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Court : Chennai

Decided On : Jul-03-1972

Reported in : (1972)2MLJ466

Appellant : M.M. Rafi and ors.

Respondent : The State Represented by the District Revenue Officer

Judgement :

ORDER

S. Maharajan, J.

1. This revision is directed against the order of the Sessions Judge of East Thanjavur, who set aside the order of the Sub-Magistrate, Mayuram, dismissing the complaint of the District Revenue Officer, and directed the case to be taken on file and disposed of in accordance with law.

2. Petitioners 1 to 7 are accused in a complaint filed, by the District Revenue Officer, Thanjavur under Rules 36, 85(4), 90 and 93 read with Rule 124 of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 and Section 7 of the Medicinal and Toilet Preparation (Excise Duties) Act, 1955. Rule 120 of the Medicinal and Toilet Preparation (Excise Duties) Rules, 1956 provides that no prosecution under the Act shall be instituted except by an Excise Officer not below the rank of a Sub-inspector of Excise. It was contended before the Sub-Magistrate that the District Revenue Officer is not an Excise Officer within the meaning of

Rule 120 and therefore, the complaint was not sustainable. This contention was accepted by the Sub-Magistrate but rejected by the learned Sessions Judge.

3. Section 2(d) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, defines an 'Excise Officer' to mean an Officer of the Excise Department of any State and to include any person empowered by the collecting Government to exercise all or any of the powers of an Excise Officer under this Act.

4. In G.O.Ms. No. 1208, Home Department, dated 20th May, 1969, the Government, have appointed certain officers to exercise the powers conferred or discharge the duties imposed on an 'Excise Officer' by such of the said Rules as are specified in column (3) of the said table. Columns of the table to the Government Order states that in the mofussal districts, the Tahsildar or Independent Deputy Tahsildar or Revenue Divisional Officer or District Revenue Officer having jurisdiction shall exercise the powers conferred or discharge the duties imposed on an Excise Officer under Rule 58(1) of the Rules. The powers conferred under Rule 58(1) are certainly powers of an Excise Officer under the Act. Inasmuch as the District Revenue Officer has been empowered by the collecting Government to exercise one of the powers of an Excise Officer under the Act, it goes without saying that the District Revenue Officer is an Excise Officer within the meaning of the Act as well as within the meaning of Rule 120 of the Rules framed in pursuance of the Act. The learned Sessions Judge was, therefore, right to hold that the prosecution launched by the District Revenue Officer is competent. But he overlooked one serious objection, which is raised before me. The prosecution itself was launched on 29th January, 1969. But G.O. Ms. No. 1208, Home Department, was passed only on 20th May, 1969, that is to say, more than four months after the date of the launching of the prosecution. There is a clause in the Government Order which however, says, that the notification shall take effect on and from 1st of March, 1965. If this clause is *intra vires* and can take effect retrospectively the prosecution would certainly be tenable.

5. In *Income-tax Officer, Alleppey v. M.C. Ponnose* : [1970]75ITR174(SC) , a similar notification issued by the rule-making authority came up for consideration before their Lordships of the Supreme Court. Their Lordships, while dealing with

the matter, observed as follows:

The short question for determination, therefore, was and is whether the State Government could invest the Tahsildar with the powers of a Tax Recovery Officer under the aforesaid provisions of the Act (Section 2(44) of the Indian Income-tax Act, 1961) with effect from a date prior to the date of the notification i.e., retroactively and retrospectively. Now it is open to a sovereign legislature to enact laws which have retrospective operation. Even when Parliament enacts retrospective laws, such laws are - In the words of Willes, J., in *Philips v. Eyre* (1870) 40 L.J.Q.B. 37, no doubt prima facie of questionable policy....

The Courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the Legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provisions which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the Courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect.

Section 19 of the Medicinal and Toilet Preparations (Excise Duties) Act is the section which empowers the Government to make rules to carry out the purposes of this Act. Sub-section (2) of Section 19 enumerates 21 categories of cases in which the Central Government may make such rules. Nothing in these clauses empowers the subordinate legislative authority either by express words or by necessary implication to make a rule or regulation With retrospective effect.

6. The effect of the present notification in G.O.Ms. No. 1208, Home, dated 20th May, 1969, is to clothe the District Revenue Officers with powers of an Excise Officer retrospectively. The Supreme Court in the case cited supra has referred to a case in *Strawboard Manufacturing Co. v. Gutta Mill Workers' Union* A.I.R. 1963

S.C. 95, in which an industrial dispute had been referred by the Governor to a Labour Commissioner with the direction that the award should be submitted not later than 5th April 1950. The award was however, made on April, 1950. OA 26th April, 1950, the Governor issued a notification extending the time upto 30th April. It was held that in the absence of a provision authorising the State Government to extend from time to time the period within which the Tribunal could pronounce the decision, the State Government had no authority to extend the time, and the award was therefore one made without jurisdiction and a nullity. This decision is quite opposite to the facts of this case and I hold on the footing of the authorities quoted above that on 29th January, 1969, the date on which the prosecution against the petitioners was launched, the District Revenue Officer, who was authorised in a subsequent Government Order dated 20th May, 1969, had no valid authority to launch a prosecution as an Excise Officer within the meaning of Section 2(d) of the Medicinal and Toilet Preparations (Excise Duties) Act. I must say that the learned Public Prosecutor has been fair enough to concede this point. I therefore, have no hesitation in disagreeing with the learned Sessions Judge and holding that the order of dismissal of the complaint by the Sub-Magistrate is correct. The order of the Sessions Judge is set aside and that of the Sub-Magistrate restored.

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