

The State Of Rajasthan vs The Mewar Sugar Mills Ltd., Bhopalsagar on 26 August, 1968

Equivalent citations: AIR1969SC880, [1969]1SCR845, [1969]24STC174(SC), 1968()WLN13, AIR 1969 SUPREME COURT 880

Author: V. Ramaswami

Bench: J.C. Shah, V. Ramaswami, A.N. Grover

JUDGMENT

V. Ramaswami, J.

1. This appeal is brought by special leave, from the judgment of the Rajasthan High Court dated April 3, 1965 in Civil Writ Petition No. 401 of 1963.

2. The respondent, the Mewar Sugar Mills Ltd. (hereinafter referred to as the 'Company') did not file any quarterly return of its sales for the assessment years 1955-56 and 1956-57 as required by the Rajasthan Sales Tax Act (Act No. XXIX of 1954), hereinafter referred to as the 'Act'. Appellant No. 2, the Sales Tax Officer, Udaipur treated this default as a default of the respondent company under sub-sections (1) and (2) of Section 7 of the Act and, after giving notice to the Company, imposed penalty under Cls. (b) and (c) of sub-section (1) of Section 16 of the Act. By his orders dated December 19, 1956 and January 25, 1957, the Sales Tax Officer imposed a penalty of Rs. 5,000 in respect of the assessment year 1955-56 and a penalty of Rs. 10,000 in respect of the assessment year 1956-57. Thereafter, on October 23, 1963 the Company moved the Rajasthan High Court for the grant of a writ under Article 226 of the Constitution to quash the two orders of the Sales Tax Officer dated December 19, 1956 and January 25, 1957. The contention on behalf of the Company was that during the material period, i. e., from April 1, 1955 to July 31, 1956 there were in existence no rules validly made under Section 26 (5) of the Act. The Writ Petition was allowed by the Rajasthan High Court by its judgment dated April 3, 1965 and the orders imposing the penalties on the Company were quashed on the ground that the imposition of penalty was illegal as it contravened Article 20(1) of the Constitution. The view taken by the High Court was that the Rules framed initially were not valid for the purpose of imposing penalties and the Rajasthan Sales Tax Rules Validating Ordinance No. 5 of 1959 and the Rajasthan Sales Tax Rules Validating Act No. 43 of 1959 could not be effective for the purpose of imposing penalty under Section 16 of the Act since the Rules could not be given retrospective effect.

3. The Act received the assent of the President on December 22, 1954 but it came into force on April 1, 1955 under a notification of the State Government under Section 1 (3) of the Act. The relevant

provisions of the Act read as follows:-

"7. Submission of returns.- (1) Every dealer liable to pay tax shall furnish re- turns of his turnover for the prescribed periods in the prescribed form, in the prescribed manner and within the prescribed time, to such authority as may be prescribed.

(2) Every such return shall be accompanied by a Treasury receipt or receipt of any bank authorised to receive money on behalf of the Government, showing the deposit of the full amount of tax due on the basis of return in the Government Treasury or bank concerned.

(3) If any dealer discovers any omission, error, or wrong statement in any returns furnished by him under sub-section (1), he may furnish a revised return in the prescribed manner at any time before the assessment is made."

"16. Offences, Penalties and Prosecutions, etc.-

(1) If any person -

(a) has without reasonable cause failed to get himself registered as required by sub-section (1) of Section 6 within the time prescribed; or

(b) has without reasonable cause failed to pay the tax due within the time allowed; or

(c) has without reasonable cause failed to furnish the return of his turnover, or failed to furnish it within the time allow- ed; or the assessing authority may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the fee payable by him, a sum not exceeding Rs. 50, and in case referred to in clause (b), in addition to the amount payable by him, a sum not exceeding half of that amount, and that in cases referred to in Clauses (c) and

(d) in addition to the tax payable by him, 1969 S. C./56 X G-6 a sum not exceeding half the amount of tax determined:....."

"26. Power to make rules.- (1) The State Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(4) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication.

(5) All rules made under this section shall be published in the Gazette, and upon such publication, shall have effect, as if enacted in this Act, from such date as may be notified in this behalf."

"29. Application of General Clauses Act.- The provisions of the General Clauses Act, 1897 (X of 1897), shall mutatis mutandis apply, so far as may be, for the interpretation of this Act in the same manner as they apply for the interpretation of a Central Act."

4. It is necessary at this stage to set out the provisions of Section 22 of the General Clauses Act, 1897 (Act X of 1897) which is to the following effect:

"Making of rules or by-laws and issuing of orders between passing and commencement of enactment. Where by any Central Act or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or by-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation then that power may be exercised at any time after the passing of the Act or Regulation; but rules, by-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation."

5. No rules were framed under the Act after the Act came into force, but on March 28, 1955 i. e., before the Act came into force certain rules called "Tee Rajasthan Sales Tax Rules 1955" (herein-after called the 'Rules') were published in the Rajasthan Gazette. Rule 1 reads as follows:

"1. Short Title and Commencement.- These rules may be called the Rajasthan Sales Tax Rules, 1955, and shall come into force on the date of their publication in the Rajasthan Gazette."

6. The Rajasthan Sales Tax Rules Validating Ordinance No. 5 of 1959 was promulgated on November 6, 1950 and it was followed by the Rajasthan Sales Tax Rules Validating Act, 1959 (Rajasthan Act No. 43 of 1959). Section 3 of this Act provides:

"3. Validating of operation of the rules. -Notwithstanding any defect or want of form or procedure and notwithstanding anything contained in the Act or the Rules or in any other law or instrument or in any decision or order of any court,-

(a) the Rules shall be deemed to have come into force on the 1st day of April, 1955, the date on which the Act came into force, and

(b) every subsequent amendment of the Rules shall be deemed to have come into force on the date specified for the coming into force thereof or, in case no such date was specified, on the date on which such amendment was notified in the Rajasthan Gazette." Section 4 states:

"Amendment of Section 26, Rajasthan Act 29 of 1954.-In sub-section (5) of Section 26 of the Act, the words 'from such date as may be notified in this behalf shall be omitted and shall be deemed always to have been omitted.'"

7. In support of this appeal the Solicitor-General put forward the argument that the High Court was in error in holding that the orders of penalty dated December 19, 1956 and January 25, 1957 were illegal as they were in violation of the guarantee in Article 20(1) of the Constitution. It was submitted: (1) that the Act and the Rules were legally operative with effect from April 1, 1955 by reason of Section 22 of the General Clauses Act read with Section 29 of the Act. (2) In any event, the Rules even if they were not initially valid, were subsequently validated by the Rajasthan Sales Tax Rules Validating Ordinance No. 5 of 1959 and the Rajasthan Sales Tax Rules Validating Act No. 43 of 1959 which were retrospective in character. (3) The imposition of penalties upon the Company under Section 16 (1) of the Act did not fall within the provisions of Article 20(1) of the Constitution and was not barred by that Article. In our opinion, the argument addressed by the Solicitor-General on the first point is well founded and must be accepted as correct and the appeal must be allowed and the judgment of the Rajasthan High Court should be set aside on that ground alone. It is therefore not necessary for us to express any opinion on the second and third questions raised by , the Solicitor-General in the course of his argument.

8. It is apparent that Section 22 of the General Clauses Act expressly confers on the rule-making authority, where there is an interregnum between the date of the commencement of the Act and the date of its enforcement, the power to make rules even during such interregnum. But the section provides that the rules so made or issued shall not take effect till the actual enforcement of the Act. In the present case the Rules were published by the Rajasthan Government in the Rajasthan Gazette on March 28, 1955 before the Act came into force. On behalf of the respondent the argument was stressed that there was no Act in force on March 28, 1955 and so no Rules could be framed or published on that date. It was also pointed out that after the Act came into force i. e., from April 1, 1955 no rules were framed in exercise of the powers conferred by the Act. There is no substance in the argument of the respondent because Section 29 of the Act makes the provisions of the General Clauses Act, 1897 (Act X of 1897) applicable for the interpretation of the Act in the same manner as they apply for the interpretation of a Central Act. Under Section 22 of the General Clauses Act power is expressly conferred on the rule-making authority to make rules even before the date of the commencement of the Act but the rules so made shall not take effect till the actual enforcement of the Act. It is apparent that in the present case, by the application of Section 22 of the General Clauses Act the rules published by the Rajasthan Government on March 28, 1955 in the Rajasthan Gazette must be held to be validly made in the exercise of the rule-making power of the State Government. It was pointed out by the respondent that Rule 1 provides that "the Rules shall come into force on the date of the publication in the Rajasthan Gazette" i. e. on March 28, 1955. But this is contrary to the provisions contained in Section 22 of the General Clauses Act. It is, however, a

well-known principle that a statute or statutory rule has to be so read as to make it valid: it has to be construed *ut res magis valeat quam pareat*. The reason is that no intention can be imputed to the legislative authority that it would exceed its own jurisdiction. It follows therefore in the present case that by reason of Section 22 of the General Clauses Act rules published by the Rajasthan Government on March 28, 1955 in the Rajasthan Gazette must be held to be validly made in exercise of the rule-making power of the State Government but they would be deemed to be not in force for the period between March 28, 1955 to March 31, 1955. We consider that the rules should be deemed to have validly come into effect from April 1, 1955. We accordingly overrule the view taken by the High Court on this aspect of the case.

9. It was, however, argued by Mr. Bhargava on behalf of the respondent- company that Section 22 of the General Clauses Act cannot be applied for the interpretation of the Act because Section 22 did not fall within the group of Sections, viz., Sections 5 to 13 of the General Clauses Act dealing with "General Rules of Construction" but fell within another group of sections under the heading 'Provisions as to Orders, Rules, etc. made under Enactments'. We are unable to accept the argument of Mr. Bhargava as correct. Section 22 of the General Clauses Act is couched in language similar to that of Section 37 of the Interpretation Act, 1889 (52 and 53 Viet. C. 63) which states:

"37. Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any order in council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until 'the Act comes into operation.' The preamble of the English Act reads:

"An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Act of Parliament". Section 37 of the English Act falls within the group of sections under the heading "New General Rules of Construction." The Indian Act is based upon the English Act of 1889 and incorporates such of its provisions as are applicable to India. It is therefore not possible for us to accept the argument put forward on behalf of the Company that Section 22 of the General Clauses Act is not a section dealing with interpretation or that it is not attracted by the language of Section 29 of the Act. It was then argued for the respondent-company that Section 22 of the General Clauses Act may like Section 37 of the English Act be a section dealing with a rule of construction but it was not a section dealing with a rule of interpretation as contemplated by Section 29 of the Act. We do not agree with this contention. In our opinion, the word "interpretation" in its context of Section 29 of the Act also includes

within its scope "construction". As observed by Kocourek:

"Interpretation is the meaning of a fact. As applied in the law, interpretation is ascertainment always of a complex fact such as the meaning of a custom, of a judicial decision, of a statute, of a regulation, of a contract or of a will. The method by which interpretation is reached is construction. Construction therefore is the means of interpretation and interpretation is the end. These definitions are not settled in usage. Thus, it may be found what here is called 'interpretation' is also called 'construction' and vice versa."

(An Introduction to the Science of Law- Kocourek, Section 41, p. 191.) We are therefore of the opinion that Section 22 of the General Clauses Act (corresponding to Section 37 of the English Act) is a section dealing not merely with construction but with interpretation and it follows that the provisions of that section are applicable for the interpretation of the Act in view of the requirement of Section 29 thereof. In our opinion, Mr. Bhargava is unable to make good his argument on this aspect of the case.

10. For the reasons expressed we hold that the judgment of the Rajasthan High Court dated April 3, 1965 should be set aside and that Civil Writ Petition No. 401 1963 filed by the respondent should be dismissed. We accordingly allow this appeal with costs.