

SRI MALAPRABHA CO-OP SUGAR FACTORY LTD.

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v.

STATE OF KARNATAKA & ORS.

(Civil Appeal No. 860 of 2006)

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AUGUST 21, 2015

[VIKRAMAJIT SEN AND SHIVA KIRTI SINGH, JJ.]

*Karnataka Excise (Manufacture and Bottling of Arrack) Rules, 1987 – r. 17 – Fixation of price of rectified spirit – By Government Order, State fixed the price of rectified spirit uniformly at Rs.6/- per litre wherein captive distilleries entitled to receive only Rs.5/- per litre, and the balance Rs.1/- per litre receivable by the State – Appellant supplied rectified spirit to various parties and received the entire sum at the rate of Rs.6/- per litre – Demand raised by the Excise Department, being accorded at Rs.1/- per litre sold by the appellant, – Challenge to, by the appellant – Held: The State had clarified that it would permit the appellant to sell rectified spirit at the common fixed rate of Rs.6/- provided it transferred Rs.1/- per litre to the State – If the appellant was serious in questioning the legal capacity of the State to recover the said Rs.1/- per litre, it perforce had to challenge the Government Order – Having failed to do so it cannot, thereafter, challenge the Demand which is predicted on the Government Order itself – More so, the appellant had full knowledge of the fact that it had been permitted to supply rectified spirit to third parties on the condition that of the general fixed price of Rs. 6/- per litre, Rs. 1/- per litre would have to be made over to the State.*

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*Bihar Distillery vs. Union of India AIR (1997) SC 1208: 1997 (1) SCR 680; Synthetics & Chemicals Ltd. v. State of U.P. (1990) 1 SCC 109: 1989 (1)*

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A **Suppl. SCR 623** ; *Vam Organics Chemicals Ltd. v. State of U.P. (1997) 2 SCC 715: 1997 (1) SCR 403*; *Pratima Chowdhury v. Kalpana Mukherjee (2014) 4 SCC 196* – referred to.

B Case Law Reference

1997 (1) SCR 680 referred to Para 4

1989 (1) Suppl. SCR 623 referred to Para 4

C 1997 (1) SCR 403 referred to Para 4

(2014) 4 SCC 196 referred to Para 4

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 860 of 2006

D From the Judgment and Order dated 16.04.2004 of the High Court of Karnataka at Bangalore in W.A. No. 7352 of 1999

E Rajesh Mahale, Adv., for the Appellant.

V. N. Raghupathy, Adv., for the Respondents.

The judgment of the Court was delivered by

F **VIKRAMAJIT SEN, J.** 1. This Appeal brings into challenge the Judgment of the Division Bench of the High Court of Karnataka in terms of which the Judgment of the learned Single Judge had been upheld; however, with the direction that the competent authority shall examine the claim made by the  
G Appellant for being classified as a non-captive unit. On 29.7.2004, while issuing notice it had been clarified that the impugned Judgment had not been stayed.

H 2. The facts that are relevant for deciding the present Appeal, succinctly, are that the Respondent State had fixed

the price of rectified spirit uniformly at ` 6/- per litre by Government Order dated 12.5.1992. While doing so, it had been indicated that the captive distilleries would be entitled to receive only ` 5/- per litre, and the balance ` 1/- per litre would be receivable by the Respondent State. For the period of 1.7.1992 to 30.6.1993, supplies of rectified spirit were made by the Appellant to various parties and the entire sum at the rate of ` 6/- per litre was recovered/received by the Appellant. It will be relevant to underscore that the supply of rectified spirit (ethyl alcohol) was made by the Appellant with full knowledge of the Government Order to which challenge has been made, namely, the payment of ` 1/- per litre to the State Government. The Appellant does not dispute that it is a captive distillery, since it produces molasses which is then distilled and converted into ethyl alcohol/rectified spirit/industrial alcohol. The Government Order dated 12.5.1992 has not been assailed by the Appellant at any point of time. When a demand for a sum of ` 13,32,000/- was raised by the Superintendent of Excise, Huballi, by letter dated 15.12.93, a challenge by way of the filing of a writ petition was initiated.

3. The Respondent State is empowered to fix the price of rectified spirit by virtue of Rule 17 of the Karnataka Excise (Manufacture and Bottling of Arrack) Rules, 1987, the vires of which have not been questioned. The Rule is reproduced for facility of reference:

**Rule 17 - Rectified spirit – Whether Rule 17 which empowers the Government to fix the price of rectified spirit, valid?**

K. Shivashankar Bhat, J., Held. - Rule 17 of the State rules, invoked in the present case, nowhere lays down nor indicate the principles or factors to be considered while the Excise Commissioner fixes the price with the prior approval of the State Government. The case of

A other liquors may be different, because, in those cases,  
the State has exclusive privilege to deal with those liquors/  
intoxicants, unlike the case of rectified spirit. The  
permissible limits of delegation of legislative function  
cannot be stretched so as to make it notional. It cannot  
B be said that the limitation on the delegation of legislative  
function has reached a vanishing point. Limitation is  
needed to prevent any possible dictatorial power being  
vested in the executive by the legislature. Rule 17 insofar  
as it empowers of the fixation of price of rectified spirit,  
C is therefore, declared as unconstitutional and ultra vires  
the provisions of the State Act.

4. The manner in which the trade of arrack is conducted  
can be gleaned, inter alia, from a reading of Rule 13, which is  
D also reproduced for convenience:

**Rule 13. Stock of rectified spirit.** – (1) The quantity  
of rectified spirit required for the warehouse shall be  
allotted by the Commissioner from time to time. It shall  
E be drawn from the distillery on indents duly countersigned  
by the Warehouse Officer. The transportation charges  
shall be borne by the licensee. The distillery shall issue  
such quantity of rectified spirit as allotted by the  
Commissioner, to the warehouse at the rates fixed by  
F the Commissioner under Rule 17.

(2) The stock of spirit when received at the warehouse  
shall be verified by the Warehouse Officer by volume and  
strength or the quantity of pure alcohol in it and taken to  
the storage vats. The Warehouse Officer shall furnish a  
G certificate of such verification to the Distillery Officer  
concerned and shall keep a register showing the details  
of stock indented, issued by the distillery and the stock  
as received in the warehouse.

H (3) Gauging of spirit shall be made by the Warehouse

Officer everyday in the presence of the licensee or his authorized representative and the result thereon shall be recorded in a register, which shall be attested by both the Officer and the licensee or his representative. A

(4) (a) The licensee or his authorized representative shall give a requisition for the transfer of such quantity of spirit for the production of arrack to the vessels kept for the purpose. The requisition shall contain information as to the date, batch, number, quantity, spirit vat number from which to be issued, and the vessel number to which it should be transferred. B C

(b) The Warehouse Officer on receipt of the requisition may permit the transfer after gauging the stock in volume and strength. D

A perusal of the said Rule makes it patently clear that the Commissioner allots quantities of rectified spirit from the distillery to a 'warehouse', and the indents are duly counter signed by the Warehouse Officer. The Rule clarifies that the transportation charges are to be borne by the licensee. This arrangement, so far as transportation expenses are concerned, obviously does not arise where molasses is readily available in the very same premises where its conversion or distillation into rectified spirit takes place. The contention of learned counsel for the Appellant is that the State is not entitled to take away the extra profit of ` 1/- per litre which the Appellant earns because molasses is available in its own premises. This argument, however, conveniently ignores the fact that the Respondent State had made it incontrovertibly clear that it would permit the Appellant to sell rectified spirit at the common fixed rate of ` 6/- provided it transferred ` 1/- per litre to the State. If the Appellant was serious in questioning the legal capacity of the Respondent State recover the said ` 1/- per litre, it perforce had to challenge the Government Order dated E F G H

A 12.5.1992. Having failed to do so it cannot, thereafter,  
challenge the Demand dated 15.12.1993 which is predicted  
on the Government Order itself. Learned counsel for the  
Respondent State has made an attempt to rely on the decisions  
of this Court in Bihar Distillery vs. Union of India AIR (1997)  
B SC 1208, as also Synthetics & Chemicals Ltd. v. State of U.P.  
(1990) 1 SCC 109. We have not permitted him to do so for  
the simple reason that the question of law that had engaged  
the attention of the Court in those cases, as well as in Vam  
Organics Chemicals Ltd. v. State of U.P. (1997) 2 SCC 715  
C was altogether different. In the three cases, the challenge  
was to the competence of the State Government to impose  
administrative charges for regulating the holding of rectified  
spirit, since there is an omnipresent danger of the rectified  
D spirit being surreptitiously diverted for the illicit production of  
arrack and for that matter even Indian-Made Foreign Liquor  
(IMFL). Learned counsel for the Appellant has endeavoured  
to place reliance on the decision in Pratima Chowdhury v.  
Kalpana Mukherjee (2014) 4 SCC 196, in order to buttress  
E the argument that estoppel cannot be claimed by the  
Respondent State; we are unable to appreciate the reliance  
on this decision in support of this contention. What we have  
before us is a simple case of recovery of dues, viz. at rates  
which had been declared well before the permission to supply  
F rectified spirit was accorded to the Appellant. The position  
may have been different had the Respondent State failed to  
pass relevant orders or had it failed to inform the Appellant  
that, since it did not incur transportation costs, this amount,  
which had been predetermined at ` 1/- per litre, would be  
G payable to the State.

5. There were three Appellants before the Division Bench  
of the High Court of Karnataka but only one of them, i.e. the  
Appellant before us, has decided to further challenge the  
H Demand of ` 13,32,000/- being accorded at ` 1/- per litre

sold by the Appellant. It is also relevant to mention that the Appellant has not challenged the Demand of transportation charges of ` 1/- per litre for any subsequent charges. A

6. We find no substance in the Appeal. The Appellant had full knowledge of the fact that it had been permitted to supply rectified spirit to third parties who are engaged in the business of production of arrack on the condition that of the general fixed price of ` 6/- per litre, ` 1/- per litre would have to be made over to the Respondent State. B

7. The Appeal is accordingly dismissed, with no order as to costs. C

Nidhi Jain

Appeal dismissed.