(2001) 10 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No''s. 1487 of 1993 and 307 of 1996

Ruby Mills Limited and Another APPELLANT

Vs

Textile Commissioner, Bombay and Others RESPONDENT

Date of Decision : 15-10-2001

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 3(3), 38
Constitution of India, 1950 — Article 226
Defence of India Rules, 1937 — Rule 119, 8(1), 8(2)
Essential Commodities Act, 1955 — Section 3
Government of India Act, 1935 — Section 293

Citation : (2002) 1 ALLMR 366 : (2002) 1 BomCR 1 : (2002) 2 BOMLR 170 : (2002) 1 MhLj 551

Hon'ble Judges : R.M. Lodha, J;Nishita Mhatre, J

Bench : Division Bench

Advocate : Snehal Shah, Sunita Masani, instructed by N.C. Dalal and Sachin Chandarana, instructed by M.K. Ambalal and Co, for the Appellant; H.V. Mehta, R.C. Master and S.A. Ingavle, for the Respondent

Final Decision : Allowed

Judgement

R.M. Lodha, J.—By this judgment, we are disposing of the aforesaid two writ petitions involving identical issues in respect of the Notification No. 3/5/94/ Cotton/4(1)/2 dated 7-4-1994 issued under Clause 4(1) of the Cotton Control Order, 1986.

2. The facts involved in Writ Petition No. 1487 of 1994 shall be sufficient for proper appreciation of the issues involved and, accordingly, for the sake of brevity, we intend to refer to the facts pertaining to writ petition No. 1487 of 1994 only.

3. Petitioner No. 1 in writ petition No. 1487 of 1994 is the company registered under Companies Act engaged in the manufacture, processing, sale and export of textile products for which Indian cotton is one of their raw materials. Petitioner No. 2 is the Vice-President of petitioner No. 1 company. All the Directors of the

petitioner No. 1 company are the nationals and citizens of India. Respondent No. 1 is the Textile Commissioner. Respondent No. 2 is the Union of India. Respondent No. 3 is the State of Maharashtra and respondent No. 4 is the Senior Inspector of Police at Bombay, who is authorised to file prosecution for offences under the Essential Commodities Act, 1955. On 7-4-1994, in exercise of the powers conferred under Clause 4 of the Cotton Control Order, the Textile Commissioner issued a notification which generally provided for the following :

i) On commencement of the notification no manufacturer shall have at any time in his possession a quantity of Indian cotton required for consumption in excess of average consumption as specified in the said notification.

ii) The exemptions for such holdings of cotton are prescribed.

iii) The procedure for computation of average consumption is prescribed.

iv) No manufacturer shall purchase Indian cotton unless his stock at any time comes down below the prescribed limit.

v) The mills which have on the date of publication of the notification Indian cotton stocks in excess of the above limit are required to send the details thereof within 15 days from the date of publication.

4. As Clauses 5 and 6 of the notification dated 7-4-1994 are material, we deem it fit to reproduce the said clauses as they are :

"5. Mills which have Indian Cotton stocks on the date of publication of this notification in the Official Gazette, in excess of the above limits are required to send details within fifteen days to the Textile Commissioner by Registered Post within acknowledgment due. Such mills are prohibited from buying any further quantity of Indian Cotton till such excess position is corrected to a level below the limits now prescribed. Dealers other than banks holding quantities of India cotton on behalf of the mills are advised to satisfy themselves that such stocks of cotton are within the limits prescribed for the mills concerned.

6. This Notification shall come into force on the date of its publication in the Official Gazette.

5. The petitioners have averred that the said notification dated 7-4-1994 was printed in the Official Gazette on 12-4-1994. It is their case that they sent their return in respect of stocks of Indian Cotton held by them as of 24-4-1994 to the Office of the Textile Commissioner on 28-4-1994. They averred that when they came to know the exact text of the notification they realised that the return required to be filed was of the stock of cotton held by the Mills on 12-4-1994 and, accordingly, on 3-5-1994 sent to the Office of the Textile Commissioner the declaration of the cotton stock as of 12-4-1994 which was received by the Office of the Textile Commissioner on 4-5-1994. The Inspector from the Office of the Textile Commissioner visited the office of the petitioners'' mills and verified the stocks and found that the same tallied with the figures in the return. The

petitioners, however, came to know that the respondents have filed First Information Report with the Senior Inspector, CB (Control) CID, Bombay (respondent No. 4 herein) which is numbered as FIR No. 29 of 1994 alleging violation of the said notification and, accordingly, enquired from the Directorate of Publications as to on what date the notification was made available to the general public to which they were informed that the said gazette notification was made available for sale to the public from 26-4-1994. In this backdrop of facts, the petitioners have stated that there was no violation of any mandate of the said notification and, therefore, approached this Court for quashing the FIR No. 29 of 1994 and to issue further direction to respondents to withdraw all actions against the petitioners pursuant to non-filing of return under Clause 5 of the notification dated 7-4-1994.

6. On behalf of the respondents, an affidavit-in-reply has been filed by one Shri Satya Prakash Verma, Assistant Director. Besides raising the objection dial the writ petition filed by the petitioners on Original Side of the High Court is not maintainable, it is the case of the respondents that the notification was issued on 7-4-1994 by the Textile Commissioner and on that very day, a press note was issued and, accordingly, news items appeared regarding notification dated 7-4-1994 in leading newspapers viz. Economic Times, Financial Express and Tecoya Trend on 8-4-1994. The respondents have set up the case that the petitioners were required to file their return under notification within 15 days from the date of publication of the notification in the Official Gazette, that is, 12-4-1994 and as the returns were filed on 28-4-1994 and 3-5-1994, prima facie offence under the provisions of Section 3 of Essential Commodities Act r/w the notification dated 7-4-1994 was made out and, accordingly, the FIR was lodged which does not suffer from any infirmity or illegality warranting it to be quashed by this Court in its extraordinary jurisdiction.

7. We have reflected over the rival case set up by the parties and bestowed our thoughtful consideration. There is no dispute that in exercise of the powers under Clause 4(1) of the Cotton Control Order, 1986, the Textile Commissioner issued notification dated 7-4-1994. There is also no dispute that the said notification was printed in the Gazette of India (Extraordinary) on 12-4-1994. From the document dated 27-5-1994 (Exhibit D) sent by the Directorate of Publications to the Indian Cotton Mills Federation, no doubt is left that the notification dated 7-4-1994 which was printed in the Gazette of India on 12-4-1994 was made available for sale to general public on 26-4-1994. It also appears that prior mere to news item appeared on 8-4-1994 in some newspapers about the issuance of notification dated 7-4-1994. The question that arises for our consideration is whether the notification dated 7-4-1994 in the circumstances aforementioned can be said to have been published on 12-4-1994 -- the date on which it was printed in the Gazette of India or on 26-4-1994 when the said gazette was made available for sale to the public at large.

8. ''Publication'' is an act by which a thing is made public; the act of publishing or

making known. Publication of the notification in the gazette involves the publicity that is the printing of the same in the government gazette and making public of that Gazette. Ordinarily, a notification in the gazette of India must be deemed to have been published on the date it is printed, but where the notification in the Gazette is printed on a particular date, yet is not made available to the public on that date, but is brought to the notice of the public on a later date, obviously, the date on which the said notification is made available to the public in general shall be the date on which the publication of notification can be said to have been made.

9. We may straightway refer to the judgment of the Apex Court in State of Maharashtra Vs. Hans George, upon which heavy reliance was placed by the learned Counsel for the respondents. The learned Counsel referred to paragraphs 45 and 46 which reads thus :

"45. Learned Counsel for the respondent also referred us to the decision of the Bombay High Court in Leslie Gwilt v. Emperor, ILR (1945) Bom. 781 : AIR 1945 Bom. 368 where the question of the proper construction and effect of rule 119 of the Defence of India Rules, 1937 came up for consideration. The learned Judges held that there had not been a proper publication or notification of an order, as required by Rule 119 and that in consequence the accused could not be prosecuted for a violation of that order. Other decisions of a like nature dealing with the failure to comply with the requirements of Rule 119 of the Defence of India Rules or the Essential Supplies Act, or the Essential Commodities Act, were also brought to our notice but we consider that they do not assist us in the present appeal. Where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court holds to be mandatory, a failure to comply with those requirements might result in there being no effective order the contravention of which could be the subject of prosecution but where there is no statutory requirements we conceive the rule to be that it is necessary that it should be published in the usual form i.e., by publication within the country in such media as generally adopted to notify to all the persons concerned the making of rules. In most of the Indian statutes, including the Act now under consideration, there is provision for the rules made being published in the Official Gazette. It, therefore, stands to reason that publication in the Official Gazette viz., the Gazette of India is the ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned. As we have stated earlier, the notification by the Reserve Bank was published in the Gazette of India on November 24, 1962 and hence, even adopting the view of Bailhache, J. the notification must be deemed to have been published and brought to the notice of the concerned individuals on the 25th November 1962. The argument, therefore, that the notification dated November 8, 1962 was not effective, because it was not properly published in the sense of having been brought to the actual notice of the respondent must be rejected.

46. Before parting from this topic, we would desire to make an observation.

There is undoubtedly a certain amount of uncertainty in the law except in cases where specific provision in that behalf is made in individual statutes as to (a) when subordinate legislation could be said to have been passed, and (b) when it comes into effect. The position in England has been clarified by the Statutory Instruments Act of 1946, though there is a slight ambiguity in the language employed in it, which has given rise to disputed questions of construction as regards certain expressions used in the Act. We consider that it would be conducive to clarity as well as to the avoidance of unnecessary technical objections giving occasion for litigation if an enactment on the lines of the U.K. Statutory Instruments Act, 1946 were made in India either by an amendment of the General Clauses Act or by independent legislation keeping in mind the difficulties of construction to which the U.K. enactment has given rise. As we have pointed out, so far as the present case is concerned, even on the narrowest view of the law the notification of the Reserve Bank must be deemed to have been published in the sense of having been brought to the notice of the relevant public at least by November 25, 1962 and hence the plea by the respondent that he was ignorant of the law cannot afford him any defence in his prosecution."

10. Insofar as the present case is concerned, there appears to be no doubt that the notification dated 7-4-1994 though was printed in the Gazette of India on 12-4-1994, it was made available to the public only on 26-4-1994. The observation made by the Apex Court in Mayer Hans George (cited supra) that even on the narrowest view of the law the notification of RBI must be deemed to have been published in the sense of having been brought to the notice of the relevant public at least by 25-11-1992 have to read in the context of fact that notification of RBI was published on 24-11-1992 and brought to the notice of public on 25-11-1992.

11. In Union of India Vs. Asia Tobacco Co. Ltd., , the Division Bench of Madras High Court was dealing with notification dated 30-11-1982, whereby the earlier notification exempting cigarettes from payment of excise duty was withdrawn. The question was whether the notification dated 30-11-1982 withdrawing the earlier notification dated 1-3-1979 can be said to have been published on 30-11-1982 or was published on 1-2-1982 when it was made available for sale. The Division Bench of the Madras High Court held thus :

"Therefore, the conclusion is irresistible that without proper Notification, viz., without putting the public on notice, it is impossible to enforce withdrawal of exemption earlier granted. Mere printing is not enough. After printing it must be published and ''publish'' means that it should be made known to the public. The normal method by which the public are made known is by making the copy of the Gazette, in which the Notification is printed, available for sale to the public. In the instant case, there is indisputable proof to show that the withdrawal Notification was made available for sale to the public only on 8-12-1982. The result is that the withdrawal Notification became effective only from that date viz., 8-12-1992."

12. The Division Bench of this Court in Union of India Vs. Gtc Industries Ltd., dealing with the same notification dated 30-11-1982 whereby the earlier notification dated 1-3-1979 was withdrawn, took the view that publication of notification does not mean mere printing but making the same available for perusal by the common people including those in the trade. After considering the judgment of Madras High Court in Union of India v. Asia Tobacco Co. Ltd. (supra), General Fibre Dealers Ltd. and Another Vs. Union of India (UOI) and Others, , State of Maharashtra Vs. Hans George, , Harla Vs. The State of Rajasthan, , G. Narayan Ready v. State of Andhra Pradesh (1975) 35 S.T.C. 310 , B.K. Srinivasan and Others Vs. State of Karnataka and Others, , D.B. Raju Vs. H.J. Kantharaj and Others, of the Report it was held thus :

"In the instant case, the said Notification dated 30th November, 1982 was issued in exercise of the powers conferred by Sub-rule (1) of Rule 8 of the said Rules read with Sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957. To be effective, such Notification was required to be made available and made known to the public in general. The publication of the said Notification dated 30th November, 1982 in the Official Gazette containing the notification became available to the public i.e., on 8th December 1982 although the Superintendent of Central Excise had made it known to the 1st respondent at a later date vide the aforesaid letter dated 14th December, 1982 addressed to the 1st respondent. Not the cases cited by Mr. Mehta but those cited by Mr. Chagla and referred to hereinabove have applicability to the facts of the instant case. Section 38 of the said Act makes publication of Notifications mandatory and such publication, in our opinion, does not mean mere printing but making the same available for perusal by the common people including those in the trade. Alleged individual intimation of the said Notification dated 30th November, 1982 by the Excise Authorities to M/S. I.T.C. Ltd., Bangalore on 2nd December, 1982 neither amounted publication nor knowledge thereof to the respondents. Admittedly the Official Gazette containing the said Notification was made available for sale to the public on 8th December, 1982. Hence, the ordinary public could not have had access to the Gazette in which the said Notification rescinding partial exemption granted under the said earlier Notification dated 1st March, 1979 was published prior to 8th December, 1982. In the circumstances, we find no infirmity in the findings and conclusion of the Learned Single Judge."

13. In Universal Cans and Containers Ltd. Vs. Union of India, the Division Bench of Delhi High Court after taking into consideration the ordinary meanings of the words "notification" and "publish" and also after taking into consideration the relevant provisions of the General Clauses Act, Official Gazettes Act, 1863 and Section 293 of Government of India Act, 1935 took the view that the publication of notification in the Official Gazette shall be the date on which the Official Gazette is made available to the public at large.

14. What seems to us is consistent legal position and we have no hesitation in

holding that the effective date of the notification published in the Official Gazette shall be the date on which it is issued to the public and not merely the date on which the Official Gazette is printed, This is particularly so where the Official gazette is not available for sale on the date it is printed. In this view of the matter, the effective date of notification dated 7-4-1994 which was printed in the Gazette of India on 12-4-1994 and made available for sale to the public at large on 26-4-1994 could only be 26-4-1994 when the Gazette was made available for sale. Clause 6 of notification dated 7-4-1994 has to be read accordingly and in no other manner as the said notification fastens criminal liability upon its non-compliance.

15. Mere publication of news item in some newspapers on 8-4-1994 in respect of the notification dated 7-4-1994 prior to its having been published in the Official Gazette cannot be of much help to the respondents and on that basis, it cannot be held that the notification dated 7-4-1994 was published on that date or on 12-4-1994 when the said Gazette was not available for sale prior to 26-4-1994.

16. Before we close, we may observe that though the learned Counsel for the respondents raised the objection that the writ petition was not maintainable on the Original Side of the High Court, nothing was shown by him to demonstrate that the writ petition on the Original Side was not maintainable.

17. Accordingly, we hold that the notification dated 7-4-1994, which was printed in the Gazette of India on 12-4-1994 having been made available for sale on 26-4-1994 was effective on and from 26-4-1994 and publication of the said notification shall be deemed to have been made on 26-4-1994 only. Admittedly, in both the writ petitions, the petitioners had filed the returns as per Clause 5 of the said notification within 15 days of the date of publication of notification i.e., 26-4-1994.

18. Consequently, both the Writ Petitions are allowed and FIR No. 29 of 1994 and FIR No. 81 of 1994 are quashed and set aside and all actions taken against the petitioner? in both the writ petitions based on assumption that the returns were not filed by the petitioners as contemplated in Clause 5 of the notification dated 7-4-1994 are quashed and set aside. Rule is made absolute in the aforestated terms.

19. No costs.

20. Writ petitions allowed.

