

CASE NO.:
Appeal (civil) 7463 of 1993

PETITIONER:
State of Madhya Pradesh & others

RESPONDENT:
M/s K.C.T. Drinks Limited

DATE OF JUDGMENT: 04/03/2003

BENCH:
M.B. SHAH , ASHOK BHAN & ARUN KUMAR.

JUDGMENT:

J U D G M E N T

Shah, J.

The respondent company having a D-2 licence for manufacture of Indian Made Foreign Liquor from rectified spirit by blending, reducing and compounding Indian Made Foreign Liquor concentrate, challenged the levy of full costs of supervision and establishments of excise staff posted at its factory premises by filing M.P. No.1456 of 1993 in the High Court of Madhya Pradesh at Jabalpur. By judgment and order dated 4.5.1993, the High Court quashed the levy of expenses incurred on supervision and establishment cost on the ground that Rule 22 of M.P. Breweries Rules, 1970 was struck down as ultra vires by this Court in case of M/s Lilasons Breweries (Pvt.) Ltd. v. State of Madhya Pradesh [(1992) 3 SCC 293]. In M/s Lilasons Breweries (Pvt.) Ltd.'s case, this Court arrived at the conclusion that Rule 22 to the extent it permits raising a demand, which in sum and substance is additional excise duty, without its being actually due, is ultra vires the Act and beyond the rule making power of the State.

Impugned judgment and order passed by the High Court is challenged by filing this appeal.

It has been pointed out that the High Court proceeded on a misconception that D-2 licences were issued under Rule 22 of the M.P. Breweries Rules, 1970. As a matter of fact, licences were issued under Rules (IV) and (V) of the Distillery & Warehouse Rules. It is pointed out that Brewery Rules are not applicable to the unit of the respondent as it is not a brewery.

In support of the aforesaid contention, learned counsel for the appellants has drawn our attention to the Rules applicable to all distilleries and warehouse in Madhya Pradesh. Relevant Rules (IV) & (V) for the grant of licence are as under:

IV. The Collector may issue, on payment of a fee of Rs.1000/- a licence in Form D-2 for the construction and working of a distillery to any person to whom a wholesale supply licence has been issued.

V. Subject to sanction of the State Government the Excise Commissioner may issue a licence in Form D-2 for the construction and working of a distillery

on payment of a fee of Rs.1000/-.

These Rules are framed by the State Government in exercise of powers conferred under Section 18 read with Section 62(2)(e)(g) & (h) of the M.P. Excise Act, 1915. Section 62(2)(h) empowers the State Government to make Rules prescribing the scale of fees or the manner of fixing the fees payable in respect of any licence, permit or pass. Section 18 empowers the State Government to lease to any person the right of manufacturing or of supplying or of selling liquor or intoxicating drug within any specified area, which is under:

"18. Power to grant lease of right to manufacture, etc. The State Government may lease to any person, on such conditions and for such period as it may think fit, the right:

- (a) of manufacturing, or of supplying by wholesale, or of both, or
- (b) of selling by wholesale or by retail, or
- (c) of manufacturing or of supplying by wholesale, or of both, and selling by retail,

any liquor or intoxicating drug within any specified area.

2. The licensing authority may grant to a lessee under sub-section (1) a licence in the terms of his lease; and when there is no condition in the lease which prohibits sub-letting, may, on the application of the lessee, grant a licence to any sub-lessee approved by such authority."

Section 27 also empowers the State Government to accept the payment of a sum in consideration of grant of any lease under Section 18, which is as under:

"27. Payment for grant of leases. (1) Instead of or in addition to any duty leviable under this Chapter, the State Government may accept payment of a sum in consideration of the grant of any lease under Section 18.

(2) Nothing contained in sub-section (1) shall be construed to preclude the State Government from enhancing or reducing the sum received in consideration of a grant of any lease under Section 18 during the course of a financial year or during the currency of a licence and the power to enhance or reduce the sum shall include power to give retrospective effect to such enhancement or reduction from a date not earlier than the commencement of the financial year."

In view of Sections 18 and 27, the State Government is entitled to accept payment of a sum in consideration of grant of any lease in lump sum in addition to any duty leviable under the Act on terms and conditions which are mentioned in the licence deed. Condition 8 of the licence provides that the licensee shall pay the full cost of excise supervisory staff posted at the premises of KCT Drinks, Mandideep, Distt. Raisen.

Similar provisions were considered by this Court and their validity is upheld in *Government of Andhra Pradesh v. M/s Anabeshahi Wine and Distilleries Pvt. Ltd.* [(1988) 2 SCC 25] wherein this Court observed thus:

"5. The perusal of the aforesaid provisions of the Act and the Rules leaves no manner of doubt that it was open to the appellant to grant the exclusive privilege of manufacturing and selling wine etc. to the respondent only provided it was, apart from making any other payment, also willing to pay the salaries and allowances referred to in the aforesaid provisions which for the sake of convenience have been described as establishment charges, and which were sought to be recovered as such under the impugned notice of demand. The respondent-Company was not under any obligation to take the licence. It was open to it to have refrained from taking any licence under the Act and the Rules if it was not willing to pay the price as required by the government for the grant of privilege to manufacture and sell intoxicants. The nature of the payment which a licensee such as the respondent is required to make to the State by reason of the State parting with the privilege in regard to manufacture sale etc. of intoxicants came up for consideration before a Constitution Bench of this Court in *Har Shankar v. Deputy Excise and Taxation Commissioner* (1975) 3 SCR 254. It was held that the amounts charged to the licensees are neither in the nature of tax nor excise duty, but constituted the price or consideration which the government charges to the licensees for parting with its privileges and granting them to the licensees..

6. The principles laid down in the aforementioned cases will, in our opinion, apply to the instant case also. The fact of the demand being with regard to establishment charges will make no difference. A predetermined amount equivalent to or even higher than the amount which is sought to be recovered by the appellant from the respondent calculated for the entire period of the licence could have been demanded in a lump sum as price for parting with the privilege and it could not have been challenged by the respondent in view of the principle enunciated by this Court in the aforesaid cases. Simply because the demand was spread over with a view to making it just and reasonable so as to represent the actual expenditure incurred by the government to maintain the requisite excise staff at the factory premises of the respondent as contemplated by the relevant provisions of the Act and the Rules, it would not become illegal and vulnerable."

In *Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. v. State of Gujarat & Anr.* [(1992) 2 SCC 42] validity of demand under Section 58A of the Bombay Prohibition Act, 1949 for maintenance of excise staff for supervision of manufacture of industrial alcohol was assailed on the ground of lack of legislative competence of the State. In that case, the Court observed thus:

"4. According to learned counsel since the entire judgment of the High Court proceeded on privilege

theory it cannot withstand the principle laid down in *Synthetics and Chemicals Ltd. v. State of U.P.* [(1990) 1 SCC 109]. Levy as a fee under Entry 8 of List II of Seventh Schedule or excise duty under Entry 51 are different than cost of supervision charged under Section 58-A. The former has to stand the test of a levy being in accordance with law on power derived from one of the constitutional entries. Since *Synthetics and Chemicals Case* finally brought down the curtain in respect of industrial alcohol by taking it out of the purview of either Entry 8 or 51 of List II of Seventh Schedule the competency of the State to frame any legislation to levy any tax or duty is excluded. But by that a provision enacted by the State for supervision which is squarely covered under Entry 33 of the Concurrent List which deals with production, supply and distribution which includes regulation cannot be assailed. The bench in *Synthetics and Chemicals case* made it clear that even though the power to levy tax or duty on industrial alcohol vested in the Central Government the State was still left with power to lay down regulations to ensure that non-potable alcohol, that is, industrial alcohol, was not diverted and misused as substitute for potable alcohol. This is enough to justify a provision like Section 58-A. In paragraph 88 of the decision it was observed that in respect of industrial alcohol the States were not authorised to impose the impost as they have purported to do in that case but that did not effect any imposition of fee where there were circumstances to establish that there was quid pro quo for the fee nor it will affect any regulatory measure. This completely demolishes the argument on behalf of the appellant."

The aforesaid decision was referred to and relied upon in *M/s Gujchem Distillers India Ltd. v. State of Gujarat* [(1992) 2 SCC 399].

In view of the aforesaid settled legal position, the condition empowering the State Government to recover the actual cost of supervisory staff posted at the premises of respondent cannot be said to be in any way illegal or ultra vires as it constitutes the price or consideration which the Government charges to the licensee for parting with its privilege and granting licence. In this view of the matter, the impugned judgment and order passed by the High Court requires to be set aside.

In the result, the appeal is allowed and the impugned judgment and order passed by the High Court is set aside. There shall be no order as to costs.