

CASE NO.:
Appeal (civil) 4796 of 1998

PETITIONER:
M/s. Kurali Khandsari Udyog

RESPONDENT:
Excise Commissioner & Controller of Molasses, U.P. & Ors.

DATE OF JUDGMENT: 20/04/2004

BENCH:
S. N. VARIAVA & H. K. SEMA.

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

This Appeal is against the Judgment of the Allahabad High Court dated 18th February, 1998. The Appellants' Writ Petition challenging Orders dated 10th December, 1997, 11th December, 1997 and 19th December, 1997 has been dismissed.

These Orders have been issued under the Uttar Pradesh Sheera Niyantran Adhiniyam, 1964 (hereinafter referred to as the Act) and the rules framed thereunder. Section 2(a) of the Act defines "Controller" as the Controller of Molasses. Section 2(d) defines "Molasses" as the heavy, dark coloured viscous liquid produced in the final stage of manufacture of sugar by vacuum pan, from sugarcane or gur, when the liquid as such or in any form or admixture contains sugar. Section 2(h) defines "Sugar Factory" or "Factory" as any premises wherein twenty or more workers are working and in which a manufacturing process connected with production of sugar by means of vacuum pan is being carried on or is ordinarily carried on with the aid of power. Section 22 of the Act gives to the State Government power to make rules. The State Government has framed the U.P. Sheera Niyantran Niyamavali, 1974 (hereinafter referred to as the Rules). Rule 22 provides that molasses produced in sugar factory shall be sold or supplied only to distilleries or other persons bonafidely requiring it for purposes of industrial development. Rule 24 reads as follows:

"24. Restriction on transportation of molasses.- No person shall, transport or cause to be transported outside Uttar Pradesh any molasses unless permission in writing obtained from the Controller."

In pursuance of this Rule, the Controller issued Orders dated 10th December, 1997, 11th December, 1997 and 19th December, 1997, which prohibited transport of "any molasses" without permission. The Appellants who are manufacturer of Khandsari molasses felt aggrieved by these Order and challenged the same on the ground that such a restriction imposes an unreasonable restriction on their right to carry on business as guaranteed under Article 19(1)(g) of the Constitution of India and on the ground that Rule 24 cannot go beyond the Act and cannot apply to molasses which is not produced by vacuum panning.

It is submitted that the Act only applies to vacuum pan molasses. It is submitted that this is clear from the definition of the term "Molasses" in Section 2(d). It is submitted that even the definition of the term "Sugar Factory" or "Factory" makes it clear that the Act only applies to those sugar factories or factories which manufacture sugar by the process of vacuum panning. It is submitted that the rules which can be framed under Section 22 cannot exceed the provisions of the Act. It is submitted that Rule 24 in so far as it seeks to place restrictions on purchase, transport or possession of

molasses can only apply to molasses prepared by the process of vacuum panning and not Khandsari molasses. It is submitted that the term "any molasses" in Rule 24 must necessarily mean any molasses prepared by the process of vacuum panning. It is submitted that therefore the three Orders which prevent transport of molasses without permission can apply only to molasses prepared by vacuum panning. It is submitted that if the Orders seek to restrict transport of any molasses then they are restrictive of the right of freedom of trade as guaranteed under Article 19(1)(g) of the Constitution of India and beyond the scope of the rule making power under Section 22.

On the other hand Mr. Dwivedi points out that in U.P. 90% of the molasses is produced by vacuum pan process. He submitted that the purpose of the Act was to control supply and sale of vacuum pan molasses so that it is available for industries in the State. He submitted that Sections 7 and 8 permits regulation of removal, sale and supply of molasses. He submitted that in the guise of exporting Khandsari molasses, vacuum pan molasses was being smuggled out of the State. He pointed out that it is impossible to differentiate vacuum panned molasses from khandsari molasses by merely looking at it. He pointed out that the difference could only be made out by sending the molasses for testing in a laboratory. He submitted that in order to control the smuggling of vacuum panned molasses as khandsari molasses it was necessary to control transport of molasses. He submitted that Section 22 of the Act gave power to the State Government to make rules for carrying out the purpose of the Act. He admitted that the purpose of the Act was to control sale and supply of vacuum pan molasses. He submitted that this included controlling the illegal or unlawful removal thereof. He submitted that one of the methods of control was to prevent removal of any type of molasses without permission. He submitted that permission was required to be taken so that Government could check that only Khandsari molasses was being exported. He stated that if khandsari molasses was to be exported then permission would be given. He submitted that at present the trucks had to be held up for a number of days till the molasses carried by them was got tested to ensure that vacuum panned molasses was not being exported. He submitted that the aim in enacting Rule 24 was to ensure that the power of search and seizure, given under Section 14 of the Act, need not be used, as once permission is granted it would be known what is being transported is Khandsari molasses.

In reply to this Ms. Goswami submitted that the Allahabad High Court had already noted that the transporters of khandsari molasses were being harassed by having their trucks detained and had directed that proper course was to keep a close check in the sugar mills premises itself and by verifying at the premises receiving such molasses. She showed to Court the Judgment dated 11th December 1998 in Writ Petition No. 39733 of 1998. However this Judgment does not deal with or consider Rule 24 or the impugned Orders. This Judgment also recognizes the need for control. Keeping a watch on the premises may be one method of control. However requiring transporters to take permission is also a method of control. Such regulatory measures do not impose unreasonable restriction and cannot be challenged on the ground that they affect the right to carry on trade as guaranteed under Article 19(1)(g) of the Constitution of India. This Court in the case of Bishambhar Dayal Chandra Mohan vs. State of U.P. reported in (1982) 1 SCC 39 has held in respect of a regulatory measure which required an endorsement of the Deputy Marketing Officer or a Senior Marketing Officer not to be a restriction on freedom of trade, commerce and intercourse within the country. It was held that even if these were considered as restrictions the limitation so imposed cannot be considered to be arbitrary or of an excessive nature. It was held that such restrictions satisfy the test of reasonableness.

We are also unable to accept the submission that these Orders are without jurisdiction and in excess of the rule making power. The

purpose of the Act is to control vacuum panned molasses. In order to achieve this object it would be necessary to regulate movement of any molasses. Thus the term "any molasses" in Rule 24 must necessarily mean any molasses and not just molasses manufactured by the process of vacuum panning. Even presuming that the rule making power did not enable the Government to make such a rule, such a restriction could always be imposed by virtue of Article 162 of the Constitution of India.

We therefore see no infirmity in the Judgment of the High Court. The Appeal stands dismissed. There will be no order as to costs.

JUDIS