
(2001) 08 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 760, 1606 of 2000 and 536, 611 of 2001

Pabu Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 22, 226

Citation : (2002) 2 WLN 517

Hon'ble Judges : Bhagwati Prasad, J;A.R. Lakshmanan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

AR. Lakshmanan, C.J.—By these four and other bunch of writ petitions, challenging the vires of the certain provisions of the Rajasthan Excise Act, the petitioners in the respective writ petitions have prayed for:

(a) appropriate writ, order or direction, incorporation of Section 54(Ka) and Sub-sections (4) to (9) in Section 69 of the Excise Act may be declared ultra vires and be struck down;

(b) by an appropriate writ, order or direction, amendment in the Excise Act, 1950 by incorporation of Section 9-B, may be declared ultra vires and be struck down;

(c) by a further appropriate, writ, order or direction impugned order dated, 16.5.2000, passed by respondent No. 2 may be declared invalid and may be quashed and set aside;

(d) Pending decision, if any further order is made or action is taken prejudicial to the interest of the petitioner, the same may also be quashed and set aside.

(e) Any other relief may also be granted in favour of the petitioner.

(f) Costs be awarded to the petitioners.

2. Briefly put the contentions urged on behalf of the petitioners in this group of matters challenging the vires of the aforesaid provision have been that:

(a) the provisions of the Amendment are contrary to Article 254 of the Constitution of India and without the assent of the President, the same are ultravires;

(b) the amended provisions are repugnant to the provisions of the Code of Criminal Procedure and the Code of Civil Procedure;

(c) The amended provisions confer unguided powers on the Excise Authorities;

(d) By Section 9(B) the remedy of judicial review is taken away and the petitioner is remedyless.

3. The respondent State has contested the writ petition and has submitted the Rajasthan Excise Act is within the legislative competence of the State Government under Item-8 read with Items 64 and 65 of List-II of the Seventh Schedule of the Constitution of India and is a Special Act dealing with right of the State to regulate, production, transport, storage, possession and sale of liquor or intoxicating drug.

4. Identical writ petitions numbering 75 were filed before the Rajasthan High Court at Jaipur Bench raising the very same contentions by the petitioners and countered by the State of Rajasthan by filing reply to the same.

5. The Division Bench comprising of Hon"ble Dr. Justice AR. Lakshmanan Chief Justice and Hon"ble Mr. Justice Ashok Parihar, in D.B. Civil Writ Petition No. 3267/2000, etc. and batch, decided on 8th August, 2001, dismissed the writ petitions holding that:

(a) the State Legislature is competent to enact the amended provisions to Section 54(Ka) and Sub-sections 4 to 9 in Section 69 of the Excise Act;

(b) the restrictions imposed are wholly against the larger public interest envisaged under the provisions of the constitution of India, which is essential to preserve the integrity and homogeneity of the country;

(c) the provisions under challenge are regulatory in the nature and they merely impose, if at all, reasonable and just restrictions in larger public interest, and

(d) that there is no merit whatsoever in the challenge to the provisions as being violative of Article 301 of the Constitution of India.

(e) that the amended provisions are not repugnant to the provisions of the Code of Criminal Procedure, Code of Civil Procedure, Indian Penal Code etc., and that the amended provisions are not contrary to Article 254 of the Constitution of India and the same are not ultravires.

6. A detailed order running to 53 pages was passed by the Division Bench holding as follows:

We have given our thoughtful consideration to the entire arguments advanced by the learned Counsel appearing for the respective parties with reference to the amended provisions of the Act. In our view by the amended provisions the rights of the citizens have not been curtailed. An alternative forum has been created under the Act and there is no illegality in the same. The Rajasthan Excise Act is an independent codified statute providing remedies for violation or contravention of any provision of the Act. Thus, in view of the discussion in the above foregoing paragraphs, the claim made by the petitioners challenging the validity of the amended provision being violative of Articles 14, 19(1)(g), 21, 22 and 301 has no weight or merit of acceptance. In our view, freedom does not mean freedom from laws or from regulation itself. Even assuming for consideration purposes, without acceding to the claim made of the rights secured to a citizen under the provisions of the Articles of Constitution of India, the grievance of the petitioners pales into insignificance in the light of the conclusion arrived at by us that the impugned provisions are merely regulatory and in public interest and are neither prohibitive nor destructive of rights impede the free flow of inter-State trade and commerce. The fear and apprehensions expressed on behalf of the petitioners of the inconvenience or impediments that may be caused if the impugned provisions are enforced, are purely hypothetical in nature and not really problems of pragmatism, which could justifiably be said to actually prejudice the lawfully protected rights of the petitioner, the regulatory safeguards envisaged under the impugned provisions cannot be considered or held to be in excess of the requirements or of such magnitude or dimensions as would result in prohibition or total annihilation of the rights. Before concluding, we would like to also highlight on the jurisdictional aspect of this Court under Article 226 of the Constitution. The powers of this Court under Article 226 of the Constitution of India are not subject to any exceptions. Therefore, we are of the view that the citizens are entitled to move this Court whenever there is threat of violation of their fundamental rights or their fundamental rights have been violated. The existence of judicial power itself does not mean that the said power can be invoked at any time and in all cases. In these cases, we have upheld the constitutional validity of the amended provisions and thus, it is for the petitioners to take further course of action under the provisions of the amended act before the authority constituted under the provisions of the Amended Act. All the writ petitions are dismissed. The contentions raised by the learned Counsel for the petitioners are devoid of any force. However, there will be no orders as to costs.

Since the vehicles have already been released by interim orders of the Court, therefore, the petitioners are directed to make payment of the remaining amount due under the orders passed by the excise authorities. In view of the present order, the parties are now at liberty to move the authority competent under the amended provisions of the Act by invoking their jurisdiction either by filing a fresh petition or by prosecuting their petitions which are filed earlier. If such a petition is filed or a request is made, the authority constituted under the provisions of the Act shall take up the petitions filed already or to be filed

hereinafter and dispose of the same on merits and after affording an opportunity of hearing to the parties concerned without rejecting the same on the plea of limitation."

7. The above writ petitions filed at the principal seat are exactly identical and therefore, applying the ratio laid down in the judgment of the Division Bench of the Jaipur Bench dated 8th August, 2001, in D.B. Civil Writ Petition No. 3267/2000 and batch, we dismiss all the above writ petitions. The judgment passed by the Division Bench in D.B. Civil Writ Petition No. 3267/2000, will form part of this judgment.

8. However, we order no costs