
(1960) 07 MP CK 0015
In the Madhya Pradesh High Court
Case No : M.P. No. 380 of 1958

Vrajlal Manilal and Company	Vs	APPELLANT
State of M.P. and another		RESPONDENT

Date of Decision : 29-07-1960

Acts Referred:

Central Excises and Salt Act, 1944 — Section 6
Constitution of India, 1950 — Article 19, 226, 246, 251
Criminal Procedure Code, 1898 (CrPC) — Section 432

Citation : (1960) J LJ 1192 : (1960) MPLJ 1165

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : B.L. Seth, for the Appellant; H.L. Khaskalam, Addl. Govt. Advocate for State, for the Respondent

Judgement

P.V. Dixit, C.J.

This order shall also dispose of Criminal Revision No. 3 of 1959.

The circumstances giving rise to these petitions are that the Petitioner in M.P. No. 380 of 1958 is a firm manufacturing bidis with its head office at Sagar. The firm has also a branch office at Damoh, where tobacco is sent from Sagar for being supplied to contractors, who are known as Sattedars, for being rolled up into bidis. The bidis are then delivered by the Sattedars at the Damoh office, where they are heated packed, and labelled and are then sent out of Damoh for sale as bidis. On 11th January 1957 the Petitioner's Damoh branch was inspected by the Excise Inspector, who found that the Petitioner had not taken out a licence in respect of the branch as required by Section 3 of the C. P. and Berar Tobacco Act, 1939 (No. VIII of 1939). The Excise Inspector reported that the applicant had contravened Section 3 of the Act and was thus liable to punishment u/s 13. The Collector, Damoh, then gave an opportunity to the Petitioner to compound the offence u/s 16 of the Act. The firm declined to do so. Thereupon a prosecution was launched for the contravention of Section 3 of the Act against the firm, its

branch manager and the Munim.

The Petitioner then filed an application under Article 226 of the Constitution challenging the legality of the demand made on it for taking out a licence in respect of the branch as also the legality of the prosecution initiated by the Collector. In that petition the prayer of the applicant is that a suitable direction restraining the opponents from proceeding with the Petitioner's prosecution for a contravention of Section 3 of the Act be issued. The other petition is a reference u/s 432 of the Code of Criminal Procedure made by the Magistrate II Class, Damoh, who is trying the accused persons u/s 3 read with Section 13 of the Act. The learned Magistrate has stated the following questions for the decision of this Court:

(i) Whether in view of Article 246 and entry No. 84 of List I of the Seventh Schedule to the Constitution of India, and also Article 251 of that Constitution, Section 3 of the C.P. and Berar Tobacco Act, 1939 is ultra vires and void ?

(ii) Whether in view of Section 6 of the Central Excises and Salt Act (1 of 1944), the imposition of a further obligation on the wholesale dealers in tobacco in the Madhya Pradesh to take out a further licence if they want to deal wholesale in tobacco, is in contravention of Clause (g) of Article 19 of the Constitution and thus void ?

(iii) Whether the proviso to Clause (e) of the Schedule to the C. P. and Berar Tobacco Act, 1939, inasmuch as it requires the wholesale dealers in tobacco who are manufacturers and who have already taken out a licence under Clause (c) of that Schedule after having paid the maximum licence fee for Rs. 125 to take out additional licence on payment of Rs. 10 per licence for each place of manufacture other than the shop or stall where he deals in Bidis, cigars, cigarettes or other tobacco or a place where manufacture is carried on without the assistance of hired labour, either on daily or piece rates is ultra vires of the powers of the State Legislature inasmuch as it goes beyond the scope of not only Section 3 of the said Act, but also against the scope of the whole Act itself inasmuch as it imposes a licence fee or duty on the manufacture of Bidis, which is beyond the scope of Section 3 of the said Act and the scope of the Act itself ?

The Petitioner-firm has raised these very questions for consideration in its petition (M.P. No. 380 of 1958).

The main question that arises for determination in these cases is whether the applicant-firm is under an obligation to take out a licence for the Damoh establishment under Act No. VIII of 1939. The question turns on the construction of the Explanation to paragraph (a) of the Schedule to the Act. Section 3 says that no person other than a retail dealer in a village with a recorded population of 2,000 or a hawker shall deal in tobacco except under a licence in accordance with the terms and conditions thereof. Section 4 deals with the issue and renewal of a licence and the payment of fees specified in the Schedule for a licence under the Act Paragraph (a) of the Schedule prescribes fees for the grant of renewal of

a licence to a wholesale dealer according to his annual turnover. The Explanation to this paragraph runs as follows:

In the case of a wholesale dealer who is not a manufacturer and who deals wholesale in tobacco at more than one shop or stall at any one time, the fees payable by him shall be the fees according to the amount of turnover relating to each shop or stall.

It will be seen that under the Explanation the wholesale dealer who is not a manufacturer is required to take out a licence and pay fees for it in respect of each shop or stall if he deals wholesale in tobacco at the shop or stall. Now, the term "deal" has been defined in Section 2 (d) as meaning "to sell, wholesale or retail, or expose or keep for wholesale or retail sale". It is thus clear that unless the establishment is a shop or a stall where the wholesale dealer sells or exposes or keeps for sale tobacco, the Explanation is not attracted and no separate licence is necessary for the establishment.

In the present case the trial Magistrate has found from the evidence adduced before him that no tobacco is sold at the Damoh branch, that at this establishment bidis are manufactured out of the tobacco received from the Petitioners' Sagar shop, and that the finished bidis are then sent out of Damoh for sale. Thus, the Damoh establishment is nothing but a depot where tobacco is received from the applicants' Sagar office and from where bidis made by the Sattedar out of that tobacco and delivered there are sent out for distribution. The establishment is not a shop or a stall where the Petitioner sells, wholesale or retail, or exposes or keeps for sale any tobacco. That being so, the Petitioner is clearly not required to take out a separate licence in respect of the Damoh branch nor liable to pay any licence fee in regard to it. In this view of the matter it is wholly unnecessary to consider the other questions touching on the vires of the Act.

The prosecution launched against the Petitioner and two others u/s 3 read with Section 13 of the Act is thus wholly misconceived. The trial Magistrate must therefore now pass an order acquitting them. The reference is accordingly answered and returned. As the Magistrate will now make a proper order in the pending prosecution in the light of the opinion expressed in the reference made by him, it is not necessary to issue any direction in M.P. No. 380 of 1958. For this reason the application under Article 226 is rejected. The Petitioner shall have its costs in M.P. No. 380 of 1958. Counsel's fee is fixed at Rs. 50. The outstanding amount of security shall be returned to the Petitioner.