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Sharma

Grover, J.

The Rent Control Tribunal referred to decisions under the Indian Companies Act, the Provincial Insolvency Act etc., where similar language is employed and in which it had been held that an interlocutory order is not appealable. He was of the opinion that only a final order of the Controller was appealable. There is a good deal of force in the view expressed by the Rent Control Tribunal but no final opinion need be expressed on the nature of the orders which will be appealable, be they interlocutory or final under the Act. Suffice it to say that so far as the order sought to be appealed against is concerned, it could not possibly be regarded as falling within the provisions of section 38(1) on the Act. I would, therefore, dismiss this appeal with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Mehar Singh, J.

THE HAMDARD DAWAKHANNA AND ANOTHER,—*Petitioners*

Versus

UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 258-D of 1957

1964

Jan., 13th.

Essential Commoditeis Act (X of 1955)—S. 3—Fruits Products Order (1955)—Provisions of—Whether ultra vires *S. 3 of the Act or Article 19(1)(g)* of the Constitution *of India.*

Held, that the language of section 3 of the Essential Commodities Act is wide enough to permit the regulation of the manufacture of an essential commodity inasmuch as the manufacture of a commodity is nothing but production of the commodity and the power conferred by the section carries with it the power to lay down conditions upon which the production of an essential commodity could be permitted and such a condition could

well relate to the quality or composition of the final product. Hence the Fruits Products Order when it provides for the quality of the fruit products is not *ultra vires* of section 3 of the Essential Commodities Act.

Held, also that the provisions of the Order as a whole are in the interest of public at large in setting up certain standards of the manufacture of the products covered by it. These standards are not unreasonable restrictions on the trade and hence the Order is also not *ultra vires* of Article 19(1)(g) of the Constitution of India.

Petition under Article 226 of the Constitution of India praying that Your Lordships may be pleased to accept this petition and to issue Writ in the nature of certiorari and/or prohibition and/or other appropriate writ, order or direction for quashing the orders of respondent No. 2, dated 10th May, 1957, and all previous orders on which the said communication is based; etc, etc.

HARDYAL HARDY, M. L. BHATIA AND R. S. NARULA, ADVOCATES, for the Petitioner.

S. N. SHANKAR AND DALJIT SINGH, ADVOCATES, for the Respondent.

ORDER

Falshaw, C.J.

D. FALSHAW, C.J.—This is a very old writ petition filed under Article 226 of the Constitution by Hamdard Dawakhana, a Wakf institution, and its Mutwali, Haji Hakim Abdul Hameed. When the petition at last came up for hearing before a learned Single Judge on the 26th of August, 1962, he referred it to a larger Bench.

Although the first petitioner is a wakf institution, it is actually engaged in the production on a commercial scale of medicines and what are described as medicated syrups. One of these, which, it is not disputed,

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enjoys a very large sale, is called Sharbat Rooh Afza, which according to the petition includes as ingredients "Kansi Seeds, Khus Pumpkin Juice, Water Melon Juice, Chharila, Ripe Grapes, Spinach, Nilofar, Sandal, Gul Gaozaban Coriander, Carrot, Mint Kulfa, Deora, Rose, Citrus, Flower, Orange Juice, Pine-apple, Juice, Water and Sugar".

In April, 1955, the Central Government introduced the Fruit Products Order of 1955 in exercise of its powers under Section 3 of the Essential Commodities Act of 1955. This order defined fruit products and laid down conditions and standards for the manufacture of the various items included within the definition. The petitioners actually obtained a licence in 1955, as required by the order, for anybody manufacturing fruit products. Out of the petitioners' products this petition is only concerned with Sharbat Rooh Afza, which is a clear dark red syrup sold in bottles bearing a label, the registered trade mark, bearing in the central panel the words 'Rooh Afza" in English and Hindi and "Sharbat Rooh Afza", in Urdu, the central picture of which is a large display of fruits in which three different kinds of grapes, apples pomegranates and oranges can be discerned. Two of the items listed in Section 2(d) of the Order as fruit products are (1) synthetic beverages, syrups and sharbats, and (v) squashes, crushes, cordials, barley water, barrelled juice and ready to serve beverages, or any other beverages containing fruit juices or fruit pulp. Section 2(j) defines 'Sharbat' as meaning "any non-alcoholic sweetened beverage or syrup containing non-fruit juice or flavoured with non-fruit flavours, such as rose, khus, kewara, etc". Section 2(k) defines 'Synthetic beverages' as meaning "any non-alcoholic beverage or syrups, other than aerated waters, containing no fruit juice but having an artificial flavour or colour resembling to fruits". This definition appears to be some-

what inconsistent with the provisions of Section 11. Section 11 reads:—

"(1) Any beverage which does not contain at least twenty-five per centum of fruit juice in its composition shall not be described as a fruit syrup, fruit juice, squashes or cordial or crush and shall be described as a synthetic syrup.

(2) Synthetic vinegars, beverages, syrups, sharbats and other products associated with fruits and vegetables shall be clearly and conspicuously marked on the label as "SYNTHETIC". The word 'SYNTHETIC' shall be written as boldly as the name of the product. No container containing any such product shall have anything printed or labelled on it which may lead the consumer into believing that it is a fruit product. Neither shall the word 'fruit' be used in describing such a product nor shall it be sold under the cover of a label, which carries the picture of any fruit. Aerated water containing no fruit juice or pulp shall not have a label which leads the consumer into believing that it is a fruit product."

The first part of Section 11 is based on Part II of the Second Schedule to the Order which provides that all fruit syrups, crushes, squashes and cordials must contain at least 25 per cent of fruit juice in the final product.

It is not in dispute that apart from minute quantities of other ingredients mentioned in the list reproduced above from the petition, the only considerable

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quantity of any fruit juice in Sharbat Rooh Afza consists of 10 per cent of orange juice, and it seems that no objection was taken to the production of Sharbat Rooh Afza with its highly coloured display of fruits in the trade mark label until the early part of 1957, when the original requirement of 10 per cent of fruit juice in the above products was raised to 25 per cent. The authorities then began requiring the petitioners to manufacture Sharbat Rooh Afza in accordance with the provisions of the Order, and the filling of the present petition in May, 1957, was precipitated by the letter of the Marketing Development Officer, Fruit Products (Annexure 'G' to the petition) which is dated the 10th of May, 1957, and reads —

> "The undersigned watched the process of manufacture of fruit syrup Rooh Afza at your premises on 29th April, 1957, and observed that adequate quantity of fruit juice as laid down in specifications for fruit syrups under part II of Fruit Products Order, 1955, is not added by you in its manufacture. Your attention is invited in this connection to this office letters of even number dated 29th January, 1957 and 30th January, 1957 and inspection memo dated 27th March, 1957, handed over to you personally wherein you were specifically asked to prepare fruit syrups strictly in accordance with aforesaid specifications but in utter disregard of these instructions you have wilfully continued to contravene the provisions of Fruit Products Order, 1955. Therefore, in exercise of the powers delegated to me by the Licensing Officer under clause 13(f) of Fruit Products Order, 1955, I order you to stop further manufacture and sale of Sharbat Rooh Afza forthwith

and send your compliance report. Your reply should be received in this office within one week of this letter and in no case later than 20th May, 1957, failing which suitable action shall be taken against you".

The first argument addressed to us by the learned counsel for the petitioner was that the whole of the Fruit Products Order was *ultra-vires* of the powers conferred by Section 3 of the Essential Commodities Act sub-section (1) of which dears: —

"If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

Sub-section (2) starts with the words "without prejudice to the generality of the powers conferred by sub-section (i) an order made thereunder may provide....", and there is no doubt that the items listed under the headings (a) to (j) which follow these words refer generally to what is regarded as matters concerned with the quantitative control of supply or prices, and no item refers in term to qualitative standards. This argument has been met by the production of a copy of a judgment of the Supreme Court in Criminal Appeal No. 141 of 1959 Messrs. *Amrit Banaspati Co. Ltd.* v. *The State of Utter Pradesh,* decided on the 30th of November, 1960. This judgment unfortunately appears to have gone unreported, and thus to have escaped the notice of the learned counsel for the petitioners.

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It refers to the Vegetable Oil Products Control Order of 1947 which was made by the Central Government, under similar provisions contained in the Essential Supplies (Temporary Powers) Act of 1946, which was replaced by the Essential Commodities Act of 1955. The Vegetable Oil Products Control Order contained certain provisions regulating the quality of vegetable oil and it was attacked on a similar ground to that raised in the present petition. The learned Judges held that the language of the section was wide enough to permit the regulation of the manufacture of an essential commodity inasmuch as the manufacture of a commodity was nothing but production of that commodity and similarly the power conferred by sub-section (1) of Section 3 as well as by sub-clause (1) of clause (4) to prohibit the production of a vegetable oil carried with it the power to lay down conditions upon which the production of an essential commodity could be permitted and such a condition could well relate to the quality or composition of the final product.

The real trouble appears to arise from the fact that the petitioners wish to carry on the manufacture of Sharbat Rooh Afza on an unchanged formula and at the same time to retain the old registered trade mark with its display of fruits of various kinds, which under Section 11 they cannot do. As the law stands Sharbat Rooh Afza in the present form must either be manufactured as a synthetic sharbat or else under Section 16. Although it is alleged by the respondents and not seriously contested by the petitioners, who emphasise its large sales that Sharbat Rooh Afza is sold as a popular drink by all shops and vendors of drinks to the public, from stalls and hand carts, the petitioners claim that it has some medicinal properties. It is in fact claimed in a small label containing the formula, which is apparently stuck to the bottles on the opposite side to he label bearing the picture of fruits, as

"The Summer Tonic of the East" and as a medicine for sunstroke, thirst, pelpitation, nausea, sleeplessness and other summer complaints'. Section 16 reads:—

> "Nothing in this order shall be deemed to apply.....
> (i) to any syrups which....
> (a) contain fruit juices for medicinal use,
> (b) are prepared in accordance with the allopathic, homeopathic, ayurvedic, unani or any other system of medicine, and
> (c) are sold in bottles bearing a label containing the words 'For medicinal use only' which does not exhibit any picture of fruits."

As I have said a very large proportion of the extensive sales of this syrup are for consumption as a beverage by the general public ,who do not drink it as a medicine, but for their enjoyment, and who presumably regard the medicinal properties claimed for it as merely an extra attraction, if needed they consider the matter at all. Thus for obvious reasons the petitioners do not want to continue manufacturing it under its present formula under the restrictions contained in section 16(1)(c) namely with a label clearly marked 'For medicinal use only' and also devoid of any picture of fruit.

It is contended on behalf of the petitioners that the syrup is not hit by the Fruit Products Order at all, since it is neither included in the squashes etc. mentioned in section 2(d) (v) nor covered by the definition of 'Sharbat' in section 2(d), but it is clear that their case is covered by the amended provisions of section 11 which permits only a drink containing a minimum of 25 per cent of fruit juice to be sold as a fruit drink, and provides that all others are to be classed as synthetic

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and clearly labelled as such without any label containing picture of fruit.

It is further contended that since the petitioners had enjoyed their registered trade mark label in which fruit of various kinds is by far the most prominent feature long before the Fruit Products Order came into force it is an unreasonable restriction and infringement of the fundamental right of the petitioners guaranteed by Article 19(1) (g) of the Constitution to require them as is being done, alternatively to alter the formula of their well-known syrup by increasing the fruit juice contents to 25 per cent or less to label it as synthetic and abandon the picture of fruit which is their registered trade mark.

In my opinion, however, the provisions of the Order as a whole are undoubtedly in the interests of the public at large in setting up certain standards of manufacture of the products covered by the order, which includes pickles, dehydrated fruit and vegetables, jams, jellies and marmalades, tomato products, chutneys, canned, bottled and frozen fruits and vegetables as well as the various kinds of beverages already mentioned, and the Order as a whole cannot possibly be impugned on this ground. I also do not consider it an unreasonable restriction on trade to insist that any beverage which purports to be a fruit drink must contain at least 25 per cent of fruit juice. In fact, speaking as a layman, I am surprised that the requisite percentage has been fixed as low as 25 per cent. If this standard cannot be held to be unreasonable, can it possibly be said that it is unreasonable that any drink which does not contain the minimum percentage of fruit juice must not be sold as a fruit drink and must be called 'synthetic', and at the same time that no beverage which does not qualify as a fruit drink can be

permitted to bear label containing picture of fruit, which would obviously be calculated to mislead the public as to the nature of the product? I have no hesitation in answering this question in the negative. I am, therefore, of the opinion, that this writ petition fails and must be dismissed, but I would leave the parties to bear their own costs.

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MEHAR SINGH, J.—I Agree.

Mehar Singh, J.

K.S.K.

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