

(2010) 08 CAL CK 0036

Calcutta High Court

Case No: W.P.T.T. No. 31 of 2010

State of West Bengal and

Another

APPELLANT

Vs

West Bengal Foreign Liquor

Manufacturers Wholesalers and

Bonders Association and

Another

RESPONDENT

Date of Decision: Aug. 16, 2010

Acts Referred:

- Bengal Excise Act, 1909 - Section 2(11), 2(12)
- Constitution of India, 1950 - Article 14, 19, 226, 323B

Citation: (2011) 1 CHN 217

Hon'ble Judges: Kanchan Chakraborty, J; K.J. Sengupta, J

Bench: Division Bench

Advocate: Pratik Dhar, Ritwik Pattanayak, Joyeeta Chakraborty and Suryasarathi Basu, for the Appellant; Pranab Kumar Dutta and Sourav Sengupta, for the Respondent

Final Decision: Dismissed

Judgement

1. The State of West Bengal has come up with this application to impugn the judgment and order of the learned Tribunal dated 18th December, 2009. The Respondent association and one of it's office bearer approached the learned Tribunal to challenge the Constitutional validity of the format for issuing import permit-cum-pass, in order to bring liquor, both indigenous and foreign variety in the State.

2. The format viz. Form No. VI has been devised under the statutory power of the State of West Bengal. The power of framing rules and also devising the format for granting permit is not disputed. In the application, contents of the entire permit was not challenged. The challenge was restricted to the number of days during which

the permit should be valid and also the date of commencement of validity of the permit.

3. The learned Tribunal after discussing in great details and considering the facts and circumstances, has held that commencement of the validity period of import permit-cum-pass from the date of export order is unreasonable, arbitrary, purposeless and having no relation or link with the object for prescribing such validity period and that should be counted from the date of issue of the specific export pass against particular import permit-cum-pass.

4. The procedure for importing liquors to this State from outside State is amongst others, a dealer has to place order for importing an alcoholic product and once such order is placed, the dealer has to procure the export permit from the exporting state. On production of the export permit, the State issues and/or grants import permit-cum-pass and in the process, the State issue the permit in a prescribed format mentioning the validity period with the date of commencement of the validity. According to the State Government, initial period of validity of the import permit-cum-pass was a longer one and it was abused in such a manner that there has been a substantial loss of revenue. After conducting a survey, it was found that the validity period can be reduced as it has been done and in this process, the abuse of the permit has been reduced to a large extent consequently there has been an upward flow of revenue.

5. However, the learned Tribunal was not persuaded to hold that the date of commencement of the validity period viz. from the date of export order issued by the outside dealer is a reasonable one as the learned Tribunal thought that if the date of the export order is reckoned, then the very purpose of granting permit could be frustrated.

6. The learned Tribunal, however, did not accept the contention of the State while holding that the number of days is not touched and the same remain as it is. The learned Tribunal held that the validity period should be reckoned from the date of issuance of the export order against particular import pass.

7. Mr. Pratik Dhar, learned Counsel appearing for the State submits that there is no dispute that the Government has power under the statute to frame rules and in order to implement the rules and acts, the Government has competence to prescribe a time limit of validity of the permit-cum-pass, both import or export and also to fix a time since when the validity period should be reckoned.

8. He submits that the learned Tribunal on fact has accepted the survey and experiment conducted by the State Government that the journey period taken from any remotest corner outside of this state to this State does not exceed more than six days from the date of issue of the export order. After considering this ground reality, the date from which the validity should be reckoned, has been devised. This act of the State has been devised to fulfill the object and this cannot be questioned

by anyone else since the said format mentioning the time limit as well as the date of reckoning of the period is stipulated to fulfill the object of the Act as well as the rules.

9. He further submits that the learned Tribunal after holding on fact that it is possible to complete the transport within the time mentioned in the said format but curiously learned Tribunal while passing the order, did not hold the same being unassailable. He further submits that if a particular dealer finds impossibility of bringing of the material to this State on import within the specified time, then under the provisions of West Bengal Excise (Payment of Fees for Regulation of Import, Export or Transport of Intoxicants) Rules, 2009, one can apply for extension of the period mentioned in the permit-cum-pass and in fit case, this extension can be granted. Therefore, the dealers are not remediless in the event the transport or import is not complete within the validity period mentioned in the said format of the permit. He submits that the State must be given a latitude and the Court should not interfere with the wisdom of the State being a subordinate legislature while framing the rules. Learned Tribunal did not consider this aspect of the matter and without considering the settled principle of law, this validity period has been interfered with. In support of his submission, he has relied on the following Supreme Court decisions: (i) [Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi,](#) and (ii) [Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat and Others,](#)

10. Mr. Pranab Kumar Dutta, learned Counsel appearing for the Respondents while supporting the judgment and order of the learned Tribunal submits that his clients have not disputed the authority of the State to frame rules or to devise the format but the legislative power must be exercised in such a manner which can stand to the test of Constitutional validity. It is well settled principle of law, unlike supreme legislation, the subordinate legislation is susceptible to other points viz. subordinate legislation must not transgress the parent provision and the same must not be inconsistent. The subordinate legislation must stand to the scrutiny of Article 14 of the Constitution and the same must not be unreasonable, arbitrary and irrational.

11. He further submits that when the learned Tribunal on fact found the date of commencement of validity of the permit-cum-pass to be unreasonable, arbitrary and purposeless, this Court should not substitute its own factual finding. While highlighting the procedure of importing liquor to the State, he submits that if the validity period is counted from the date of the export order then the dealer gets actually, in some cases no time or little time to complete such import and before transport is complete, the validity of the pass becomes lapsed. He has also drawn our attention to the definition of export and import as mentioned in Sections 2(11) and 2(12) of the Bengal Excise Act and Rule 131 of the West Bengal Excise (Foreign Liquor) Rules, 1998 under which the permit is required to be obtained. He further submits that this permit-cum-pass is relatable to the import and going by the

definition of import, it has to be understood that validity of the permit should be reconciling to the date of export pass issued by the supplier. Unless the export permit is produced before the authority concerned in the State, import permit-cum-pass is not granted. Therefore, the whole object of issuing import permit-cum-pass must have a co-relation with the date of export permit. The format which is the part of the statutory provision cannot thus override the provision of the act. He, therefore, submits that the judgment and order of the learned Tribunal does not call for any interference.

12. We have heard both the learned Counsel and we have carefully gone through the judgment and order of the learned Tribunal. The issue before us is whether the commencement of the validity period of the import permit-cum-pass from the date of export order is unreasonable, arbitrary and irrational or not and whether the learned Tribunal can in exercise of power of judicial review sit over the justifiability of the action of the Government, taken in exercise of power granted under the act and rule or not.

13. Learned Tribunal after analyzing the facts of this case, and submission of learned Counsels for the parties came to the conclusion that the time limit fixed in the format of the permit by the Respondents, is wholly unreasonable, impractical and irrational. We are of the view that when the learned Tribunal has expressed an opinion, based on fact finding, regarding arbitrariness and irrationality, this Court cannot sit in appeal over the decision of the learned Tribunal simply because this Court should not do so.

14. The whole thing is whether on given facts and circumstances, such decision can be arrived at by a reasonable prudent man, is the test, and while applying this test we think that the learned Tribunal has not committed any mistake for the reasons, discussed hereunder.

15. We are not unmindful of the Court's or tribunal's power regarding exercise of power of judicial review to strike down any provision of law having statutory force. Here, the power to frame rules and also to frame the format of the permit has been derived by the State-Respondents under the Act. Under such circumstances, the format of granting permit-cum-pass, containing all the conditions, has a statutory force. It is true that presumption of Constitutionality applies in favour of the statute as well as the delegated legislation but that does not mean that the Court or the tribunal cannot test it on the anvil of Article 14 which has got a very wide amplitude.

16. Therefore, the decision reported in Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat and Others, cited by Mr. Pratik Dhar is not applicable. The ratio decided in that case cannot be disputed, but the power of the Tribunal formed under Article 323B and also this Court, under Article 226, is inviolable and this is one of the basic feature of the Constitution. This judgment nowhere says that the Tribunal or the Court cannot examine any statutory provision or any document

having a force of statute, applying the tests laid down under Articles 14 and 19 of the Constitution of India. We are of the view that the right under Article 19 is not an absolute one and it is circumscribed by the statute or statutory provision mentioning reasonable restriction. Article 14 of the Constitution demands that any state action whether by legislative or by executive, must be devoid of arbitrariness, unreasonableness and irrationality.

17. Similarly, the decision cited by Mr. Dhar reported in [Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi](#), is not applicable in the facts and circumstances of this case as the learned Tribunal on fact finding recorded that time limit prescribed by the Respondents with regard to the validity of the import pass-cum-permit is wholly unworkable and unreasonable. Therefore, this judgment cannot also be made applicable.

18. Based on these findings, we are of the view that the time limit fixed by the Respondents does not stand to the test and scrutiny of Article 14 of the Constitution of India.

19. There is yet another good reason to hold that the commencement point of the validity of the permit from the date of export order is not in consonance with the provisions of the statute as well. According to us, the object of granting permit is to facilitate import which in its turn cannot take place unless export takes place.

20. The definition of import has been given in the statute u/s 2(12) of the Bengal Excise Act, 1909, which for better appreciation is quoted hereunder

Section 2(12):

Import means to bring into West Bengal otherwise than across a customs frontier as defined by the Central Government.

21. Therefore, there must be a movement of goods for entry in the State of West Bengal otherwise across the customs frontier as defined by the Central Government. Therefore, it is clear that the import must take place from the States not from any other countries for which the provision of Customs Act will be applicable.

22. In the format it has been mentioned, in order to reckon the validity period of the permit, the starting point should be the date of the order of export. According to us, order of export itself is not an export, e.g. if in a given case, the order of export is issued but the goods are not loaded for transportation or movement from the place of origin to this State, there cannot be any import, either in factual or legal sense, for definition of import has specifically provided that there must be bringing of goods into West Bengal.

23. Under such circumstances, the learned Tribunal has very rationally and realistically held that the validity period should be counted from the date of the

specific export pass issued against particular import permit-cum-pass. The Respondents" plea that fixing the starting point of the validity period from the date of export order, has produced a goods result as the clandestine import of the alcoholic goods has been drastically reduced, as a result there has been augmentation of revenue.

24. We think that it is a mere statement in the affidavit and there is no scientific data. Moreover, import can only be done when there has been a valid pass for export under the provisions of the aforesaid Bengal Excise Act, 1909 and the Rules framed thereunder.

25. We are, therefore, of the view that export order is not synonymous with actual export having taken place. We do not find any reason to interfere with the judgment and order of the learned Tribunal and we uphold the same.

26. It seems to us that this method has been resorted to by the State Respondents because all the checkposts at the entry of the State of West Bengal have not been properly guarded nor being checked before entry into the State. If the officials at the checkposts thoroughly examine with due vigilance the documents and verify the goods sought to be brought, then this pass cannot be re-utilised at all.

27. Accordingly, this application fails. There will be no order as to costs.

28. Mr. Pratik Dhar prays for stay of operation of this judgment and order. We find from the records that the learned Tribunal granted stay of operation of it's judgment for a period of five weeks. However, the State did not file this application within the period during which the stay was in operation. Hence, we feel that there is no urgency. When the State could bear with the order of the learned Tribunal after expiry of the period of stay we feel that there is no harm to ask the state to wait for fixing its own time for taking further course of action. Hence, the prayer for stay is refused.

29. Urgent Xerox certified copy of this order, if applied for, be supplied to the applicants.