
(1983) 01 BOM CK 0023
In the Bombay High Court
Case No : Writ Petition No. 684 of 1980

Shree Vindhya Paper Mills Ltd.	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 24-01-1983

Acts Referred:

Industries (Development and Regulation) Act, 1951 — Section 13(1), 2, 29, 3

Citation : AIR 1983 Bom 270 : (1983) 1 CompLJ 361

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Advocate : Ashok H. Desai and Aspi Chinoy, for the Appellant; M.I. Sethana, J.D. Dholakia and A.J. Dholakia, for the Respondent

Judgement

1. This petition can arise questions about the licensing under the Industries (Development and Regulation) Act, 1951, of an industry that convert's base paper into adhesive stamp paper.
2. The petitioners are a limited company and have a plant in Nasik. The plant was set up in 1969 fort he processing of base paper into art and chromo paper and board and laminated paper.
3. On 19th Feb., 1970 a notification was published by the Union of India, the 1st respondent, in exercise of powers conferred by Section 29B(1) of the Act. Thereby the 1st respondent exempted from the operation of Secs. 10, 11 and 11-A of the Act the industrial undertakings therein mentioned. Clause 2 (vi) of the notification provided that no industrial undertaking would be liable (eligible?) for exemption if it related to any of the industries listed in Schedule II annexed thereto. Item 30 of the Sch. II mentioned paper conversion products. The petitioners then applied for an industrial licence under the Act. On 29th July, 1970 the petitioners were issued a carry-on business (C. O. B.) licence by the 1st respondent under the Act. The licence stated that the petitioners would have an installed capacity of 900 tonnes per annum each in respect of art paper and card and other speciality papers. In January, 1971 the petitioners commences

commercial production. On 11th March, 1971 they were granted a C. O. B. licence for 3000 tonnes per annum for the same articles.

4. On 16th Feb., 1973 the 1st respondent issued a notification in exercise of powers under S. 29B(1) of the Act exempting the classes of industrial undertakings therein mentioned from the provisions of Ss. 10, 11, 11-A and 13 of the said Act. In respect of the undertakings other than small scale units and undertakings manufacturing ancillaries it stated this : "Articles reserved for small scale sector: No such undertakings shall be eligible for exemption for the manufacture of any of the articles specified in Sch. I (articles reserved for the small scale sector);. This notification in terms superseded inter alia the notification of 19th Feb., 1970 mentioned above. In Sch. I, relating to articles reserved for the small scale sector, at item 30 paper conversion products were mentioned.

5. Prior to 1974 the India Security Press, Nasik, which prints stamps for the 1st respondent, was importing much of its requirements of adhesive coated paper for printing stamps. In 1974 or thereabouts it considered the feasibility of setting up its own plant for such paper. This required a large outlay, part of it in foreign exchange. A high power committee was then set up to consider whether adhesive stamp paper of the requisite standard could be indigenously made by existing units. Sometime in 1974 the 1st respondent imposed restrictions on art and chromo paper. Consequently, the petitioners and others making these articles lost their market. The petitioners, with a view to diversify, approached the India Security Press to see if they could make adhesive stamp paper. They set up a pilot plant, which was inspected and approved by the high power committee, and started trial production. In 1975 or thereabouts the petitioners installed additional machinery for the purpose of making adhesive stamp paper. This included a 10 bowl super-calendaring machine which was imported upon import licences granted by the 1st respondent. Between 1975 and 1977 the petitioners made adhesive stamp paper on a commercial basis. They received orders pursuant to tenders for about 1500 tonnes from the India Security Press and effected supplies of about 1,000 tonnes. The petitioners filed with the Director General of Technical Development of the 1st respondent returns in respect of such production.

6. In April, 1976 a press note was issued by the 1st respondent with a view to removing ambiguities about the articles that were deemed to be covered under the head of paper conversion products reserved for the small scale sector. The press note clarified that the articles therein enumerated fell under paper conversion products, the future development of which was reserved to the small scale sector. Item 11 thereof mentioned gum tape and item 26 gummed paper, stickers, labels, etc.

7. It appears that a complaint was made by the 3rd respondent, which is a small scale industry, that the petitioners were making adhesive stamp paper which was reserved for the small scale sector. On 10th Nov., 1976 the Directorate General

of Technical Development informed the petitioners that the manufacture of gummed paper was not covered by the industrial licence held by them for the manufacture of art card, dispersion plastic coated paper and other speciality papers. The petitioners were asked to inform the Directorate whether they were manufacturing gummed paper and, if so, to whom they were supplying it. Correspondence ensued during the course of which the paper made by them was covered by their industrial licence and was not an article reserved for the small scale sector. On 7th Nov., 1977 the 1st respondent informed the petitioners that it had been brought to the 1st respondent's notice that the manufacture of gummed paper was reserved for the small scale sector and the petitioners did not possess an industrial licence for the manufacture thereof. The petitioners were directed to discontinue such manufacture forthwith failing which they would be liable u/s 24 of the Act. Correspondence ensued between the petitioners and the 1st respondent in which the petitioners contended that the adhesive stamp paper made by them was not reserved for the small scale sector and that the making thereof was covered by their industrial licence.

8. On 16th April, 1978 the 1st respondent issued a notification under S. 29B of the Act amending the notification of 16th Feb., 1973. Schedule I was replaced. Item 66 thereof now related to gummed tape; item 73 to stickers, labels of gummed paper, etc.; item 75 to gummed paper for stamps; and item 76 to gummed paper other than for stamps.

9. On 4th July, 1978 the 1st respondent informed the petitioners that their contention that the industrial licence held by them covered adhesive stamp paper had not been found acceptable. The petitioners, the letter stated, might, therefore, like to submit an application for a C. O. B. licence for such manufacture. On 31st July, 1978 the petitioners informed the 1st respondent that, without prejudice to their rights, they would apply for a C. O. B. licence for making adhesive stamp paper, and they did so. On 3rd Nov., 1978 the Assistant Directorate of Industries, Nasik, to whom the case had been referred, reported that the adhesive stamp paper which the petitioners were supplying to the India Security Press could not be manufactured by small scale industries because it required a special coating of synthetic material and chemicals and no natural adhesive could be used; also because super-calendaring was required and sometimes also clay coating. The letter stated that the India Security Press was of the opinion that its requirements were of a superior type of super-calendared adhesive stamp paper and that the production of it by the small scale sector was not of the requisite standard. The letter stated that it recommended the petitioners' application for the grant of the C. O. B. licence. On 11th April, 1979 the 1st respondent wrote to the petitioners in respect of their application for the C. O. B. licence for adhesive stamp paper. The letter stated that paper conversion products, including gummed paper, were reserved for development in the small scale sector with effect from 19-2-170 vide the notification of that date and that the petitioners' production of adhesive stamp paper had commenced only in 1975. The letter went on to say that "since the manufacture of paper conversion

products including gummed paper was reserved for small scale sector with effect from 19-2-1970 and since the production of these items was commenced by you only in 1975 Government of India consider that there is no case for the issue of an industrial licence".

10. On 20th June, 1980 the petitioners filed this petition. They prayed that the 1st and 2nd respondents should be directed to withdraw the orders of 7th Nov., 1977 and 4th July, 1978 and refrain from interfering with the petitioners' production of adhesive stamp paper. They also prayed that the notifications of 19th Feb., 1970, 16th Feb., 1973 and 16th April 1978 should be quashed to the extent that they reserved adhesive stamp paper for the small scale sector. On 14th Oct., 1980 an interim order was passed in the petition by which the 1st and 2nd respondents were restrained from interfering with the production by the petitioners of adhesive stamp paper for the India Security Press on the ground that the same was not covered by their industrial licence.

11. In July, 1981 the India Security Press floated a tender at which the petitioners were permitted to bid. Their tender was found to be the lowest, lower than that of the 3rd respondent. The 3rd respondent thereupon filed in this Court Writ Petition No. 1157 of 1981. The 3rd respondent also filed a chamber summons seeking to be impleaded in the instant writ petition. An order was obtained in the later writ petition that the status quo ante should be maintained in respect of the tender. On 7th Sept., 1981 the 3rd respondent was impleaded in the instant writ petition and the order of status quo ante in relation to the tender was continued. An appeal was filed in which it was directed that the two writ petitions should be heard together.

12. Mr. Dholakia, learned counsel for the 3rd respondent here and the petitioner in the later writ petition, has fairly stated to maintenance that the issues raised by the later writ petition are squarely covered by the instant writ petition and that he would apply for withdrawal of the later writ petition upon that basis.

13. The question raised in this writ petition can be conveniently dealt with under the heads of three queries. First, is the Act applicable to the petitioners? Secondly, does the petitioners' existing industrial licence cover adhesive stamp paper? Thirdly, were the petitioners unjustifiably refused a C. O. B. licence for adhesive stamp paper? It will be appreciated that an answer in the affirmative to the first query would render the other queries superfluous. Similarly, an answer in the affirmative to the second query would render the third query superfluous.

14. To appreciate what is involved in the petition some of the provisions of the Act must be mentioned. Section 2 of the Act declares that it is expedient in the public interest that the 1st respondent should take under its control the industries specified in the First Schedule of the Act. Section 3 contains definitions, two of which may be presently noted. Sub-section (d) defines an industrial undertaking to mean any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority. Sub-

section (1) defines a scheduled industry to mean any of the industries specified in the First Schedule. Section 10(1) requires the owner of every existing industrial undertaking to register the undertaking in the prescribed manner within such period as the 1st respondent by notification fixed. Section 11(1) provides that no person or authority shall, after the commencement of the Act, establish any new industrial undertaking except under an in accordance with a licence issued in that behalf by the 1st respondent. Section 3(dd) defines a new article in relation to an industrial undertaking which a licence or permission had been issued under the Act to mean any article which falls under an item in the First Schedule other than the item under which articles ordinarily manufactured or produced in the industrial undertaking at the date of registration or issue of the licence or permission, as the case may be, fall. Section 13(1) provides that no owner of an industrial undertaking to which the provisions of the Act did not originally apply but became applicable after the commencement of the Act, carry on the business of the undertaking after the expiry of three business of the undertaking after the expiry of three months from the date on which the provisions of the Act became so applicable except under and in accordance with a licence issued in that behalf by the 1st respondent. Section 29B reads thus:

"If the Central Government is of opinion, having regard to the smallness of the number of workers employed or to the amount invested in any industrial undertaking or to the desirability of encouraging small undertakings generally or to the stage of development of any scheduled industry, that it would not be in public interest to apply all or any of the provisions of this Act thereto, it may, by notification in the Official Gazette, exempt, subject to such conditions as it may think fit to impose, any industrial undertaking or any scheduled industry or class of scheduled industries as it may specify in the notification from the operation of all or any of the provisions of this Act or of any rule or order made there under."

15. The First Schedule of the Act opens with these words, "Any industry engaged in the manufacture or production of any of the articles mentioned under each of the following headings or sub-headings, namely :--

"the 24th heading thereof refers to "paper and pulp including paper products" and contains five items which read thus:

"1. Paper -- writing, printing and warping.

2. Newsprint.

3. Paper board and straw board.

4. Paper for packaging (corrugated paper, Kraft paper, paper bugs, paper containers and the like).

5. Pulp -- wood pulp, mechanical, chemical, including dissolving pulp."

16. The petitioners contend that they are not engaged in the production or manufacture of any of the items listed in the First Schedule to the Act and are,

therefore, not covered by the Act. They submit that they merely process the paper and refine and adapt it to make it suitable for commercial use. The basic characteristics of the processed paper and its essential identity does not differ from that of the base paper used. The petitioners subject the base paper to the mechanical processes of calendering of clay coating in some cases, and of application on its reverse of synthetic adhesive. I am not satisfied upon the bare averment of the petitioners that the basic characteristics of adhesive stamp paper are the same as those of the base paper or that the essential identity of both is the same. I must, therefore, hold that the petitioners manufacture or, at any rate, produce adhesive stamp paper, which is covered by Item 24 (1) of the Schedule to the Act. I should mention also that in para 1 of the petition the petitioners have described themselves as manufactures of art paper and board, chromo paper and board, plastic coated paper, adhesive coated paper and other speciality paper specially treated with synthetic plasticisers and chemicals. Quite apart from the fact that the petitioners have described themselves as manufactures of these papers, there is no material before maintenance that these are not articles which are produced or manufactured by the petitioners. The answer to the first query is that the petitioners are a scheduled industry.

17. I turn now to consider the second query : does the petitioners" existing licence cover adhesive stamp paper? The licence empowers the petitioners to make "art paper, art card and plastic dispersion coated paper and card and other speciality papers". The petitioners say that adhesive stamp paper is a speciality paper and they are entitled to make it having regard to the terms of the licence. The respondents say that adhesive stamp paper is not a speciality paper because it is a paper conversion product. The point immediately at issue, therefore, is as to whether adhesive stamp paper is a speciality paper.

18. Adhesive stamp paper is a paper conversion product inasmuch as the base paper is converted to adhesive stamp paper, but it is, as I see it, a speciality paper for all that.

19. Plastic dispersion coated paper and card are admittedly paper conversion products. The petitioners" licence refers to them thus: "..... Plastic Dispersion Coated Paper and Card and other speciality papers". It is thus clear from the terms of the licence itself that the 1st respondents have treated a paper conversion product as a speciality paper. Additionally, various standard books upon paper referred to by both sides show that paper conversion products can be speciality papers. Both sides placed reliance upon "Industrial and Speciality Papers" by Robert H. Mosher and Davis. In Vol. 3 the first words of Chap. 10 (Gummed and Speciality Tapes and Labels) are, "The manufacture of gummed paper is one of the major converting processes. The base paper is bought in the form of rolls from the paper manufacture and the adhesive is applied at the gumming plant". At page 243 of the same volume it is stated that "gummed flat-label paper is used for types of stamps," In a book on "Paper and Board Manufacture" issued by the Technical Division of the British

Paper and Board Industry Federation it is stated (at page 358) that high grade speciality papers coated with gum Arabic or polyvinyl alcohol are used for postage stamps. In a book on "Paper and Paper Converting Industries, Small Business Publications" Chemical Engineering Series No. 45" it is stated, under the heading "Other Miscellaneous Specialties" (at page 67), "The varieties of specialty papers introduced hereunder, viz., coated, limited and reinforced papers, etc., are, strictly speaking, paper conversion products". Stress was placed on behalf of the respondent on the Glossary in Vol. II of the Mosher and Davis book in which (at page 319) "specialties" are defined to be "grades of paper made with specific characteristics and properties to adapt them to definite uses". The contention was that specialty papers could only be made and could not be result of conversion. That this is not quite so is shown, part from what I have already mentioned above, by the Foreword to Vol. III. It is written by Harris Court. Ware, a Fellow of the Technical Associating of the Pulp and Paper Industry. It asserts that "Paper is the generic terms for a felted sheet of plant fibres in which its thickness is invariably minute compared with its width and length. Where the sheet has been altered significantly by the addition of non-fibrous materials, either by admixture into the felted fibrous or by application of coating or films to the fibrous web, the product is considered a specialty paper". It is, therefore, patent that specialty paper can be make or converted. The respondent relied upon the affidavit of One Jamshedji Batliboi upon the basis of his alleged expert knowledge in the filed of paper. He is a partner in the firm doing paper business and has experience of the paper trade for about 44 years. He is a member of the Paper Traders" Association. In his affidavit he has relied upon the books that I have mentioned. He has placed on phases upon the definition of "Specialties" quoted from the Glossary in Vol. III of the Mosher and Davis book but has not taken into account the other quoted portions of that books or of the other books. I administration not inclined to consider him an expert in the making of paper or to place weight upon the assertions, especially in the face of statement to the contrary in the books on which he has relied.

20. It is thus satisfactorily established that adhesive stamp paper is a specialty papers Being such, it is in terms covered by the petitioner existing industrial licence.

21. It was contended that the petitioner existing licence was only a carry on business licence and under it the petitioners could be and were licenced to manufacture only that which they had been previously manufacturing or in respect of whose manufacture they had taken effective steps; the paper industry was covered by the Act in 1970; the petitioner had not started the manufacture of or taken effective steps for the manufacture of adhesive stamp paper till about 1975; therefore, the existing licence did not licence the petitioners to manufacture adhesive stamp paper. u/s 13(1)(c) on owner of an industrial undertaking shall, in the case of an industrial undertaking to which the provisions of the Act did not originally apply but became applicable after the commencement of the Act, carry on the business of the undertaking after the

expiry of three months from the date on which the provisions of the Act became so applicable except under and in accordance with a licence issued in that behalf by the 1st respondent. The embargo under the section is upon the continuance of the business without a licence; if the licence is obtained the business may be carried on under the in accordance with its terms. There is nothing in the section which restricts the ambit of the business that may be carried on to that which was previously carried on. If the licence licences the manufacture the holder the licence is entitled to manufacture it and cannot be stopped from doing so on the ground that he was previously not doing so. The existing licence licenced the petitioners to manufacture specialty papers. The petitioners adhesive stamp paper though they had not been manufacturing it when the Act became applicable to them in 1970.

22. It was argued that even if the existing licence covered adhesive stamp paper, adhesive stamp paper could not have been made by the petitioner without permission in that behalf inasmuch as adhesive stamp paper was a new article. Section 3(dd) defines a new article to be any article which falls under an item in the First Sch. other than the item under which article ordinarily manufactured or produced in the industrial undertaking at the date of registration or issue of the licence or permission, as the case may be, fall. It was argued by Mr. Sethna, learned counsel for the 1st and 2nd respondent that adhesive stamp paper was a new article because the base paper fell under Item 24 (1) of the First Sch. whereas adhesive stamp paper was covered by the 24th heading itself.

23. Secondly, the heading and sub-heading in the First Sch. are not item therein. This is clear from the opening words of First Schedule., viz., "Any industry engaged in the manufacture or production of any of the articles mentioned under each of the headings or sub-headings". It must be noted that the Act does not cover each and every industry but only those industries specified in the First Sch. If the respondent's contention that the headings and sub-headings in the First Sch. are also items therein is to be accepted every industry would be covered by the Act by reason of the 38th heading, "Miscellaneous Industries". As has been stated, what the petitioners ordinarily manufacture is covered by Item 24 (1) of the First Sch. So is adhesive stamp paper, being printing paper. Adhesive stamp paper is, hence, not a new article for the making of which permission was required.

24. This brings me to the third query: Was the C. C. B. licence which the petitioners asked for unjustifiably refused? The C. C. B. licence, it may be recalled, was asked for in relation to adhesive stamp paper, which the 1st respondent said fell out side scope of the existing industrial licence. On 11th April, 1979, the 1st respondent informed the petitioners with regard to that licence that paper conversion products including gummed paper were reserved for development in High small scale sector with effect from 19th Feb., 1970, vide the notification of that date. From the past production of adhesive coated papers reported with the petitioners" application it was noticed that the manufacture of

this item had commenced only in 1975. Since the manufacture of paper conversion products including gummed paper were reserved for the small scale sector with effect from 19th Feb., 1970 and since the production of this item was commenced by the petitioners only in 1975 the 1st respondent considered that there was no case for the issue of an industrial licence. The petitioners' application dated 4th August, 1978 for issue of the C. C. B. licence was, therefore, finally rejected.

25. The only reason for the refusal of the C. O. B. licence was, thus, that paper conversion products, which included gummed paper, had been reserved for the small scale sector by the notification of 19th Feb., 1970. There is not a word in that notification that even remotely suggest such reservation. Mr. Chinoy, learned counsel for the petitioners, was right in urging that that itself disclosed total non-application of mind and vitiated the refusal.

26. The second of the notification in this behalf was issued on 16th Feb., 1973. It stated that undertakings other than small scale units and manufacturers of ancillaries would not be eligible for the exemptions thereby given for the manufacture of the article specified in the Schedule thereto, which were reserved for the small scale sector. Item 30 of the Schedule reads. "Paper conversion products". In 1976 a press note was issued by the 1st respondent with a view to removing ambiguities about the articles that were deemed to be covered under the head of paper conversion products reserved for the small scale sector. It clarified that the articles therein enumerated fell under paper conversion product, the future development of which was reserved for the small scale sector. At Item 11 thereof gum tape was mentioned and at Item 26 gummed paper stickers, labels, etc. No other item was listed which related, however, distantly, to adhesive stamp paper. On 16th April, 1978 the third notification was published, amending the notification of 16th Feb., 1973. The entire Schedule was substituted. At Item 66 thereof gummed. type was mentioned at Item 73 stickers, labels was mentioned at Item 76 gummed paper other than for stamps. It was contended by Mr. Chinoy that the sequence and the wording of the press note established that adhesive stamp paper was reserved for small scale industries for the first time only on 16th April, 1978. there is. I think, much substance in the contention, and it would mean that the petitioners were manufacturing adhesive stamp paper until it came to be reserved for the small scale sector on 16th April, 1978 and were entitled to a C. O. B. licence for its manufacture.

27. The really important point that is raised in regard to the reservation is about the power to reserve. Each of the notification was issued u/s 29B of the Act, which has been quoted. There is, patently, no power conferred under S. 29B to make reservations. The power is only to exempt industries from the provisions of the Act. Mr. Sethna fairly conceded that there was no power u/s 29B to make reservations. He submitted, however, that the reservation had not been made under the notifications but under the 1st respondent's industrial policy and

the fact of the reservation has been recited in the notifications. Asked where such reservation has been made and under what power in law, Mr. Sethna admitted that the reservation was made only in the Schedule to the notifications. What it comes to, then, is that the reservation is made by notifications, the source of whose power is Section 29B; but Section 29B confers no power to make reservations. The reservation made under the notifications is, therefore, of no effect and the petitioners could not have been denied a C. O. B. licence upon the ground of such reservation.

28. In the light of what I have discussed, it is not necessary to consider the petitioner's submission that in passing the order of 11th April, 1979 refusing the C. O. B. licence the respondent failed to exercise statutory discretion, that the reservation in favour of small scale industries is unreasonable and that the result to the petitioners of the C. O. B. licence violated their right under Article 19(1)(g) of the Constitution.

29. I may mention that it was urged by Mr. Sethna that the petitioner's conduct in applying for the licence estopped them from contending that the Act did not apply. The short answer to this contention is that the law is not determined by the conduct of the parties or by their view of it. It was also urged that the challenge to the refusal of C.O. B. licence was grossly delayed because the petitioners had been told as far back as 1977 of the reservation of paper conversions product for the small scale sector. I find no obligation take action until the licence was actually refused on 11th April, 1979.

30. It was urged on behalf of the 3rd respondent that a suit was the proper remedy and not a writ petition. I have not discerned any disputed questions of fact by reason of which the petition should be dismissed.

31. In the premises, the orders dated 7th Nov., 1977 and 4th July, 1978 are quashed. The 1st and 2nd respondent are directed not to interfere with the production by the petitioners of adhesive stamp paper on the ground that the same is not covered by the petitioner's existing industrial licence. The 1st respondents' India Security Press is directed not to disregard tenders submitted to it by the petitioners for the supply of adhesive stamp paper. The notifications dated 19th Feb., 1970, 16th Feb., 1973 and 16th April, 1978 are quashed in so far as they make reservations for the small scale sector.

32. The 1st and 2nd respondent shall pay to the petitioners the costs of petition. The 3rd respondent shall pay and bear its own costs.

33. Mr. Sethna applied for stay for a period of six weeks. Mr. Chinoy opposes. I see no reason why the petitioners should be so prevented from manufacturing adhesive stamp paper, having regard to the fact that I have held that adhesive stamp is covered by their existing industrial licence and that, in any event, the refusal to them of the C. O. B. license for it was unjustified. I decline the application for stay.

34. Petition allowed.