

Mohinder Singh Kohli v. The State of Punjab, etc. (Tuli, J.)

the plaintiff, was not correctly made by me and I fell in error in following the decision of Teja Singh C.J. in *Bhag Singh's case* (2) (*Supra*). In that case I followed the principle as laid down by Tek Chand J. in *Kanshi Nath's case* (1) (*supra*) as far as the opening of the windows and ventilators towards the house of the plaintiff were concerned, but about the door I held that since the door would always mean that a person has got the right to get into his house and to get out of it, therefore, that would amount to trespassing the property of another neighbour towards whose house the door opens. I wish to point out that this view taken by me does not appear to be a correct view of law. By merely opening the door, a person would not be entitled to get into the property of another person. A larger window may take the form of the door. Therefore, in principle, the opening of a window or a door will not make any difference. If a person criminally trespasses into the property of another, he is liable to be prosecuted for criminal trespass. As regards the opening of Parnalas it appears that this may be an actionable nuisance. Draining out the whole water from one's property into the premises of a neighbour, would, perhaps, be an actionable nuisance and which may not be permitted. Therefore, I wish to point out that the basic principle as laid down in *Kashi Nath's case* (1) (*supra*) is the correct enunciation of law and while deciding such cases the said principle has to be kept in view. I have, therefore, made it clear that the view taken by me in so far as ordering the defendant in *Kaur Sain's case* (13) (*supra*), to close his door, was not correct.

B. S. G.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

MOHINDER SINGH KOHLI,—Petitioner.

versus

THE STATE OF PUNJAB, ETC.,—Respondents.

Letters Patent Appeal No. 605 of 1971.

September 26, 1972.

Punjab Excise Act (I of 1914)—Section 58(2)(d) as substituted by Punjab Act 1 of 1940—Punjab Excise Bottles Rules (1963)—Rules 4 and 93—Constitution of India (1950)—Articles 301, 304 and 305 and

entry 8 in the State list of Seventh Schedule—Section 58(2) (d) empowering the State Government to make rules in respect of excise bottles—Whether ultra vires the Constitution—Regulating the export of excise bottles from the State under rule 4—Whether affect inter-State trade and violative of Articles 301 and 304—Right of the distilleries alone to purchase excise bottles—Monopoly in favour of the distilleries—Whether created.

Held, that although an excisable bottle is not intoxicating liquor, yet it is certainly the container of such liquor. It is open to the State Legislature to make law as to how the intoxicating liquors shall be possessed, transported, purchased and sold and for that purpose, bottles can be prescribed as the containers in which intoxicating liquors shall be so possessed, transported, purchased or sold. The jurisdiction of the State Legislature extends to the enacting of any law for the use of excise bottles for possession, transport, purchase and sale of intoxicating liquors. A provision to that effect could be made by the State Legislature in the Punjab Excise Act, 1914 itself, but instead of making a provision in this behalf in the Act, power has been conferred on the State Government to make rules under section 58(2) (d) of the Act. Moreover, the Act is a pre-Constitution Act and, therefore, the provision in section 58(2) (d) is constitutionally valid, as is provided in Article 305 of the Constitution. Hence section 58(2) (d) of the Act insofar as it empowers the State Government to make rules in respect of excise bottles is not *ultra vires* the Constitution.

(Para 4)

Held, that inter-State trade is affected only if that trade can be legally carried on in respect of certain articles or commodities. The object of the Punjab Excise Bottles Rules, 1963 framed under section 58(2) (d) of the Act is to make available Punjab excise bottles to the distilleries in the State for the possession, transport and sale of intoxicating liquors. Under rule 93 of the Punjab Distillery Rules, it is provided that the intoxicating liquor shall be possessed, transported, purchased and sold only in bottles of particular type and capacity. They have to bear a specific mark which has to be embossed or sand-blasted into the bottle itself. The name of the distillery can also be embossed or sand-blasted while manufacturing the bottle, so that the excise bottles bearing the name of a distillery shall be sold to that distillery alone or its authorised agents or to any other distillery with its consent and the permission of the Excise and Taxation Commissioner. Such bottles cannot be used for any other purpose and general trade in them is prohibited. Rule 4 of the Rules only regulates export of such bottles and does not totally prohibit the same. The export can be made in pursuance of a general or special order passed by the Excise and Taxation Commissioner. Hence the regulation of export of Punjab excise bottles under the Rules does not affect inter-State trade and

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commerce and is not violative of Articles 301 and 304 of the Constitution.

(Para 5)

Held, that conferring of the right on the distilleries alone to purchase excise bottles, whether bearing their names are not, does not create monopoly in their favour in respect of such bottles. As the bottles can be used by the distilleries and none else, it is legitimate to provide that they can be purchased by the distilleries alone, either directly or through their authorised agents. It is also inherent that the other persons should be debarred from possessing or trading in such bottles which are meant for the distilleries for being filled with intoxicating liquors to be sold to the licensees and through them to the consumers. The necessity for this arose because of the shortage of bottles due to their limited manufacture in the country and their non-import from foreign countries. Effort is, therefore, made to enable the distilleries to meet the requirements of the licensees by making available to them the maximum quantity of empty bottles required by them for the sale of intoxicating liquors. Hence no monopoly is created in favour of the distilleries and the rules conferring the sole right of purchase of excise bottles on the distilleries are not unconstitutional on this ground.

(Para 6)

Letters Patent Appeal under Clause 10 of the Letters Patent from the judgment dated 9th November, 1971, passed by the Hon'ble Mr. Justice R. S. Narula in C.W. 3642 of 1971.

T. S. Manjral, Advocate for the petitioner.

H. S. Giani, Advocate for Advocate-General, Punjab, for the respondents.

JUDGMENT

Judgment of the Court was delivered by :—

TULI, J.—The appellant, who is a bottle merchant of Chowk Arya Samaj, Bhatinda, filed Civil Writ No. 3642 of 1971, challenging the constitutional validity of the Punjab Excise Bottles Rules, 1963 (hereinafter called the Rules). That petition was dismissed by the learned Single Judge on November 9, 1971, and the present appeal under Clause 10 of the Letters Patent is directed against that order.

(2) These rules were framed by the Governor of Punjab in exercise of powers conferred under section 58 of the Punjab Excise

Act, 1914 (hereinafter called the Act), and were promulgated by notification dated April 16, 1963. According to these rules, the excise bottles are to be used only for the purpose of bottling spirit in accordance with the licence granted under the Act and cannot be used for any other purpose except with the permission of the Excise and Taxation Commissioner. The export of these bottles outside the State of Punjab cannot be made except as directed by the Excise and Taxation Commissioner by way general or special order. The excise bottles can be sold only to a licensed distillery or to its authorised agent and the sale of these bottles to any other person or firm is prohibited. The possession or storage of more than 20 empty excise bottles is prohibited except by a licensed distillery or its authorised agent. Authorised agent can be appointed by a licensed distillery to buy and store excise bottles on its behalf. The particulars of the authorised agent appointed by the licensed distillery have to be communicated to the Excise and Taxation Commissioner who has the right to cancel any letter of authorisation if he considers that the authorised agent is an unsuitable person. These rules are not to be applied to the possession or use at any time of not more than 20 excise bottles for domestic purposes in any house.

(3) When these rules came into force, the appellant was appointed by Jagatjit Distilling and Allied Industries Limited, Jagatjit Nagar, district Kapurthala, (which is a licensed distillery), as its authorised agent, by issuing a letter dated June 7, 1963. The said distillery appointed various other authorised agents also. On August 4, 1971, the said distillery cancelled the authorisation issued in favour of the appellant for the collection, storage, purchase and sale of Punjab excise bottles for that distillery with immediate effect. In that letter, the appellant was further warned that if he dealt in the purchase, collection, storage or sale of Punjab excise bottles belonging to the said distillery, suitable action under the relevant Punjab Excise Rules would be taken against him for unauthorised dealing in such bottles. The cancellation of the appellant's authorisation by the said distillery led to the filing of the writ petition by him.

(4) The first ground pressed before the learned Single Judge by the learned counsel for the appellant was that section 58(2)(d) of the Act, under which the impugned rules have been framed, is

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beyond the Legislative competence of the State Legislature and the same plea has been repeated before us. Originally, this clause read as under:—

“58. (2) In particular, and without prejudice to the generality of the foregoing provisions, the Local Government may make rules—

(a) * * * * *

(b) * * * * *

(c) * * * * *

(d) regulating the import, export, transport or possession of any excisable article.”

“Excisable article” was defined in section 3(6) of the Act as under:—

“ ‘Excisable article’ means and includes any liquor or intoxicating drug as defined by or under this Act.”

By Punjab Act I of 1940, clause (d) of section 58(2) was substituted to read as under:—

“Regulating the import, export, transport or possession of any intoxicant or excise bottle and the transfer, price or use of any type or description of such bottle.”

By the same Act, “excise bottle” was defined in section 3(6-a) as under:—

“ ‘Excise bottle’ means a bottle of such type or description as may be or may have been at any time permitted for the bottling of liquor or beer by rules made under this Act.”

After the coming into force of the Constitution, the words “Local Government” were substituted by the words “State Government” by the Adaptation of Laws Order. The question that has been debated is that excise bottles have nothing to do with liquor and,

therefore, no legislation with regard thereto can be made by the State Legislature under Entry 8 in the State List which reads as under:—

- “8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.”

It is true that an excisable bottle is not intoxicating liquor but it is certainly **the container of intoxicating liquor**. It is open to the State Legislature to make law as to how the intoxicating liquors shall be possessed, transported, purchased and sold and for that purpose, bottles can be prescribed as the containers in which intoxicating liquors shall be possessed, transported, purchased or sold. It thus becomes evident that the jurisdiction of the State Legislature extends to the enacting of any law for the use of excise bottles for possession, transport, purchase and sale of intoxicating liquors. A provision to that effect could be made by the State Legislature in the Act itself. Instead of making a provision in this behalf, in the Act, power has been conferred on the State Government to make rules under section 58(2)(d) of the Act. We are, therefore, unable to hold that section 58(2) (d), in so far as it empowers the State Government to make rules in respect of excise bottles is *ultra vires* the Constitution.

(5) The next submission made by the learned counsel for the appellant is that the export of the empty excise bottles cannot be prohibited by the State Government as it affects the inter-State trade and commerce and is violative of the provisions of Articles 301 and 304 of the Constitution. It has been pointed out by the learned Single Judge that the Punjab Excise Act is a pre-Constitution Act and, therefore, the provision in section 58(2) (d) is constitutionally valid, as is provided in Article 305 of the Constitution. We are further of the opinion that inter-State trade is affected only if that trade can be legally carried on in respect of certain articles or commodities. The object of the Rules, the constitutional validity of which has been challenged, is to make available Punjab excise bottles to the distilleries in the State for the possession, transport and sale of the intoxicating liquors. Under rule 93 of the Punjab Distillery Rules it has been provided that the intoxicating liquor shall be possessed, transported, purchased and sold only in bottles of particular type and capacity. They have to bear a specific mark which has to be embossed or sand-blasted into the bottle itself. The

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name of the distillery can also be embossed or sand-blasted while manufacturing the bottle, so that the excise bottles bearing the name of distillery shall be sold to that distillery alone or its authorised agents or to any other distillery with its consent and the permission of the Excise and Taxation Commissioner. Such bottles cannot be used for any other purpose and general trade in them is prohibited. It cannot, therefore, be said that if export of Punjab excise bottles is regulated, it amounts to infringement of the appellant's right to inter-State trade and commerce. Rule 4 of the Rules only regulates export of such bottles and does not totally prohibit the same. The export can be made in pursuance of a general or special order passed by the Excise and Taxation Commissioner. It has nowhere been alleged by the appellant that he ever made a request to the Excise and Taxation Commissioner for exporting the Punjab excise bottles collected by him and that it was refused, nor has he been able to show that these bottles can be exported to any other State. All that he has been able to point out is that such bottles can be used by any other distillery in the States of Haryana and Himachal Pradesh with the permission of the Excise and Taxation Commissioners of those States. In the absence of any allegation that the appellant has been illegally prohibited from carrying on inter-State trade in the Punjab excise bottles, it is academic to decide whether in a particular case these rules will affect the rights of a trader under Articles 301 and 304 of the Constitution. We, therefore, repel this submission of the learned counsel for the appellant.

(6) The last submission made by the learned counsel for the appellant is that a monopoly has been created in favour of the distilleries to purchase the Punjab excise bottles whether bearing their names or not. In our opinion, there is no question of creating a monopoly in favour of the distilleries in respect of such bottles. They can be used only by the distilleries and none else. It is, therefore, legitimate to provide that they can be purchased by the distilleries alone either directly or through their authorised agents. It is also inherent that the other persons should be debarred from possessing or trading in such bottles which are meant for the distilleries for being filled with intoxicating liquors to be sold to the licensees and through them to the consumers. The necessity for promulgating the Rules arose because of the shortage of bottles due to their limited manufacture in the country and their non-import from foreign countries. The consumption of intoxicating liquor has

been increasing year by year and it is a source of large revenue to the State. Effort is, therefore, made to enable the distilleries to meet the requirements of the licensees by making available to them the maximum quantity of empty bottles required by them for the sale of intoxicating liquors. There is thus no question of creating a monopoly in favour of the distilleries and these rules cannot be held to be unconstitutional on that ground.

(7) For the reasons given above, we find no merit in this appeal which is dismissed but the parties are left to bear their own costs.

B.S.G.

CIVIL MISCELLANEOUS

Before M. R. Sharma, J.

M/S. BHIM COTTON COMPANY, DHURI,—*Petitioner.*
versus

ASSESSING AUTHORITY (EXCISE AND TAXATION OFFICER),
SANGRUR, DISTRICT SANGRUR, ETC.—*Respondents.*

Civil Writ No. 3663 of 1971

OCTOBER 6, 1972.

Punjab General Sales Tax Act (XLVI of 1948)—Section 5(2) (a) (ii), second proviso—Goods purchased in Punjab on the undertaking that the same will either be re-sold in Punjab or used for manufacture of non-tax free goods—Purchasing firm contravening the undertaking—Whether liable to pay sale-tax equivalent to purchase tax—Selling firm—Whether entitled to claim deduction regarding the transaction on its gross turnover.

Held, that where a purchasing firm purchases goods on the positive undertaking that the same will either be re-sold in Punjab, or used for manufacture of goods which are not tax-free in the State of Punjab and contravenes the undertaking given by it in its declaration form, under the second proviso to section 5(2) (a) (ii) of the Punjab General Sales Tax Act, 1948 it is liable to pay tax equivalent to the purchase tax on such goods obtaining in the State of Punjab. So far as the selling dealer is concerned, it can claim deductions in respect of such sales from its gross turnover on proof of two conditions, namely, the person to whom the goods are sold should possess a valid registration certificate and