

STATE OF MADHYA PRADESH

A

v.

FIRM GAPPULAL ETC.

December 17, 1975

[A. N. RAY, C.J., M. H. BEG, R. S. SARKARIA AND
P. N. SHINGHAL, JJ.]

B

Madhya Pradesh Excise Act—Sections 25, 26 and 62—Levy of excise duty on liquor not lifted by the contractors under a contract is neither authorised by s. 26 of the Act, nor such a power to levy excise duty vested in the State under s. 62 of the Act—Meaning of the word “pratikar”—Whether denotes “compensation or excise duty”.

Under the provisions of the Madhya Pradesh Excise Act, an excise licensee has to pay the following :

C

- (i) The prescribed licence fee, which licence gives the licensee privileges of selling liquor in a shop.
- (ii) The price of liquor which he purchases from the State Government; and
- (iii) Excise on the liquor so purchased by him.

In all the appeals, the appellants are the auction contractors to sell liquor in the various shops. One of the terms of the sale memo was that the contractor would have to lift a prescribed minimum quantity of liquor and pay duty or consolidated duty at the prevalent rate, otherwise they would have to pay duty on the quantity short of the minimum prescribed.

D

In all the appeals, the appellants were served with various demand notices demanding a fourth item, viz., duty on liquor not lifted by the contractor who was bound to lift under the conditions prescribing minimum quantity. The vires of these demands were challenged under Art. 226 of the Constitution before the Gwalior Bench of the Madhya Pradesh High Court and they were allowed.

E

Dismissing the appeals by certificate, the Court,

HELD : (1) “Pratikar” is excise duty. [1042 F]

(2) The State confers the right to require by farming out either by auction or by private treaty. Rental is the consideration for the privilege granted by the Government for manufacturing or vending liquor. Rental is the consideration for the agreement for grant of privilege by the Government. [1042 G]

F

Nashirwar v. State of Madhya Pradesh, [1975] (2) S.C.R. 861; *Hari Shankar v. Deputy Excise and Taxation Commissioner*, [1975] (3) S.C.R. 254, discussed ed.

(3) These appeals relate to the demand of excise only in respect of liquor. Levy of excise duty on undrawn liquor imposed by the State-respondent was exercise of powers which the State did not possess. [1042 H, 1043 E]

G

Bimal Chandra Banerjee v. State of Madhya Pradesh, [1971] (1) S.C.R. 844, followed.

Panna Lal & Ors. v. State of Rajasthan, [1976] (1) S.C.R. 220, not applicable.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. (1) 1751, 1747-50 & 1752, (2) 2041 & 2042 and (3) 1753-1756 of 1971.

H

[From the judgment and order dated the (1) 20-1-1971, (2) 17-2-1971, (3) 21-8-1971 of the Madhya Pradesh High Court]

- A** (Gwalior Bench) in (1) Miscellaneous Petitions Nos. 19/70 & 10, 109 and 111 of 1969 and 18 and 20 of 1970, (2) in 9 and 10 of 1971 and (3) 123-125 and 127 of 1970 respectively.]

I. N. Shroff for the appellant.

A. K. Sen (in CA 1751/71) for the respondents.

- B** *Hargobind Misra* (in CAs 2041-42/71) for the respondents.

A. Raman (in CA 1751/71) and *S. S. Khanduja* in all the appeals with him for the respondents.

The Judgment of the Court was delivered by

- C** RAY, C.J. These appeals by certificate turn on the question whether the Government was right in making a demand of excise duty on liquor not lifted by the liquor contractors.

The High Court relying on the decision of this Court in *Bimal Chandra Banerjee v. State of Madhya Pradesh*⁽¹⁾ held against the Government.

- D** There is no dispute that in these appeals the demand notice is in respect of duty on liquor which has not been lifted.

The liquor contractors were subject *inter alia* to the following conditions at auction which the Government wants to enforce :

- E** "In case the fixed monthly quantity is not taken in any month, the concerning contractor shall be liable to pay to the Government the amount of PRATIKAR at the rate fixed by the Government for spiced spirit and plain spirit to the extent to which it would be less than the fixed monthly minimum quantity and the amount of such PRATIKAR shall be paid within the tenth day of the month such shortage is concerned. Security to the extent of one sixth to one tenth of the whole of the amount of yearly PRATIKAR will have to be given".

- F** Pratikar is excise duty.

- G** This Court in the recent decision in *Nashirwar v. State of Madhya Pradesh*⁽²⁾; *Hari Shanker v. Deputy Excise and Taxation Commissioner*⁽³⁾ and *Panna Lal & Ors. v. State of Rajasthan*⁽⁴⁾ held that the State has exclusive right to manufacture and sell liquor and to sell the said right in order to raise revenue. The State confers the right to vend liquor by farming out either by auction or by private treaty. Rental is the consideration for the privilege granted by the Government for manufacturing or vending liquor. Rental is the consideration for the agreement for grant of privilege by the Government.

- H** In *Bimal Chandra Banerjee's* case (*supra*) this Court held that a levy of excise duty on undrawn liquor imposed by the State was exercise of powers which the State did not possess.

(1) [1971] (1) S.C.R. 844.

(3) [1975] (3) S.C.R. 254.

(2) [1975] (2) S.C.R. 861.

(4) [1976] (1) S.C.R. 220.

In the recent decision of this Court in *Panna Lal's* case (*supra*) this Court said that there is no levy of excise duty in enforcing the payment of the guaranteed sum or the stipulated lump sum mentioned in the licenses. It was also pointed out in *Panna Lal's* case (*supra*) that the lump sum amount stipulated under the agreement is not to be equated with issue price. The issue price is payable only when the contractors take delivery of a particular quantity of specified value of country liquor. The issue price relates only to liquor drawn by the contractors and does not pertain to undrawn liquor. This Court in *Panna Lal's* case (*supra*) said that "no excise duty is and can be collected on undrawn liquor". In *Panna Lal's* case (*supra*) the excise duty component of the issue price was found to be a measure of the quantum of or extent of the concession or the remission to be given to the liquor contractor. The concession is not what is paid by the contractor to the State but it is a remission or a reduction in the stipulated amount for exclusive privilege allowed by the State to the contractor. The lump sum amount payable for the exclusive privilege is not to be confused with the issue price. In essence what was sought to be recovered from the liquor contractors in *Panna Lal's* case (*supra*) was the shortfall occasioned on account of failure on the part of liquor contractor to fulfil the terms of license.

It was pointed out in *Panna Lal's* case (*supra*) as follows :—

"To suggest that the license obliges the contractors to pay excise duty on undrawn liquor is totally misreading the conditions of the license. The excise duty is collected only in relation to the quantity and quality of the country liquor which is drawn. No excise duty can be predicated in respect of undrawn liquor".

These appeals are, therefore, not of the type of *Panna Lal's* case (*supra*). These appeals are of the type of *Bimal Chandra Banerjee's* case (*supra*). These appeals relate to the demand of excise only in respect of undrawn liquor. The High Court rightly quashed the demands. The appeals are, therefore, dismissed. Each party will pay and bear its own costs.

S.R.

Appeals dismissed.