Hyderabad Chemical And Pharmaceutical ... vs State Of Andhra Pradesh And Ors. on 20 March, 1964

Equivalent citations: AIR1964SC1870, [1964]7SCR376, AIR 1964 SUPREME COURT 1870

Bench: P.B. Gajendragadkar, K.N. Wanchoo, N. Rajagopala Ayyangar, J.C. Shah, S.M. Sikri

JUDGMENT

Wanchoo, J.

1. These are five connected appeals on certificates granted by the High Court of Andhra Pradesh. They involve a common question of law and will be dealt with together. The brief facts necessary to understand the question of law raised in these appeals are these. The appellants manufacture medicines in which they have to use alcohol. Before Parliament passed the Medicinal and Toilet Preparations (Excise Duties) Act, No. 16 of 1955, (hereinafter referred to as the Act), the appellants were working under licences granted under the Hyderabad Abkari Act, No. 1 of 1316-F. Under that Act certain rules called the Medical Preparations and Spirituous Rules, 1345-F were framed and r. 36 thereof provided that "the expenses of the establishment for the supervision of the work shall be borne by the pharmaceutical laboratory (licensee) as per the decision of the Commissioner Excise". It appears that for the manufacture of medicines, the appellants used to be supplied with alcohol. Further the State Government posted on the bonded manufacturies of the appellants certain supervisory excise staff, and r. 36 was obviously framed to re-imburse the Government for expenses incurred in that behalf. After the Act came into force from April 1, 1957, the appellants who were manufacturing medicinal preparations were governed by it and the Rules framed thereunder and took licences under the Act. The appellants then contended that as the Act had repealed all previous provisions with respect to medicinal preparations, they were no longer bound to pay the charges prescribed under r. 36 of 1345-F Rules. Their contention was that this rule along with such provisions of the Hyderabad Abkari Act, which concerned medicinal preparations were repealed by the Act and the Rules framed thereunder. The State Government could therefore no longer ask they to pay the costs of the establishment posted at their bonded manufacturies for supervision . The appellants thereupon filed writ petitions in the High Court challenging the levy of these charges.

2. The petitions were opposed on behalf of the State and its contention was that even though the Act and the Rules framed thereunder had come into force from April 1, 1957, r. 36 of the 1345-F Rules continued and was not repealed by the Act and the Rules framed thereunder, and the State was entitled to the expenses of the supervisory staff and could realise it from the appellants.

3. The High Court held that r. 36 could not be said to have been repealed by the Act and the Rules framed thereunder and was till good law. In this connection the High Court pointed out that the Hyderabad Abkari Act was not concerned only with medicinal preparations but was a general Act dealing with excise including alcohol, and that alcohol in the ultimate analysis was liquor; therefore the State Government which supplied alcohol to the appellants for the purpose of making medicinal and toilet preparations for which no duty was paid was entitled to see that the alcohol was not used for purposes other than that for which it was supplied to the appellants. Accordingly the High Court held that r. 36 of the 1345-F Rules was designed to achieve this object, under the general law of excise contained in the Hyderabad Abkari Act, and was therefore good. In consequence the writ petitions were dismissed. The appellants then applied for certificates to appeal to this Court, which were granted; and that is how the matter has come up before us.

4. The only question that falls for consideration therefore is whether after the coming into force of the Act and the Rules, r. 36 of the 1345-F Rules can still be said to survive. There is no doubt that the Hyderabad Abkari Act was a general Act and before the Constitution came into force, r. 36 of the 1345-F Rules would be good law. Under the Constitution, however, medicinal and toilet preparations came under entry 84, List I of the Seventh Schedule to the Constitution, which provides for duties of excise on tobacco and other goods manufactured or produced in India, except -

> (a) alcoholic liquors for human consumption;
>
> (b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance containing opium, Indian hemp and other narcotic drugs and narcotics. No charge could thereafter be levied on the manufacture of medicinal preparations except by the Union in the shape of duties under item 84 of List I. But under Art. 277 of the Constitution "any taxes, duties, cesses or fees, which, immediately before the commencement of this Constitution were being lawfully levied by the Government of any State.....may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law". In view of this provision, all duties and charges levied by the State before the coming into force of the Constitution on the manufacture of medicinal preparations could continue to be levied until law was made by Parliament otherwise. It is not in dispute that the Act came into force from April 1, 1957 and is a law made otherwise by Parliament within the meaning of Art. 277, and therefore duties and other charges levied by the State in connection with medicinal preparations could no longer be levied by it. Further the Act specifically provides in s. 21 that "if, immediately before the commencement of this Act, there is in force in any State any law corresponding to this Act, that law is hereby repealed". It is true that the Hyderabad Abkari Act was a general law which was concerned with liquor and intoxicating drugs generally; it thus applied to alcohol also (treating it as liquor) used for manufacturing medicinal preparations. The effect of s. 21 therefore is that so far as the Hyderabad Abkari Act applied to the use of

alcohol, treating it to be liquor, in the manufacture of medicinal and toilet preparations, the Hyderabad Abkari Act must be deemed to have been repealed to that extent only by s. 21.

5. Reliance is placed on behalf of the State on the proviso to s. 21, which lays down that "all rules made,.....under any law hereby repealed shall, so far as they are not inconsistent with this Act, have the same force and effect as if they had been respectively made.....under this Act and by the authority empowered hereby is in that behalf." It is therefore contended that by virtue of the proviso to s. 21, r. 36 of the 1345-F Rules must be deemed to continue. We are of opinion that there is no force in this contention. Rules were framed under the Act in 1956 and came into force along with the Act. Rule 143 of these Rules provides that all rules made under any law corresponding to the Act in force in any State are hereby repealed except as respects things done or omitted to be done before such repeal. Consequently all rules framed for the purpose of the manufacture of medicinal preparations came to an end in view of r. 143 of 1956 Rules. Therefore r. 36 of 1345-F Rules, which appears in the Medicinal Preparations and Spirituous Rules must be held to be no longer good law so far as it applies to medicinal preparations. That is one reason why we consider that r. 36 must be held to have been repealed after the coming into force of the Act and the Rules framed thereunder. The proviso to s. 21 on which reliance has been placed cannot change the position in view of the new Rules framed in 1956 with respect to medicinal preparations. As soon as the new Rules came into force the old rules must fall and there is a specific provision in the new Rules (namely r. 143) which says that all rules made under any law corresponding to the Act are hereby repealed.

6. We may refer in this connection to the construction of r. 36 of the Rules of 1345-F. It provides that the expenses of the establishment for the supervision of the work shall be born by the pharmaceutical laboratory. The establishment which has to be paid for under r. 36 therefore is for the supervision of the work done by the pharmaceutical laboratories. Now the work done by a pharmaceutical laboratory is to manufacture medicinal preparations. Rule 36 therefore provides that expenses of the establishment for the supervision of the work of medicinal preparations manufactured by pharmaceutical laboratories have to be paid by the laboratory concerned. The supervisory staff which has to be paid for under r. 36 therefore is meant for the supervision of the manufacture of medicinal preparations and it is for that purpose only that expenses have to be borne by the laboratory concerned. The purpose of the rule therefore is clearly covered by the Act and the Rules framed thereunder and it cannot survive the Act and the Rules in view of s. 21 of the Act and r. 143 of the 1956-Rules, and the proviso to s. 21 cannot be availed of by the State.

7. This brings us to the alternative argument on behalf of the State, namely, that in any case the rule still remains good because it is meant to carry out the general purpose of the Hyderabad Abkari Act, namely to see that unauthorised sale of alcohol is not made for human consumption by the laboratory to which it is supplied for purposes of manufacture of medicinal preparations. Therefore it is said that the rule is good inasmuch as it is concerned with the enforcement of the general law relating to alcohol and intoxicating drugs contained in the Hyderabad Abkari Act. We are of opinion that there is no force in this convention either. In the first place, as we have already indicated, the main object of the supervisory staff mentioned in r. 36 is to supervise the manufacture of medicinal preparations. In that connection the supervisory staff will certainly see that the alcohol supplied is

used for the purpose for which it is supplied and is not used in any other manner. Rule 36 is only concerned with seeing that the manufacture of medicinal preparations is made properly and is done under the supervision of the establishment attached to each laboratory; and it is only incidentally that in that connection the establishment is also to see that the alcohol supplied is not used otherwise than for the purpose of manufacture. That however will not make the rule good under the Hyderabad Abkari Act, which deals with alcohol and intoxicating drugs generally.

8. What we have said above is borne out if we look at the 1956-Rules. Rule 20 provides that in case of manufacture in bond (and we are concerned in the present appeals with such manufacture) alcohol on which duty has not been paid shall be used under excise supervision. Rules 42 provides that "it shall be open to the Excise Commissioner to determine the size of the supervisory staff in consultation with the licencee." It is clear therefore that under the 1956 Rules supervisory staff is attached to bonded manufacturies which manufacture medicinal preparations. This is also the purpose of r. 36. Further r. 141 provides that "the licencee of a bonded manufactory or warehouse shall, where so required by the Excise Commissioner, provide the officer and the staff posted to the manufactory or bonded warehouse with suitable lodging conveniently situated to the factory or bonded warehouse premises at a rent not exceeding 10 per cent of the pay of each officer so accommodated. If for any reason the licencee is not able to provide such accommodation he shall provide suitable accommodation to the satisfaction of the Excise Commissioner near the manufactory or bonded warehouse recovering only 10 per cent of the pay of the occupant." Then r. 45 provides that "the officer-in-charge shall exercise such supervision as is required to ensure that alcohol issued for a certain preparation is added to the materials which go to make that preparation and that no portion of such alcohol is diverted to other purpose." It is clear therefore from these rules that the supervisor staff is attached to a boned manufactory for the purpose of supervision to see that the manufacture is carried on properly and also to see that alcohol issued for the purpose of manufacture is not diverted to any other use. We cannot therefore accept the argument that simply because the supervisory staff has got to see that alcohol supplied, assuming it to be liquor, is not misused, r. 36 is still good law because its purpose is to see that the general law relating to alcohol and intoxicating drugs contained in the Hyderabad Abkari Act is carried out. As the 1956-Rules show it is the duty of the supervisor staff attached to a bonded manufactory to see that the manufacture is properly made and that alcohol supplied is not diverted to any use except that of the manufacture of the preparation. This being the purpose of the 1956-Rules, the levy under r. 36 of 1345-F cannot be justified on the ground that under that rule the supervisory staff has to see that the general law relating to alcohol and intoxicating drugs is not violated. There is no doubt that the field covered by r. 36 of the 1345-F Rules is completely covered by the Rules framed under the Act and therefore r. 36 can no longer be justified as good under the general law relating to alcohol and intoxicating drugs. We may add that the Act or the 1956 Rules make no provision for any such charge as is provided in r. 36 of 1345-F Rules, the intention being that the duty under the Act will cover all expenses for enforcing it. The fact that members of the supervisory staff are the servants of the respondent makes no difference because they function under the Act and the rules framed thereunder and not under the Hyderabad Act. We are therefore of opinion that reading s. 21 of the Act and r. 143 of the Rules framed thereunder, r. 36 of 1345-F Rules must be held to have been repealed and that it is not saved by the proviso to s. 21. We therefore allow the appeals, set aside the orders of the High Court, and direct the issue of writs as prayed for. The appellants will get their

costs from the respondents - one set of hearing costs.

9. Appeals allowed.