

CASE NO.:
Appeal (civil) 905 of 2002

PETITIONER:
Oma Ram

RESPONDENT:
State of Rajasthan and Ors

DATE OF JUDGMENT: 21/04/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 905 of 2002
With
(CIVIL APPEAL NO.291 OF 2004, CIVIL APPEAL NO.3575 OF
2002, CIVIL APPEAL NO.4562 of 2002 and CIVIL APPEAL
NO.906 of 2002)

Dr. ARIJIT PASAYAT, J.

1. In all these appeals challenge is to the judgment of the Rajasthan High Court at Jodhpur dismissing the writ petitions filed under Articles 226 and 227 of the Constitution of India, 1950 (in short the 'Constitution'). Challenge in the writ petitions was to the vires of certain provision of the Rajasthan Excise Act, 1950 (in short the 'Act'). Essentially the prayers were as follows:

"(a) appropriate writ, order or direction, incorporation of Sec. 54(ka) and Sub-Sections (4) to (9) in Section 69 of the Excise Act may be declared ultra-vires and be struck down;
(b) by an appropriate writ, order or direction, amendment in the Excise Act, 1950 by incorporation of Section 9B may be declared ultra-vires and be struck down;
(c) by a further appropriate, writ, order or direction impugned order dated 16.5.2000, passed by respondent No. 2 may be declared invalid and may be quashed and set aside;
(d) Pending decision, if any further order is made or action is taken prejudicial to the interest of the petitioner, the same may also be quashed and set aside."

2. The contentions raised on behalf of the appellant in the writ petitions challenging the vires of the provisions were founded on the following allegations:

1. The provisions of the amendment are contrary to Article 254 of the Constitution and without the assent of the President those are ultra vires;
2. the amended provisions are repugnant to the provisions of the Code of Criminal Procedure and the Code of Civil Procedure;
3. The amended provisions confer unguided

powers on the Excise Authorities;

4. By Section 9(B) the remedy of judicial review is taken away and the petitioner is remediless."

3. The respondent-State prayed for dismissal of the writ petition on the ground that the Act was within the legislative competence of the State Government under Item 8 read with Items 64 & 65 of List II of the 7th Schedule of the Constitution and is a special Act dealing with right of the State to regulate production, transfer, storage, possession and sale of liquor or intoxicating drugs.

4. The High Court noted that 75 similar petitions were filed before the Jaipur Bench raising similar contentions.

5. Following the view of the Jaipur Bench the Writ Petitions were dismissed by the impugned judgment.

6. In support of the appeals, it was submitted that as per the provisions of Sections 451 to 457 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C'), the criminal court has jurisdiction to release any property seized or recovered during any enquiry or trial. By the insertion of Section 54(A) of the Rajasthan Excise Amendment Ordinance, 2000 which was later on substituted by the Amendment Act Along with Section 54A, Section 69 has also been amended and as per amended sub section (6) of Section 69 it has been provided that whenever any means of conveyance is seized in connection with commission of offence under the Act, the Excise Commissioner or any officer authorized in this behalf by the State Government shall have and notwithstanding anything contained in any law for the time being in force, any Court, Tribunal or other Authority shall not have jurisdiction to make order with regard to the possession, delivery, disposal or release of such conveyance. Grievance was that in view of the aforesaid provisions the criminal courts were not invoking jurisdiction and the power of the court has been taken away. Challenge to Section 54A and Section 69(6) were made on the ground that they are unconstitutional, arbitrary, unreasonable and violative of Articles 14, 19, 20, 21 and 301 of the Constitution. It was submitted that the powers conferred on judicial courts by virtue of Sections 451 to 457 Cr.P.C. has been curtailed or have been taken away and indirectly the power of revision of Sessions judge or the High Court and inherent power of the High Court under Section 482 Cr.P.C. has been curtailed.

7. In response, learned counsel for the State made the reference to Sections 4,5, & 9 Cr.P.C. and Section 41 of the Indian Penal Code, 1860 (in short the 'IPC').

8. The objects and reasons of the Rajasthan Excise Amendment Act, 2000 need to be noted. The same is as follows:

"Statement of Objects and Reasons:

The incidence of unauthorised transportation of excisable articles had increased in recent past and it was noticed that owners of such vehicles were indulging in these activities with impunity. It was also noticed that the vehicles indulging in such transportation even after seizure for

commission of the offence were released from courts and were again used for unauthorised transportation of excisable articles. To check this menace, it was considered necessary to provide that if any means of conveyance is used in commission of offence under the Rajasthan Excise Act, 1950, then the same shall be liable to be confiscated by order of the Excise Commissioner or the Officer, not below the rank of District Excise Officer as may be authorized by the State Government in this behalf and the owner of such a means of conveyance shall be, deemed to be guilty of offence for the commission of which, the said means of conveyance was used. For achieving these purposes, Section 69 of the Rajasthan Excise Act was proposed to be suitably amended and a new Section 54A was proposed to be inserted."

The amended Section 54 reads as follows:

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"54. Penalty for unlawful import, export, transport, manufacture, possession etc.- ,

Whoever in contravention of this Act or of any rule or order made or of any licence, permit or pass granted, thereunder

- (a) imports, exports, transports, manufactures, collects, sells or possesses any excisable article, or,
- (b) cultivates any hemp plant (Cannabis Sativa); or
- (c) constructs or works any distillery, pot still or brewery; or
- (d) uses, keeps or has in his possession any materials stills, utensil, implements or apparatus whatsoever for the purpose of manufacturing any excisable article other than tari; or removes any excisable articles for any distillery potstill, (brewery) or warehouse established or licensed under this Act or
- (e) bottles any liquor for the purposes of sale; or
- (f) taps or draws tari from any tari producing tree;

shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to two thousand rupees.

Sections 54A and 69 read as follows:

"54-A. Owner of animal, cart, vessel, raft, motor vehicle or any other means of conveyance deemed to be guilty in certain cases. Where any animal, cart, vessel, raft, motor, vehicle or any other means of conveyance is used in the commission of an offence under this Act, and is liable to confiscation, the owner thereof, except, in case of a motor vehicle -or other, means of conveyance being owned by the Central, Government or any State Government or any of the undertakings, shall be deemed to be guilty of such offence and such owner shall be liable

to be proceeded and be- punished accordingly unless he satisfies the court that he had no reason to believe that such offence was being or likely to be committed and he had exercised due care in the prevention of the commission of such an offence.

69. What things are liable to confiscation- (1) Whenever an offence punishable under this Act has been committed

(a) every excisable article in respect of which such offence has been committed.

(b) every still, utensil, implement or apparatus and all materials by means of which such offence has been committed,

(c) every excisable article lawfully imported transported, manufactured held in possession or sold alongwith or in addition to any excisable article liable to confiscation under clause (a),

(d), every receptacle, package or covering in which any article as aforesaid or any materials, still, utensil, implement or apparatus is or are found together with the other contents --(if any) of such receptacle or package, and

(e) every animal, cart, vessel, raft or other conveyance used in carrying such receptacle or package, shall be liable to confiscation.

(2) When in the trial of any offence punishable under this Act the Magistrate decides that anything is liable to confiscation under clause (a) to (d) of sub-sec (1) he may order confiscation.

Provided that (in case of a thing other than an excisable article he may, in lieu of ordering confiscation, give) the owner of the thing liable to be confiscated an option to pay any such fine as the Magistrate thinks fit.

(3) When anything mentioned in sub-section (1) is found in circumstances which afford reason to believe that an offence under this Act has been committed in respect or by, means thereof, or when such an offence has been, committed and the offender is not known or cannot be found, the Excise Commissioner may order confiscation of the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing or animal in question or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he produces in support of the claim:

Provided further that if the thing in question is liable to speedy and natural decay, if the Excise Commissioner is of opinion that the sale of the thing or animal in question would be for the benefit of its owner, he may at any time direct it to be sold; and the provisions of this section shall so far as may be,

apply to the net proceeds of such sale.

(4) Where any means of conveyance referred to in clause (e) of sub-section (1) is seized in connection with the commission of any offence under this Act, a report of such seizure shall, without unreasonable delay, be made by the person seizing to the Excise Commissioner or to the officer, not below the rank of the District Excise Officer, as may be duly authorized by the State Government in this behalf and whether or not a prosecution is instituted for commission of such an offence, the Excise Commissioner or the officer authorized in this behalf by the State Government, having jurisdiction over the area where the said means of conveyance was seized, may, if satisfied that the said means of conveyance was used for commission of offence under this Act, order confiscation of the said means of conveyance.

Provided that before ordering confiscation of the said means of conveyance a reasonable opportunity of being heard shall be afforded to the owner of the said means of conveyance and if such owner satisfies the Excise Commissioner or the officer authorised by the State Government in this behalf that he had no reason to believe that such offence was being or likely to be committed and he had exercised due care in the prevention of the commission of such an offence, the Excise Commissioner or the officer authorised by the State Government in this behalf, may not confiscate the said means of conveyance.

Provided further that where such means of conveyance is owned by the Central Government or any State Government or any of their undertaking, no order of confiscation of such means of conveyance shall be passed by the Excise Commissioner or the officer authorised by the State Government in this behalf and the matter shall be referred to the State Government by the Excise Commissioner or the officer authorised by the State Government -in this behalf, for making such orders regarding means of conveyance as the State Government may deem fit.

Provided also that before ordering confiscation under this, sub-section the owner of the means of conveyance, referred to in clause (e) of sub-sec. (1), may be given an option to pay in lieu of confiscation, a fine not exceeding the market price of such means of conveyance.

(5) Any person aggrieved by an order of confiscation made under sub-sec. (4) may within sixty days from the date of communication to him of such order, appeal to the Divisional Commissioner and the Divisional Commissioner after giving opportunity to the appellant to be heard, shall pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(6) Whenever any means of conveyance as referred

to in clause (e) of sub-section (1) is seized in connection with commission of an offence under this Act, the Excise Commissioner or any officer authorised in this behalf by the State Government shall have, and, notwithstanding anything contained in any law for the time being in force any court, tribunal or other authority shall not have jurisdiction to make order with regard to the possession, delivery, disposal, release of such means of conveyance.

(7) Where the Excise Commissioner or the officer authorised by the State government in this behalf is of the opinion that it is expedient in public interest or for the benefit of its owner that the means of conveyance as referred to in clause (e) of sub-sec.

(1), seized for commission of offence under this Act be sold by public auction, he may at anytime direct it to be sold.

(8) Where any means of conveyance is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of such sale or auction or other incidental expenses relating thereto and in other cases, the means of conveyance which was seized or the amount of fine paid in lieu of its confiscation, shall-

(a) where no order of confiscation is ultimately passed by the Excise Commissioner or the officer authorized by the State Government in this behalf or,

(b) where an order passed on appeal under sub-sec. (5) so requires; or

(c) where in a prosecution instituted for commission of offence under this Act in respect of which an order of confiscation has been made under this section, the person concerned is acquitted,

be paid, returned or refunded, as the case may be, to its owner:

Provided that no interest shall be payable on the amount to be paid or refunded under this sub-section.

any order of confiscation made by the Excise Commissioner or any officer authorised by the State Government in this behalf, shall not prevent the infliction of any 'punishment to which the person affected thereby is liable under this Act."

Section 9B of the Act which was introduced in the Gazette Notification dated 31.7.1998 reads as follows:

"Bar of jurisdiction of civil courts;

No Civil Court shall have jurisdiction to entertain any suit or proceeding to set aside or modify;

(a) any original order passed by any of the officer competent to do so under the provisions of this Act;

(b) any order passed under or referred to in

Section 9A."

Article 254 of the Constitution reads as follows:

"(1) If any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any,; provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the Provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament, or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been, reserved for the consideration of the President and has received his assent, prevail in that State

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

9. So far as Amendment Act, 2000 is concerned it received assent of the Governor on 3.4.2000 by which Section 54A was inserted and amendments were made in Section 69 of the existing provisions and sub-sections 4 to 9 were inserted and earlier amendments were made in Section 9-B which has been quoted above.

10. In P.N. Krishna Lal & Ors. v. Govt. of Kerala & Anr. (1995 (suppl.) 2 SCC 187) it was observed at para 12 as follows:

"12. The scheme of the Act and the Amendment Act is a consistent whole, regulating production, manufacture, possession, transport, purchase or sale of intoxicating liquors. The Amendment Act was enacted to prohibit mixing or permitting to mix methanol in arrack or intoxicating drug or failure to take reasonable precautions to prevent acts or omissions, of mixing methanol in arrack or intoxicating drug or to be in possession thereof with knowledge of its adulteration or to prevent deleterious effect on the health of the consumers to prevent grievous hurt to human beings or their death. As a part of it, the burden of proof of the ingredients of the offence being within the special knowledge of the accused has also been laid on the accused person. Therefore, though incidentally it trenches into some of the

provisions of the Evidence Act, the Indian Penal Code and the Code, in its pith and substance, it is an integral scheme of the Act, which falls within Entry 8 read with Entries 64 and 65 of List II of the Seventh Schedule of the Constitution. Under Article 246(3), the State legislature was competent to enact the Amendment Act. Therefore, the assent of the President is not necessary. Even assuming that some of the provisions incidentally trespass into the field of operation of the Central provisions falling in the Concurrent List, which empower both Parliament and the State legislatures to enact the law, the assent given by the President made Sections 57-A and 57-B valid. The Gazette Notification of the Amendment Act has been placed before us which shows that the President has given his assent to the Amendment Act on 1-12-1984. Therefore, by operation of proviso to clause (2) of Article 254, the Amendment Act prevails over the relevant provisions in the Indian Evidence Act, IPC and the Code in relation to the State of Kerala."

11. This is a complete answer to most of the submissions made by the appellants.

12. In State of Karnataka v. K. Krishnan (2000(7) SCC 80) this court while considering a case of forest offence under the Karnataka Forest Act, 1963, observed that the provisions of the Act should be strictly complied with and generally the seized forest produce and the vehicle, boat, tools etc. used in commission of forest offence should not be released and even if the Court is allowed to release the same, the authorized officer must specify reasons therefor and must insist on furnishing of bank guarantee as the minimum condition. In that case the forest produce was transported in violation of the provisions of the Act. The High Court had modified the conditions regarding bank guarantee stipulated by the authorized officer and instead had directed to furnish two like sureties to the extent of Rs.1,50,000/- each for the purpose of getting interim custody of the vehicle. This Court held that the High Court had adopted a casual approach and its order was contrary to law.

13. Certain provisions of the Essential Commodities Act, 1955 have relevance. Section 6A deals with confiscation of food grains, edible oil seeds and edible oils. Section 6B deals with issue of show cause notice before confiscation of food grains etc. Section 6E deals with bar of jurisdiction in certain cases. Section 6E has been substituted to provide that except Collector or State Government, all other authorities, judicial or otherwise, would be debarred from making any order with regard to the possession, delivery, disposal or distribution of any essential commodity, seized in pursuance of an order made under Section 3. Thus a Magistrate has no jurisdiction to grant relief against seizure under Section 457 Cr.P.C. Section 6A provides for confiscation of essential commodities seized in pursuance of an order made under Section 3. Collector of the district of the Presidency Town, in which such commodity is seized, may order confiscation, if he is satisfied that there has been a contravention of such an order. But, no order of confiscation shall be made under this Section, if the seized essential commodity has been produced by the producer, without prejudice to any action, which may be taken

under any other provision of this Act. Section 6B of the Act provides the procedure to be adopted by the Collector, before passing order for confiscation, which provides that after issuing of notice, an opportunity has to be given to the aggrieved party, for contesting the same. The Collector, after giving him a hearing, has to decide the objection and pass an order either confiscating the property or refusing to confiscate the property.

14. In case *Shambhu Dayal Agarwala v. State of West Bengal & Anr.* (1990 (3) SCC 549) this Court held that whenever any essential commodity is seized, pending confiscation under Section 6A, the Collector has no power to order release of the commodity in favour of the owner. Having regard to the scheme of the Act, the object and purpose of the statute and the mischief it seeks to guard, this Court held that the word "release" in Section 6E is used in the limited sense of release for sale etc., so that the same becomes available to the consumer public. It was further held:

"No unqualified and unrestricted power has been conferred on the Collector of releasing the commodity in the sense of returning it to the owner or person from whom it was seized even before the proceeding for confiscation stood completed and before the termination of the prosecution in acquittal of the offender. Such a view would render clause (b) of Section 7(1) totally nugatory and would completely defeat the purpose and object of the Act. The view that the Act itself contemplates a situation which would render Section 7(1)(b) otiose where the essential commodity is disposed of by the Collector under Section 6A(2) is misconceived. Section 6A does not empower the Collector to give an option to pay, in lieu of confiscation of essential commodity a fine not exceeding the market value of the commodity on the date of seizure, as in the case of any animal, vehicle, vessel or other conveyance seized along with the essential commodity. Only a limited power of sale of the commodity in the manner prescribed by Section 6A the essential commodity has to be exercised in public interest for maintaining the supplies and for securing the equitable distribution of the essential commodity."

15. The amendments introduced, in our view, are regulatory in nature and cannot be regarded as violative of freedom guaranteed under Article 301 of the Constitution. In *Jilubhai Nanbhajai Khachar & Ors. v. State of Gujarat and Anr.* (1995 Supp (1) SCC 596), after examining the principle of "Eminent Domain" it was held by this Court that Article 300-A is not attracted and deprivation is in exercise of police power and said article enjoins that such deprivation should not be without sanction of law.

16. There are similar provisions in the Excise Acts of other States, for example the Tamil Nadu Excise Act, 1971, Karnataka Excise Act, 1965, Uttar Pradesh Excise Act, 1910 and the Andhra Pradesh Excise Act, 1968. The provisions are in Sections 4 and 14A of the Tamil Nadu Act, Sections 43A and 43B of the Karnataka Act, Section 72 of the Uttar Pradesh Act and Sections 46 and 46A of the Andhra Pradesh Excise

Act.

17. Reference may also be made to Deputy Commissioner, Dakshina Kannada District v. Rudolph Fernandes [2000(3) SCC 306] and State of W.B. & Ors. v. Sujit Kumar Rana [2004 (4) SCC 129] while gauging the validity of the impugned provisions.

18. In view of what has been stated above the inevitable conclusion is that the appeals are without merit, deserve dismissal, which we direct. No costs.

JUDIS