(1976) 10 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 90 of 1974

Organon (India) Limited and others APPELLANT

Vs

Collector of Excise, District Mandsaur, Mandsaur and others RESPONDENT

Date of Decision : 21-10-1976

Acts Referred:
Constitution of India, 1950 — Article 13(1), 14, 19, 226, 246

Citation : (1981) ILR (MP) 644 : (1977) JLJ 1 : (1977) MPLJ 118

Hon'ble Judges : Shiv Dayal Shrivastava, C.J;Raj Krishna Tankha, J

Bench : Division Bench

Advocate : G. Chakravarty with R.M. Chatterjee and Ravindra Kumar Verma, for the Appellant; M.C. Nihalani, Advocate General with M.V. Tamaskar and K.K. Adhikarit, Government Advocates for respondents Nos. 1 to 3 and R.P. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Dayal, C.J.

This petition under Article 226 of the Constitution challenges the imposition of duty on export of poppy husk under Rule 3-A of the M.P. Poppy Husk Rules, 1959, framed u/s 5, read with section 13 of the Opium Act, 1878, (hereinafter called the "Act"), as ultra vires Article 246 of the Constitution. By amending the petition, the petitioners have further contended that section 5 of the Opium Act is itself void under Article 13(1) of the Constitution, as the power delegated to the State Government is unbridled, uncanalised, uncontrolled and arbitrary. It is ultra vires on the ground of excessive delegation. Initially, the challenge was also rested on Articles 14 and 19 of the Constitution [ground (d)], but during the course of the hearing, an application was made by the petitioners to delete that ground.

The petitioners'' case is that petitioner No. 1 (hereinafter called the ''petitioner'') is a public company incorporated under the Companies Act. On February 25, 1974, a wholesale licence in Poppy Husk in Form No. 1 under Rule 5, read with

Rule 6 of the M.P. Poppy Husk Rules, 1959, was granted to the petitioner in the name of its Secretary (petitioner No. 2). On March 20, 1974, the said licence was renewed. In or about March 1974, the petitioner entered into a contract with M/s Verengde Pharmacutische Fabricen B.V. Kloosterstrat 6 Oss Holland (hereinafter referred as the "Dutch Buyer") for supply to them of 1000 metric tonnes of poppy husk. The Dutch buyer obtained from the Dutch Government necessary import authorisation allowing them to import poppy husk into Holland. On the strength of the aforesaid authority, the petitioner obtained permission from the Narcotics Commissioner, Government of India, duly authorising the petitioner to export "for sale" 1000 metric tonnes of poppy husk. The petitioner obtained 100 tonnes of poppy husk which was lying in various places in the district of Mandsaur, sealed in bags of 40 kgs. each. They were to be dispatched to the Port of Bombay by road transport. On or about March 30, 1974, the petitioner applied to the Collector of Excise, District Mandsaur, for necessary permission to enable it to transport the said poppy husk from the District of Mandsaur to the Port of Bombay, to perform its obligation under the said contract with the said Dutch buyer. No excise duty was leviable or payable under Rule 3-A (a) of the M.P. Poppy Husk Rules, 1959, for export across the custom frontiers and, therefore, the petitioner claimed exemption from depositing any amount by way of excise duty or otherwise under the said Rules. On April 15, 1974, the Collector of Excise, District Mandsaur, ordered that permission to transport poppy husk from the District of Mandsaur to the Port of Bombay could only be granted on payment of excise (export) duty under Rule 3-A (a) of the said Rules and refused to grant permission without payment of that duty.

On April 16, 1974, the petitioner filed this petition at the Indore Bench of this Court, contending that the above said order of the Collector of Excise is arbitrary, illegal and ultra vires, as the levy of excise duty is without jurisdiction, null and void. In this petition, the petitioner claims a writ, direction or order in the nature of mandamus commanding the Collector of Excise, M.P., and the State of Madhya Pradesh, to cancel, rescind and withdraw the said imposition of "excise" duty, and also a writ of certiorari to quash the same, and further a mandamus or prohibition is sought commanding the respondents to refrain from demanding "excise" duty under Rule 3-A (a) of the Poppy Husk Rules, 1959.

The respondents opposed the petition. They rely on Rule 8, sub-rule (1) of the M.P. Poppy Husk Rules, 1959, under which a wholesale licensee is authorised to export poppy husk under certain conditions. They have pleaded want of knowledge as regards the alleged agreement between the petitioner and the Dutch buyer, or the authorisation by the Dutch Government for importation or the grant of authorisation by the Narcotics Commissioner of India. According to their submission, the authorisation issued by the Narcotics Commissioner of India was under the International Opium Commissions and the rules framed under the Dangerous Drugs Act, 1930; it has nothing to do with the Opium Act or the Poppy Husk Rules. The respondent''s case in short is that the petitioner applied under Rule 8 of the M.P. Poppy Husk Rules, 1959, for an export pass in respect of poppy husk, from the State of Madhya Pradesh to the State of Maharashtra. The respondents were concerned only with the export of poppy husk from the State of Madhya Pradesh to the State of Maharashtra. The respondents were neither concerned with any alleged sale of poppy husk in Holland, nor with the export of poppy husk from Bombay port to Holland. Duty on export of poppy husk from the State of Madhya Predesh to any other State in India is levied under Rule 3-A (a) of the M.P. Poppy Husk Rules, 1959, and is chargeable in advance under Rule 8 (4) of the said Rules. The respondents denied that either section 5 of the Opium Act or the rules are ultra vires. It is further contended in the return that since the petitioner''s application was not accompanied by a valid import pass or "no objection certification" issued by the excise authorities of the importing State, the respondent''s order was legal, valid and within his powers.

Shri Chakravarty, learned counsel for the petitioner, has addressed us simultaneously in Misc. Petition No. 367 of 1974, which was filed here (at Jabalpur) on April 26, 1974; Misc. Petition No. 628 of 1974, which also was filed here on July 23, 1974; Misc. Petition No. 367 of 1975, which also was filed here on April 15, 1975; and Misc. Petition No. 490-of 1975, filed here on May 15, 1975, advancing common arguments. Shri Chaphekar, who appeared in Misc. Petition No. 345 of 1970, adopted the arguments of Shri Chakravarty. It is, therefore, convenient to decide all these cases together in as much as common questions have been raised.

Sections 4 and 5 of the Opium Act read thus:--

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall--

(a) possess opium;

(b) transport opium;

(c) import or export opium; or

(d) sell opium.

5. The State Government may, from time to time, by notification in the Official Gazette, make rules consistent with this Act, to permit absolutely or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters:--

(a) the possession or use of opium;

(b) the transport of opium;

(c) the importation or exportation of opium; and

(d) the sale of opium and the form of duties leviable on the sale of opium by retail:

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea customs for the time being in force or under the Dangerous Drugs Act, 1930.

The word "export" has a special and restrictive definition in section 3 of the Act:--

''import'' and ''export'' means respectively to bring into, or take out of, a State otherwise than across any customs frontiers.

The expression "customs frontiers", is defined thus:

''customs frontiers'' means any of the customs frontiers of India as defined by the Central Government u/s 3-A of the Sea Customs Act, 1878.

The Madhya Pradesh Poppy-Husk Rules were made by the State Government in exercise of the powers conferred by section 5, read with section 13 of the Act. Rule 3-A reads thus:

3-A. Duty on Poppy-Husk shall be levied at the following rates, namely:--

(a) on the export of Poppy Husk-0.25 p. per kg.

(b) on the sale of Poppy Husk by the wholesale licensee to the retail licensee-0.50 p. per kg.

Rule 8 enacts:--

8(1) No person other than a wholesale licensee shall export poppy-husk.

(2) A wholesale licensee who desires to export poppy-busk shall apply to the Collector for an export pass. Such application shall be accompanied by a valid import pass or ''no objection certificate'' issued to such licensee by the Excise authorities of the importing State.

(3) On receipt of an application, the Collector or any other officer duly authorised by him in this behalf shall issue to the licensee an export pass in Form PH 3 for the quantity mentioned in the import pass produced by him under Sub-rule (2). Such export pass shall accompany the consignment which shall not be open during transit.

(4) The duly on the export of poppy husk shall be paid in advance at the rates prescribed in Rule 3-A and the application be submitted under Sub-rule (2) shall be accompanied by a treasury challan in proof of the payment of such duty.

Notwithstanding anything contained in these rules or any export pass issued thereunder, no wholesale licensee to whom an export pass has been issued before the commencement of these amendments and who has not exported poppy-husk before such commencement, shall export poppy-husk except on payment of duty prescribed under Rule 3-A.

Before we deal with the petitioner''s contention, it must be pointed out at once that in the petition, the expression ''"excise duty" is invariably used in almost every paraghaph, as if the respondents had demanded "excise duty" and as if the petitioner''s objection is that no "excise duty" can be levied. In the prayer clause also reliefs have been sought against the imposition of "excise duty". As observed by the Privy Council in AIR 1945 98 (Privy Council)

It is not the name of the tax but its real nature, its ''pith and substance'' as it has sometimes been said, which must determine into what category it falls.

It is an indirect duty which a manufacturer or producer passes on to the ultimate consumer. Therefore, subject to the legislative competence of the taxing authority, the said tax can be levied at a convenient stage so long as the character of the impost, i.e. it is a duty on the manufacture or production, is not lost. The method of collection does not affect the essence of the duty, but only relates to the machinery of collection or administrative convenience. R.C. Jal v. Union of India A I R 1962 S C 1261 and A.K. Roy and Another Vs. Voltas Limited, . However, substantially, this writ petition is directed against the order dated April 15, 1974 of the Collector of Excise, District Mandsaur (Annexure F; to the petition). That order no where used the word "excise". What is said in the order is that it is only after the petitioner, deposits in the treasury prescribed duty on export that export pass could be granted:

When rendered into English, it would read thus:--

In reply to your letter referred to above, you are. informed that a pass for the export of poppy husk can be issued to you only after the deposit in the treasury of the duty for export prescribed by the M.P. State according to Rule 3A (a) of the M.P. Poppy Husk Rules, 1959.

Sd/- (Samdeo)

Collector (Excise)

District Mandsaur, M.P.

It will thus be seen that the word "excise duty" does not anywhere appear in the above letter. It is, however, amusing that throughout this writ petition and also at certain places in the return, the expression "excise duty" has been used. It could be traced out from the record from where the word "excise" crept into this matter. Two letters were addressed by A. V. Iyengar, Secretary to the petitioner-Company, on March 30, 1974. In the letter addressed by him to the Commissioner of Excise, the expression "export duty" was employed:--

Since the proposed despatch of the poppy husk from Madhya Pradesh......... ''no objection'' certificate as contemplated by Rule 8 of the Madhya Pradesh Poppy Husks Rules, 1959 is not required to be furnished to the District Excise Officer nor is any export duty payable. (Annexure E)." (Italic by us.)

But, in the other letter (Annexure D), which was addressed to the Collector of

Excise, the expression "excise duty" some-how crept in.

Since the said consignment of poppy husks will be despatched from Madhya Pradesh for export across customs frontiers of India and as such no excise duty is leviable or payable under the Madhya Pradesh Poppy Husks Rules. In the circumstances, we are not remitting with this application any amount by way of excise duty or otherwise under the Madhya Pradesh Poppy Husks Rules as the said Rules have no application in case of exports across customs frontiers." (Italic by us.)

Neither in Rule 3A nor in Rule 8 of the M.P. Poppy Husk Rules does the word "excise" appear anywhere. On the contrary, every where the word used is "export", "export pass", "duty on export" of poppy husk. We shall, therefore, read the word "excise duty" in the petition and in the return as "duty on export".

The real contention of the petitioner on the merits of the case is that it is not liable to pay any duty on export, because the poppy husk in question was to be exported to Holland, that is, across customs frontiers. It is, therefore, not "export" at all. Although it is "export" in the literary or in the usual legal sense, yet, it is not "export" within the meaning of the Opium Act. And, if it is not export within the meaning of that expression, as defined in the Opium Act, it cannot be called "export" within the rules framed under it. When the petitioner applied to the District Excise Officer for export permit, he specified Bombay as the place where the goods, after being exported from Madhya Pradesh, would be imported. Further, along with the application, the import pass, issued by the Collector of Bombay, was enclosed. There, the place where the goods would be imported is entered thus:--

Allenbury Compound

Mahalaxmi, Opposite Shakti Mills Ltd.,

Bombay.

The respondent''s case is that since the petitioner desired to export poppy husk from the District of Mandsaur the authorities agreed to issue a permit for the export to another State (Bombay) within India. It was in the discretion of the authorities whether to issue a permit or not. Neither the petitioner prayed for a permit for export across the customs frontiers, nor did the authorities agree to issue such permit. It would have been a different, matter, if the petitioner had prayed for a permit for export to Holland. It was then for the excise authorities to consider whether they would grant such a permit or not. It was only if the Excise authorities had agreed to grant a permit for export to Holland (i.e. across the customs frontiers) that the petitioner could contend that duty on such export was not payable. In the return filed in this Court, the respondents have made it very clear that they were only concerned. with the petitioner''s application for exportation of the poppy husk from Madhya Pradesh to Bombay; they were not concerned with what the petitioner would do after such importation at Bombay.

This being the situation, the petitioner''s contention that the respondents demanded duty on expoxt across customs frontiers, cannot be accepted. Learned Advocate-General emphasised at the hearing that it was in the discretion of the Excise authorities to grant a permit, and if they agreed to grant a permit for export of poppy husk from Madhya Pradesh to Bombay only, they were within their right, it was open to the petitioner to insist on a permit for export to Holland, in which case the authorities would have exercised their discretion, whether to grant such permit at all, or not. And, in case they declined to grant such permit, the question of payment of duly would not arise. Exemption could be claimed only if the respondents had agreed to grant a permit for export to Holland, or any other place across customs frontiers. It was open to the petitioner to decline to take a permit for export, if it was restricted to goods being imported to Bombay only. In our opinion, the Advocate-General is right. The petitioner''s contention that the respondents demanded duty on export to Holland (across customs frontiers) must be rejected.

Shri Chakravarty strenuously maintained that the petitioner had to make the application under coercion because, otherwise, the excise authorities would not grant the permit and without permit, the petitioner could not take the opium out of the boundaries of the State of Madhya Pradesh. We see force in the learned AdvocaterGeneral''s reply that there was no question of coercion. The excise authorities plainly told their interpretation of the rules and their policy that they would not permit opium to be taken, out without payment of duty. It was for the petitioner to acceptor not to accept. It was for him entirely to choose whether to export the opium on the condition that it would be imported into the State of Maharashtra. The petitioner could very well choose not to export the opium at all. Learned Advocate-General specifically invited our attention to the import passes, which the petitioner appended to his applications for grant of permit.

Case No.

Pass issued by the authorities in the Stateof

Place from where to be exported

Place where to be imported

M. P. 345/70

Superintendent of Probition and Excise, Mahesana (Gujrat)

Jaora

Visnagar

M. P. 90/74

Collector of Bombay

Mandsaur

Allenbury compound, Mahalaxmi opposite Shakti Mills, Bombay

M. P. 367/74

Collector of Bombay

Jaora

Shed No. 3, Ferry Wharp, Bombay

M. P. 628/74

-do-

Mandsaur

-do-

M. P. 367/75

Collector of Calcutta

Jaora

Calcutta Port, Commissioner,s Warehouse

M. P. 490/75

Collector of Bombay

Jaora

Shed No. 3, Ferry-Wharp, Bombay

The pass for import in Misc. Petition No. 345 of 1970 was issued under the Gujarat Poppy Capsule Rules, 1973 and in all other cases under the Maharashtra Poppy Capsule Rules, 1961.

If the policy of the State Government is that it would not permit poppy husk to be taken out of its territorial boundaries without payment of export duty, there is nothing unconstitutional, illegal or wrong. The State Government does not compel any person to export. It is the choice of anyone, intending to take out poppy husk, to purchase or enter into contracts. There is no question of compulsion or coercion. The State Government and its excise authorities are within their right to say that they are not concerned "whether you take out the poppy husk from our territory to another State for sale, consumption or exportation across the customs frontiers".

This brings us to the petitioner''s contention that Article 286 of the Constitution is offended. Under that Article, the State is debarred from imposing or authorising imposition of a tax on the sale or purchase of goods where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of the territory of India. In the first place, the respondents did not demand any tax on sale; they demanded duty on export. Secondly, in these cases, sales in favour of the petitioners are not "in the course of export"; they may be sales "for export" and this is the contention of the petitioner, while challenging the vires of the Poppy Husk Rules and section 5 of the Opium Act, on the basis of Article 246 and with reference to Entry 59 of List 1 in the 7th Schedule to the Constitution. A clear distinction was succinctly drawn between a "sale for export" and a "sale in the course of export" in Serajuddin and Others Vs. The State of Orissa, Mr. Chief Justice Ray, speaking for the majority, observed thus:--

A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export unless the sale occasions export. To occasion export there must exist such a bond between the contract of sale and the actual exportation that each link is inextricably connected with the one immediately preceding it. Without such a bond a transaction of sale cannot be called a sale in the course of export of goods out of the territory of India--A sale in the course of export predicates a connection between the sale and export. No single test can be laid as decisive for determining that question. Each case must depend upon its facts--Where the sale is effected by the seller and the seller is not connected with the export which actually takes place, it is sale for export. Where the export is the result of sale, the export being inextricably linked up with sale so that the bond cannot be dissociated without a breach of the obligations arising by statute, contract or mutual understanding between the parties arising from the nature of the transaction, the sale is in the course of export.

Applying Sirajuddin''s case (supra), the sale which took place between the vendors (undisclosed) from whom the petitioner purchased poppy husk in question in Mandsaur district, were sales "for export" but not "sales in the course of export."

We now come to the petitioner''s contention that the Poppy husk Rules and section 5 of the Opium Act are ultra vires the Constitution. He further contended that section 5 suffers from the vice of excessive delegation of legislative functions. Reliance was placed on several decisions, particularly on In re Art, 143 Constitution of India and Delhi Laws Act A I R 1951 S C 332 . Learned counsel read out to us in extenso the observations of Mr. Justice Fazi Ali in para 74 (page 355) and also relied on Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, : (paragraphs 11 and 15 from the judgment of Mr. Chief Justice Subba Rao). The Opium Act is a pre-constitution law and is, therefore, protected and preserved by Article 372 of the Constitution. It cannot be struck down on the ground of want of legislative competence. It was not the petitioner''s case that the Act is inconsistent with any provisions of the Constitution.

Shri Chakravarty argued that the Opium Act was applied to Madhya Pradesh on April 18, 1950, by virtue of the Opium and Revenue Laws (Extension of Application) Act, 1950 (No. XXXIII of 1950), i.e. after January 26, 1950, so that it is not within the protection of Article 372. The argument is untenable. Explanation I to Article 372 of the Constitution is the answer. It reads as follows:--

The expression ''law in force'' in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

(italic by us)

Immediately before the commencement of the Constitution, Mandsaur District was in the United States of Gwalior, Indore and Malwa (Madhya Bharat) in which the Opium and Other Dangerous Drugs Act (No. XXVIII of 1950) was in force from May 21, 1949, when it was published in the Government Gazette (having already received the assent of the Rajpramukh on April 25, 1949). Before the formation of the Madhya Bharat State, there were laws in some of the convenanting States relating to opium and other dangerous drugs, while in some of the convenanting States there were no such laws. To make the laws uniform and to provide for production of and dealing in opium and other dangerous drugs, a Bill was introduced in the interim Legislature of Madhya Bharat. Learned Advocate General also referred to Article 277 of the Constitution.

Adverting to the objection that section 5 of the Opium Act is bad on the ground of arbitrary and excessive delegation, we may say that the principles are well settled: (1) The essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the Legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. (2) The Legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. (3) Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the Courts should not interfere. (4) What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal, including its preamble. (5) The nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation. (6) What form the guidance should take is again a matter which cannot be Mated in general terms, it will depend upon the circumstances of each statute under consideration; in some cases guidance in broad general terms may be enough; in other cases more detailed guidance may be necessary. (Per Wanchoo C.J. in Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another,

In the present case, the delegation is not to any executive officer but such a high authority as the State Government. And, the delegation is to make rules consistent with the Act, to permit absolutely, or subject to the payment of duty...... (a) possession, (b) transport (c) importation or exportation, and (d) sale of opium. All these four are prohibited u/s 4 of the parent Act itself:--

Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment.......

(italic by us)

It is clear from the provisions of the Opium Act that the underlying object is two-fold, i. e. to raise revenue and to discourage consumption, export or import of opium. The need to arrive at such rates of excise duty as will serve the twin objects of the policy underlying the Act, operates as guidance for determination of the rates of excise duty. In M.K. Papiah and Sons Vs. The Excise Commissioner and Another, ; their Lordships held that the power to fix the rate of excise duty conferred on the Government is valid. The dilution of parliamentary watch-dogging of delegated legislation may be deplored but in the compulsions and complexities of modern life, cannot be helped. See also Corporation of Calcutta and Another Vs. Liberty Cinema, (paragraphs 21, 23, 26 and 27). In that case, it was held that "the fixation of rates of taxes may be legitimately left by a statute to a non-legislative authority, for we see no distinction in principle between delegation of power to fix rates of taxes to be charged on different classes of goods and power to fix rates simpliciter." Shri Chakravarty''s argument that there is no guideline in section 5 at least by prescribing the maximum rate, is also answered in that ruling:--

We are unable to see how the specification of the maximum rate supplies any guidance as to how the amount of the tax which no doubt has to be below the maximum only sets out a limit of rate to be imposed and a limit is only a limit and not a guidance.

It must, therefore, be held that neither section 5 of the Opium Act, nor the M.P. Poppy Husk Rules, 1959, are ultra vires the Constitution.

Very strong reliance was placed on R.P.K. Gopal v. State of U. P. 1973 All. LJ 739, in which a Division Bench, consisting of Jagmohan Lal and Prem Prakash JJ. struck down section 5 of the Opium Act. The main basis of that judgment is Articles 14 and 19 of the Constitution and also for the reason of excessive delegation. Before us, Articles 14 and 19 were not canvassed. With respect, we disagree with the learned Judges of the Allahabad High Court for the reasons we have stated above.

The petitioner has not challenged the vires of the Poppy Husk Rules under Article 301 of the Constitution and rightly, because of the protection under Article 305. Nor has the petitioner invoked Article 19, as it is suspended during the continuance of emergency.

In Misc. Petition No. 367 of 1975, refund has been claimed: So also in M.P. No. 345 of 1970. In view of the conclusions we have reached, the question of refund does not arise.

Before we leave this case, we are bound to mention that on April 16, 1974 this Misc. Petition (No, 90 of 1974) was filed at the Indore Bench of this Court. On that very day it was placed before a Division Bench there, which admitted the petition for hearing. However, on the question of stay (I.A. No. 836/74) the Bench directed issue of notice for hearing on April 26, 1974. On the last mentioned date, after hearing, the following order was passed by the same Bench:--

The petitioner seeks to have the order Annexure ''F'' quashed in his petition. The said application is made for passing the stay order as mentioned therein. The impugned order Annexure ''F'' has only conveyed to the petitioner that the authority is prepared to grant permission to enable the petitioner to move the goods on payment of Excise duty. In view of the nature of the order passed by the authorities, the making of interim order as prayed for would result in actually modifying the order Annexure ''F'' at this stage. We are, therefore, of the opinion that there is no occasion to issue the stay order of the type claimed in the application. The application for stay is, therefore, rejected.

Now, it is remarkable that on the same date, i. e. April 26, 1974 Misc. Petition No. 367 of 1974 was filed here at the principal seat of this Court. It was placed in motion hearing on May 4, 1974, before a Division Bench here. The following order was passed:--

Shri V.S. Dabir for the petitioners. Put up in motion hearing for admission after vacation.

On July 5, 1974, this petition was again laid before another Division Bench here, when the following order was passed:--

Shri A. K. Chitley counsel for the petitioners heard on the question of admission.

The petition will be heard. Let a date for hearing be fixed in Office and notices be issued to the opposite party on payment of necessary process-fees within 7 days. A sum of Ks. 250 on account of security should be deposited and to file identical copies within 30 days.

Also heard counsel on I.A. No. 1507 of 1974 for grant of an ad interim writ restraining the respondents from recovering the Excise duty.

An ad interim writ is granted restraining the respondents from carrying on the recovery proceedings provided the petitioners furnish a Bank guarantee to the satisfaction of the Registrar of this High Court. In the event of the petitioners failing, the Bank guarantee will be liable to be paid to the first respondent.

The Collector Mandsaur will state the amount of the Bank guarantee being furnished which shall be equal to the duty recoverable from the petitioner.

The Bank guarantee shall be furnished within one month from today.

Issue notice of the application to the other side on payment of process-fee within 3 days.

It was not mentioned either in the writ petition or in the application for an ad interim writ that another writ petition had been filed at Indore Bench and the application for ad interim writ had been dismissed by a Division Bench there. It was undesirable on the part of the petitioner to have suppressed that fact from both the Division Benches here.

The result of the discussion is that all the petitions must be dismissed for the reasons aforesaid.

This petition (Misc. Petition No. 90 of 1974) is dismissed with costs. Counsel''s fee Rs. 250.

