

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2035 OF 2007

IN

WRIT PETITION NO. 1049 OF 2006

Sunder P. Chugh

.. Petitioner

V/s

State of Maharashtra & ors.

.. Respondents

Mr.D.B. Savant for the petitioner.

Mr.V.P. Malvankar, A.G.P. for the respondents.

CORAM : S.B. MHASE &
D.G. KARNIK, JJ.

DATE : 29TH SEPTEMBER 2007

P.C. :

1. Heard learned counsel for the petitioner.

2. This civil application has been taken out in Writ Petition No.1049 of 2006 in which the rule has been issued. At the time of issuance of rule, the Court did not grant any interim relief, but granted liberty to the petitioner to apply separately for an interim relief, if necessary. Thereafter, the present civil application is taken out for the interim relief.

3. In the writ petition, the petitioner has

contended that the Bombay Denatured spirit Rules, 1959 are ultra vires the Constitution of India and has prayed that the said Rules should be struck down. The petitioner has further prayed that the Court should declare that the petitioner does not require a licence under the Bombay Prohibition Act for sale, purchase and transportation of the denatured spirit.

4. By this civil application, the petitioner prays that the State should be restrained from prosecuting the petitioner for not holding licence under the Prohibition Act and the Bombay denatured Spirit Rules, 1959 for possessing, purchasing, and transporting the denatured spirit.

5. The issue of constitutional validity of the Bombay Denatured Spirit Rules, 1959 is yet to be decided. In the circumstances, we cannot restrain the respondents from instituting the prosecution on the assumption that the Bombay Denatured Spirit Rules are unconstitutional. Needless to say that if the petitioner is prosecuted, it is open for the petitioner to contend before the concerned magistrate that the Rules are not applicable and/or that he does not require the licence for any reason including the grounds which have been taken in the writ petition. However, prosecution cannot be stayed.

6. Learned counsel for the petitioner invited our attention to the decision of the Supreme Court in **State of U.P. v. Vam Organic Chemicals Ltd.**, reported in 2003 AIR SCW 5463. Therein, Supreme Court has held that the State Government is competent to levy fee for the purpose of ensuring that industrial alcohol is not surreptitiously converted into potable alcohol and that the State is deprived of revenue on the sale of such potable alcohol and the public is protected from consuming illicit liquor. The question whether the State is competent to make a provision requiring a licence to be obtained so as to ensure that the industrial alcohol is not surreptitiously converted into potable alcohol is a question which is required to be decided in the writ petition. At this stage, without hearing the writ petition finally, it cannot be said that the State is not competent to make such a provision and further direct not to prosecute the petitioner for non-obtaining the licence.

7. In the circumstances, we cannot grant interim relief of restraining the State from prosecuting the petitioner for the alleged breach. Civil application is accordingly dismissed.

(D.G. KARNIK, J.)

(S.B. MHASE, J.)