(1994) 01 MP CK 0024

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1701 of 1984

Motilal Jain and Another APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 17-01-1994

Acts Referred:

Madhya Pradesh Excise Act, 1915 — Section 62, 8
Madhya Pradesh Mahua Rules, 1959 — Rule 13, 14

Citation : (1994) ILR (MP) 53 : (1994) JLJ 165 : (1994) 1 MPJR 12 : (1994) 39 MPLJ 353 : (1994) MPLJ 353

Hon'ble Judges : U.L. Bhat, C.J;P.P. Naolekar, J

Bench : Division Bench

Advocate : R.K. Samaiya, for the Appellant; B.K. Rawat, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

P.P. Naolekar, J.

In this petition under Article 226, the petitioners have challenged constitutional validity of Sections 8(c) and 62(d1) of the M.P. Excise Act, 1915 and M.P. Mahua Rules, 1959.

The petitioner No. 1 is a dealer in Mahua flower holding a licence under the M. P. Mahua Rules, 1959 and the petitioner No. 2 is the agent of petitioner No. 1. 120 tonnes of Mahua flower was transported by the petitioners on 25th May. 1984 from Sailwada, District Damoh, to Runeeja, District Ujjain. According to the petitioners, the Mahua flowers were transported under a valid permit issued by the District Excise Officer, Damoh dated 18-5-1984 which was valid upto 27-5-1984. The truck in which the Mahua flowers were transported was checked and seized by the Hying Squad of Excise Department, Sagar. At the relevant time of checking, the petitioners could not show the permit for transportation of the Mahua flowers, which was presented to the concerned officer on the next day. Later on, the petitioner No. 1 moved an application for release of seized Mahua flowers on the ground that they are lying in the open place and are deteriorating. His application was rejected. However, the Chief Judicial Magistrate directed auction of Mahua to licence holders on an application moved by the Excise Department. The Excise Department filed a challan in the Court of Chief Judicial Magistrate, Sagar u/s 37 of the M. P. Excise Act, 1915. As per the return filed by the respondents, the petitioners were not holding permit for transportation of the Mahua flowers; the permit which was produced was not in respect of the goods carried and seized, and in any case, the goods were not transported on the route prescribed under the permit. The bone of contention in this petition is that the M. P. State Legislature has no legislative competence to regulate the movement or trade of Mahua flowers under the provisions of Sections 8(c) and 62(d-1) and the M. P. Mahua Rules, 1959 framed u/s 62(d-1) of the M. P. Excise Act, 1915 as it is beyond the competence of the State Legislature. The respondents, on the other hand, supported the legislative competence of the State Legislature to enact the aforesaid provision under Entry 8, List II of Seventh Schedule to the Constitution of India.

The legislative power of the State Legislature is limited by the. provisions relating to distribution of the powers and other limitations imposed by different Constitutional provisisons. The provisions made by the State Legislature, which are not covered under the said provisions, will be a nullity. The enactment will be without legislative competence of the State if it is not referable to any matter dealing with and with respect to the matters in List II or III of Seventh Schedule to the Constitution of India. Thus, it has to be seen whether the powers exercised by the M. P. State Legislature are referable to any of the Entries in List II or III of Seventh Schedule to the Constitution. The State heavily relied on Entry 8, List II of Seventh Schedule for exercising powers under the Constitution for its authority to legislate the relevant provisions i.e. Sections 8 and 62 of the M. P. Excise Act which read as under :

8. Power to prohibit import, export or transport. - The State Government may, by notification,-

(a) Prohibit throughout the State or in any specified area thereof, the import of any intoxicant;

(b) prohibit the transport of any intoxicant.

(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.

Power to make rules :

(1) The State Government may make rules for the purpose of carrying out the provisions of this Act.

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

*** *** *** (d-1) regulating the import, export, transport, collection, possession, supply, storage or sale of Mahua flowers prescribing licences and permit therefor, throughout the State or in any specified area or for any specified period.

*** *** ***

Section 8(c) and Section 62(d-1) are inserted by M. P. Act No. 23 of 1958 whereas M. P. Mahua Rules, 1959 were published in M. P. Gazette dated 26-6-1959 and are framed in exercise of the powers conferred by Clause (d-1) of sub-section (2) of Section 62 of the M. P. Excise Act (II of 1915). Entry 8 of List II of Seventh Schedule to the Constitution of India reads :

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

By insertion of sub-section (c) to Section 8 in M. P. Excise Act, 1915, powers are given to the State Government to make suitable provisions for effective control of Mahua or any other base which is or which can be utilised for the manufacture of liquor by issuance of the notification; whereas, Section 62(d-l) authorises the State Government to make rules regulating the import, export, transport, collection, possession, supply, storage or sale of Mahua flowers by prescribing licences and permit therefor, throughout the State or in any specified area or for any specified period. Rule 13 of M. P. Mahua Rules, 1959 requires that any person desiring to transport Mahua has to apply for permit to the Collector, and the Collector has been authorised after making necessary enquiries, to issue permit for transportation of Mahua under Rule 14 in Form IV prescribed under the rules.

The M. P. Excise Act, 1915 was enacted for the purpose of control and to regulate import, export, transport, manufacture, sale and possession of intoxicating liquor, intoxicating drugs and the various provisions are made for the said purpose in the Act. The question for consideration is whether the Mahua flower itself, not being an intoxicant, the provisions made by the State Legislature relating to import, export, transport, collection, possession, supply, storage or sale of Mahua flowers u/s 8(c) and Section 62(d-1) and the Rules made thereunder, are within the legislative competence under Entry 8 of List II of Seventh Schedule. Entries in the legislative list are not source of legislative power but merely topics or fields of legislation and it is well settled that while interpreting the legislative entry and its scope, widest possible amplitude must be given to the words used and each general word used must be held to extend to ancillary and subsidiary matters which can fairly be said to be comprehending in it. Reliance is placed on Chaturbhai M. Patel Vs. Union of India (UOI) and Others, , Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another, and Kasturi Lal Harilal Vs. State of U.P. and Others, The entries must receive a liberal construction by a broad and generous spirit and not in a narrow sense. Whenever the question of legislative competence is raised, the test is whether the legislation, looked at as a whole, is substantially with respect to the particular topic of legislation and has not only remote connection with the entry, and if it is so the matter well be a legislation on the topic.

It is the allegation of the State in its return that 95 per cent of the Mahua flower is being used in the manufacture of liquor and the rest 5 per cent is used as cattle fodder and food for human consumption. The statement made in the return has not been controverted by the petitioners. Thus, it is clear that Mahua flower in the State of Madhya Pradesh is mainly used for the purpose of manufacture of liquor and is the raw material in that sense.

In Entry 8, List II of the Seventh Schedule to the Constitution the words used "that is to say" are merely illustrative and not words of limitation. u/s 8(c) and Section 68(d-l) and the M. P. Mahua Rules, 1959, what has been provided by the State Legislature is the power to regulate the import, export, transport, collection, possession, supply, storage or sale of Mahua flower by prescribing licences and permits. Manufacture of "intoxicating liquors" provided in Entry 8 must necessarily include the power to regulate the raw material used in the manufacture of intoxicating liquor, by regulative measures of control of import, export, transport, collection, possession, supply, storage or sale of Mahua flowers by prescribing licences and permits. Such regulations being substantially regulative measures are referable to manufacture of intoxicating liquors. The power to regulate manufacture or production of liquor shall be frustrated, if there is no authority with the State to regulate the trade or movement of Mahua flower which is a base or raw material utilised for manufacture of intoxicating liquor. The powers exercised for regulating the raw material used for manufacture of intoxicating liquor is an ancillary power to the powers given under entry 8, whereby the State Legislature can make a provision in respect of manufacture of intoxicating liquors. It is well settled that the law determining whether an enactment is a legislation with respect to a given power, the relevant consideration is not the consequences of the enactment on the subject matter or whether, in fact, it affects it, but whether in pith and substance it is a law on the subject matter in question. Mahua flower in the State of Madhya Pradesh are being utilised for the purpose of manufacture of intoxicating liquor and, therefore, Mahua flower will be Subject on which the State Legislature can legislate under Entry 8, List II of the Seventh Schedule to the Constitution. Mahua flower being used for the manufacture of intoxicating liquor, and thus had a direct connection with the manufacture of liquor.

For the aforesaid reasons, we uphold the constitutional validity of the provisions of Section 8(c), 62(d-l) of the Excise Act, 1915 and the M. P. Mahua Flower Rules, 1959 being within the legislative competence of the Madhya Pradesh State Legislature.

Another question which has been argued is that the petitioner''s Mahua flower was not liable to be seized because it was transported on the route prescribed under the permit and the permit issued by the Excise Department. This will require consideration of the factual aspects, as the allegations made by the petitioners are specifically controverted by the State in its return. We, therefore, refrain from expressing any opinion on this question in exercise of our jurisdiction under Article 226 of the Constitution of India, particularly so, when it is alleged by the petitioners that the State has taken action against them u/s 37 of the M. P. Excise Act, 1915.

Consequently, this petition fails and is dismissed with costs. Counsel''s fee Rs. 250/-, if certified.

