
(1988) 03 KAR CK 0057
In the Karnataka High Court
Case No : W.A. Nos.1249 to 1369 of 1987 etc.

State of Karnataka

APPELLANT

Vs

Anjanappa and Co.

RESPONDENT

Date of Decision : 01-03-1988

Acts Referred:

Karnataka Excise Act, 1965 — Section 71 (4)
Karnataka Excise Licences (General Conditions) Rules, 1967 — Rule 15

Citation : (1988) ILR (Kar) 1695 : (1988) 2 KarLJ 118

Hon'ble Judges : Prem Chand Jain, C.J.;Shivashankar Bhat, J

Bench : Division Bench

Advocate : M.R. Achar, for the Appellant; P. Vishwanatha Shetty, Hegde Associates, A. Jagannatha Shetty, C.V. Guruve Gowda, N.Y. Hanumanthappa, R.S. Hegde, K.S. Vyasaraao, M.H. Sawkar, King and Patridge, J.V. Halsoor, M.L.N. Reddy and R. Gururajan, for the Respondent

Final Decision : Allowed

Judgement

Prem Chand Jain, C.J.—These batches of Writ Appeals are disposed of by this judgment as a common question of law arises in all these appeals.

2. The respondents ere all Excise Contractors. They are aggrieved by the amendment to Rule 15 of the Kama take Excise Licences (General Conditions) Rules, 1967 (hereinafter referred to as Rules.) The amendment in the rule is effected by Notification gazetted on 25-6-1983 which came into force with effect from 1-7-1983.

3. Prior to the coming into force of the amendment in Rule 15 of the Rules, the rent not paid before the stipulated date, namely, 10th of a month, was liable to be charged with interest at the rate of 6 1/4%. By the amendment effected, the rate of interest in Rule 15 of the Rules, has been raised to 18%. The grievance of the Writ Petitioners is that they were adversely hit by the amendment brought about inasmuch as the raising of the rate of interest from 6 1/4% to 18% is arbitrary, unreasonable and excessive. Plea was also set up that the rule is made

in violation of the mandatory requirement of Sub-sections (3) and (4) of Section 71 of the Karnataka Excise Act, 1965 (hereinafter referred to as Act).

4. The petitions were contested on behalf of the State.

5. On consideration of the entire matter in the light of the provisions of the Act and the Rules and the relevant judicial pronouncements, the learned Single Judge recorded findings to the following effect:

(1) That the provisions in Sub-clause (ii) of Clause (h) of Sub-section (2) of Section 71 of the Act lead to the inevitable conclusion that the State does not lack competence to make rules in regard to payment of rent ;

(2) That liberal construction of Sub-clause (ii) of Clause (h) of Sub-section (2) of Section 71 of the Act provides for the making of rules in respect of collection of rents, fixation of fees and of ancillary powers in regard to levy and collection of fee or rent so fixed. Therefore the State Government does not lack competence to levy interest;

(3) That the amended rule has been competently made ;

(4) That non-placing of the rules apart from the language of Sub-section (4) hits at the very source of power of the executive or of the administration. Therefore non-placing must be held to have made the rule ineffective till it was so placed. This Court must necessarily hold that as on 4th September 1985 the amendment of Rule 15 i.e., the raising of interest from 6 1/4% to 18% had not become effective; and

(5) That the rules questioned are not retrospective, but prospective.

6. In view of the findings (4) and (5), the learned Single Judge found that the Writ Petitioners for the excise years 1983-84, 1984-85 and for part of 1985-86 are entitled to a declaration that they are not liable to pay interest at the enhanced rate of interest at 18%. Accordingly a direction was issued to the appellants not to levy and collect interest on the over-due amount of rent at 18%, but only at 6 1/4%. It was also declared that the amendment in Rule 15 came into effect on 10-2-1986 and not on 1-7-1983.

7. Feeling aggrieved from the aforesaid direction issued by the learned Single Judge, the State has preferred these appeals.

8. The only question of law that was debated and needs determination is - "Whether the Rules came into force immediately on the date of publication or after the expiry of the 30 days after laying the rules before both the Houses?"

9. At the out set it may be observed that a contrary view has been taken by another learned Single Judge of this Court in a bunch of cases (W.P. Nos.39763 to 66 of 1982 -DD 20-8-1987)¹ wherein it is held that the rules have the effect from the date of their making. The learned Judge has noticed the Judgment of the learned Single Judge against which the present appeals have been filed and

which is now reported in H. Dasappa and Sons Vs. State of Karnataka, H. Dasappa & Sons v. State of Karnataka. In the ordinary course, as a contrary view was being taken, the learned Judge would have referred the matter for decision by a larger Bench, but finding that the decisions in AVALA REDDY RAMAPPA v. STATE OF MYSORE 1960 Mys.L.J.315 and Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another, are binding decisions, the learned Judge took a contrary view and decided the petitions on merits.

10. In this situation, we have to consider as to which view on the question of law raised before us is correct.

11. Sub-sections (3) and (4) of Section 71 of the Act, to which reference may be necessary are in the following terms :

"71. Power to make rules -

(1)** ** *(2)** ** *(3) A rule under this Act may be made with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a statement laid before both Houses of the State Legislature. Subject to any modification made under Sub-section (4), every rule made under this Act shall have effect as if enacted in this Act.

(4) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid or the sessions immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

Sub-section (3) of Section 7 of the Act, as conceded by the learned Counsel for the parties is not relevant at all, but the same has been reproduced as reference was also made to this provision during the course of arguments.

12. On the respective contentions of the learned Counsel for the parties, the fate of the case hinges on the interpretation of Sub-section (4). An analysts of Subsection (4) shows that it confers rule making power on the State Government. What is required under this subsection is that rules made by the Government should be placed before the Legislature for 30 days, whether those 30 days are comprised in one session or more than one session. It is also provided that in the event of the modification of the rules by the Legislature, it is the modified rule that would be effective and in case the Legislature disapproves the rules the same shall thereafter have or effect. It is further provided that any modification on annulment made by the Legislature shall not prejudice or validly affect anything previously done under the rules. From the last portion of Sub-section (4), it is quite evident that the intention of the Legislature was to make

the rules effective from the date they are sought to be enforced by the Government and not from the date after the expiry of the 30 days after laying them before both the Houses. In case the rules were to become effective only after the expiry of 30 days after laying them before both the Houses, then making a provision that any modification or annulment made by the Legislature shall not prejudice or validly affect anything previously done under the rules, would have no meaning.

13. Further if the Legislature had intended that the rules should not take effect till they had the sanction of the two Houses, it would have expressly said so by employing negative language. The Section does not say that the rule would not be effective till it is laid before the two Houses. What really it provides is that in the event of the two Houses modifying the rule, it is the modified rule which would be effective and in the event of the two Houses annulling the rules, the rules would be ineffective. In this view of the matter the only irresistible conclusion that can be arrived at is that it is from the date on which the Government decides to make the rules effective, that they come into force, and not after the expiry of 30 days after they are placed before both the Houses of the Legislature.

14. The view which we are taking finds full support from the two judgments on which reliance was placed by Mr. M.R. Achar, learned State Counsel and the unreported Judgment of this Court in W.P. Nos.39763 to 39766 of 1982 decided on 20-8-1987. In Avala Reddy Ramappa's case 1960 Mys.L.J.315 wherein a similar question arose for consideration, a Division Bench of the High Court of Mysore has observed thus -

"We next proceed to consider the argument resting on the provisions of Section 246 of the Act.

Now, that Section provides :-

"246. Certain rules and orders to be laid before the Houses of the State Legislature -

Every rule made u/s 210 and every order made u/s 245 shall be made, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more sessions, and if before the expiry of the said period, either House of the State Legislature makes any modification in any rule or order or directs that any rule or order shall not have effect, and if the modification or direction is agreed to by the other House, such rule or order shall thereafter have effect only in such modified form or be of no effect, as the case may be."

It is an undisputed fact that the Rules with which we are concerned in this case were in fact laid before the two Houses of the State Legislature although they were not before those Houses for the full period of thirty days referred to in this Section, The petitioner, therefore, contends that the result was that the Rules

never came into force. According to the argument, it is only after the expiry of that period of thirty days that the Rules would come into operation and not otherwise.

This contention, in our opinion, is groundless. The Section does not provide that the Rules made u/s 210 do not come into force until after the expiry of the period of thirty days referred to in that Section. What it only provides is that if during the period of those thirty days, either House of the State Legislature makes any modification to any Rule or directs that any Rule shall not have effect and if such modification or direction is consented to by the other House, the Rule shall thereafter have effect only in such modified form or be ineffective, as the case may be. In other words, it is only on a direction by the Houses in the manner specified in that Section that the Rule shall be of no effect, and that it is only in the event of the Houses modifying the Rule in that way that the modified Rule shall have operation. The words "thereafter" and "be of no effect" occurring in that Section permit no other construction.

The submission made to us that since there is no provision in the Rules that they shall forthwith come into effect, they could not come into effect until after the expiry of the thirty days referred to in Section 246 is similarly insubstantial. Sections 22 and 23 of the Mysore General Clauses Act constitute a complete answer to that argument. It is a firmly established rule that statutory instruments, like the Rules made in this case, validly made under the Act, and which are intra vires of the rule-making authority, should be regarded as though they were themselves an enactment, and as part of the principal Act, under which they are made. The Rules in this case became such law soon after they were made and published, as required. It was thus scarcely necessary for the Rules themselves to provide that they shall come into operation Or force on any particular date."

In the Judgment of the Supreme Court in Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another, Section 26 of the Bombay Agricultural Produce Market Act, which is in pan mater/a with Section 71(4) of the Act, came up for interpretation. The Supreme Court, while considering the question as to whether the rules would be effective from the date of their making or not, observed as under :

"*** Section 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made u/s 26(1). It is true that the Legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of Sub-section (5) of Section 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that Sub-section (5) of Section 26 having regard to the purposes for which it is made,

and in the context in which it occurs, cannot be regarded as mandatory. The rules have been in operation since the year 1941 and by virtue of Section 64 of the Gujarat Act 20 of 1964 they continue to remain in operation."

As has already been observed, a learned Single Judge of this Court on the basis of the aforesaid Judgment has already taken similar view.

15. To meet the arguments of Mr. M.R.Achar, Mr.Narasimha Murthy, Senior Advocate, learned Counsel for the contesting respondents, submitted that the authority vested with the power of making subordinate legislation has to act within the limits of its power and that the subordinate legislation will be of no effect if the mandatory provisions of Sub-section (4) of Section 71 of the Act requiring the Rules to be laid before each House of the State Legislature while it is in sessions for a total period of 30 days which may be comprised in one session or any two or more successive sessions, has not been complied with. In support of this contention the learned Counsel placed reliance on the decision of the Supreme Court in *Hukam Chand etc. Vs. Union of India (UOI) and Others*, and drew our attention to paras 6 and 11 of the report.

16. As we find, the main thrust of the argument of Mr. Narasimha Murthy was that the rules were void ab initio as the mandatory provisions of Sub-section (4) of Section 71 were not complied with and that such rules could not become effective nor could any action be taken on the basis of those rules. On giving our thoughtful consideration to the entire matter, we find that the contention of the learned Counsel is untenable and the decision to which reference has been made is not at all helpful to the learned Counsel, As has been brought out in the earlier part of the judgment, the decision of the Supreme Court in *Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another*, is a complete answer to the contentions raised by Mr. Narasimha Murthy. Further, the judgment in *Atlas Cycle Industries Limited and Milton Cycle Industries Limited Vs. State of Haryana and Others*, to which reference was made during the course of arguments again does not help Mr. Narasimha Murthy ; rather it goes against him. As is stated in para-21 of the said judgment, the policy and object underlying the provisions relating to laying the delegated legislation made by the subordinate law making authorities or orders passed by subordinate executive instrumentalities before both Houses of Parliament being to keep supervision and control over the aforesaid authorities and instrumentalities, the "laying clauses" assume different forms depending on the degree of control which the Legislature may like to exercise. It is further stated that there are three kinds of laying which are generally used by the legislature. These three kinds of laying are described and dealt with in *Craies on Statute Law, 7th Edition* as under :-

- (i) Laying without further procedure ;
- (ii) Laying subject to negative resolution; and
- (iii) Laying subject to affirmative resolution.

There can be no gainsaying that the case in hand falls in second category with regard to which in Atlas Cycle Industries" case, it has been observed thus :-

"(ii) Negative resolution. Instruments so laid have immediate operative effect but are subject to annulment within forty days without prejudice to a new instrument being made. The phraseology generally used is subject to annulment in pursuance of a resolution of either House of Parliament." This is by far the commonest form of laying. It acts mostly as a deterrent and sometimes forces a Minister (in Sir Cecil Carr's phrase) to "buy off opposition" by proposing some modification."

Further in para 22, reference is made to an English judgment in BAILEY v. WILLIAMSON (1873)8 QB 118 wherein it was held over-ruling the contention that the Rules became effective from the time they were made and it could not be the intention of the Legislature that the laying of the rules before Parliament should be made a condition precedent to their acquiring validity and that they should not take effect until they are laid before and approved by Parliament. If the Legislature had intended the same thing as in Section 4, that the rules should not take effect until they had sanction of the Parliament, it would have expressly said so by employing negative language. Thus, as earlier observed even the judgment in Atlas Cycle Industries Limited and Milton Cycle Industries Limited Vs. State of Haryana and Others, goes against the contention sought to be raised by Mr. Narasimha Murthy learned Counsel.

17. Mr. Hanumanthappa, learned Counsel appearing for some of the Writ Petitioners - respondents, while adopting the contentions raised by Mr. Narasimha Murthy, Senior Advocate, also advanced an argument that provisions of Sub-section (4) of Section 71 of the Act are mandatory and that the purpose for which this legislation has been made would be defeated if it is held that the Rules become effective even before they are laid before the two Houses. In support of this contention the learned Counsel, besides the Judgment in Atlas Cycle Industries Ltd., case drew our attention to the judgment in Avala Reddy Ramappa v. State of Mysore 1960 Mys.L.J.315 also. Mr. Holla, learned Counsel for some of the respondents, had also sought to raise a contention that the Rules were laid before the two Houses after the arguments had commenced in the Writ Petitions filed by the Writ Petitioners challenging the validity of the rules and did not conform with the provisions of Sub-section (4) of Section 71, the requirement of which is to lay the rules before the two Houses "as soon as may be" and as the rules were not laid before the two Houses, as soon as they were made, the rules should be declared void.

18. On giving our thoughtful consideration again we find ourselves unable to agree with the contentions of the learned Counsel, it is correct that the Rules have to be laid before the two Houses as soon as may be. But this requirement is not mandatory and any infraction in this respect by itself would not invalidate the Rules. However, it is not necessary to dilate on this aspect in depth as the Rules have been laid before the two Houses and have also been approved without any

modification. Further, the Judgment relied upon by Mr. Hanumanthappa in Avala Reddy Ramappa's case 1960 Mys.L.J.315 has no bearing on the facts of the case in hand especially when we have the authoritative pronouncements of the Supreme Court on the point which falls for our consideration in these cases.

19. Lastly an argument, in the alternative, was sought to be raised by Mr. Narasimha Murthy. Senior Advocate, that the rules in question would not affect the leases for the excise year 1st July 1983 to 30th June 1984. The contention of the learned Counsel was that the auction which had a condition that in the event of default, 6 1/4% interest would be charged, had taken place prior to the drafting and publication of the Rules, that the bid was made at the auction by the respondents on the condition that the interest chargeable would be 6 1/4%, that if they had known that interest would be charged at 18% there was every likelihood that they might not have made a bid at the auction and that the Rules though gazetted on 25-6-1983 to become effective from 1st July 1983 would not affect the leases for which the auction was held prior to the gazetting of the Rules. On the face of it the argument of the learned Counsel is of despair. The lease is to take effect from 1st July 1983 and such leases would be governed by the provisions of the rules which are in force on 1st July 1983. Further, as stated in the statement of objections filed on behalf of the respondents a notification under Rule 4 was published by the Excise Commissioner in which it was specifically stated that the lease shad be subject to the provisions of the Karnataka Excise Act and the Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules, 1969, the Karnataka Excise Licences (General Conditions) Rules 1967 and all other relevant rules under the Karnataka Excise Act 1965 as amended from time to time. Thus from this notification it was made clear to the intending lessees that the lease for which they were going to bid was subject to the Act and the Rules as amended from time to time. In the wake of this notification we find absolutely no justification in the plea now put forth before us that the auction which had taken place before the publication of the Rules would not be subject to the impugned rule.

20. No other point arises for consideration.

21. For the reasons recorded above we allow all these appeals, set aside the Judgment of the learned single Judge and dismiss the Writ Petitions filed by the Writ-Petitioners-respondents". But in the circumstances of the cases, we make no order as to costs.