

(2011) 05 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No. 6016 of 2011

Yash Polymers and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Bureau of Indian Standards Act, 1986 — Section 14
Bureau of Indian Standards Rules, 1987 — Rule 7(6), 7(7)
Constitution of India, 1950 — Article 14, 19, 19(1), 226

Citation : (2011) 3 GLH 539

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : K.M. Patel and Mehul H. Rathod, for Petitioners 1- 24 and Manan Maheta, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—During the course of admission hearing, the Petitioners have proposed an amendment to the prayer clause and that proposed amendment is taken into consideration.

2. 24 Petitioners, claiming to be engaged in the business of manufacturing, selling and distributing pneumatic tubes made of natural rubber for two and three-wheelers, have invoked Articles 14, 19(1)(g) and 226 of the Constitution for the prayers to set aside the Pneumatic Tyres and Tubes for Automotive Vehicles (Quality Control) Order, 2009 as far as it covers pneumatic tubes made of natural rubber for two-wheelers and three-wheelers. The Petitioners have also prayed for directing Respondent No. 2, Bureau of Indian Standards, to review the IS:13098:1991 for revising the same as envisaged under Rule 7(6)(g) of the Bureau of Indian Standards Rules, 1987. By the proposed amendment, a prayer is added to declare the aforesaid Order to be unconstitutional and violative of Articles 14 and 19(1)(g) of the Constitution insofar as it relates to pneumatic tubes made of natural rubber for two or three-wheelers.

3. It was vehemently argued by learned senior advocate Mr. K.M. Patel, appearing for the Petitioners, that the Bureau of Indian Standards ("BIS", for short) has adopted Indian Standard Specification No. 13090 for pneumatic tubes and affirmed them in the year 2001. Those standards were admittedly based on Japanese Standard JIS D 4231:1987 : JIS K 6367 which were meant for specific athletic use of motorcycle, as confirmed by a Japanese Body in reply to a query made by BIS. The Government of India in its Ministry of Commerce and Industry has issued impugned Order dated 19.11.2009 in exercise of the powers conferred by Section 14 of the Bureau of Indian Standards Act, 1986 ("the Act", for short), after consulting BIS, and prescribed the standards for pneumatic tubes which are arbitrary, unreasonable, discriminatory and amounting to unreasonable restriction, according to the submission. Elaborating the submission, learned Counsel submitted that even after notification of the impugned Order on 19.11.2009, the Government was pleased to hold meetings for reviewing implementation of the Order in view of the representations made by small scale manufacturers of pneumatic tubes made of natural rubber for two and three-wheeler vehicles. At the 18th meeting of Automotive Tyres/Tubes and Rims Sectional Committee, held on 11.5.2010, it was decided to set up a Panel for submitting recommendations alongwith technical justification on the issue of revising IS 13098:1991. Thereafter meetings of the Panel were held in July and August. On 29.01.2011, at the 19th meeting of the Committee, it was decided to undertake a study for evaluating the validated data by technical expert institutions, like Central Institute of Road Transport and Indian Rubber Manufacturers Research Association. Thereafter, several requests and representations were made for reviewing the matter of prescribing standards and implementation of the impugned Order as far as pneumatic tubes made of natural rubber for two or three-wheelers were concerned. It was, on that basis, submitted that while the Government had already extended the date for coming into force of the impugned Order, it was necessary and proper that the date now due for enforcing the impugned Order should be further extended till the Committee made its final recommendations and the Government considered it. It was also argued that IS 13098 was adopted in the impugned Order straightaway from the Japanese Standards which were admittedly prescribed for athletic use of motorcycles (for automotive tubes, moto-cross). Thus, the prescription of standards was without application of mind, according to the submission. It was also argued that while prescribing the standards for pneumatic tyres and pneumatic tubes at the same time, the tyres were divided into three classes with different specifications, whereas all the tubes for all automotive vehicles were put in one class for prescribing their specifications. That was a discrimination, according to the submission. It was further argued that, even according to the BIS Rules, 1987, all established standards have to be reviewed periodically, at least once in five years, to determine the need for revision or withdrawal; and the standards, which, in the opinion of the Selectional Committee, need no revision or amendment, have to be re-affirmed by the Committee under Rule 7(6) (g). This process of re-affirmation was not carried out since the year 2001,

according to the submission, and hence the impugned Order was prescribing outdated standards. He also submitted that while deliberations of the Committee appointed for the purpose of reviewing the standards pursuant to the representations of the tube manufacturers were inconclusive, it was improper and unreasonable to enforce the impugned Order with effect from 13.5.2011, which is the next appointed date. Learned Counsel also submitted that the prescription of standards as aforesaid and the impugned Order placed an unreasonable restriction upon the fundamental right of the Petitioners to carry on their business and as an actual effect of enforcement of the impugned Order, many of the manufacturing units of tube made of natural rubber may face closure of their business. Learned Counsel relied upon judgment of the Apex Court in B.P. Sharma Vs. Union of India (UOI) and Others, to emphasize the following propositions contained therein:

14. The right which is guaranteed to all citizens under Article 19(1)(g) of the Constitution of India is to practice any profession or to carry on any calling, trade or business. Clause (6) of Article 19(1) however, places a restriction that nothing would prevent the State from making any law imposing reasonable restrictions in exercise of the right in the interest of general public.... Subject to above noted restrictions the valuable rights as provided under Article 19(1)(g) is available to all the citizens who are free to choose any trade, business, calling or profession etc. It obviously, also includes the manner and terms in which they will carry on their profession, but again subject to reasonable restrictions which may be thought necessary by the State in the interest of general public....

Relying on the above observations, it was submitted that the prescription, in effect, of Japanese Standards meant for vehicles used for racing could not have any nexus with the object sought to be achieved by the impugned Order.

4. It is clear from the brief narration of relevant facts and the contentions of the Petitioners that the Petitioners have sought to indirectly challenge the validity of the Pneumatic Tyres and Tubes for Automotive Vehicles (Quality Control) Order, 2009, which is made in exercise of the powers conferred by Section 14 of the Act, which reads as under:

Section 14 Compulsory use of Standard Mark for articles and processes to certain scheduled industries-

If the Central Government, after consulting the Bureau, is of the opinion that it is necessary or expedient so to do, in the public interest, it may, by order published in the Official Gazette-

(a) notify any article or process of any scheduled industry which shall conform to the Indian Standard; and

(b) direct the use of the Standard Mark under a licence as compulsory on such article or process.

Explanation

5. Admittedly, the impugned Order is a piece of delegated legislation and not even alleged to be made in violation of the powers conferred upon the Central Government. The Act has been made with the avowed object of providing for the establishment of a Bureau for the harmonious development of the activities of standardisation, marking and quality certification of goods and for matters connected therewith or incidental thereto. The rules made under the Act also provide in Rule 7(7) that Indian Standards are voluntary and available to the public. Their implementation depends on adoption by concerned parties. However, an Indian Standard becomes binding if it is stipulated in a contract or referred to in a legislation or made mandatory by specific orders of the Government. Thus, not only that the standards are made mandatory by the Government by virtue of the impugned Order, but they are presumed to be necessary in the public interest in terms of the provisions of Section 14 of the Act. Under such circumstances, either to presume or declare that the impugned Order or any part of it is enacted without application of mind, or to direct that the Order should not take effect till certain date would directly encroach upon the legislative field. As for the ground of unreasonableness, or violation of Article 19(1)(g), the salutary principles laid down by the Apex Court in *M.R.F. Ltd. Vs. Inspector Kerala Govt. and Others*, may be referred. It is held in that judgment that in order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances. A just balance has to be struck between the restrictions imposed and the social control envisaged by Clause (6) of Article 19. There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise.

6. Therefore, while the prescription of Standards, in public interest, after consulting the BIS, clearly appeared to be intended to ensure safety of the people riding vehicles, the restriction as alleged or perceived by the Petitioners could by no stretch be held to be unreasonable. Putting into force a piece of legislation from a particular date is as much a part of enacting the legislation as the legislation itself and, therefore, cannot be made a subject-matter of judicial review. The argument that there is obvious discrimination between the items of pneumatic tyres and tubes for such tyres, insofar as a single Standard is prescribed for tubes as against three different Standards prescribed for tyres, involves technical study of the matter and such distinction cannot by itself be held to be discriminatory. It is not the function of the Courts to sit in judgment over matters involving technical expertise.

6.1 As held by the Apex Court in *Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India*, the function of the Court is to

see that lawful authority is not abused, but not to address itself to the task entrusted to a particular authority. "The Court cannot question the wisdom, the need or desirability of the regulation. The State can regulate the exercise of the fundamental right to save the public from a substantive evil. The existence of the evil as well as the means adopted to check it are the matters for the legislative judgment. But the Court is entitled to consider whether the degree and mode of the regulation whether is in excess of the requirement or is imposed in an arbitrary manner. The Court has to see whether the measure adopted is relevant or appropriate to the power exercised by the authority or whether over-stepped the limits of social legislation.... However, there is presumption of constitutionality of every statute and its validity is not to be determined by artificial standards...the objective test which the Court to employ is whether the restriction bears reasonable relation to the authorized purpose or an arbitrary encroachment under the garb of any of the exceptions envisaged in Part III.... The Court weighs in each case which of the two conflicting public or private interest demands greater protection and if it finds that the restriction imposed is appropriate, fair and reasonable, it would uphold the restriction...."(excerpts from paragraphs 32, 49, 50, 51 and 52 of the aforesaid judgment). Applying the ratio and principles evolved by the Apex Court, and even assuming that impugned provisions amount to restriction on fundamental right of the Petitioner, it has to be held to be reasonable and within discretion of the government to evolve and enforce in the interest of general public, the standard of an article like pneumatic tyres and tubes to which the Act admittedly applies.

7. In the above facts and circumstances and for the reasons briefly discussed hereinabove, the petition cannot be entertained for grant of any of the reliefs as prayed in the petition. Therefore, the petition is summarily dismissed.