(1974) 01 AP CK 0015

In the Andhra Pradesh High Court

Rukramaraju Krishnam Raju APPELLANT

Vs

Circle Inspector of Excise and Others RESPONDENT

Date of Decision : 25-01-1974

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 20
Drugs and Cosmetics Act, 1940 — Section 22, 27, 31, 32

Citation : (1975) CriLJ 204

Hon'ble Judges : Madhava Rao, J;Kondaiah, J

Bench : Division Bench

Judgement

Kondaiah, J.—The appellants in the writ appeals and the petitioners in the writ petitions are wholesale and retail dealers under the Drugs and Cosmetics Act, 1940 and manufacturers of and dealers in Ayurvedic preparations such as Mruthasanjeevanisura and Kharjurasava. They seek for the issuance of writs of mandamus directing the respondents not to interfere with the sale of the Drugs and their business in manufacture and sale of Ayurvedic preparations. According to the petitioners and the appellants the Excise Authorities are raiding their business premises without any jurisdiction, harassing them and interfering with their lawful business activities of sale of drugs, and manufacture and sale of Ayurvedic preparations and therefore they should be restrained by the issuance of writs of mandamus from interfering with their lawful activities. The respondents filed counters to the effect that the Excise Authorities have received authentic information that the petitioners herein and some other retail drug dealers and manufacturers of Ayurvedic preparations are indulging in purchase of rectified spirits from manufacturers for a low price and selling the same as liquor after diluting it with coloured water and thereby they are contravening the provisions of the Andhra Pradesh Excise Act and that, therefore the Excise Authorities had to raid their business premises and seize certain quantities of such illicit liquor and send the same to the Chemical Examiner and put up criminal cases against such of those who had contravened the provisions of the Andhra Pradesh Excise Act. The respondents claim to have a right to raid the business premises of the petitioners when they receive authentic information about any illegal activities which amount to contravention of the provisions of the Excise Act or the Medicinal and Toilet Preparations Act, 1955 and therefore, no writ to prevent them from discharging their statutory duties can be issued by this Court .

2. Upon the respective contentions of the parties, the question that arises for determination is, whether the Excise Authorities are competent to take action against the retail dealers in drugs and manufacturers of Ayurvedic preparations known as Mruthasanjeevanisura and Kharjurasava under Sections 34, 52 and 53 of the Andhra Pradesh Excise Act, 1968 and the rules made thereunder for the violation of any of the conditions of the licences issued under the Drugs and Cosmetics Act, 1940.

3. The sum and substance of the argument of Miss Lakshmi Devi the learned counsel for the petitioners is that the dealers under the Drugs and Cosmetics Act and the manufacturers and dealers in Ayurvedic preparations cannot be proceeded against under the provisions of Excise Act and that for any alleged violation of the conditions of the licences granted to them under the Drugs and Cosmetics Act they may be liable to be proceeded against only under that Act, According to the counsel, that Act is a self-contained one and provides for the issuance of licence, enumerates the conditions of licence and mentions the consequences of the contravention and violation of any of the conditions of licence; and therefore, the petitioners if they commit any irregularities or illegalities in the conduct of their business, can be effectively proceeded against under the provisions of the very same Act without resorting to the provisions of Excise Act. In those circumstances, it is contended that the Excise Act has no application to the facts of the present case, and the petitioners are entitled for the issuance of a writ of mandamus restraining the Excise Authorities from interfering with the lawful business activities.

4. Mr. Koti Reddy, learned counsel for some of the petitioners pressed upon us that the licences issued to the manufacturers of Ayurvedic preparations known as Mruthasanjeevanisura and Kharjurasava fix the upper limit of alcohol content at 65 per cent and the process of the manufacture of those drugs is under the direct control of a Government. Excise Officer and therefore, they do not fall within the definition of liquor nor can they be called intoxicant drugs and that therefore, the Excise Act has no application for the goods manufactured under the Medicinal and Toilet Preparations Act He also contends that the definition of ''liquor'' is very wide and is therefore violative of Article 19(1)(g) of the Constitution and should be struck down.

5. The above claim of the petitioners Is resisted by the learned Government Pleader for excise contending, inter alia, that dealers in genuine Ayurvedic preparations subjected to duty would not be proceeded against and the provisions of the Excise Act are certainly attracted in the cases on hand, as the petitioners and some of the dealers in drugs are dealing in liquor without the

requisite licence. According to him, the provisions of the Drugs and Cosmetics Act empower the authorities to take action against dealers indulging in irregularities and illegalities in the conduct of their business: and they can also be proceeded against under the Excise Act if the provisions of that Act are really attracted.

6. In order to appreciate the respective contentions of the parties, it is necessary to consider the relevant provisions of the Drugs and Cosmetics Act, 1940. True, as contended by the petitioners, Section 27 provides for penalty for manufacture, sales etc. of cosmetics in contravention of Chapter IV whereas Section 31 provides for confiscation of the stock of the drug or cosmetic in respect of which the contravention has been made. The Inspectors and other authorities of the Central Government are entitled to inspect any premises, take samples of any drug, enter and search at all reasonable times and examine any record, register or document or any other material in the business premises and exercise such other powers as may be necessary for carrying the purposes of Chapter IV or any rules made thereunder. The aforesaid powers are specifically invested with the Inspectors u/s 22. Sub-section (3) thereof provides for punishment to such of those who obstruct the inspectors in the discharge of their duties tinder Section 22, with imprisonment which may extend to three years, or with fine, or with both. Rule 59 of the Drugs and Cosmetics Rules, 1945, to which pointed reference has been made by Miss Lakshmi Devi, empowers the State Government to appoint licensing authorities for the purpose of Part VI of the rules for such areas as may be specified. It also prescribes the procedure for the grant or renewal of licences to sell, stock or exhibit for sale, or distribute drugs. Rule 65 specifies the conditions of licence. Neither in the Drugs and Cosmetics Act nor in the rules made thereunder, we find any provisions prohibiting the Excise Authorities under the Excise Act or any other Act from proceeding against the dealers under the Drugs and Cosmetics Act if they contravene the provisions of the Excise Act But on the other hand, we find positive provision in Sub-section (3) of Section 32 of the Drugs and Cosmetics Act, which runs counter to the contention of the petitioners. Section 32(3) reads:

Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.

7. Under Sub-section (3) of Section 32, the dealers under this Act would be liable to be prosecuted under any other law for any act or omission which constitutes an offence under Chapter IV. This provision provides a complete and effective answer to the plea of the petitioners that they cannot be proceeded against by the Excise Authorities under the Excise Act even, if they contravene the provisions of the Excise Act. It is well settled that a particular act or omission to do a thing may constitute an offence under two or more statutes. In such &n event, the concerned authorities are not prevented from taking any action under the various statutes. The only restriction as indicated in Article 20(2) of the

Constitution of India is that no person shall be punished for the same offence more than once. The submission of the petitioners that the Excise Authorities cannot proceed u/s 34 or any other provision of the Excise Act, cannot be acceded to, if the petitioners commit any irregularity or offence under the Excise Act, although they might also be liable tinder the Drugs and Cosmetics Act.

8. The petitioners are assuming that they are only indulging in lawful business activities. The petitioners need not apprehend any trouble, harassment or ill-treatment from the Excise Authorities as long as they carry on only lawful business activities. The Excise Authorities are undoubtedly empowered to raid the business premises of the petitioners if they have authentic information that they are indulging in illegal activities resulting in contravention of the provisions of the Excise Act In such cases, the Excise Authorities are not only not prevented from raiding the business premises but are entitled to do so and proceed according to law and take appropriate action against such of those persons who contravene the provisions of the Excise Act. That apart, the petitioners are not entitled for the issuance of a writ of mandamus prohibiting statutory authorities from discharging their duties in accordance with law. Even assuming that some inconvenience, hardship or harassment has been caused to some of the petitioners while the Excise Authorities discharged their statutory duties under the Act, that cannot be a valid ground for the issuance of writs of mandamus in favour of the petitioners. In such an event, the dealers can certainly complain to the higher authorities and see that any over zealous officer is punished. They can also file criminal complaints and institute civil suits for damages against the individual officers and the State if they really commit such illegal and unauthorised acts. The very intendment of the Excise Act is to raise public revenue and to protect and safeguard public health. As ruled by the Supreme Court in State of Orissa and Others Vs. Harinarayan Jaiswal and Others, the Government his the exclusive right to deal with the sale of liquor and ''the citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government; nor can there .be any infringement of Article 14 of the Constitution1. Admittedly, Rr. 110 to 114 of the Rules made under the Medicinal and Toilet Preparations Act empower the Excise Authorities to have free access to premises, equipment stocks and accounts of dealers in dutiable goods, to detain persons found to carry or remove any dutiable goods for transport and examine them or to stop, enter and search any vessel, car or other means of conveyance for dutiable goods, and to seize and detain or remove any goods in respect of which duty has not been levied or any contravention of the provisions of the Act or Rules made thereunder has occurred. In view of the aforesaid provisions it does not lie in the mouth of the petitioners to contend that the Excise Authorities have no power to enter any business premises and take appropriate action if any contravention of the Act of the Rules is detected by them in individual cases. The action of the respondents or any Excise Authorities in raiding the business premises of the drug dealers, cannot in the circumstances, be held to be mala fide or illegal.

9. We may add that similar writ petitions, W. P. Nos. 5365 of 1972, 207 of 1972, 5742 of 1971, 4198 of 1970 and batch, have been dismissed by this Court .

10. The submission of Mr. Koti Reddy that Mruthasanjeevanisura and Kharjurasava are not intoxicants as their alcohol content is only 65 per cent which is permissible under the very licences granted to the dealers, cannot be accepted. Whether a particular drug or any other article is an intoxicant within the meaning of Section 2 (19) or an intoxicating drug as defined in Section 2 (20) of the Excise Act, is a question of fact depending upon the facts and circumstances. ''Intoxicant'' is defined u/s 2 (19) thus:

Intoxicant'' means any liquor as defined in Clause (21) or any intoxicating drug as defined in Cl. (20) and includes gulmohwa (that is, Mohwa flower)". ''Liquor'' is defined in Section 2 (21) of the Excise Act. It is an inclusive definition. It reads:

Liquor'' includes:

(a) Spirits of wine, denatured spirits, methylated spirits, rectified spirits, wine beer, toddy and every liquor consisting of or containing alcohol; and.

(b) any other intoxicating substance which the Government may, by notification, declare to be liquor for the purposes of this Act

Admittedly, those two Ayurvedic preparations contain 65 per cent alcohol. Any liquor consisting of or containing alcohol is defined as ''Liquor''. ''Intoxicant'' takes in any liquor as well as any intoxicating drug. In the circumstances, we have no hesitation to hold that Kharjurasava and Mruthasanjeevanisura, which contain 65 per cent of alcohol irrespective of the fact whether they are medicinal preparations or not, are intoxicants within the meaning of Section 2 (19) of the Excise Act. This view of ours gains support from the decision of a Division Bench of this Court in D, & E. Ayurvedic G. H. Tonics v. Commissioner of Excise (1970) 2 AWR 315. Hence the dealers of Ayurvedic preparations of Mruthasanjeevanisura and Kharjurasava cannot complain if the Excise Authorities take appropriate action under the Excise Act for any contravention of the provisions of the Excise Act, According to the learned Government Pleader, the State has sufficient information that a number of manufacturers of and dealers in Mruthasanjeevanisura and Kharjurasava, are preparing spurious drugs and making huge profits by contravening the provisions of the Excise Act. According to him, instead of preparing genuine Mruthasanjeevanteura and Kharjurasava and selling the same after payment of the requisite duty, they are indulging in preparing spurious drugs which are injurious to health and such illegal and corrupt practices would result in irreparable loss to the State Revenue and inconvenience and harassment to the abkari contractors in the area; and in those circumstances, the Excise Authorities are compelled to take appropriate action by raiding their shops and prosecuting them in proper cases. The petitioners, in those circumstances, cannot complain about the action of the Excise Authorities. Mr. N. Bhaskara Rao, learned counsel for the Abkari contractors, reiterated the submission of the Government Pleader and added that on account of the illegal and fraudulent practices of several dealers in drugs, his clients have suffered and are suffering huge loss in the contracts.

11. The further submission of the appellants that Section 68 of the Excise Act has been introduced to facilitate the wording of the Central Act i.e., the Medicinal and Toilet Preparations Act and to avoid conflict and that therefore, the Excise Authorities under the State Act are not empowered to take action against the dealers who obtain licences under the Medicinal and Toilet Preparations Act cannot be acceded to. Section 38 of the Excise Act only empowers the State Government to exempt or reduce the Excise Duty levied u/s 22 on any liquor or to exempt any intoxicant from, any of the provisions of the Act other than those of Chapter V in any specified period or occasion. If really the State Government has exempted any particular intoxicant from any of the provisions of the Act, any dealer in such intoxicant may be outside the purview of the Excise Act. It has not been brought to our notice that any of the preparations or the drugs sold by the petitioners have been exempted by the State Government u/s 68. The mere making of the provision u/s 68 empowering the State Government to exempt any intoxicant or exempt or reduce the excise duty levied u/s 22 would not entitle the petitioners to claim that the Excise Authorities, under the State Act, are prohibited from functioning in accordance with the provisions of the Act. The question of the provisions of the State Act being in conflict with the provisions of the Central Act, does not arise in the case on hand. The simple question now before us. is whether the Excise Authorities have Jurisdiction and power to raid the busi ness premises of the dealers in drugs end the manufacturers of the dealers in Khar-jurasava and Mruthasanjeevaniflura if they indulge in any irregularities or contravene any provisions of the Excise Act. As pointed out earlier, there is no provision under the Medicinal and Toilet Preparations Act or any other Act prohibiting the Excise Authorities from discharging their duty under the Excise Act.

12. It has been stated to us by the learned Government Pleader that the dealers, who manufacture and sell genuine Ayurvedic preparations on which the requisite duty has been paid, are not being proceeded against and would not be proceeded against. In these circumstances, we are unable to see any hardship or inconvenience to the petitioners. We are satisfied that there is no merit in any of the writ petitions and the appeals. The writ appeals and the writ petitions are, therefore dismissed with costs. Advocate''s fee Rs. 100.

