

Supreme Court of India

Hindustan Sugar Mills Ltd vs State Of U.P on 26 April, 1994

Equivalent citations: 1994 SCC (4) 149, 1994 SCALE (2)775

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

HINDUSTAN SUGAR MILLS LTD.

Vs.

RESPONDENT:

STATE OF U.P.

DATE OF JUDGMENT 26/04/1994

BENCH:

MOHAN, S. (J)

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MOHAN, S. (J)

MUKHERJEE M.K. (J)

CITATION:

1994 SCC (4) 149

1994 SCALE (2)775

ACT:

HEADNOTE:

JUDGMENT:

ORDER K. JAYACHANDRA REDDY, J.- In Ibrahim Bachu Bafan v. State of Gujarat' and in Amir Shad Khan v. L. Hmingliana² two Benches consisting of three Judges in each of these two cases held that the detaining authority under the COFEPOSA Act has also the power to revoke the detention order made by it by virtue of the power conferred by Section 21 of the General Clauses Act read with Section 11 of the COFEPOSA Act and that the power of revocation conferred by Section 11 of the Act has nexus with the right of representation conferred on the detenu by Article 22(5) of the Constitution. Thus, according to the view taken in these two cases, the power of + From the Judgment and Order dated 27-10-1993 of the Bombay High Court in Crl. W.P. No. 1092 of 1993 1 (1985) 2 SCC 24: 1985 SCC (Cri) 149 2 (1991) 4 SCC 39 : 1991 SCC (Cri) 946 revocation can be exercised by the three authorities namely the officer of the State Government or that of the Central Government and the State Government as well as the Central Government and such power of revocation is independent of the power of revocation conferred by Section 8(f) on the appropriate Government after the opinion is rendered by the advisory board.

2. In *State of Maharashtra v. Sushila Mafatlal Shah*³ a Bench of two Judges has taken a contrary view. It appears that *Ibrahim Bachu Bafan* case, decided by a Bench of three Judges which was earlier in point of time was not brought to the notice of the Bench of two Judges which decided the above case. The Bench of two Judges held that even if an order of detention is made by a specially empowered officer of the State Government or the Central Government, such order of the specially empowered officer acquires "deemed approval" of the State Government or the Central Government, as the case may be, automatically and therefore the representation can be made only to the State Government or the Central Government, as the case may be and not to the officer making the order of detention.

3. There appears to be an apparent conflict between the two views. Since this is an important question, we think that the conflict has to be resolved by a larger Bench. Consequently the papers may be placed before Hon'ble the Chief Justice of India for referring this matter to a Bench of five Judges.

4. Learned counsel for the petitioner submits that since the matter is not going to be decided by the larger Bench in the near future, the period of detention of one year will come to an end even by the end of July 1994 since the detenu is in jail for the last eight months. He therefore submits that the petitioner may be granted interim bail or may be released on parole till the matter is decided by the larger Bench. In such matters of detention, we are of the view that it is not appropriate for this Court to grant interim bail or parole. It is open to the petitioner to approach the Government or the appropriate authority and seek parole.

ORDER

1. This is a sequel to the judgment of this Court in *Synthetics & Chemicals Ltd. v. State of U.P.*¹ At SCR p. 682 it was, observed: (SCC pp. 158, 159, para 88) "On an analysis of the aforesaid decisions and practice, we are clearly of the opinion that in respect of industrial alcohol the States are not authorised to impose the impost they have purported to do. In that view of the matter, the contentions of the petitioners must succeed and such impositions and imposts must go as being invalid in law so far as industrial alcohol is concerned..... On this view it was further declared at pp. 682-683: (SCC p. 159, para 89) "We must, however, observe that these imposts and levies have been imposed by virtue of the decision of this Court in *Synthetics & Chemicals Ltd. case*'. The States as well as the petitioners and manufacturers have adjusted their rights and their position on that basis except in the case of *State of Tamil Nadu*. In that view of the matter, it would be necessary to state that these provisions are declared to be illegal prospectively. In other words, the respondent States are restrained from enforcing the said levy any further but the respondents will not be liable for any refund and the tax already collected and paid will not be refunded. We prospectively declare these imposts to be illegal and invalid, but do not affect any realisations already made."

2. Therefore, what Mr Anil B. Divan, learned Senior Counsel, contends is the order made by a Bench of three Judges of this Court in *Writ Petition Nos. 7452 of 1981 and 3571 of 1982, Sachid Hussain v. State of Up.*² Must apply. According to him, the appellants would not be entitled to refund but at the same time they cannot be subject to liability at present.

3. In opposition to this, it is submitted that because of the stay granted by this Court, the State could not effect recovery. No doubt, on and from 25-10-1989 the appellants may not be liable; but in view of the prospective 1 (1990) 1 SCC 109, 158 : 1989 Supp I SCR 623, 682 2 Writ Petition Nos. 7452 of 1981 and 3571 of 1982 overruling in Synthetics & Chemicals' the levy prior to that period is not, in any manner, affected. As a matter of fact, this Court in several cases has permitted the levy of vend fee prior to 25-10-1989.

4. On a consideration of the above, we are of the view that there is a conflict in regard to the power of the State as to the levy of vend fee prior to 25-10-1989. The above extract by us will clearly indicate that on and from 25-10- 1989, namely, the date of the judgment in Synthetics & Chemicals' the levy of vend fee on industrial alcohol will be clearly illegal but the question is what about the period prior to 25-10-1989? In Writ Petition Nos. 7452 of 1981 and 3571 of 1982 (Sachid Hussain v. State of U.P.2) this Court quashed the recovery order dated 14-9-1981 issued by the Excise Inspector for a sum of Rs 68,200 against the petitioners therein and the respondents (State of U.P. and others) were directed to recover the said amount towards the vend fee for the period from 9-4-1975 to 14-4-1978. This order was passed by a Bench of three Judges.

5. However, there are orders passed by a Bench of two Judges in Civil Appeal No. 485 of 1979 and other connected matters (H.M. Ishaque & Sons v. State of U.P.3) holding thus:

"We may clarify that the effect of the above judgment is that the levy of vend fees in respect of industrial alcohol will become unconstitutional only from the date of the judgment i.e. 25-10-1989. The levy of any vend fee relating to a date prior to 25-10-1989 will be valid and would be recoverable if not already recovered and will not be refundable if already recovered. However, any collection of vend fee relatable to a period on or after 25-10-1989 will be unconstitutional as declared by this Court."

To the same effect is the order made by this Court in Interlocutory Application No. 1 of 1990 in SLP (C) No. 10175 of 1991 dated 11-12-1991. Here again a Division Bench held:

"The contention that the steps for realisation of the vend fee for the period prior to 25-10- 1989 the date on which the decision in Synthetics and Chemicals Ltd. v. State of U.P.1 was rendered by this Court declaring the levy as unconstitutional cannot be proceeded with has to be rejected. The clear directions in the aforesaid judgment paragraph 89, is that the restraint from enforcing the levy is only prospective and the declaration does not affect any realisations already made. Learned counsel for the State has pointed out that in this case an attachment had already been levied and the recovery steps had been stayed only on the application of the petitioner who was directed to furnish bank guarantee and it is not therefore a case of levy being enforced after the decision of this Court. We have been referred to the order in Civil Appeal Nos. 2191-2193 of 1989 that there is no scope for holding that the applicants have been absolved of the vend fee for the earlier period for which bank guarantee were offered.

We do not therefore, see any merit in this petition. It is accordingly dismissed."

6. This conflict, in our considered view, will have to be decided by an appropriate Bench in order that there may be uniformity. Hence, we direct the papers be placed before My Lord the Chief Justice for appropriate orders.