
(1990) 11 PAT CK 0014

In the Patna High Court

Case No : Civil Miscellaneous Writ No's. 4120 and 4121 of 1987

Pratapur Sugar and Industries Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-11-1990

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1991) 1 BLJR 352

Hon'ble Judges : S. Ali Ahmad, J; R.N. Prasad, J

Bench : Division Bench

Judgement

S. Ali Ahmad, J.—M/s. Pratap Pur Sugar and Industries Ltd. is the petitioner in these two cases, which have been heard together and are being disposed of by this common judgment.

2. The petitioner-factory, which is located in the State of Uttar Pradesh is engaged in crushing sugarcane. Admittedly the sugarcane being supplied to the petitioner in Uttar Pradesh is not sufficient to meet its requirement. It, therefore, applied for allotment of reserve-area in the State of Bihar. That was allotted to it. The crushing season, according to the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (hereinafter to be referred to as "the Act") commences on 1st day of July and ends on 30th June next following. In the year 1981-82, there was excess production of sugarcane in the State of Bihar. The Officer, therefore, issued instruction that on account of non-lifting of sugarcane by some mills specified in the order, the cane in the area reserved for those mills could not be crushed. The petitioner-factory was, therefore, directed to crush the cane of the area reserved for other factories also. As a result of this order, which is binding under Sub-section (9) of Section 13 of the Act, the petitioner had no option but to crush the sugarcane of the area that was reserved for other factories. There were some other factories also which had to do excessive crushing on account of high production of sugarcane and non-lifting of the same by some factories in the State. Those factories were given exemption with effect from 1st May, 1982 u/s

49(2) of the Act from payment of purchase tax which is payable u/s 49(1) of the Act. The petitioner was not included in the list of factories which have been given this exemption. The grievance is that the petitioner has been discriminated in the matter of exemption u/s 49(2) of the Act. The prayer, therefore, in C.W.J.C. 4121/87 is to direct the respondent to give exemption to the petitioner also. So far as C.W.J.C. No. 4120 of 1987 is concerned, the facts are almost identical, excepting that it relates to the crushing Season 1982-83 and Annexure-1 dated 20.11.1985 while giving exemption to some other factories states that sugar factories of Uttar Pradesh shall not get the remission under this notification. The prayer, therefore, is to quash that part of Annexure-1 by which the factories located in the State of Uttar Pradesh, have been excluded from the exemption granted u/s 49(2) of the Act.

3. Counter-affidavits have been filed in the two cases. The facts which I have mentioned above, have not been denied but the order excluding the petitioner from getting exemption u/s 49(2) of the Act has been sought to be justified on the ground that the petitioner-factory is located not in the State of Bihar but is situated in Uttar Pradesh. It is said that the remission is given to the factories located in Bihar with a view to give encouragement to local factories.

4. Mr. Basudeo Prasad appearing in support of the application contended that Section 49(1) of the Act provides that the State Government may by notification in the official Gazette impose tax on purchase of sugarcane by or on behalf of occupier of the factory. He says that under Sub-section (2) the purchase tax may be reduced, remitted, in whole or in part, in respect of cane used in any such factory for the purposes of research seed-distribution, crushing of diseased cane or intake of excessive crop. He says that these are the only four grounds which are relevant for exercise of powers under this Sub-section. According to Mr. Basudeo Prasad, the fact that the petitioner-factory is located in the State of Uttar Pradesh is irrelevant for the purpose of Section 49(1) as well as Section 49(2) of the Act. Mr. Additional Advocate General No. 1, while supporting the order contended that the Act makes a distinction between factories located within Bihar and beyond Bihar. He says that as such the petitioner-factory which is located beyond the limits of Bihar cannot claim to be treated alike, with the factories located in the State of Bihar. In that connection learned Counsel has drawn my attention to Section 31 of the Act. This section relates to declaration of reserve-area. The proviso to this section deals with factories situated outside the State of Bihar. This proviso prescribes the manner in which the application will have to be made and also the pre-conditions for making such an application. The pre-conditions being that the factory should open a branch office in the State of Bihar and should deposit a security of five thousand rupees with the Collector in the State and also should give an undertaking in the prescribed form to purchase cane grown in the reserve area solely through a co-operative society of such area. These pre-conditions do not apply to the factories in Bihar. He, therefore, said that the Act makes a distinction between factories located in Bihar and factories located beyond Bihar. Mr. Additional Advocate General has also drawn

my attention to Rule 2(d) and Rule 2(f) of the Rules framed under the Act, where "external factory" and "internal factory" have been defined. "Internal factory" is a factory located in Bihar, while "external factory" is one which is situated beyond the territorial limits of Bihar. My attention was also drawn to Rule 23 which deals with reservation of the area to the factories and procedure for purchasing cane grown in such area. Sub-rule (2) says that the occupier of an external factory shall make an application, in Form XI, for an area within the State to be reserved for the purposes of his factory and shall give an undertaking, in Form XII, to purchase cane solely through the co-operative society specified in the undertaking. On the basis of these materials, the Additional Advocate General urged that when the Act and the rules have made distinction between an external factory and internal factory then the authorities were fully justified in giving exemption to only those factories which are located within the limits of Bihar. He also has drawn my attention to the case of *M/s East India Tobacco Co. v. State of Andhra Pradesh* and another AIR 1982 SC 1733 which says that in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It also says that "it is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article 14". This case, in my opinion, does not help the respondents. Here a particular type of tobacco, namely, Virginia was being taxed leaving from its purview the other type of tobacco. It was held that Virginia tobacco has features which distinguish it from country tobacco, and can be treated as a class in itself. Mr. Additional Advocate General also referred to a portion of the decision in the case of *The State of Andhra Pradesh and Anr. v. Nalla Raja Reddy and Ors* AIR 1976 SC 1458 which reads as follows:

Though a law *ex facie* appears to treat all that fall within a class alike, if in effect it operates unevenly on persons or property similarly situated, it may be said that the law offends the equality clause. It will then be the duty of the Court to scrutinize the effect of the law carefully to ascertain its real impact on the persons or property similarly situated. Conversely, a law may treat persons who appear to be similarly situated differently; but on investigation they may be found not to be similarly situated. To state it differently, it is not the phraseology of a statute that governs the situation but the effect of the law that is decisive. If there is equality and uniformity within each group the law will not be condemned as discriminative, though due to some fortuitous circumstances arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception to this doctrine. But in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification, so long as it adheres to the fundamental principles underlying the said doctrine. The power of

the Legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways.

The Supreme Court in the two cases referred to above has clearly stated that while choosing the person or the group to be taxed there must exist a reasonable classification. Therefore, we have to see as to whether there is reasonable justification for treating the petitioner-factory differently. It is true that for the purpose of granting reserved area, the factory located beyond Bihar has been treated differently. But besides this, which I have mentioned in some detail, no other provision has been brought to our notice that factories located in Bihar have been given any extra privilege. Section 49 of the Act gives power to the State to impose tax. Under Sub-section (1), the rate of taxation, is mentioned. In the matter of rate of taxation, the factories of Bihar and outside Bihar have been treated similarly. Sub-section (2)(a) gives power to the State Government to reduce, remit, in whole or in part, the tax imposed under Sub-section (1) on four grounds. These grounds are research, seed-distribution, crushing of diseased cane or intake of excessive crop. Here also no distinction is made between factories located in Bihar and factories located beyond Bihar. All those factories which spend on research, seed-distribution or crushing diseased cane or, intake excessive crop become entitled to consideration under Sub-section (2) irrespective of their geographical location. The petitioner, like factories located in Bihar did excessive intake of crop as per direction of cane officer. The factories of Bihar were granted exemption on this ground u/s 49(2)(a) of the Act but the petitioner was deprived of the consideration on the ground of its geographical location. This geographical consideration, in my opinion, has no nexus to Clause (a) of Sub-section (2) of Section 49 of the Act. It is well settled that the State in such matter cannot act arbitrarily and if it does then its action is hit by Article 14 of the Constitution. I, therefore, while allowing these applications, quash that part of Annexure-1 in C.W.J.C. No. 4120 of 1987 by which the factories located in Uttar Pradesh have been kept out of exemption granted under Sub-section (2)(a) of Section 49 of the Act. In so far as C.W.J.C. No. 4121 of 1987 is concerned, I direct the respondents to consider the case of the petitioner in the matter of exemption u/s 49(2)(a) of the Act in the same manner as it has considered the case of the factories located in Bihar at an early date. No order as to costs.

R.N. Prasad, J.

I agree.