

CASE NO.:

Appeal (civil) 3630-3631 of 2003
Appeal (civil) 4648-4653 of 2003
Appeal (civil) 8123 of 2003
Appeal (civil) 8124 of 2003

PETITIONER:

Prohibition & Excise Supdt. A.P. & Ors.

RESPONDENT:

Toddy Tappers Coop. Society, Marredpally & Ors.

DATE OF JUDGMENT: 17/11/2003

BENCH:

S.B. Sinha

JUDGMENT:

J U D G M E N T

S.B. SINHA, J:

Section 72 of the Andhra Pradesh Excise Act, 1968 provides for rule making power. Sub-sections (3) and (4) of Section 72 of the Act read as under :

"(3) Any rule under this Act may be made with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a statement to be laid before both Houses of the State Legislature.

(4) Every rule made under this Act, shall, immediately after it is made be laid before each House of the State Legislature if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiration of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

Sub-section (3) of Section 72 of the Act, therefore, confers power on the State to give retrospective effect to rules made thereunder, subject to the fulfillment of the legal requirements.

The submission of Mr. K.K. Venugopal, learned Senior Counsel appearing on behalf of the respondents, is that it was not only mandatory to lay the said rule before both Houses of the State Legislatures inasmuch not only reasons for making the same with

retrospective effect are to be assigned but also approval of the Houses was required to be obtained.

Strong reliance, in this behalf, has been placed on Union of India etc. vs. National Hydroelectric Power Corporation Ltd. and Others etc. [(2001) 6 SCC 307].

The submission of the learned counsel cannot be accepted for more than one reason.

Laying down of a subordinate legislation before both Houses of the Legislature is directory in nature.

In M/s Atlas Cycle Industries Ltd. and Others vs. The State of Haryana [(1979) 2 SCC 196], this court noticed that there are three different laying clauses which assure different forms depending on the degree of control which the Legislature may like to exercise, namely, -

- (i) Laying without further procedure,
- (ii) Laying subject to negative resolution,
- (iii) Laying subject to affirmative resolution.

Upon considering a large number of Indian and English decisions, it was held :

"From the foregoing discussion, it inevitably follows that the Legislature never intended that non-compliance with the requirement of laying as envisaged by sub-section (6) of Section 3 of the Act should render the order void. Consequently non-laying of the aforesaid notification fixing the maximum selling prices of various categories of iron and steel including the commodity in question before both Houses of Parliament cannot result in nullification of the notification..."

Yet again in Quarry Owners' Association vs. State of Bihar and Others [(2000) 8 SCC 655], a Division Bench of this Court observed :

"In a democratic set-up, every State Government is responsible to its State Legislature. When any statute requires mere laying of any notification or rule before the legislature its executive, viz., the State Government comes under the scrutiny of the legislature concerned. Every function and every exercise of power, by the State Government is under one or the other Ministry which in turn is accountable to the legislature concerned. Where any document, rule or notification requires placement before any House or when placed, the said House inherently gets the jurisdiction over the same, each member of the House, subject to its procedure gets the right to discuss the same, they may put questions to the Ministry concerned.

Irrespective of the fact that such rules or notifications may not be under the purview of its modification, such Members may seek explanation from such Ministry of their inaction, arbitrariness, transgressing limits of their statutory orbit on any such other matter. Short of modification power, it has a right even to condemn the Ministry. No doubt in the case

where the House is entrusted with power to annul, modify or approve any rule, it plays a positive role and has full control over it, but even where the matter is merely placed before any House, its positive control over the executive makes even mere laying to play a very vital and forceful role which keeps a check over the State Government concerned. Even if submission for the appellants is accepted that mere placement before a House is only for information, even then such information, inherently in it makes the legislature to play an important role as aforesaid for keeping a check on the activity of the State Government. Such placement cannot be construed to be non est. No act of Parliament should be construed to be of having no purpose. As we have said, mere discussion and questioning the Ministry concerned or authority in the House in respect of such laying would keep such authority on guard to act with circumspection which is a check on such authority, specially when such authority is even otherwise answerable to such legislature..."

It was further observed :

"We also find there are few provisions in our Constitution which require mere laying before Parliament. Article 151 requires laying of the report of the Comptroller and Auditor General of India before each House of Parliament and with reference to the State, to be laid before the legislature of the State. Article 338(5) requires placing of the report of the Commission before each House of Parliament and with reference to the State Government, under sub-article (7) it is required to be laid before the legislature of the State. Though they are mere provisions for mere laying before Parliament, but it is always open to any Member of the House to discuss and comment on the said report."

It was, inter alia, concluded :

"(d) Requirement of mere placement of the rules or the notifications before the State Legislature is also one of the forms of check on the State Government to exercise its powers as a delegatee."

Sub-section (3) of Section 72 of the Act merely provides for laying down the rules before both the houses of the Legislature with the reasons for giving a retrospective effect. The said provision does not speak of the necessity to obtain permission or prior approval therefor by the houses of the Legislature. Only in the event the Legislature is not satisfied with the sufficiency or otherwise of the reasons assigned, it may direct that the same would operate prospectively. Sub-sections (3) and (4) of Section 72 must be read in such a manner that both may be given effect to. Sub-section (3) deals with only a special situation, whereas sub-section (4) is general in nature. In the event, a negative resolution is adopted the Rules will cease to have the force of law. Difference between sub-sections (3) and (4) of Section 72 lies in the fact that whereas in case the rule is given retrospectivity, the members of both the houses of the Legislature shall be apprised of the reasons therefor, whereas in case of the rule which is prospective in nature,

simple laying down before both the Houses would serve the statutory object.

In National Hydroelectric Power Corporation (supra), this Court was dealing with a different type of rule making power, viz. Section 16 of the Water (Prevention and Control of Pollution) Cess Act, 1977 which reads as under :

"16. Power to amend Schedule I. - (1) The Central Government may, by notification in the Official Gazette, add to Schedule I any industry having regard to the consumption of water in the carrying on of such industry and the consequent discharge thereof resulting in pollution of any stream and thereupon Schedule I shall, subject to the provisions of sub-section (2), be deemed to be amended accordingly.

(2) Every such notification shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and if it is not sitting, within seven days of its reassembly and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People, and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder."

In that case, therefore, laying of the Rules before both the Houses was held to be subject to affirmative resolution.

Interpreting the said provision, it was observed :

"...Mere perusal of sub-section (2) shows that there has to be a positive act of approval by Parliament to the issuance of the notification before it can be held that Schedule I has been amended. Merely laying the notification before each House of Parliament is not sufficient compliance within the provisions of Section 16(2). There is of course no time-limit within which the Houses of Parliament are required to pass a resolution once the Central Government has sought approval as contemplated by sub-section (2), but in the present case the pleadings disclose that no such approval was in fact sought for."

(Emphasis sought for)

The said observations, thus, must be held to be confined to the fact of the matter obtaining therein. In that case it was found as of fact that the rule had never been placed before the Legislature and, thus, there was even no substantial compliance of the law. The Bench, however, did not consider the effect of the directory nature of such a provision, in the light of the decision of this Court in M/s Atlas Cycle Industries (supra) and Quarry Owners' Association (supra). The Court further did not notice the difference between the expressions 'approval'

and 'permission'. Section 16 of the Water Act, construction whereof was in question did not use the expression 'prior approval'. The word 'approval' indicates that an Act which has already been made and is required to be approved whereas in the case of 'permission', the situation would be different. This aspect of the matter has been considered by this Court in High Court of Judicature for Rajasthan vs. P.P. Singh and Another [(2003) 4 SCC 239] stating :

"When an approval is required, an action holds good. Only if it is disapproved it loses its force. Only when a permission is required, the decision does not become effective till permission is obtained. (See U.P. Avas Evam Vikas Parishad and Another v. Friends Coop. Housing Society Ltd and Another [(1995) Supp (3) SCC 456]. In the instant case both the aforementioned requirements have been fulfilled."

Furthermore, in the instant case, the respondents have not been criminally proceeded against. They have merely incurred a civil liability. Such a liability could be fastened on them irrespective of Rule 24 of the A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969 inasmuch in terms of the conditions of licence as also the Act and the Rules framed thereunder, the licensees are required to carry on their business in liquor which would mean the liquor free from all types of adulteration. Such goods should be fit for human consumption and not hazardous to health. For the said purpose, it was not necessary for the State to strictly adhere to Rule 24 of the Rules inasmuch the right of an accused in terms of Articles 20 and 21 of the Constitution of India would not be attracted in such a case. Even if Rule 24 as amended is held to have no retrospective effect, such a provision must be held to be directory and non-compliance thereof would not vitiate the proceedings for suspension of the licence as even in such a case, it would be open to the respondents herein to get the sample tested by any other private laboratory of their choice for the purpose of showing that the allegations made against them are wrong. The respondents, thus, in no manner are prejudiced. They in the proceedings initiated against them would be entitled to raise all other defences.

By reason of such a rule no substantive right of the appellants is affected inasmuch licences granted to the licensees are subject to the terms and conditions laid down therein whereby strict adherence to the provisions of the Act or the Rules framed thereunder would be implicit.

Furthermore, admittedly the laboratories owned by the State did not have the requisite facilities for testing drugs. A Licensee having regard to public health cannot be permitted to escape his liabilities only because certain testing facilities are not available in the State Laboratories. We have no doubt in our mind that considering the matter from that angle, Rule 24 must be held to be directory in nature.

I may further observe that the observations made in the accompanying judgment of Dr. Lakshmanan, J. to the effect that it is also a settled law by a catena of decisions of this Court that no citizen has got any fundamental right for the trade in liquor and it is for the Government to evolve the excise policy and implement the same in the interest of the public and safeguard the public may not have much relevance in the fact situation obtaining herein and more so when the said question is pending consideration before the Constitution Bench.

Subject to the aforementioned, I respectfully agree with the conclusion arrived at by Brother Lakshmanan, J. that the appeals be allowed.

JUDIS