

BHUPENDRA SINGH BHATIA

v.

STATE OF M.P. AND ORS

DECEMBER 6, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

*Contract Act, 1872/Sale of Goods Act, 1930 :*

*Sale/purchase of foreign liquor—Fixation and payment of price—Held: Seller and purchaser both should know sale/purchase price at the time or before the sale—In a sale of a commodity if seller agrees to fix/inform the purchase price after the sale, it would be open to purchaser to reduce the price but to a negligible amount and vice-versa—State Government/Purchase Committee fixing lower rate of commodity than the rate as fixed earlier under an **ad hoc** purchase agreement—Payment made—Demand of differential amount from Seller—Such an action by the State Government is arbitrary and unreasonable—Hence, the rates fixed by the State Purchase Committee earlier would be applicable for entire financial year 1996-1997—Directions issued—Constitution of India, 1950—Article 14.*

In terms of a new Excise Policy introduced by the State of Madhya Pradesh, it was decided that sale of foreign liquor in tribal sub-plan area would be exclusively done by the State Government through retail outlets. In connection thereof, a purchase committee was constituted for purchasing foreign liquor. The Purchase Committee was to decide about the purchase price of the foreign liquor on the basis of the lowest quotations, and as it was likely to take time, a stop-gap arrangement was made and the Purchase Committees were constituted at the District Level headed by the Collector to purchase the foreign liquor from the whole-sellers as an *ad hoc* arrangement till the rate was finally decided by the State Level Committee. This arrangement was allowed to continue till the matter was decided by State Level Committee. The Quotations of the appellant-supplier were accepted by the Purchase Committee for supply of foreign liquor to Government liquor shops and the payments were made to the appellant for supply of foreign liquor at the approved rates. However, the rates were ultimately decided in December, 1996 by the State Level Committee and the excess amount paid to the appellant

A for supply of foreign liquor was sought to be recovered from him. Aggrieved, the seller filed the petition before the High Court, which was dismissed by the High Court. Hence the present appeal.

B Appellant-seller contended that the rate fixed by the Purchase Committee in April-May, 1996 was applicable for the entire financial year of 1996-97 and the same cannot be changed before the expiry of the financial year and it cannot be made effective retrospectively from 1.4.1996; and that no reasons have been assigned for the said change and the common rate fixed now for the entire region is not justified, as the transportation charges would be different in different areas.

C Allowing the appeal, the Court

D HELD: When a sale of any commodity is made, the seller and the purchaser both have to know the sale/purchase price at the time of or before the sale. A sale/purchase price to be fixed subsequent to the sale is unknown in the world. If a sale of a commodity is made today and if the purchaser informs the seller that he will inform the purchase price subsequently, then it can always be open to the purchaser to reduce the purchase price subsequently to a negligible amount. Similarly, if the sale price can be fixed subsequent to the sale at the option of the seller it can be increased by the seller at his option, and the seller can later on while demanding the sale price increase it to an exorbitant amount. Such a view is not clearly contemplated by any sensible person or by any stretch of imagination. In fact, such an action by the State Government has to be treated as arbitrary and unreasonable, and it is well settled in *Maneka Gandhi v. Union of India* and another that any State action which is arbitrary and unreasonable is violative of Article 14 of the Constitution. Hence, the rates fixed by the Purchase Committee in April/

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F May, 1996 are applicable for the entire financial year 1996-1997.

[281-F-G-H; 282-A-B]

*Maneka Gandhi v. Union of India and another* AIR (1978) SC 597, relied on.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 445 of 2000.

From the Judgment and Order dated 20.4.1999 of the High Court of Madhya Pradesh at Jabalpur in LPA 35/1999.

H Prakash Shrivastava for the Appellant.

Sidharth Dave and Vibha Datta Makhija for the Respondents. A

The Judgment of the Court was delivered by

**MARKANDEY KATJU, J.** This appeal has been filed against the impugned judgment of the Madhya Pradesh High Court dated 20.4.1999 in LPA No. 35 of 1999. B

Heard learned counsel for the parties and perused the record.

The facts of the case are that appellant challenged the order of the Additional Commissioner dated 27.12.1996, whereby the rates to be paid by the Government to the whole-sellers of foreign liquor to the State Government for sale of liquor through F.L.10 licence through its retail outlets in the tribal sub-plan area, were fixed on the basis of the decision taken in the meeting held on 23.12.1996 under the Chairmanship of the Additional Excise Commissioner, Gwalior. The appellant further challenged the order dated 12.2.1997 of the Additional Commissioner, Excise, as contained in Annexure P/8 filed with the petition, directing the District Excise Officer that the rates decided by the Committee are being made effective from 1.4.1996 and the difference of the amount between the rates at which the whole-sellers were paid from 1.4.1996 till the decision of the Committee and the rates now decided by the Committee should be recovered/adjusted from the whole-sellers. C D

The main contention of the appellant was that the rate fixed by the Purchase Committee in April-May, 1996 are applicable for the entire financial year of 1996-97 and the same cannot be changed before the expiry of the financial year and it cannot be made effective from 1.4.1996. It is also urged that no reasons have been assigned for the said change and the common rate fixed now for the entire region is not justified, as the transportation charges will be different in different areas. E F

A new Excise Policy was introduced in the State of Madhya Pradesh w.e.f. 1.4.1996, by which it was *inter-alia*, provided that in tribal sub-plan area, sale of foreign liquor through retail outlets will be done exclusively by the State Government with the purpose to save the tribals from being exploited by the private contractors, and the earlier policy of auctioning the foreign liquor shops to private individuals was abandoned in tribal areas. By virtue of the new Policy, the State was to sell the foreign liquor from the Government retail outlets in the tribal dominated areas. Therefore, a State Level Purchase Committee was constituted for purchase of foreign liquor to be sold to the G H

A State Government through its retail outlets in the tribal areas. The Purchase Committee was to decide about the purchase price of the foreign liquor on the basis of the lowest quotations. However, as the constitution of the Purchase Committee and inviting tenders at State Level was likely to take time, a stop-gap arrangement was made and the Purchase Committees were constituted at the District Level headed by the Collector to purchase the foreign liquor from the whole-sellers as an *ad hoc* arrangements till the rates were finally decided by the State Level Committee. This arrangement was allowed to continue from time to time till the matter was decided by State Level Committee.

C The case of the appellant was that the appellant's quotations were accepted for supply of foreign liquor to Government liquor shops in pursuance of the quotations and the rates quoted by the appellant which were duly approved by the Purchase Committee, and the payments were made to the appellant for supply of foreign liquor at the approved rates. However, the rates were ultimately decided in December, 1996 by the State Level Committee and the excess amount paid to the appellant for supply of foreign liquor was sought to be recovered from him. Hence, the appellant filed the petition before the High Court.

E The High Court in paragraph 7 of its judgment observed that at the time of the purchase of liquor from the appellant in pursuance of the order of the Collector it was clearly mentioned that it is a temporary arrangement till a regular arrangement is made. It was stated in the letter dated 22.3.1996 (Annexure P/2 to the writ petition) that since the State Level Committee is yet to decide the rates, hence a temporary arrangement of purchase of foreign liquor may be made as a stop-gap arrangement till the State Level Committee decides the rates. This arrangement was allowed to continue upto 15.5.1995 and even thereafter till the State Level Committee finally decided the rates.

G The stand of the State Government in its counter affidavit was that for fixing the rate for purchase of foreign liquor the State Level Committee took a long time as it had to correspond with various distributors from all over the country and hence an *ad hoc* arrangement had to be made in the meantime. The appellant was clearly informed by the Collector vide letter dated 10.4.1996 that the appellant will be bound by the directions issued by the State Excise Commissioner in respect of rates of foreign liquor. Another letter was sent to him reiterating the same position vide letter dated 20.9.1996.

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The appellant also supplied liquor at the rates fixed by the District Level Committee as an *ad hoc* arrangement from April, 1996 to December, 1996 and this rate which was fixed by the District Level Committee was higher than the rate fixed by the State Level Committee in December, 1996. It is contended by learned counsel for the State Government that the appellant was clearly informed that this *ad hoc* rate was subject to the final decision of the State Level Committee. When the State Level Committee fixed the rate it became effective from 1.4.1996, i.e. retrospectively from that date. Hence, the appellant and others who supplied liquor at the higher rate as per *ad hoc* arrangement of the District Level Committee, had to refund the difference of rates between that fixed by the State Level Committee and the District Level Committee.

The High Court while dismissing the writ petition observed :

“The appellant knew it well that the rates given by the appellant is a temporary arrangement till the State Level Committee decides the rates for supply of foreign liquor to the Government retail outlets. Since the State Level Committee has decided the various rates of foreign liquor and which was communicated by communication (Annexure P/5), the difference of rates supplied by the petitioner were higher than the rates which has been accepted by the State Level Committee; therefore, the difference of rates charged by the petitioner is sought to be adjusted. This action of the State Government, in our opinion, does not appear to be unjust or breach of principles of natural justice”

With respect, we cannot agree with the reasoning of the High Court.

In our opinion, when a sale of any commodity is made, the seller and the purchaser both have to know the sale/purchase price at the time of or before the sale. A sale/purchase price to be fixed subsequent to the sale is unknown in the world. If a sale of a commodity is made today and if the purchaser informs the seller that he will inform the purchase price subsequently, then it can always be open to the purchaser to reduce the purchase price subsequently to a negligible amount. Similarly, if the sale price can be fixed subsequent to the sale at the option of the seller it can be increased by the seller at his option, and the seller can later on while demanding the sale price increase it to an exorbitant amount. Such a view is not clearly contemplated by any sensible person or by any stretch of imagination. In fact, such an action by the State Government has to be treated as arbitrary and unreasonable,

- A and it is well settled in *Maneka Gandhi v. Union of India and Anr.*, AIR (1978) SC 597, that any State action which is arbitrary and unreasonable is violative of Article 14 of the Constitution.

- B For the reasons given above, this appeal is allowed. The impugned judgments of the Learned Single Judge as well as the Division Bench of the High Court, and the orders of the Additional Excise Commissioner dated 27.12.1996 and Excise Commissioner dated 12.2.1997 are set aside. It is held that the rates fixed by the Purchase Committee in April/May, 1996 are applicable for the entire financial year 1996-1997. The prayers in the writ petitions are allowed. No costs.

S.K.S:

Appeal allowed.