

KANYA KUMARI DISTRICT SIDHA AND AYURVEDA  
VAIDYAR SANGAM AND ANR.

v.

THE GOVERNMENT OF TAMIL NADU AND ORS.

MARCH 13, 1996

[J.S. VERMA, N.P. SINGH AND B.N. KIRPAL, JJ.]

*Tamil Nadu Prohibition Act, 1937 : Sections 3(9), 16, 54(2) (m).*

*Tamil Nadu Spirituous preparations (Control) Rules, 1984: Rules 3(b)(j)(k) and 11.*

*Indigenous system of Medicines—Medicinal Preparation containing alcohol whether self generated or otherwise or any intoxicating drug—Sale of—‘Spirituous preparations’ and ‘Restricted preparations’—Sale of—Requirement of licence for—Held valid—Object of the rules explained.*

The appellants manufacture and deal in ayurvedic and unani medicines. They questioned the validity of the Tamil Nadu Spirituous Preparations (Control) Rules, 1984 contending that the provisions requiring licences for sale of indigenous system of medicines by medical practitioner or by those holding licence under the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 or holders of licences under Drugs and Cosmetics Act, 1940 amounts to unreasonable restrictions on the right of wholesale and retail dealers to deal in indigenous system of medicines. The High Court upheld the validity of the Rules. Against the decision of the High Court an appeal was preferred before this Court.

Dismissing the appeal, this Court

**HELD :** 1. The impugned order of the High Court requires no interference. In view of the provisions contained in section 3(9) and 54(2)(m) of the Tamil Nadu Prohibition Act, 1937 read with Rules 3(b)(j)(k) and 11 of the Tamil Nadu Spirituous Preparations (Control) Rules, 1984, if any wholesale or retail dealer is to sell any preparation which contains alcohol whether self-generated or otherwise or any intoxicating drug, then he has to obtain licence as required by Rule 11 of the Rules. The Rules purport to regulate the sale of spirituous preparations

and restricted preparations through homoeopathic or indigenous system of medicines. The restrictions imposed by the Rules are consistent with the provisions of the Act and the State Government had authority to frame such Rules. The primary object is to regulate the sale of medicinal or toilet preparations containing alcohol and/or intoxicating drugs, which is consistent with the scheme and provisions of the Act i.e. prohibition of the manufacture, sale and consumption of intoxicating liquors and drugs in the State of Tamil Nadu. [321-D, 320-E-H; 321-C]

2. The fact that the appellants are dealing in many products of indigenous system of medicines and all of them do not contain alcohol is of no significance or consequence. Once it is found that they have been dealing and selling any medicinal preparation through indigenous system of medicines which can be held to be restricted preparation or spirituous preparation then the provisions of the Rules shall be attracted and the appellant can deal only on basis of licences being granted for the same.

[321-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 30-31 of 1993.

From the Judgment and Order dated 17.4.89 of the Madras High Court in W.A. No. 1508 and W.P. No. 1445 of 1988.

M. Kalyana Sundaram and S.R. Setia for the Appellants.

A.S. Nambiar, Ms. A. Subhashini for Arputham, Aruna & Co. for the Respondents.

The Judgment of the Court was delivered by

N.P. SINGH, J. The appellants who manufacture and deal in ayurvedic and unani medicines questioned the validity of the Tamil Nadu Spirituous Preparations (Control) Rules, 1984 (hereinafter referred to as the 'Rules') framed under the exercise of the power conferred by Section 54 of the Tamil Nadu Prohibition Act, 1937 (hereinafter referred to as the 'Act') before the High Court which has upheld the validity of the said rules. The order by which the aforesaid Rules were notified gives the object of the framing of the Rules, saying that by G.O. Ms. No. 3031, Home, dated 1.11.1958, the Government in exercise of the powers conferred by Section 16 of the aforesaid Act had exempted the medicinal and toilet preparations containing alcohol and/or intoxicating drugs from all provisions of the said

Act, subject to certain conditions. But the conditions were found to be inadequate to check effectively the manufacture and sale of medicines containing alcohol and because of that a decision had been taken to frame a separate set of rules. Rule 3(b) defines alcohol to mean ethyl alcohol of any strength and purity having the chemical composition of  $C_2H_5OH$ . Rule 3(j) defines "restricted preparations":

"spirituous preparations that are intended for internal consumption and containing more than 18% v/v of alcohol and medicinal preparations containing intoxicating drugs.

Provided that all ayurvedic preparations containing self-generated alcohol and classified as "restricted preparations" under the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 shall be treated as restricted preparations for the purpose of these rules."

Similarly Rule 3(k) defines "spirituous preparations" :

"Spirituous preparations" means -

(i) any medical or toilet preparation containing alcohol, whether self-generated or otherwise, or any intoxicating drug; or

(ii) any other substance containing alcohol or intoxicating drug, whether self-generated or otherwise, notified under rule 5 to be a spirituous preparation;

....."

Rule 11 provides for grant of wholesale and retail sale licences in different forms prescribed therein for sale of any homoeopathic medicinal preparation or "any preparation coming under the indigenous system of medicine to a registered medical practitioner or to those holding licence in Forms L1 and L2 under the Medicinal and Toilet preparations (Excise Duties) Rules, 1956 or a licence under the Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940)".

According to the appellants, the provisions aforesaid requiring licences for sale of indigenous system of medicines by medical practitioner or by those holding licence under the Medicinal and Toilet Preparations

(Excise Duties) Rules, 1956 or holders of licences under Drugs and Cosmetics Act, 1940 amounts to unreasonable restrictions on the right of wholesale and retail dealers to deal in such indigenous system of medicines.

It cannot be disputed that power to frame such Rules, requiring the wholesale dealers and retail dealers to get licences before dealing in indigenous system of medicines must flow from the provisions of the Act under which such Rules have been framed. Section 3(9) of the Act defines "liquor":

"liquor" includes toddy, /country Liquor, spirits or wine, (denatured spirits), spirits, wine, beer, and all liquid consisting of or containing alcohol"

Section 54 vests power in the State Government to make rules for the purpose of carrying into effect the provisions of the said Act. Clause (m) of sub-section (2) of Section 54 says :

"Clause (m) - for the prevention of the use of medicinal or toilet purposes and for the regulation of the use of any liquor or drug exempted from all or any of the use provisions of this Act."

On a plain reading Section 54(2)(m) enables the State Government to make rules for regulating the use of any liquor for medicinal or toilet purposes. We are not able to appreciate as to how in face of Section 54(2)(m) it can be held that the State Government could not have regulated the use of liquor which shall include alcohol in view of definition of liquor under Section 3(9) aforesaid. As already pointed out above, Rule 3(k) defines 'spirituous preparations' to mean any medicinal or toilet preparations containing alcohol whether self-generated or otherwise or any intoxicating drug. The expression alcohol has already been defined in rule 3(b). In this background, if any wholesale or retail dealer is to sell any preparation which contains alcohol whether self-generated or otherwise or any intoxicating drug, then he has to obtain licence as required by Rule 11 of the Rules. From reading the Rules, it is apparent and obvious that they purport to regulate the sale of spirituous preparations and restricted preparations through homoeopathic or indigenous system of medicines. The restrictions imposed by the Rules are consistent with the provisions of the Act and the State Government had authority to frame such Rules under Section 54(2)(m).

On behalf of the appellant, it was pointed out that they are dealing in many products of indigenous system of medicines and all of them do not contain alcohol. In other words, majority of the medicinal preparations are neither spirituous preparations nor restricted preparations containing any alcohol. This according to us, is of no significance or consequence. Once it is found that the appellants have been dealing and selling any medicinal preparation through indigenous system of medicines which can be held to be restricted preparation or spirituous preparation then the provisions of the Rules shall be attracted and the appellant can deal only on basis of licences being granted for the same. The notification through which the rules were notified as already mentioned above clearly indicate the object and the reason for framing such rules. The primary object is to regulate the sale of medicinal or toilet preparations containing alcohol and/or intoxicating drugs, which is consistent with the scheme and provisions of the Act i.e. prohibition of the manufacture, sale and consumption of intoxicating liquors and drugs in the State of Tamil Nadu. The impugned order of the High Court requires no interference. The appeal is accordingly dismissed. In the fact and circumstances of the case, there shall be no orders as to cost.

Appeal dismissed.