

PETITIONER:
POLYCHEM LIMITED & ANR.

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT: 04/08/1998

BENCH:
CJI, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. Venkataswami, J.

The short question that arises for our consideration in this appeal is whether the State Government is empowered to collect differential supervision charges with retrospective effect under Section 58-A of the Bombay Prohibition Act, 1949?

The facts leading to the filing of this appeal are as follows:-

The first appellant is a company registered under the provision of the Companies Act, 1956. The second appellant is a share-holder and director of the first appellant-company. The appellants, for the sake of convenience, will be referred to hereinafter as the 'Company'. The company is engaged in the manufacture of alcohol potable liquor, country liquor and alcohol based chemicals. As required under Section 58 A of the Act read with Condition No.2 of the License issued to the Company in Form 'I', the Company used to pay in advance the supervision charges towards the costs of the staff deputed for the purpose of supervising the operation of manufacture, storage and issue of spirit. The Inspector of prohibition and Excise by a letter dated 19th July, 1979 informed the company that the wages and dearness allowance of Government servants were increased retrospectively and on account of that the supervision charges payable by the Company comes to Rs. 1,54,379.79 for the period 1970 to 1979. However, pursuant to the said letter dated 19th July, 1979, no steps were taken by the respondents to collect the differential amount from the Company. While so, the Company on 7th April, 1983 received a demand Notice dated 21st March, 1983 calling upon the Company to pay the differential amount of supervision charges amounting to Rs. 99,702.10 immediately within 15 days from the date of the receipt of the said Demand Notice, failing which legal action to recover the amount as arrears of land revenue would be taken.

Aggrieved by the said demand of differential supervision charges retrospectively, the company moved the High Court by filing a writ Petition No. 1672/83 under Article 226 of the Constitution of India. The said Writ

Petition was heard along with writ Petition No. 940/82 and the main judgment was rendered in Writ Petition No. 940/82. A Division Bench of the Bombay High Court upheld the impugned demand of differential supervision charges retrospectively. The Company, aggrieved by the judgment of the Bombay High Court dated 12.9.90, has preferred this appeal by special leave.

Learned counsel appearing for the appellants-company submitted that the impugned judgment of the Division Bench runs counter to an earlier Division Bench judgment of the same High Court on the same point. It is stated that another Division Bench in M/s J.E. Bilmoria & sons Vs. The State of Maharashtra & Ors. [1990 (2) Bombay C.R. 108 (Nagpur Bench)] has quashed similar demand of differential supervision charges retrospectively. Therefore, the judgment under appeal, ignoring the earlier division Bench judgment on the same point, cannot be sustained.

Learned counsel appearing for the respondents, placing reliance on the reasoning given in the judgment under appeal, supported the conclusions reached by the Division Bench.

Section 58-A of the Bombay Prohibition Act, 1949 enables the Statement Government to levy and collect what is called supervision charges. It is common ground that this supervision charges are collected in advance at the beginning of every quarter. The question for consideration is whether this collection of supervision charges in advance can be revised as a consequence of revision of salaries to Government servants. While upholding such revision and collection of differential supervision charges retrospectively, the learned judges in the judgment under appeal held that the liability to pay supervision charges and the quantification of the same are two different concepts and, therefore, the liability was not imposed with retrospective effect, but merely rates are revised with retrospective effect. The Division Bench for coming to the above conclusion placed reliance on a single Judge's judgment in Writ Petition No. 631/82. As a matter of fact, we find that the judgment of the learned Single judge in Writ Petition No. 631/82 was expressly overruled by an earlier Division Bench of the Bombay High Court on 1.8.89 in M/s J.E. Bilmoria's case (supra). We presume that this Division Bench judgment was not brought to the notice of the latter Division Bench, otherwise they would not have taken diametrically opposite view without referring the issue to a larger Bench. We further notice that the judgment in M/s J.E. Bilmoria's case was not challenged by the Revenue as per the information passed on by Mr. Nargolkar, learned counsel for the respondents.

In M/s J.E. Bilmoria's case, the reasonings of the Division Bench to hold that the demand of differential supervision charges retrospectively was without jurisdiction, are in the following words:-

"We have already pointed out above the provisions of Section 58-A of the Bombay Prohibition Act the relevant rules and the conditions of licence, which bear upon the question of supervision charges. If in pursuance of the provisions of Section 58-A of the Bombay Prohibition Act, the rules and the conditions of licence, advance payment of the supervision charges had to be made at the beginning of

every quarter and without payment of those charges, the articles could be removed from the bonded warehouse for sale evidently the duty of the licensee, who stores articles in the bonded warehouse, would be only to pay the amount which has been ascertained and had to be paid in advance. Neither of these provisions clothes the State Government or the commissioner with the authority to charge the supervision charges with retrospective effect. Obviously, when section 58-A uses the words "the cost of such staff shall be paid to the State Government", that would have reference to the cost of the staff as obtaining for the period during which the goods are stored in the bonded warehouse and not the incidence which the State would have to bear by reason of such a remote circumstance as the upward revision of the pay-scales of its own employees at & latter date.

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We must bear in mind the nature of excise duty as indicated in M/s Mc Dowell & Co. 's case, A.I.R. 1977 S.C. 1459 (supra) that it is an indirect duty which the manufacturer or producer passes on to the ultimate consumer, that is, ultimate incidence will always to be on the customer. By attempting to pass on the incidence of upward revision of pay-scales to the licensees, several years after the removal of the articles from the bonded warehouse, the respondents would make it impossible for the petitioners to pass on the cost of storing the articles in the bonded warehouse to the ultimate consumer, and this clearly the respondents cannot be permitted to do, because such a situation had never been anticipated by the petitioners, and by the unilateral action of the respondents, no additional liability can be imposed on the petitioners.

As observed in (Income Tax Officer V. I.M.C. Ponnose), A.I.R. 1970 S.C. 385, it is open to a sovereign legislature to enact laws which have retrospective operation. Even when the parliament enacts retrospective laws such laws are no doubt prima facie of questionable policy, and contrary to the general principle that legislation by which

the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law. 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. Here, it does not appear to us that Section 58-A of the Bombay prohibition Act permitted the Government retrospectively to raise the quantum of costs, nor is there any warrant to infer that there was delegation to the rule making authority to charge the amount of costs on the basis of the events which could not have been anticipated at the time the costs were assessed.

After describing in detail how the petitioners order their affairs, the petitioners have stated in ground No. (vi) of para 2 of the petition that on a rational interpretation of the relevant conditions and provisions, the petitioners were entitled to know in advance the costs payable by them so as to enable them to fix the price of goods, and the respondents, having acted in the manner and permitted to the petitioners to sell the goods on the effective representation that the cost of supervision charges for incoming quarter was fixed for the said quarter, cannot now be permitted to go back on their said representation and demand additional amount, more so with retrospective effect from 5.5.1970."

On a scrutiny of these two Division Bench judgments, the view taken in M/s J.E. Bilmoria's case commends to us and we are of the view that the reasonings given therein are well-founded. We are, therefore, of the view that the impugned demand of differential supervision charges retrospectively cannot be sustained and accordingly the judgment under appeal is set aside and the Writ Petition No. 1672/83 filed by the company stands allowed. The question posed at the beginning is answered in the negative.

In the result, the appeal is allowed accordingly with no order as to cost.