
(1979) 09 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 548 of 1969

The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd.,
Birlagram, Ujjain

APPELLANT

Vs

The Textiles Committee, Bombay and Another

RESPONDENT

Date of Decision : 28-09-1979

Acts Referred:

Textiles Committee Act, 1963 — Section 12, 2, 22, 22(3)
Textiles Committee Rules, 1965 — Rule 22

Citation : AIR 1980 MP 69 : (1980) MPLJ 272

Hon'ble Judges : C.P. Singh, C.J.;C.P. Sen, J

Bench : Division Bench

Advocate : G.L. Sanghi, A.K. Chitale, V.S. Dabir and A.G. Dhande, for the Appellant; J.J. Bhatt, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Sirsilk Ltd. Vs. Textiles Committee and Others, AIR 1989 SC 317 : (1988) 4 JT 92 : (1988) 2 SCALE 975 : (1989) 1 SCC 168 Supp : (1988) 2 SCR 880 Supp

G.P. Singh, C.J.

The petitioner in this petition under Article 226 of the Constitution carries on the business inter alia of manufacture of viscose staple fibre in its staple fibre factories situated at Birlagram, Nagda (M. P.) and Birlakootam, Mavoor (Kerala), The petition pertains to the levy of fees under Rule 21 of the Textile Committee Rules, 1965, on viscose staple fibre manufactured by the petitioner. The petitioner prays for quashing of the notice of demand dated 11th July 1969 and for refund of Rupees 9,66,994.12 recovered as fees from the petitioner under Rule 21.

The Textile Committee Act, 1963, was enacted by Parliament on 3rd December 1963. The object of the Act as disclosed in the long title, is to provide for the

establishment of a Committee for ensuring the quality of textiles and textile machinery and for matters connected therewith. Section 2(f) of the Act defines "textile machinery" to mean the equipment employed directly or indirectly for the processing of textile fibre into yarn and for the manufacture of fabric therefrom by weaving or knitting and to include equipment used either wholly or partly for the finishing, folding or packing of textiles. Section 2(g) defines "textiles". This definition as originally enacted read as follows;

"(g) Textiles" means any fabric or cloth or yarn made wholly or in part of cotton, or wool or silk or artificial silk or other fibre."

The above definition of "textiles" was substituted by a new definition by Act No. 51 of 1973 which came into force on 1st January 1975. The new Section 2(g) reads as follows:

"(g) "textiles" means any fabric or cloth or yarn or garment or any other article made wholly or in part of-

(i) cotton; or

(ii) wool; or

(iii) silk; or

(iv) artificial silk or other fibre, and includes fibre."

Section 3 of the Act provides for establishment of the Textiles Committee by the Central Government. Section 4 deals with the functions of the Committee. The functions of the Committee as stated in Section 4 generally are to ensure by such measures as it thinks fit, standard qualities of textiles both for internal marketing and export purposes and the manufacture and use of standard type of textile machinery. Section 7 of the Act provides for constitution of a fund called the textiles fund. Fees recovered under the Act form part of this fund. The moneys in the fund are applied for meeting the pay and allowances of the officers and other employees of the Committee and other administrative expenses of the Committee and for carrying out the purposes of the Act. Section 11 confers on the Committee the power of inspection. In exercise of this power, the Committee may on application or otherwise, direct an officer specially authorised in that behalf, to examine the quality of textiles or the suitability of textile machinery for use at the time of manufacture or while in use in a textile mill and submit a report to the Committee. On receipt of the report of inspection the Committee may tender such advice as it may deem fit to the manufacturer of textiles, the manufacturer of textile machinery and the applicant; Section 12 provides for levy of fees for inspection and examination. The Section reads as follows;

"12. (1) The Committee may levy such fees as may be prescribed-

(a) for inspection and examination of textiles,

(b) for inspection and examination of textile machinery,

(c) for any other services which the Committee may render to the manufacturers of textiles and textile machinery

Provided that the Central Government may by notification in the Official Gazette, exempt from the payment of fees, generally or in any particular case.

(2) Any sum payable to the Committee under Sub-section (1) may be recovered as an arrear of land revenue." (The section quoted here is as it stood before its amendment by Act 51 of 1973). Section 22(1) confers on the Central Government power to make rules for carrying out the purpose of the Act. In particular, Section 22(2)(e) empowers the Central Government to make rules providing for "the scale of fees that may be levied for inspection and examination u/s 12," Section 22(3) contains a laying clause which reads as under;

"22 (3). Every rule made under this section by the Central Government shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session 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." In exercise of the powers conferred by Section 22, the Central Government made the Textile Committee Rules, 1965. Rule 21, as amended by the Textile Committee (Amendment) Rules, 1966, in so far as relevant, reads as follows:

"21. Fee for Inspection, Examination and other services rendered by the Committee:

(1) The Committee may with effect from 1st March 1965 levy and collect for inspection and examination of textiles and textile machinery specified in column 2 of the table below, the fee specified in the corresponding entry in column 3 of that table:

S. No.

Description of Textiles and Textile Machinery

Fee

1

2

3

(a)

Man-made cellulosic fibre cut to staple length

1 paisa per 2 kgs. manufactured.

(b)

Man-made non-cellulosic fibre cut to staple length

2 paisa per kg. manufactured.

... ..

(2) The Committee may levy and collect for any other service rendered by it to the manufacturers of textiles and "textile machinery, such fee as it may fix with the approval of the Central Government."

Learned counsel for the petitioner submitted that the definition of "textiles" as it stood prior to 1st January 1975 did not include fibre and, therefore, viscose staple fibre manufactured by the petitioner did not fall within the definition of textiles and the respondents were not entitled to charge any fee u/s 12 or Rule 21 for inspection from the petitioner. It was further submitted by the learned counsel that the petitioner never applied for inspection and even otherwise no inspection was ever carried out of the staple fibre manufactured by the petitioner and, therefore, there was no occasion for levy of inspection and examination fee u/s 12 or R, 21, The learned counsel also submitted that manufacturers of man-made fibres had not been receiving any benefit directly or indirectly and no services were ever rendered to them by the Committee and there was thus complete absence of quid pro quo and the levy of fees on this ground also was invalid. Learned counsel lastly submitted that the rules were not laid as required by Section 22(3) in Parliament and for this reason they were invalid. The learned counsel for the respondents in reply submitted that the definition of textiles covered yarn, and fibre was included in yarn; that it was not necessary to show for supporting the fee that any particular service was rendered to each individual manufacturer and the service rendered to the textile industry as a whole was sufficient to support the fee and that the requirement of laying contained in Section 22(3) was merely directory which did not affect the coming into force of the rules.

We have already set out the definition of "textiles" as it stood before the Amending Act No. 51 of 1973 which came into force on 1st January 1975. According to this definition, textiles meant "any fabric or cloth or yarn made wholly or in part of cotton, or wool or silk, or artificial silk or other fibre". The use of the word "means" in the definition gives rise to the inference of its being restrictive and exhaustive. Further, it is clear that what was embraced by the definition before 1st January 1975 was any fabric or cloth or yarn and not any fibre. The definition made a distinction between yarn and fibre. The same distinction appears in Section 2(f) in the definition of "textile machinery which expression is defined to mean the equipment employed "for the processing of textile fibre into yarn.....". The Act does not contain any definition of "yarn" and

hence it has to be understood in its ordinary sense to mean "any fibre, or wool, silk, flax, cotton, nylon etc. spun into strands for weaving, knitting or making thread", [Webster's New World Dictionary] A fibre in order to answer the description of "yarn" in the ordinary commercial sense must be a spun strand meant for use in weaving, knitting or rope-making [The Commissioner of Sales Tax, U.P. Vs. Sarin Textiles Mills, It is true that yarn is manufactured out of fibre but various operations such as blending, carding, combing or hackling and spinning have to be performed for converting fibre into yarn [See The New Encyclopaedia Britannica, 15th Edition, Vol. 18, p. 173] "Yarn" and fibre" form different commercial commodities and we are unable to accept the argument of the learned counsel for the respondents that "yarn" as used in the definition of "textiles" in the Act included any fibre. It was only when the definition was amended by Act No. 51 of 1973 that "fibre" became included in "textiles". The burden to prove that the viscose staple fibre manufactured in the petitioner's staple fibre factories answered the description of yarn and so was embraced in the definition of "textiles" was on the respondents. No material was placed before us and, except for a bare assertion, nothing in particular was stated in the return to discharge the said burden. The learned counsel for the respondents argued that this was a disputed question of fact and should not be tried under Article 226. The learned counsel in this connection referred to a judgment of the Gujarat High Court in The Baroda Rayon Corporation Ltd. v. Textile Committee, Spl. C. Appln. No. 597 of 1969, D/- 18-11-1976. In the Gujarat case the petitioner was admittedly a manufacturer of rayon yarn and not rayon fibre and the argument was that rayon yarn did not fall within the definition of "textiles" as it was made of synthetic fibre or man-made fibre. This argument was repelled. However, at one place the learned Judges used the words "yarn" and "fibre" interchangeably and it was this part of the judgment which was relied upon before us. In our opinion, the judgment of the Gujarat High Court which deals with rayon yarn and holds that rayon falls within the definition of textiles" is not of any assistance to the respondents. Simply because the judgment at some places loosely uses the word fibre for yarn, it cannot be held that the definition as contained in the Act makes no distinction between yarn and fibre. When the respondents have produced no material to show that the petitioner's product falls within the description of yarn, it is not possible to say that there is any serious dispute on a question of fact which cannot be tried under Article 226. For these reasons, we hold that the viscose staple fibre manufactured by the petitioner did not fall within the definition of "textiles" as contained in the Act till 1st January 1975,

Now Section 11 of the Act which authorises the Textiles Committee to inspect and examine the quality of textiles and Section 12 which empowers the Committee to levy such fees as may be prescribed for inspection and examination of textiles must be construed in the light of the definition of "textiles" as contained in Section 2(g). The power to levy fee for inspection and examination of textiles u/s 12 was not available in respect of the petitioner's

product which did not fall within the definition of textiles in Section 2(g), till 1st January 1975. For the same reason, Rule 21 which empowered the Textiles Committee to levy and collect fee for inspection and examination of man-made cellulosic and non-cellulosic fibre cut to staple length at the rates mentioned in item 5 of the table forming part of the Rule was in excess of the rule-making power conferred by Section 22 read with Section 12 and could not be availed of against the petitioner. The learned counsel for the respondents argued that assuming that fibre was not included before 1st January 1975 in the definition of textiles, yet the fee levied by Rule 21 for inspection and examination of fibre was a fee for inspection of textiles as defined, at the stage of manufacture of fibre. It is difficult to accept this argument, when textiles as defined in the Act before 1st January 1975 did not include fibre, the fee for inspection and examination of textiles could only be for inspection and examination of textiles as defined and not for inspection and examination of fibre. The rule which provided for imposition of fee for inspection of fibre when fibre was not included in the definition of textiles, went beyond the rule making power of the Central Government and was to that extent invalid.

On the finding reached above that the petitioner's product with which we are concerned in this petition, did not fall within the definition of textiles contained in Section 2(g) till 1st January 1975, it has to be held that levy and collection of fee up to 31st December 1974 u/s 12 read with Rule 21 for its inspection and examination were not authorised by law and were invalid.

As regards the argument that no special benefit is conferred of the petitioner and that there is entire want of quid pro quo, it was not disputed before us that at no stage till the return was filed any inspection and examination of the viscose staple fibre manufactured by the petitioner was ever undertaken by the respondents. The respondents' contention in the return is that the fee payable u/s 12 and Rule 21 need not be correlated to every individual manufacturer and that the fee benefits the industry as a whole and, therefore, there is an element of quid pro quo. The respondents in this context have set out in para 4 of their affidavit the various inspections and other schemes undertaken by the Committee. Reference is therein made to a five year plan which contemplates inspection of staple fibre meant for internal consumption. There are conflicting judgments of various High Courts on this point. The Madras High Court in *South India Viscose Ltd. Vs. Textiles Committee and Others*, and the Kerala High Court in *The Travancore Rayons Ltd. Vs. The Textiles Committee*, have held that the imposition of fee on manufacturers of rayon yarn was invalid as no services were rendered to them by the Textiles Committee and the idea of serving the textile industry as a whole could not support the levy when no services were rendered to rayon yarn manufacturers. Contrary views were, however, taken by the Allahabad, Gujarat and Andhra Pradesh High Courts [See *J. K. Cotton Spinning & Weaving Mills Co. Ltd, v. Textiles Committee*, Spl. Appeal No. 3 of 1972, D/-24-10-1978, *Baroda Rayon Corporation Ltd. v. Textiles Committee*, Spl. C. Appln, No. 597 of 1969, D/- 18-11-1976 and the *Srisilk Ltd. v. Textiles*

Committee, Writ Petn. No. 1094, of 1970, D/- 18-1-19721 We do not find it necessary to go into this question in this petition. Our finding that the levy of fee till 31st December 1974 was invalid for the reason that viscose staple fibre did not fall within the definition of textiles till then, makes it unnecessary to examine whether any services were rendered to the petitioner or to the industry as a whole for supporting the levy. As regards the period from 1st January 1975 onwards, the material on record is not sufficient to decide the question as to the nature of services rendered. The petition was filed in December 1969 and the last affidavit was filed in March 1972. The activities of the committee may have considerably widened by now. Further, the Amending Act 91 of 1973, by inserting Section 5A, made provision for a cess in the nature of duty of excise in substitution of fee for inspection and examination of textiles and Section 12 was also amended. The position existing after the amending Act was enforced is thus not quite clear. We, therefore, decline to go into the question of the validity of the fee for the period after 1st January 1975 in this petition.

As regards the argument that the rules were not laid, we need only say that the laying requirement as contained in Section 22(3) prescribes a negative procedure and is directory and non-laying of the rules in parliament did not prevent their coming into force. The point is directly covered against the petitioner by two decisions of the Supreme Court and a Division Bench decision of this Court: (See *Jan Mohd. v. State of Gujarat* AIR 1968 SC 385, *Mathura Prasad v. Inspector General, Rly. Protection Force* 1974 MPLJ 373 and *Atlas Cycle Industries Ltd. v. State of Haryana* AIR 1979 SC 1149).

The petition is allowed. It is declared that the respondents were not entitled to levy and collect any fee from the petitioner for inspection and examination of viscose staple fibre u/s 12 of the Act or Rule 21 of the Rules up to 31st December 1974. The notice of demand dated 11th July 1969 is quashed. The respondent Committee is directed to refund to the petitioner any such fee collected from it subject to this that this direction shall not cover any period beyond three years before the filing of the petition. There will be no order as to costs. The security amount be refunded to the petitioner.