

(1995) 12 KAR CK 0043

In the Karnataka High Court

Case No : W.P.s 31806 to 31814 and 32469 to 32474 of 1992

Sapthagiri Enterprises and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-12-1995

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Excise Act, 1965 — Section 71

Citation : (1996) ILR (Kar) 2991

Hon'ble Judges : S. Rajendra Babu, J;B. Padmaraj, J

Bench : Division Bench

Advocate : Javaji Srinivasalu and Madhusudan R. Naik, for the Appellant; H. Rangavittalachar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Rajendra Babu, J.—In these petitions, the petitioners are calling in question the validity of the Rules framed by the respondents u/s 71 of the Karnataka Excise Act, 1965 known as Karnataka Excise (Distillery and Warehouse) (Amendment) Rules, 1992.

2. The petitioners are engaged in the business of primary distilleries or the distilleries which have units where the spirit is ultimately converted into potable alcohol.

3. The petitioners question the levy of licence fee on three specific grounds:

(1) That the licence fee in question is not in fact fee, but is tax in the guise of fee and levy of such fee is impermissible in law;

(2) That proper procedure has not been followed in levying the impost in question;

(3) That the impost, under the impugned Rules is arbitrary, irrational and contrary to Article 14 of the Constitution.

4. The learned Government Advocate contended that the State has necessary competence to levy not only fee, but also to collect consideration for parting with privilege to manufacture spirit out of molasses or units which use spirit for purposes of manufacturing intoxicant liquors; that appropriate procedure has been followed in levying the impost in the impugned Rules and there is no arbitrariness in the levy of the said impost.

5. Though arguments have been addressed on a very wide canvass as to the scope of Entry-8 of List -II, Entry-33 of List-11 and Entry-51 of List-II with reference to the decisions in *SYNTHETICS AND CHEMICALS LTD v. STATE OF U.P. AND ORS.*, and *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, in our view it is unnecessary to examine the matter in that detail, as the matter can be disposed of on a narrow compass.

6. The Government issued a Notification on 18th June, 1990 publishing a draft Rules to amend the Karnataka Excise (Distillery & Warehouse) Rules, 1967 in terms of Section 71 of the Karnataka Excise Act inviting objections and suggestions from all persons likely to be affected on or before 28th June, 1990. The said Rules were finalised only on 11th February, 1992 and published in the Gazette of the same date. There is some dispute as to whether that publication was made at all or not. The learned Counsel for the petitioners urged that there was no such Notification issued on that day though the Gazette was issued on a subsequent date it was ante-dated. It is unnecessary to consider even this aspect in the view we propose to take in these cases.

7. The draft Rules were published setting out that licence fee in respect of distilleries which manufacture any spirit out of molasses or which use spirit manufactured out of molasses will be Rupees five lakhs and Rupees one lakh in case of distilleries which manufacture any spirit out of materials other than molasses or which use spirit manufactured put of materials other than molasses,

8. The contention advanced on behalf of the petitioners is that the said Rules are manifestly arbitrary inasmuch as for the previous excise year the licence fee was only Rs. Two lakhs and although the licence fee was enhanced to Rs. Five lakhs for two excise years from 1990-91 to 1991-92 the same was reduced with effect from 1.7.1992 to Rs. 2,50,000/- in respect of distilleries which manufacture any spirit out of molasses. There was no rationale in fixing of this fee for in the previous year it was only Rs. 2 lakhs and in the subsequent years it was only Rs. 2.5 lakhs while only for the relevant period it was enhanced to Rs. 5 lakhs, that is almost double the rate that was adopted for the excise years 1992-93 to 1994-95.

9. The learned Government Advocate filed an additional statement of objections to set out the pattern of the licence fee structure for the excise years 1989-90 to 1994-95. The said fee structure is as follows:

"LICENCE FEE STRUCTURE

Upto 1989-90

From 1990-91 to 1991-92

From 1992-93 to 1994-95

Govt. Notification No. FD 2 PES 86 dated 3.8.1986

Govt. Notification No. FD 8 PES 90 dated 11.2.1992

Govt. Notification No. FD 3 PES 92 dated 11.6.1992

1. Rs. 2 lakhs in the case of distilleries which manufacture any spirit out of materials other than fruits like cashew, pine apple, apple & grapes.

1. Rs. 5 lakhs in the case of Distilleries which manufacture any spirit out of molasses or which use spirit manufactured out of molasses.

1 . Rs. 2.5 lakhs in the case of Distilleries which distill spirit out of molasses.

2. Rs. 5 lakhs in the case of distilleries which distill spirit out of Tapioca/ Sweet potato.

3. Rs. 75.000/- in the case of distilleries which distill spirit out of toddy, caashew, pine apple and apple and use such spirit for manufacture of I.M.L

4. Rs. 75.000/- in the case of distilleries which distil spirit out of grapes or malt and also use such spirit.

5. Rs. 2.5 lakhs in the case of distilleries which use spirit distilled out of molasses, Tapioca, Sweet Potato, Grapes or Malt for manufacture of IML"

10. The learned Government Advocate submitted that prior to 1991-92, the primary units, blending units as well as combined unit were charged with same licence fee. Considering the nature of operations and the capital investment made, proposals were made to change the pattern of fee structure, so that in the case of combined unit, fee could be charged more than primary unit or blending unit, thus rationalised the fee structure. It is submitted that it is only to remove the disparity in the fee structure the same was altered and therefore there is no arbitrariness in levying fee of Rs. 5 lakhs in the case of distilleries which manufacture spirit out of molasses and such fee has remained the same inasmuch as those distilleries which indulge in such activities have to pay Rs. 2.5 lakhs each in regard to distillation of spirit out of molasses and also indulging in activity of making I.M.L. out of molasses and there is no irrationality in the fee structure adopted by the Government during the relevant period. He also submitted that the fee payable over the licence is a pure term of contract and therefore the concept of arbitrariness in such matter would not arise at all and therefore the contention advanced on behalf of the petitioners in this regard cannot be accepted.

11. The law is well settled that in cases of subordinate legislation the immunity

that is available to the plenary legislation is not available and inter alia the validity of the delegated legislation framed thereto could be challenged even on grounds of arbitrariness or unreasonableness I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) Therefore, the Rule that has been challenged in these cases can certainly be examined in the light of the said decision and the principle laid down thereto.

12. A comparison of Item No. 1 in column No. 2 in the licence fee structure could be made with Item No. 1 in Column No. 3. They clearly indicate that they fall into the same class of distilleries, and there is no difference between the two. It is only during the excise years 1990-91 and 1991-92 a licence fee of Rs. 5 lakhs is sought to be raised in case of distilleries which manufacture any spirit out of molasses or distilleries which use spirit manufactured out of molasses. Exactly in the case of such distilleries the fee charged is only Rs. 2.5 lakhs for 1992-93 to 1994-95. When we specifically queried the learned Government Advocate as to the basis of the change in the fee structure he put forth to the arguments to which we have made reference earlier. But, those arguments have no relevance to this aspect of the matter at all. It is no doubt true in the years 1992-93 to 1994-95 fee structure has been made as indicated earlier classifying distilleries into different categories - that which distill spirit out of molasses; that which distill spirit out of tapioca and sweet potato; that which will distill spirit out of toddy, cashew, pine apple and apple and use such spirit for manufacture of I.M.L.; those distilleries which distill spirit out of grapes or malt and also use such spirit and distilleries which use spirit distilled out of molasses, tapioca, sweet potato, grapes or malt for manufacture of I.M.L Though these classifications have been made now, so far as the first category in this classification is concerned, it is identical with the distilleries that fall under Item-1 in column-2 referred to earlier and there is no difference between the two at all. May be the Government was conscious of the fact that for the excise years 1990-91 and 1991-92 there was classification and therefore they wanted to rationalise the fee structure by introducing a different rates for different classes of distilleries, but that would not mean that the rate adopted could be so different from what was adopted for the years 1990-91 or 1991-92, which almost double the rate adopted in the years 1992-93 to 1994-95. Some good reasons must have been set forth by the State Government supporting the rationale adopted in fixing such fee. Unless good reasons are forthcoming, the action of the State cannot be stated to be supported by reason or informed by reason. Therefore, we find it difficult to accept the argument of the learned Counsel for the State that there has been proper classification of the different distilleries in excise years 1992-93 to 1994-95 and thus the fee structure has not been altered at all.

13. We shall now take up the contention advanced on behalf of the State that rate of fee is only a term of contract and therefore is not amenable to judicial review. In case of licences issued under the Excise Act in respect of distilleries the same are governed by the Karnataka Excise (Distillery and Warehouse)

Rules. Whatever contract may be entered into they must be consistent with Rules and all terms stated in the contract are part of the said Rules. Contrary to the Rules no contract could have been entered into by the State or any of its Officers, particularly when the statute contains all the terms set forth therein are part of the Rules themselves necessarily the question of arbitrariness could be examined. Therefore, we do not find substance in the arguments advanced on behalf of the State that the licences granted to the petitioners being in terms of contract and rate of fee fixed was only a part of the contract could not be examined under judicial review.

We may examine this aspect from another angle.

In *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, the Supreme Court stated the law on the matter as follows:

"Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14."

In that case the Court was concerned with the activity of the Public Authority in relation to the tenants who were not covered by the Rent Control Enactment. It was stated that in respect of dealing with tenants by the Public Authorities they should not act as private landlords and must be judged by the standard that they will act distinctly from the ordinary landlords. Further it was stated, if a Governmental policy or action even in contractual matters fails to satisfy the test of reasonableness, it would be unconstitutional. The same position was reiterated in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, . In that decision there was exhaustive consideration of judicial review of contractual powers of Public Authorities. It was stated that once if it is shown that the impugned State action is arbitrary and therefore violative of Article 14 of the Constitution there can be no impediment in striking down the impugned act irrespective of the question whether the right arises is contractual or statutory. It is really the nature of the personality of the State which is significant and must characterise all its actions, in whatever field and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest.

In view of this clear pronouncement of law by the Supreme Court in more than one decision, we have no hesitation in applying the same principles even to matters arising under the contracts.

14. It is very dear in this case that it is not a case of pure contract at all. It is a case of contract emanating from a Rule, which is statutory. What is contained in the Rule is reflected in the contract. Thus, viewed from any angle we do not think there is any impediment to interfere with the action impugned herein.

15. For the reasons stated above, these petitions stand allowed and the impugned Rules shall stand quashed to the extent of enhancing the licence fee from Rs. 2 lakhs to Rs. 5 lakhs. The consequential demands made thereto shall not be enforced in so far as they relate to enhanced amount. Rule made absolute accordingly.