(1989) 11 KL CK 0037

In the High Court Of Kerala

Case No : O.P. No''s. 1209, 1245, 1250, 1382, 1502, 1775, 1784, 1785, 3248 4715, 4717, 4742, 5111 and 5278 of 1989

Thirumal Wines APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 03-11-1989

Acts Referred:

Constitution of India, 1950 — Article 304
Kerala Abkari Act, 1077 — Section 3(17A)
Kerala Liquor Transit Rules, 1975 — Rule 3, 5, 8, 9

Citation : (1989) 11 KL CK 0037

Hon'ble Judges : V.S. Malimath, C.J;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : C.S. Vaidyanathan, Krishnamoorthy, N.N. Venkitachalam, M.K. Damodaran and P.V. Narayanan Nambiar, for the Appellant; K. Sudhakaran, General, for the Respondent

Judgement

Bhaskaran Nambiar, J.—Mahe, part of the Union Territory of Pondicherry, is a small town, having access by land only through the Kerala State. It is a Pondicherry town landlocked in the Kerala State. Mahe does not manufacture liquor. Liquor has therefore to be transported from Pondicherry through Kerala State to Mahe or it has to be imported from other States to Mahevia Kerala. Kerala is thus a transit route for bringing liquor to Mahe. The Petitioners are dealers in liquor, licenced by the Pondicherry State to carry on wholesale trade in liquor in Mahe. Necessarily they have to import liquor from the States of Punjab, Uttar Pradesh, West Bengal, Maharashtra,. Karnataka, Tamil Nadu etc. or transport it from Pondicherry State itself. They obtain the necessary licence/ permit for importing or transporting liquor to Mahe. But as the liquor has to be carried in transit through the Kerala State, the State Government insisted on transit permits under the Kerala Abkari Act. The Petitioners used to obtain these permits without any difficulty, but recently, in some cases, applications for the permits were either kept pending or were arbitrarily rejected. The result was that the Petitioners were not able to carry on their trade in liquor in Mahe even though they had a licence granted by the Pondicherry State, as no liquor could be imported or transported to Mahe. They have, therefore, filed these writ petitions mainly for a declaration that they do not require any transit permit under the Kerala Abkari Act for importing/transporting liquor to Mahe and also for the issue of appropriate consequential writ or directions. In some cases, orders have been passed by the Government rejecting the applications for issue of transit permits. These orders are also in challenge. We shall separately deal with those cases where specific orders rejecting the applications for transit permit are issued. We shall deal with the general issues involved in these writ petitions.

2. Shri C.S. Vaidyanathan, Advocate leading the arguments in this batch of writ petitions, submitted that the Kerala Abkari Act and the rules do not insist. on transit permits in Kerala for importing liquor to Mahe from States other than Pondicherry, or for carrying the liquor through the Kerala'' State to Mahe and therefore, he submitted that the insistence by the State Government of transit permit in Kerala State for transporting liquor to Mahe in Pondicherry State was plainly without jurisdiction. He also submitted that the action of the State Government in refusing or rejecting transit permits in Kerala for transporting/ importing liquor to Mahe was opposed to Article 304 of the Constitution. He also contended that, in any case, the reasons stated for rejecting the application for transit permit are illogical and irrelevant, unsound and unreasonable, not warranted or contemplated under the Abkari Act or the rules.

3. Shri Sudhakaran, Advocate General, however, contended that the Abkari Act applies not only to liquor, but also to intoxicating drugs and that the State is well within its power to control the transports any liquor or intoxicating drug through its territory, whether the destination was to any place outside this State or not. It was submitted that the large number of liquor shops in the small town of Mahe indicate that huge quantities of liquor are brought to the town from outside, not for consumption inside Mahe, but to be taken out clandestinely to the neighbouring towns of Badagara, Tellicherry etc. in this State and it is necessary to restrict the import of liquor to Mahe so that smuggling of liquor to Kerala can be curtailed or prevented.

4. The short question is whether transit permit are required under the Kerala Abkari Act and the rules, for transporting liquor through the Kerala State to Male in Pondicherry State.

5. The Abkari Act of Kerala controls almost every facet of the liquor trade in this State. No liquor or intoxicating drug shall be exported from this State or imported into this State except with the permission of the Government or any officer authorised by the Government. Transport of liquor exceeding prescribed quantities is regulated by permits, issued under the provisions of the Act, and transport from one local area to any other local area in this State can also be prohibited by appropriate notification. Liquor or intoxicating drug can be

manufactured only under the authority and subject to the terms and conditions of a licence granted by the Commissioner of Excise, in that behalf. No person, not being a licensed manufacturer or vendor of liquor or intoxicating drugs shall have in his possession any quantity of liquor or intoxicating drugs in excess of such quantities, prescribed by notifications issued from time to time." Establishment of distilleries, breweries, wineries or warehouses are also regulated by licenses/permits issued under the Act. The Act defines ''Import'', ''Export'' and ''Transport'' thus:

3. (16) ''Import'' means to bring into the State.

(17) ''Export'' means to take out of the State.

* * * * (18) ''Transport'' means to move from one place to Anr. within the State.

6. As liquor intended for Mahe from outside this State is not exported from this State or imported to this State, a question arose whether carrying liquor through the Kerala State to Mahe will constitute transport within this State, This was answered m the negative by a decision of this Court in an unreported judgment in O.P. Nos. 4302, 4430, 4353 and 4533 of 1971 dated 10th November 1971. This Court held thus:

If on the other hand the goods which are entrusted to a public carrier at Pondicherry are delivered at Mahe there can be no justification for the apprehension by the Excise authorities that the goods are imported into the State or are transported within the State. Such cases could safely be held to be cases where there is no reason for the Excise authorities to take action.

As I said earlier it will "be safe to observe here that the Excise authorities will be well-advised not to interfere with the transport of the goods when it is evident that the goods consigned to a public carrier at Pondicherry is passing through Kerala on its way to Mahe and is to be delivered at Mahe only. In such cases the possibility of importing into the State may be ruled out. The mere fact that goods pass through this State may not be sufficient in such cases to hold that thers is export within the State.

This judgment was accepted by the State and four years thereafter, the Act was amended inserting a definition clause for the expression ''transit''. Section 3(17A) so inserted reads thus:

3(17A). ''Twit'' means to move from one place in a Stata to Anr. place in that State through the territory of the State of Kerala.

Explanation.- In this clause, ''State'' means the State of Karnataka or the State of Tamil Nadu or the Union Territory of Pondicherry.

7. The State also framed the Kerala Liquor Transit Rules, 1975 which, in Rule 3 prescribed a permit for transit of liquor in this State thus:

3. Permit for transit of liquor.- No liquor shall be allowed to be moved from one

place in a State to Anr. place in that State through the territory of the State of Kerala except under a permit issued by the Assistant Excise Commissioner of the Division through whose jurisdiction it is proposed to be moved:

Provided that when liquor has to be moved through more than one Excise Division, the permit shall be issued by the Deputy Commissioner of Excise and when, liquor has to be moved through more than one Excise Zone by the Excise Commissioner.

Grant of permit under these transit rules is in Rule 5 which reads thus:

5. Grant of permit.- (1) On rcceipt of an application, the Assistant Excise Commissioner, the Deputy Commissioner of Excise or the Excise Commissioner, as the case may be, shall, if he is satisfied, as to the genuineness of the application, issue the permit.

(2) A permit granted under Sub-rule (1) shall be in Form T.P. and shall be in printed forms and in duplicate. Each permit shall bear a consecutive number aid must be sealed with the private seal of the officer issuing the permit in addition to his office seal.

Rule 8, relevant for our purpose, reads thus:

8. Liquor not to be sold in Kerala.- No liquor moved under a permit shall be diverted for sale inside the State of Kerala.

Rule 9, relating to refusal of permits reads thus:

9, Permit may be refused to persons contravering rule 8.- The Assistant Excise Commissioner, the Deputy CoanM Orssioner, Excise or the Excise Commissioner may refuss to gramt permit to any person who has been fouiid guilty of breach of Rule 8.

8. Transit permit is thus required under the Act and the rules. Transport is confined to the carrying of goods where the transport commences within this State to a destination also within this State. Transit, as defined under the Act has also a'' definite connotation, but a limited application. Not, all transits through the Kerala State are covered by the definition, "Transit". Transit, under the Act, is movement from one place in a State to Anr. place in that same State through the territory of the State of Kerala. The entry and the exit points should thus be in the same State. And "State" for the purpose means the State of Karnataka or the State of Tamil Nadu or the Union Territory of Pondicherry. This has been added by an explanation. Thus, according to the definition of the expression "Transit" in Section 3(17A), read along with the explanation for the word " State", it is clear that the starting point and the terminal point of the journey of liquor must be in the same State, either Karnataka or Tamil Nadu or the Union Territory of Pondicherry, and the intermediate points must be through the territory of the State of Kerala. It is this statutory policy that is sought to be achieved by the rules when the Kerala Liquor Transit Rules, 1975 also define "State" thus:

2. (h) ''State'' means the State of Karnataka or the State of Tamil Nadu or the Union Territory of Pondicherry.

Rule 3 insists on a permit for transit, if liquor is carried from one place in the State to Anr. place in that State through Kerala.

9. Thus, if liquor is transported from Karnataka State to Mahe, or from Tamil Nadu, Punjab, Maharashtra, Goa, Wert Bengal etc. to Mahe, even though the liquor has to pass through Kerala State before it reaches Mahe, no transit permit is required under the Act and the rules, for, there is no movement from one State to the same State, as Mahe is in a different State, the Union Territory of Pondicherry. However, when liquor is transported from Pondicherry to Mahe, both within the Union Territory of Pondicherr, that liquor passing through Kerala State requires a transit permit. This is the clear effect of the provisions of the Act and the rules.

10. But, the Board of Revenue issued a Circular dated 22nd June 1987, to the following effect:

It has come to the notice of the Board that no contractors of neighbouring States of Pondicherry, Karnataka and Tamil Nadu are transporting liquors imported from other States through Kerala without taking transit permits as per the provisions in the Kerala Liquor Transit Rules, 1975. It is also noted that the Excise Authorities are not insisting on the parties to take transit permit on the presumption that only such liquors that are imported from the neighbouring States of Pondicherry, Karnataka and Tamil Nadu to that State which are passing only, through Kerala need transit permit and that the liquor that are imported from other States of India need not have transit permit. It may be noted that liquor from any State can move to Kerala only through the neighbouring States of Tamil Nadu, Karnataka and Pondicherry and therefore the liquor that are imported from any State of India shall have transit permit if they are transported through Kerala.

In future all the Excise Officers are directed to strictly adhere to the rules and see that no liquor is transported to other States through Kerala without a valid transit permit as stipulated in the rules.

It is this Circular that is sought to be enforced against the Petitioners for insisting that transit permits are required even in cases where the definition of ''Transit'' under the Act does not apply.

11. The circular rightly took note of the fact that the excise authorities were insisting on the parties to take transit permit only in cases where liquor transported from Karnataka, Tamil Nadu or Pondicherry to other parts of those States passed through Kerala. This was in, accord with the statutory provisions. But the circular takes the further stand that liquor brought from any State can move inside the Kerala State only if it was, supported by transit permit, even where the destination is to a place outside the State. This Circular is plainly

against the Act and the rules. The Circular of the Board ignores the statutory definition of ''Transit'' in the Act, the explanation to the word ''State'' in Section 3(17A) and the definition of the word ''State'' in the Kerala Liquor Transit Rules. An executive order which is opposed to the statutory provisions can have no legal validity. The Board''s, Circular dated 22nd June 1987 cannot be enforced and no transit permit can be insisted on that basis.

12. It was submitted by the Advocate General that the Petitioners themselves have applied for transit permits and obtained permits and therefore they should not be allowed to challenge the action of the excise authorities when the application for transit permits are rejected now or when there is refusal to issue any fresh transit permit. The excise authorities and the Petitioners were under a mutual mistake in proceeding on the assumption that transit permits are required in all cases where liquor passes through the Kerala State to Mahe. When the Petitioners realised their mistake and were prevented from transporting liquor to Mahe, even though such transport did not fall within the definition of ''Transit'' in the Act and the rules, they are well within their right to challenge the action of the authorities as illegal and unconstitutional. No principle of estoppel can be pressed into service in such cases. The State Government cannot arm itself with authority to act illegally against the provisions of the Abkari Act, on the ground that the Petitioners have in the past acquiesced in such action.

13. It is unnecessary, therefore, to consider the other contentions raised by Shri Vaidyanathan that the insistence of the transit permits by an executive order for transporting liquor from one State to Anr. violates Article 304 of the Constitution or that there is an unreasonable restriction on the right to carry on trade.

14. In the result, it is sufficient to declare that under the Kerala Abkari Act and the rules as they are now in force, the excise authorities have jurisdiction to insist on transit permits for transport of liquor only in those cases where liquor transported from one part of Karnataka, Tamil Nadu or Pondicherry to other parts of the same State are carried through Kerala. Thus liquor transported from Pondicherry to Mahe (both within the Union Territory of Pondicherry) through the Kerala State, requires transit permits under the Act. But no transit permit is required when liquor is brought from any other State to Mahe, even when that liquor has to pass through the Kerala State. O.P. No. 1382 of 1989.

15. The Petitioner submitted an application for transit permit for transporting Indian Made Foreign Liquor from Bangalore to Mahe. That was rejected by order Ext. P-10. The reasons state thus:

During the financial year 14 (fourteen) Transit Permits were issued to the applicant. A huge quantity of Indian Made Foreign Liquor have already been lifted to Mahe. In the circumstance, I am convinced that the application put in by M/s Thirumal Wines, Mahe is not genuine. As such application is rejected. The import permit No. I-333/88-89, dated 16th February 1989 issued by Deputy Commissioner of Excise, Mahe is returned.

16. Under the Act and the rules as in force now, in view of the definition of ''transit'', the Petitioner does not require transit permit for transporting Indian Made Foreigh Liquor from Bangalore to Mahe even when it passes through Kerala. The order, Ext. P-10, shall therefore be no bar to the Petitioner in O.P. No. 1382 of 1989 for exporting liquor to Mahe from Bangalore.

17. Even otherwise, the reason stated that the application is not genuine has no factual foundation. There is no case that the Petitioner does not intend to export the liquor to Mahe. There is no case that the Petitioner has diverted for sale in Kerala or sold in Kerala, liquor intended to be delivered at Mahe. The counter affidavit takes the stand that the liquor was expected to reach Mahe. What happens thereafter does not affect the genuineness of the application. Ext. P-10 is quashed.

O.P. No. 1775 of 1989

18. The Petitioner submitted an application for transit permit for transporting Indian Made Foreign Liquor from Goa to Mahe. This was rejected as per Ext. P-6. In view of the fact that no transit permit is required to lift Indian Made Foreign Liquor from Goa to Mahe, Ext. P-6 order has no force and it shall be no bar to the Petitioner in O.P. No. 1775 of 1989 for transporting the liquor from Goa to Mahe under the Kerala Abkari Act and the rules as they now stand.

19. No further directions are required to be issued in these writ petitions and they are disposed of accordingly.