

STATE OF BIHAR AND ORS
v.
BIHAR DISTILLERY LTD. ETC.

DECEMBER 3, 1996

[B.P. JEEVAN REDDY AND K.S. PARIPOORAN, JJ.]

Bihar Excise (Amendment and Validating) Act, 1995—Act of 1995—Validity of Challenged—Price fixation of country liquor by Commissioner of Excise—Enactment of Amending Act to provide statutory basis and legislative impremature to the price fixation done by the Commissioner—Held, enactment not beyond legislative competence of the state, nor violative of fundamental rights nor arbitrary in the facts of the case—Hence the validity cannot be impeached.

Enactment—Constitutionality of—Challenge to—Approach of the court in examining—Held, is to start with the presumption of Constitutionality and not with a view to pick holes, or to search defects of drafting.

Judiciary :- Courts—Duty towards Legislature—The Court must recognise the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the legislative and executive are expected to show due regard and deference for the judiciary.

In a batch of writ petitions, High Court, vide an interim order directed that the supply of country liquors to retailers shall be made directly by the State through its officers. Generally the system was that the wholeseller used to supply the same to the retailers and maintenance of the warehouse used to be his responsibility. As per the direction of the High Court, the State took up the task of wholesale supply and maintenance of warehouse was its responsibility. On 15.12.1989 in a meeting between Excise Officers and representatives of distilleries the cost price of country liquor was agreed to be enhanced and the break up in the cost price, one of the components of which was on account of maintenance charges of ware house was also agreed to by both the parties.

Excise Commissioner directed the Deputy Commissioner to deduct 70 paise as maintenance charge. The distilleries filed writ petition before High Court challenging the direction of the Excise Commissioner which

A was allowed on the ground that the order of deduction by the Excise Commissioner was without jurisdiction as the power to deduct belonged to the Board of Revenue alone. The Governor of Bihar came up with ordinances for amending Bihar Excise Act validating the price fixation by giving it statutory basis. Pursuant to it Bihar Excise (Amendment and Validating) Act, 1995 was enacted. The writ petition before High Court challenging the validity of the above Act as well as the Ordinance, was allowed.

C In appeal to this Court the appellant State contended that the deduction was justified in view of the fact that the warehouse belonged to and were maintained by the State and that the break up of the cost price was agreed to between the two parties in the meeting.

Allowing the appeal, this Court

D HELD : 1. The Amending Act 9 of 1995 being Bihar Act 9 of 1995 is neither unconstitutional nor it is ineffective to achieve the objective it set out to achieve the object set out in the Preamble. The validity of the amending Act cannot be impeached. All that it does is to provide statutory basis and legislative imprimatur to the price fixation done by the Commissioner and its breakup. It also provides for recovery and deduction of the 0.70 paise component on account of maintenance charges of warehouses. It can neither be suggested that the Bihar legislature did not have the legislative competence to enact the said Amending Act nor can it be suggested that the Act violates any of the fundamental rights enshrined in Part III. An act of Legislature cannot be struck down merely saying it is arbitrary and the charge of arbitrariness also does not appeal to be justified in the facts and circumstances of the case. [498-A-B; 497-E-H]

State of A.P. And Others v. McDowell & Company and Others, [1996] 3 SCC 709, referred to.

G 2. The approach of the Court, while examining the challenge to the constitutionality of an enactment is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Any such defects of drafting should be ironed out as

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part of the attempt to sustain the validity/Constitutionality of the enactment. An Act made by the Legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared void. The same approach holds good while ascertaining the intent and purpose of enactment or its scope and application. [494-H; 495-A-B]

Charanjit Lal Chowdhary v. Union of India, AIR (1951) SC 41; *Burakur Coal Company v. Union of India*, AIR (1961) SC 654; *Ram Krishan Dalmia etc. v. Justice S.R. Tendulkar & Others*, AIR (1958) SC 538 and *Seaford Court Estates Ltd. v. Asher*, [1949] 2 K.B. 481, referred to.

3. Court must recognise the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the Legislature and Executive are expected to show due regard and deference to the Judiciary. The constitution recognizes and gives effect to the concepts of equality between the three wings of the State and the concept of 'checks and balances' inherent in such scheme. [495-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15112-15 of 1996.

From the Judgment and Order dated 5.1.96 of the Patna High Court in C.W.J.C. No. 1773, 4272, 2233 and 5828 of 1994.

S.B. Sanyal and B.B. Singh for the Appellants.

Y.V. Giri, Jyoti Saran and Praveen Kumar for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted.

The distribution and sale of country liquor in the State of Bihar is regulated by the Bihar Excise Act, 1915 and the rules made thereunder. It was a two-tier system. The wholesale dealers (contractors) were lifting the liquor from the distilleries and supplying it to the retailers. Both the wholesale dealers and retailers were selected on the basis of auction/tender process. The price at which the wholesaler supplied the country liquor from the warehouse to the retailer was fixed by the Government either statutorily or on the basis of negotiations between the wholesalers (con-

A tractors) and the Government. The price so determined was known as the cost price of country liquor which was payable by the retailer at the time of taking delivery from the concerned warehouse. The maintenance of warehouse was the responsibility of the wholesale supplier (Contractor).

B In the year 1989, a batch of writ petitions, C.W.J.C. No. 4722 of 1989 and others, were filed in the Patna High Court. The High Court made interim orders in those writ petitions directing that till the contract is settled and until further orders from the Court, the supply of country liquor to the retailers shall be made directly by the State through its officers. In view of the said orders the Government was obliged to undertake the supply of country liquor from the warehouses maintained by it to the retailers. Even after the said batch of writ petitions were disposed of, the practice of the Government undertaking wholesale supply of country liquor to retailers continued for some time. This happened during the period commencing on July 1, 1989, and ending with March 31, 1992. (These facts are taken from the preamble to the impugned Amendment Act being Bihar Act 9 of 1995.)

D On December 15, 1989, a meeting was held between the Excise Officers of the State and the representatives of the distilleries to determine the cost price of country spirit/liquor. The representatives of the distilleries pleaded that since the cost of price of rectified spirit has been increased by the Government of India Under Ethyl Alcohol (Price Control) Order, the cost price of country liquor should also be increased. They also pleaded that in view of the levy of sales tax at the rate of 16% on the rectified spirit earmarked for country spirit/liquor, with effect from December 1, 1989, and the rise in price index over the years, the cost price of country liquor should be enhanced. The Member, Board of Revenue who was representing the Government side at the said meeting agreed that in view of the enhancement of the price of ethyl alcohol and levy of sales tax on rectified spirit and other incidentals, the price of country-liquor deserves to be enhanced. The last para of the minutes of the meeting reads thus:

G "As per discussion between representatives of the Distillers and Departmental representatives, the Member, Board of Revenue suggested certain components for proper consideration and fixation of cost price of spirit by following ways :"

H On February 19, 1990 the Excise Commissioner, Bihar addressed a

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letter to all the distilleries fixing the cost price of country liquor. Having regard to the crucial relevance of this letter it would be appropriate to extract the letter in full. A

"Patna, dated 19th February, 1990

Sub : *Meeting between Excise Officers and representatives of distilleries on 15.12.1989 presided by Member, Board of Revenue : regarding refixation of cost price of country spirit/liquor.* B

Sir, C

Your attention is drawn towards the subject noted above, and to state that the Government has taken a decision to fix the *cost price of rectified spirit to be supplied as country spirit/liquor from the country spirit warehouses with immediate effect @ Rs. 3.42 (Rupees three and paise forty-two only) for L.P. Litre by following components :-* D

(i) Cost of Spirit	Rs. 1.72 per L.P.L.	
(ii) Transport/Working Wastage, etc.	Rs. 0.08 -do-	
(iii) Sales Tax	Rs. 0.27 -do-	E
(iv) Transportation Charges of spirit	Rs. 0.45 -do-	
(v) <i>Maintenance charge of spirit/liquor warehouses (expenses on coolies wages/ house-rent/electric charges/expenses on communications/Water taxes, etc.)</i>	Rs. 0.70 -do-	F
(vi) Dividend	Rs. 0.20 -do-	

Total : Rs. 3.42 per L.P.L. G

(Rupees three and paise forty-two only)

2. *If you are ready to supply the rectified spirit to the country, spirit/liquor Warehouses from your distilleries, then please give your written consent at once accordingly. Thereafter necessary* H

A orders will be issued, so that the payment be made after recovery from the retail vendors.

Yours' faithfully,

Sd/-Illegible

(Mehesh Prasad)

B Excise Commissioner, Bihar, Patna"

(The break-up of the cost price of Rs. 3.42 paise per L.P.L. mentioned in the above letter is the very break-up which is said to have been mentioned at the end of the Minutes of the Meeting dated 15.12.1989.)

C This letter shows that pursuant to the discussion and negotiations held at the meeting held on 15th December, 1989, the Government fixed the cost price of "rectified spirit to be supplied as country spirit/liquor from the country spirit warehouses" at Rs. 3.42 paise per L.P.L. The break-up of the said price was also mentioned in the letter which includes, "main-
D tenance charge of spirit/liquor warehouses (expenses on coolies wages/house-rent/electric charges/expenses on communications/water taxes, etc.)" at Rs. 0.70. paise per L.P.L.

E On 20th February, 1990 the Commissioner of Excise, Bihar intimated all the Collectors/Deputy Commissioners of the State about the said fixation of the price. The letter reads :

"Patna - Dated 20th February, 1990

Sub : Fixation of the Cost Price of Country Liquor *supplied from Warehouses*

F Dear Sirs,

G With regard to the subject stated above I have been directed to inform you that the matter regarding fixation of the Cost Price of country Liquor supplied from Warehouses was under consideration of the Government. After thorough discussions, *the State Government decided that the Cost price of the Country Liquor supplied from the Warehouses shall be fixed at Rs. 3.42 (Rupees Three and paise forty two only) per L.P. Litre.* This cost price of Country Liquor will be collected from the retail vendors of Country
H liquor from the date of issue of this order.

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As per Board Notification No. 23-17/89-5, dated 19.12.89 for the amendment in Clause No. 15 of Licence Form No. 27, a separate order is being sent to the non-contracted distilleries for payment of the aforementioned Cost price for their supply of Spirit to the Warehouses for manufacture of Country Liquor.

Yours' faithfully,

Sd/-

Illegible

Excise Commissioner, Bihar"

Evidently, supplies were being made by the distilleries as per the letter dated 19th February, 1990.

On 26th July, 1990, the Excise Commissioner, Bihar addressed a letter to all the Collectors/Deputy Commissioners in the State directing them to deduct 70 paise per L.P.L. from the cost price of Rs. 3.42 paise per L.P.L. and remit it to the Government account. Para 2 of the letter which alone is relevant reads thus:

"2. In this context, this is to state that the earmarked component for meeting the expenses of maintenance of warehouses e.g. wages to coolies (engaged in the warehouses), house-rent etc. be deposited under budget head - "8433 - Civil deposit - 800 - other deposit cost price of country spirit/liquor, ganja, etc." After recovering from distilleries or deducting @ Rs. 0.70 paise per L.P.L. from the cost price (Rs. 3.42) so fixed for the rectified spirit which is meant for country spirit/liquor to be supplied from the country spirit warehouses. Payment for the expenditure on day-to-day expenses, e.g. wages to coolies, electricity charges, expenses on communications, water supply tax, etc. has to be made twice in a month from the deposited sum by withdrawing the same as per need and its account has to be kept as per rule. Payment for the maintenance of the warehouses, e.g. house-rent, construction of the building, erection of the Vats, etc. shall be made by withdrawing from the balanced amount after obtaining sanction order from the Excise Commissioner and its account of such expenses shall be kept separately."

Until the receipt of the Commissioner's letter dated 26th July, 1990,

- A the distilleries were being paid at the rate of Rs. 3.42 paise per L.P.L. for the spirit supplied by them. On receipt of the said letter the Collectors/Deputy Commissioners not only started deducting 0.70 paise from the price payable to the distilleries but also called upon the distilleries to refund the excess amount paid to them on that account. The distilleries thereupon approached the Patna High Court by way of a batch of writ petitions challenging the communication/letter of the Commissioner of Excise, Bihar dated 26th July, 1990 and the communications issued pursuant to it. The distilleries submitted that though they demanded the cost price of Rs. 4.00 per L.P.L., the State Government on its own fixed the price at Rs. 3.42 paise per L.P.L. as their letter dated 20th February, 1990.
- B They submitted that the distilleries are entitled to receive at least the said cost price of Rs. 3.42 paise, if not more. They submitted that they are not concerned with the maintenance of warehouses which is the responsibility of the Government and that no amount can be deducted from out of the said cost price on account of maintenance of warehouses. The Government opposed the writ petitions submitting that the aforesaid cost price was fixed in the joint meeting held on 15th December, 1989, that the writ petitioners were party to the said decision including the break-up of the said cost price and that, therefore, they are not justified in opposing the deduction of 0.70 paise on account of the maintenance charges of the warehouses. The High Court allowed the writ petitions on the following reasoning; under Section
- C 90(2) of the Bihar Excise Act, the Board of Revenue is given the power to fix maximum and minimum price of country liquor but the Board has not chosen to exercise that power; instead of doing that the Commissioner of Excise has chosen to issue Annexures 5, 6 and 7 (Annexure 5 is the communication dated 26.7.1990 and Annexures 6 and 7 are the consequential directions/demands made by the Superintendents of Excise); the Commissioner "cannot be said to have exercised the jurisdiction, if any, vested in the Board of Revenue."* Annexures 5 to 7 are not backed by any authority of law and are therefore, unenforceable. The High Court quashed the said orders/communications with the observation that "the Government or the respondents cannot force the petitioners for the refund of the
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* If this reasoning is correct, then the High Court should have held that the very price fixation under the Communication dated 19th and 20th February, 1990 was illegal, but the High Court did not say so. It merely quashed the Communications proposing to deduct 70 paise per L.P.L. out of the aforesaid price. The High Court also did not deal with the argument that the said price was fixed by agreement between the Government and distilleries.

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amount already paid to the petitioner and as a logical conclusion, they are bound to carry out the obligations created earlier by the interim orders of the said Court." A

For some unexplained reasons, the Government of Bihar and its Officials did not choose to appeal against the said judgment, with the result the judgment became final. Contempt petitions were taken out by the distilleries against the Government and its Officials for disobedience to the judgment of the High Court. The Governor of Bihar then came forward with an Ordinance amending the Bihar Excise Act seeking to provide statutory basis to the aforesaid price fixation and the deduction of 70 paise per L.P.L. In other words, the Governor of Bihar sought to remove the defect pointed out by the High Court viz., that the price fixation by the Commissioner was without jurisdiction and that that power belonged to the Board of Revenue alone. By amending the Act itself, the Ordinance sought to validate the said price fixation by treating it as fixation by the Legislative itself. It is stated that one after the other, ordinances were issued to the same effect, until the enactment of the Bihar Excise (Amendment and Validating) Act, 1995 being Act 9 of 1995 in the same terms. The Amending Act was given retrospective effect from 20th February, 1990. The long Preamble to the Amending Act sets out the circumstances in which the Government was obliged to undertake supply of country liquor from the warehouses pursuant to the interim orders of the High Court, the fixation of cost price of country liquor at Rs. 3.42 paise per L.P.L. by agreement between the government and the distilleries, the break-up of the price into several components and the developments leading to the enactment of the Amending Act. Having regard to the contentions urged before us and the findings recorded by the High Court in the order under Appeal, it is necessary to set out the entire Preamble to the Act. It reads : B
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Preamble.- WHEREAS, it is necessary in public interest that out of the cost price of Country Spirit the amount of money earmarked for the maintenance of warehouse be regulated; G

AND, WHEREAS, the price of country spirit to be supplied to the retailer by the Contractor (Wholesale supplier) from the Warehouse belonging to the Contractor or the State or another person, is fixed by the Government of Bihar, on the basis of negotiations between the Contractor and the Government and such H

A price being known as the cost price of country spirit payable by the retailer at the time of taking or issue of Country liquor from the warehouse concerned;

AND, WHEREAS, as a regulatory measure the maintenance of warehouse is the responsibility of the contractor;

B AND, WHEREAS, in the year 1989 in C.W.J.C. No. 4722 of 1989 and other similar cases a situation arose whereby and whereunder the Patna High Court ordered that till contract is settled and till further order from the Court, the supply of country liquor shall be made to the retailers directly by the State through its Officers;

C AND, WHEREAS, in pursuance to the said direction the country liquor had to be supplied from different warehouses situated in the State, by the State Government through its Officers;

D AND, WHEREAS, after the Final Order of the High Court in the above writs in the year 1990 the situation emerged that in certain areas of the State the supply of country liquor to the retailers continued to be made by the State Government through its Officers due to non-functioning of the concerned Contractors;

E AND, WHEREAS, *during this period the warehouses were required to be maintained by the State;*

F AND, WHEREAS, in fixing the price of country liquor to be supplied by the Contractor holding exclusive privilege licence the State Government had taken into account the cost of spirit, the cost of transportation of such spirit, the cost of maintenance of warehouses, sales tax and dividend;

G AND, WHEREAS, while fixing the price of country liquor to be supplied to the retailer, the following components of cost were included in the cost price :-

	Rs.
Cost of Spirit 1.72
Transit/Working wastages 0.08
H Warehouse maintenance charges 0.70

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Transportation charges	0.45	A
Sales Tax	0.27	
Dividend	0.20	
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Total	3.42	
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AND, WHEREAS, in February 1990 the Government had decided that country spirit would be supplied at the rate of Rs. 3.42 per L.P. Litre which include Rs. 0.70 per L.P. Litre as maintenance charge of warehouses; B

AND, WHEREAS, the amount deposited by the retailers as price of country spirit was to be deposited in Treasury through Bank draft and thereafter the Distillers (Suppliers) were to be paid the amount after deduction of the component of price meant for maintenance of warehouse, that is Rs. 3.42-0.70 = Rs. 2.72; C

AND, WHEREAS, *in some cases by mistake the entire amount of Rs. 3.42 was paid to the Distillers (Suppliers);* D

AND, WHEREAS, some of the Distillers (Suppliers) challenged the authority of the State regarding deduction of warehouse maintenance charges from the cost price fixed for supply of country spirit to warehouses; E

AND, WHEREAS, in C.W.J.C. No. 6863/90 and in other similar writ petitions the Court held that in the absence of Rules the State Government is not authorised to fix the price of country spirit and to make deductions of maintenance of warehouses charges therefrom; F

AND, WHEREAS, it has become necessary to levy and validate the deduction/realisation of warehouse maintenance charges from the cost price of the country spirit fixed by the State in the year 1990; G

Be it enacted by the Legislature of the State of Bihar in the forty sixth year of the Republic of India as follows."

Section 2 of the Amending Act added Section 22-A to the Excise Act. Section 22-B contains the validation clause while Section 22-C gives H

A overriding effect to the Amending Act over any judgment, decree and order of the Court or any other law for the time being in force. The said Sections read as follows :

B "22-A. The fixation of cost price of country liquor, by the State Government. - (1) The State Government, while granting exclusive privilege of manufacturing supplying wholesale or of selling wholesale or retail of country liquor may fix the cost price which includes the price of the spirit, the transportation charges, warehouse maintenance charges, taxes, if any, and other charges, such as bottling, packing etc. and dividend.

C (2) Any person to whom the State Government has granted exclusive privilege of manufacturing, supplying wholesale or selling wholesale or retail country liquor *during the year 1990 wherein the cost price of the country liquor was fixed by the State Government* taking different components into account including warehouse maintenance charges at the rate of 70 paise per L.P. Litre *shall be deemed to have been fixed under this Section.*

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E 22-B. Validating of cost price of country liquor and realisation of warehouse maintenance charges.- (1) Notwithstanding any judgment, decree or order of any court, Tribunal or Authority *the price of country spirit, including the warehouse maintenance charges at the rate of 70 paise per L.P. Litre fixed during the year 1990 shall be deemed to have been fixed under this Act* and any amount collected from the retailer as a cost price of country liquor per L.P. Litre shall be paid to or payable to the Contractor (Distiller/Supplier) after deducting at the rate of 70 paise per L.P. litre as the maintenance charges of the warehouses and the said amount shall not be payable to the Contractor (Distiller/Supplier).

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G (2) *The amount so collected shall be deemed to have been collected under the provision of this Act* and the said amount of warehouse maintenance charges shall not be refundable and no Court, Tribunal or Authority shall order for refund of such amount;

H Provided that where the amount collected from the retailer has been paid to the Contractor (Distiller/Supplier), the State Government shall realise such amount from the Contractor (Distiller/Sup-

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plier and the Contractor shall be required to refund the said amount to the State Government; A

Provided further, that the State Government may adjust, the said amounts from any amount due or payable to the Contractor by the Government; B

Provided also that the said amount shall be spent by orders of the Excise Commissioner under administrative instructions issued for the maintenance of warehouses; C

Provided further also, that any amount realised on account of warehouse maintenance charges but refunded to the supplier, under the order of any Court, Tribunal or Authority shall be refunded by the Supplier and the State Government shall recover the same from the Contractor (Distiller)/Supplier as arrears of revenue. D

22-C. *Overriding effect of the Act.*- Notwithstanding anything to the contrary contained in any judgment, decree or order passed by any Court and in any other law for the time being in force, the provisions of this Act shall have the effect." E

(emphasis supplied) E

The portions underlined by us clearly bring about the scope and intendment of the Amending Act. To repeat, it is to vest the price fixation done by the Commissioner of Excise, under his letters dated 19th and 20th February, 1990 with the legislative authority; that fixation shall be deemed to have been done by the Legislature itself. F

Another batch of writ petitions was filed by the distilleries challenging the validity of the Ordinance and the Amending Act. This batch of writ petitions have also been allowed by the Patna High Court under the judgment and order impugned herein. The basis upon which the High Court has allowed the writ petitions, without declaring the Amending Act as invalid, is better set out in their own words. The High Court said : G

"12. It will be evident from Section 22-A aforesaid that the same relates to manufacture/sale of 'country liquor'. So far as Section 22-B is concerned, therein the words 'country liquor' have not been H

A mentioned, nor the words 'rectified spirit'/Commercial spirit' has
 been mentioned, rather the 'country spirit' has been mentioned
 therein. When query was made from the learned Advocate
 General, as to what is 'country spirits', learned Advocate General
 B submitted that the same is, in fact, 'country liquor' and not 'rec-
 tified spirit' from which the 'country liquor is prepared. It was
 accepted at the Bar by the learned Advocate General that the
 Hindi version of the Act 9/95 is the original one, wherein the words
 'DESHI SARAB' has been mentioned, which means 'country
 liquor' and not the rectified spirit.

C 13. From the aforesaid plain reading of the provisions of Act
 9/95, particularly, the Hindi version, it will be manifest and clear
 that the Act in question has been promulgated with respect to the
 manufacturers/dealers of 'country liquor'. No provision has been
 laid down therein with respect to manufactures of 'rectified
 D spirit'/commercial spirit', which is the original raw material
 manufactured by the petitioners and supplied to the Respondents
 No rate has been fixed by the State Government with respect to
 such 'rectified spirit' by the impugned Act 9/95 and/or earlier
 E ordinances. Thereby, I hold that the impugned Act 9/95 is not
 applicable to the petitioners, who supplied 'rectified spirit' to the
 State in their Warehouses.

F It is for the said reason, the question of declaring the impugned
 Act as ultra vires does not arise, in the present case, and for similar
 reason, there is no necessity of giving any specific finding with
 respect to the first three issues raised by the counsel for the
 petitioners."

G The High Court also made certain observations as to the quantity of
 the rectified spirit required for obtaining 1 L.P.L. of country liquor, the
 cost structure of the country liquor as well as to the absence of the power
 in the State to fix the price of rectified spirit.

H Mr. S.B. Sanyal, the learned counsel for the State of Bihar assailed
 the judgment of the High Court on various grounds. He submitted that
 since the warehouses belong to and are maintained by the State Govern-
 ment, the State Government was fully justified in seeking to deduct 0.70
 H paise per L.P.L. on account of the maintenance of warehouses. Counsel

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submitted that the break-up of the cost price of the country liquor was agreed to between the two parties and that one of the components of the said cost price was the item of 0.70 paise per L.P.L. on account of maintenance charges of warehouses, which fixation has now been validated by the Amending Act removing the defect pointed out by the High Court in its first judgment. In this view of the matter, he submitted, the distilleries cannot legitimately resist the deduction of 0.70 paise. Counsel submitted that the High Court has not really appreciated the true nature and character of the price fixation done by the Commissioner of Excise and the Amending Act and has allowed the writ petitions adopting a highly technical approach and on a totally erroneous basis. Mr. Y.V. Giri, learned counsel for the respondents distilleries, however, supported the reasoning and conclusion of the High Court. He submitted that the distilleries have nothing to do with the supply of country liquor to the retailers. According to him, the distilleries manufacture only the rectified spirit and that alone is sold by them to the Government. Counsel submitted that for obtaining one litre of country liquor, 1/4th litre of rectified spirit is required and that the price of Rs. 3.42 paise per L.P.L. represents the cost of said quantity of rectified spirit required for obtaining 1 litre of country spirit and that, therefore, the claim for deduction of 0.70 paise on account of maintenance charges is wholly untenable and illegal. Counsel submitted that the distilleries have nothing with the warehouses or their maintenance which was the responsibility of the Government during the relevant period. The cost of 1 litre of rectified spirit, he submitted, is much more than Rs. 4.00 and, therefore, the distilleries cannot be asked to supply country liquor at the rate of Rs. 2.72 per L.P.L. (i.e., Rs. 3.42 minus 70 paise). The learned counsel submitted that there was no agreement between the distilleries and the Government with respect to the price of country liquor at the joint meeting held by 15.12.89 and that the distilleries were unaware of the Commissioner's letter dated 19.2.1990 as well as the Commissioner's communication dated 20th February, 1990 referred to above.

We have already set out the substance of the minutes of the meeting held on 15.12.89, the letter dated 19.2.90 (which was issued on the basis of the discussions held at the said meeting) as well as to the letter of the Commissioner dated 20.2.90. The minutes of meeting dated 15th December, 1989 speak of fixation of the cost price of country liquor. The letter dated 19th February, 1990 speaks of "cost price of rectified spirit to be supplied as country spirit/liquor from the country spirit warehouses" while

- A the letter dated 20th February, 1990 speaks of "cost price of country liquor supplied from the warehouses." This mix up of the expressions of "rectified spirit to be supplied as country spirit/liquor" and "country liquor" in the said proceedings/letters may perhaps be for the reason that all that it takes to convert the rectified spirit into country spirit, it is said, is adding of water to rectified spirit. May be or may not be. That is not material for our purposes. What is material is that the price of Rs. 3.42 per L.P.L. said to have been agreed upon at the meeting held on 15th December, 1989, and referred to in the said letters and which cost price has now been legislatively validated, all give the break-up of the said price which includes the figure of 70 paise per L.P.L. on account of "warehouse maintenance charges".
- B Now, it is admitted - indeed, it is the positive case of Mr. Y.V. Giri - that the distilleries have nothing to do with maintenance of warehouses and that they were being maintained by the Government itself during the said period. The preamble to the Amending Act and the amended provisions expressly speak of the said cost price and its break-up. The Amending Act further provides expressly for deduction of the said 70 paise per L.P.L. component for being credited to the government's account. In the face of all these facts, it is difficult to understand on what basis can the distilleries say that the said component of 70 paise should not be deducted. The Amending Act is not taking away anything from the distilleries; it is merely affirming and validating the acts and orders already
- C issued in view of, and with a view to remove, the defect pointed out by the High Court in its first judgment. It cannot be disputed, at this stage, by the distilleries that they were not parties to the meeting held on 15th December, 1989 or that they did not receive the letter of the Commissioner dated 19th February, 1990. If this were so, it is understandable on what basis and at whose request or order, they were supplying the spirit to the distilleries.
- D It cannot but be held in the circumstances that the distilleries accepted the offer contained in the Commissioner's letter dated 19th February, 1990 and were making supplies on the basis of the said letter and the orders placed pursuant to that letter and their acceptance of it.
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- F
- G Now coming to the reasoning in the impugned judgment, we must say with all respect that we have not been able to appreciate it. The approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent
- H possible. It should strike down the enactment only when it is not possible

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to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the Legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application. Now, the result of the impugned Judgment is that the Amending Act has become an exercise in futility - a purposeless piece of Legislation. And this result has been arrived at by pointing out some drafting errors and some imperfection in the language employed. If only the High Court had looked into the minutes of the meeting dated 15th December, 1989 and the two letters of the Commissioner aforementioned, it would have become clear that the Amending Act was doing no more than repeating contents of the said letters and placing the legislative imprimatur on them. As the impugned judgment itself suggests, part of the imperfection of language is perhaps attributable to translation from Hindi to English. Indeed, it is surprising that the Court has not even referred to the long preamble to the Act which clearly sets out the context and purpose of the said enactment. It was put in at such length only with a view to aid the interpretation of its provisions. It was not done without a purpose. To call the entire exercise a mere waste is, to say the least, most unwarranted besides being uncharitable. The court must recognize the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the Legislature and the Executive are expected to show due regard and deference to the Judiciary. It cannot also be forgotten that our constitution recognizes and gives effect to the concept of equality between the three wings of the State and the concept of 'checks and balances' inherent in such scheme.

Though the above propositions are well settled, it may not be out of place to refer to a few decisions. In *Charanjit Lal Chowdhary v. Union of India*, A.I.R. (1951) S.C. 41, Fazal Ali, J. stated. ".....it is the accepted doctrine of the American Courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles". In *Burrakur Coal Company v. Union of India*, A.I.R. (1961) S.C. 654 AT 963,

A Mudholkar, J., speaking for the Constitution Bench, observed : "Where the validity of a law made by a competent legislature is challenged in a Court of law, that Court is bound to presume in favour of its validity. *Further, while considering the validity of the law the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained.*"

B

We may quote the pertinent propositions enunciated in *Ram Krishna Dalmia, Etc. v. S.R. Tendulkar & Others Etc.*, A.I.R. (1958) S.C. 538, to the following effect :

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"(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

D

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and .."

E

We may also refer to the following perceptive observations in the decision of Lord Denning in *Seaford Court Estates Ltd. v. Asher* (1949) 2 K.B. 491 :

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"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized.

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A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He

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must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. That was clearly laid down by the resolution of the judges in *Heydon's case*, and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden Put into homely metaphor it is this : A judge should ask himself the question : If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases."

The above observations have been quoted with approval by this Court in a number of decisions. We felt impelled to reproduce them only because of the kind of approach adopted by the High Court in the Judgment under appeal. It helps to remind ourselves of the above observations from time to time.

Now coming to the validity of the Amending Act we are unable to see on what ground cannot its validity be impeached. All that it does is to provide statutory basis and legislative imprimatur to the price fixation done by the Commissioner and its break-up. It also provides for recovery and deduction of the 0.70 paise component on account of maintenance charges of warehouses. It can neither be suggested that the Bihar Legislature did not have the legislative competence to enact the said Amending Act nor can it be suggested that the Act violates any of the fundamental rights enshrined in para III. The general averment of Mr. Y.V. Giri that the Act is arbitrary is too vague to merit any acceptance, apart from the fact that an act of Legislature cannot be struck down merely saying it is arbitrary - See this Court's Judgment in *State of A.P. and Others v. McDowell & Company And Others* [1996] 3 S.C.C. 709 at 737 to 739, apart from the fact that the charge does not appear to be justified in the facts and circumstances of the case.

For the above reasons, the appeals are allowed, the judgment of the

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A High Court is set aside and it is declared that the Amending Act 9 of 1995, being Bihar Act of 9 of 1995 is neither unconstitutional nor is it ineffective to achieve the objective it set out to achieve - object set out in the Preamble.

B The writ petitions filed by the respondents in the High Court are dismissed. No costs.

K.K.T.

Appeals allowed.