
(2000) 06 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No. 20062 of 1999

M/s. Anugraha Distilleries Private Limited, Bangalore

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 28-06-2000

Acts Referred:

Citation : (2000) 1 KarLJ 277

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : Sri Mohan Shanthanagoudar, for the Appellant; Smt. S. Sujatha, High Court Government Pleader, for the Respondent

Judgement

1. The petitioner have been issued a licence on 7-3-1998 for establishing a distillery with the capacity to manufacture 30,000 litres of rectified spirit per day and 1,50,000 cases of IML per annum. The production is not yet started. The petitioner is now been required to deposit Rs. 15 lakhs as licence for the year 1999-2000 for preliminary distillation and that Rs. 18 lakhs for the secondary distillation. The licence is being composite, it is stated that the order of enhancement of fee is arbitrary and illegal. The action has been challenged on three grounds; firstly that the enhancement of fee from Rs. 7.50 lakhs to Rs. 15 lakhs and from Rs. 10 lakhs to Rs. 18 lakhs is an arbitrary exercise without any reasons and in view of the judgment of this Court in M/s. Sapthagiri Enterprises, Sameerwadi, Mudhol Taluk, Bijapur District and Others v State of Karnataka and Others, the levy has to be struck down; secondly, it is stated that since the petitioner has not started manufacturing, therefore, there is no justification to raise the fee under Entry 51 of the List II of the Seventh Schedule of the Constitution; and thirdly, the amendment to the rules have not been made. Learned Government Advocate placed on record the notification dated 9-6-1999 since the rules in this regard have been amended and therefore his third contention no longer survives.

2. Regarding the question of fee not being falling within Entry 51 of List II of the

Seventh Schedule it may be observed that the said entry is in respect of duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India.--

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

3. Fee for licence is not the duty of excise. In *State of Uttar Pradesh and Others v Sheopat Rai and Others*, it was observed that the term "licence fee" and the term "fixed fee" under the Excise Rules being the consideration that the Government receives from a private party to part in latter's favour its exclusive privilege or right to vend foreign liquor in specified shops of any locality in Uttar Pradesh State under a contract. It is not "fee" and cannot partake the character of either "regulatory fee" or "compensatory fee". [Thus the licence fee or fixed fee realisable from a private party for granting the privilege or right to sell or vend foreign liquor to such party was considered to be the duty of excise].

4. The duty of excise is on manufacture/production as contemplated under Entry 51 of List II of the Seventh Schedule. When a licence is granted and licence fee is collected it could be a matter ancillary for the manufacturing of liquor for which the State has a right to grant such privilege or licence. In *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , it was considered that the "licence fee" or the "fixed fee" does not have to conform to the requirement that it must bear a reasonable relationship with the service rendered to the licence and the amount charged to the licensees is not a fee properly so-called nor indeed a tax but is in the nature of the price of privilege which the purchaser has to pay in any trading or business transaction. Similar observations were made in *Crag Martin Distillery (Private) Limited, Goa Vs. State of Karnataka*, , where the fee was levied for import of liquor from other States while the local manufacturers were not charged with any such fee. It was observed that:

"11. There is no dispute that for levying fee rendering of service to a person from whom the fee is collected is necessary. Though in earlier years it was the view that rendering service to persons from whom the fee was collected was required, the same has been diluted by the judgments of the Apex Court and the Apex Court held that when a fee is collected from a class of persons, service provided to that particular class is sufficient and in such cases an individual may not receive a particular service and that cannot be a ground to hold that there is no quid pro quo and merely by the absence of such quid pro quo, the rule cannot be said to be ultra vires. This proposition is supported by the judgment of the Supreme Court in the case of *Gasket Radiators Pvt. Ltd. Vs. Employees' State Insurance Corpn. and Another*, and *City Corporation of Calicut Vs. Thachambalath*

Sadasivan and Others, , wherein it is held:

"It is well-settled by numerous recent decisions of the Supreme Court and that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered or the advantages conferred. Such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee".

The principles laid down in the said judgment squarely apply to the facts of the case, and we do not see any force in the contention of the learned Counsel for the appellant".

5. In Har Shankar's case, supra, regarding keeping of increased fee it was observed as follows:

"57. While on this question, we may with advantage cite a passage from "American Jurisprudence" (Vol. 30, pages 642 and 645) which is based on the decisions in Gundling v Chicago, Phillips v Mobile and Richard v Mobile. It says:

"The familiar principle that the imposition of licence fees on useful and honourable occupations must not exceed the cost of issuing the licence, plus the expense of inspecting and regulating the business licensed. . . is not necessarily applicable to a liquor licence. The liquor traffic is not something which is licensed for the purpose of promoting it. Indeed, licence fees may be exacted in amounts intended to discourage participation in the business. The Courts have quite generally refused to hold that the licence fee imposed, merely, because it is large, is a tax, where the object is to control, regulate, and restrict, and not to encourage the liquor traffic, the revenue being the result of the system and not the motive for its adoption.. The higher the fee imposed for a licence, it is sometimes said, the better the regulation, as the effect of a high fee is to keep out of the business those who are undesirable, and to keep within reasonable limits the number of those who may engage in it" .

In Sheopat Rai's case, supra, the licence fee for grant of licence for sale of foreign liquor in a shop it was considered within the legislative competence. Since the State enables regulations regarding manufacture, transport and possession and sale of liquor the power of collecting the licence fee for grant of the licence to manufacture spirit/liquor has to be upheld.

[6. It may be observed that excessive fee which is being charged and raised from year to year may be for the purpose of discouraging the undesirable persons as a matter of policy for which the petitioner has entered into at the time when the application was submitted for grant of such a licence.]

7. The decision given in the case of M/s. Sapthagiri Enterprises, supra, refers to enhancement of the licence fee from Rs. 2.5 lakhs to Rs. 5 lakhs for the year 1990-91, 1991-92. It was reduced to Rs. 50,000/- in 1992-93 and was Rs. 2 lakhs in the year 1989-90. It was the enhancement in the year 1991-92 which was challenged and it was found that there was no rationale in fixing the fee for the high amount when in the preceding and subsequent year the fee was Rs. 2 lakhs and Rs. 2.5 lakhs only. It was because of subsequent reduction of fee the Division Bench of this Court came to the conclusion that in the preceding year that there was no rationale or justification for enhancement. In the present matter this is not the position. Fee could be enhanced and it is a matter of policy and does not require interference of this Court. The writ petition is, therefore, having no force and it is dismissed.