advocate : T.S. Manjral, for the Appellant; H.S. Giani, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bal Raj Tuli, J.—The Appellant, who is a bottle merchant of Chowk Arya Samaj, Bhatinda, filed Civil Writ No. 3642 of 1971, challenging the constitutional validity of the Punjab Excise Bottles Rules, 1963 (hereinafter called the Rules). That petition was dismissed by the learned Single Judge on November 9, 1971, and the present appeal under Clause 10 of the Letters Patent is directed against that order.

2. These rules were framed by the Governor of Punjab in exercise of powers conferred u/s 58 of the Punjab Excise Act, 1914 (hereinafter called the Act), and were promulgated by notification dated April 16, 1963. According to {these rules, the excise bottles are to be used only for the purpose of bottling spirit in accordance with the licence granted under the Act and cannot be-used for any other purpose except with the permission of the Excise and Taxation Commissioner. The export of these bottles outside the State of Punjab cannot be made except as directed by the Excise and Taxation Commissioner by way general or special order. The excise bottles can be sold only to a licensed

distillery or to its authorised agent and the sale of these bottles to any other person or firm is prohibited. The possession or storage of more than 20 empty excise bottles is prohibited, except by a licensed, distillery or its authorised agent. Authorised agent can be appointed by a licensed distillery to buy and store excise bottles on, its behalf. The particulars of the authorised agent appointed by the licensed distillery have to be communicated to the Excise and Taxation Commissioner who has the right to cancel any letter of authorisation if he considers that the authorised agent is an unsuitable person. These rules are not to be applied to the possession or use at any time of not more than 20 excise bottles for domestic purposes in any house.

3. When these rules came into force, the Appellant was appointed by Jagatjit Distilling and Allied Industries Limited, Jagatjit Nagar, district Kapurthala, (which is a licensed distillery), as its authorised agent, by issuing a letter dated June 7, 1963. The-said distillery appointed various other authorised agents also. On August 4, 1971, the said distillery cancelled the authorisation issued in favour of the Appellant for the collection, storage, purchase and sale of Punjab excise bottles for that distillery with immediate-effect. In that letter, the Appellant was further warned that, if he dealt in the purchase, collection, storage or sale of Punjab excise bottles belonging to the said distillery, suitable action under the relevant Punjab Excise Rules would be taken against him for unauthorised dealing in such bottles. The cancellation of the Appellant''s authorisation by the said distillery led to the filing of the writ petition by him.

4. The first ground pressed before the learned Single Judge by the learned Counsel for the Appellant was that Section 58(2)(d) of the Act, under which the impugned rules have been framed, is beyond the Legislative competence of the State Legislature and the same plea has been repeated before us. Originally, this clause read as under:

58. (2) In particular, and without prejudice to the generality of the foregoing provisions, the Local Government may make rules--

(a) ******

(b) ******

(c) ******

(d) regulating the import, export, transport or possession of any excisable article.

Excisable article" was defined in Section 3(6) of the Act as under:--

''Excisable article'' means and includes any liquor or intoxicating drug as defined by or under this Act

By Punjab Act I of 1940, Clause (d) of Section 58(2) was substituted to read as under:--

Regulating the import, export, transport or possession of any intoxicant or excise bottle and the transfer, price or use of any type or description of such bottle.

By the same Act, "excise bottle" was defined in Section 3(6-a) as under:

Excise bottle'' means a bottle of such type or description as may be or may have been at any time permitted for the bottling of liquor or beer by rules made under this Act.

After the coming into force of the Constitution, the words "Local Government" were substituted by the words "State Government" by the Adaptation of Laws Order. The question that has been debated is that excise bottles have nothing to do with liquor and, therefore, no legislation with regard thereto can be made by the State Legislature under Entry 8 in the State List which reads as under:

8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

It is true that an excisable bottle is not intoxicating liquor but it is certainly the container of intoxicating liquor. It is open to the State Legislature to make law as to how the intoxicating liquors shall be possessed, transported, purchased and sold and for that purpose, bottles can be prescribed as the containers in which intoxicating liquors shall be possessed, transported, purchased or sold. It thus becomes evident that the jurisdiction of the State Legislature extends to the enacting of any law for the use of excise bottles for possession, transport, purchase and sale of intoxicating liquors. A provision to that effect could be made by the State Legislature in the Act itself. Instead of making a provision in this behalf in the Act, power has been conferred on the State Government to make rules u/s 58(2)(d) of the Act. We are, therefore, unable to hold that Section 58(2) (d), in so far as it empowers the State Government to make rules in respect of excise bottles is ultra vires the Constitution.

5. The next submission made by the learned Counsel for the Appellant is that the export of the empty excise bottles cannot be prohibited by the State Government as it affects the interstate trade and commerce and is violative of the provisions of Articles 301 and 304 of the Constitution. It has been pointed out by the learned Single Judge that the Punjab Excise Act is a pre-Constitution Act and, therefore, the provision in Section 58(2) (d) is constitutionally valid, as is provided in Article 305 of the Constitution. We are further of the opinon that inter-State trade is affected only if that trade can be legally carried on in respect of certain articles or commodities. The object of the Rules, the constitutional validity of which has been challenged, is to make available Punjab excise bottles to the distilleries in the State for the possession, transport and sale of the intoxicating liquors. Under Rule 93 of the Punjab Distillery Rules it has been provided that the intoxicating liquor shall be possessed, transported, purchased and sold only in bottles of particular type and capacity. They have to bear a specific mark which has to be embossed or sand-blasted into the bottle itself. The name of the distillery can also be embossed or sand-blasted while manufacturing the bottle, so that the excise bottles bearing the name of distillery

shall be sold to that distillery alone or its authorised agents or to any other distillery with its consent and the permission of the Excise and Taxation Commissioner. Such bottles cannot be used for any other purpose and general trade in them is prohibited. It cannot, therefore, be said that if export of Punjab excise bottles is regulated, it amounts to infringment of the Appellant''s right to inter-State trade and commerce. Rule 4 of the Rules only regulates export of such bottles and does not totally prohibit the same. The export can be made in pursuance of a general or special order passed by the Excise and Taxation Commissioner. It has nowhere been alleged by the Appellant that he ever made a request to the Excise and Taxation Commissioner for exporting the Punjab excise bottles collected by him and that it was refused, nor has he been able to show that these bottles can be exported to any other State. All that be has been able to point out is that such bottles can be used by any other distillery in the States of Haryana and Himachal Pradesh with the permission of the Excise and Taxation Commissioners of those States. In the absence of any allegation that the appelant has been illegally prohibited from carrying, on inter-State trade in the Punjab excise bottles, it is academic to decide whether in a particular case these rules will affect the rights of a trader under Articles 301 and 304 of the Constitution. We, therefore, repel this submission of the learned Counsel for the Appellant

6. The last submission made by the learned Counsel for the Appellant is that a monopoly has been created in favour of (the distilleries to purchase the Punjab excise bottles whether bearing their names or not. In our opinion, there is no question of creating a monopoly in favour of the distilleries in respect of such bottles. They can be used only by the distilleries and none else. It is, therefore, legitimate to provide that they can be purchased by the distilleries alone either directly or through their authorised agents. It is also inherent that the other persons should be debarred from possessing or trading in such bottles which are meant for the distilleries for being filled with intoxicating liquors to be sold to the licensees and through them to the consumers. The necessity for promulgating the Rules arose because of the shortage of bottles due to their limited manufacture in the country and their non-import from foreign countries. The consumption of intoxicating liquor has been increasing year by year and it is a source of large revenue to the State. Effort is, therefore, made to enable the distilleries to meet the requirements of the licensees by making available to them the maximum quantity of empty bottles required by them for the sale of intoxicating liquors. There is thus no question of creating a monopoly in favour of the distilleries and these rules cannot be held to be unconstitutional on that ground.

7. For the reasons given above, we find no merit in this appeal which is dismissed but the parties are left to bear their own. costs.

